The ICEman Cometh? Recent War of Words Puts California Employers in the Crosshairs of National Immigration Debate

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Immigration has been a major flashpoint between California and the Trump Administration during the past year. In 2017, the California Legislature passed significant legislation impacting how California employers deal with federal immigration authorities. These actions appeared to put California on a collision course with the federal government, with California employers stuck squarely in the middle. A recent escalation in rhetoric between state and federal officials may portend that such a collision may be imminent.

What's The Backstory?
Right from the election of President Trump, a major source of friction between his administration and California has been the issue of immigration. The California Legislature has been vocal and active in efforts to "resist" announced or anticipated actions of the Trump Administration. This includes efforts to make California a "sanctuary state," legislative resolutions and statements against the travel ban and other Trump proposals, expressions of support for the DACA program, and other actions to provide services and support to immigrants in California, including California workers.

This is not new. In the last few years, the California Legislature has enacted a number of laws designed to protect immigrant workers – ranging from anti-retaliation measures to bills aimed at restricting the use of E-Verify or prohibiting specified "document discrimination."

But the election of President Trump put these differences into sharp contrast, and appeared to set the state and federal governments on a collision course over this hot-button issue.

California Legislature Responds – AB 450 and SB 54
In 2017, the California Legislature responded with dramatic measures to draw a line in the stand on immigration.

Most significantly for California employers, the state enacted Assembly Bill 450 by Assemblymember David Chiu (D-San Francisco). Among other things, AB 450 prohibits employers from voluntary consenting to federal immigration authorities having access to the worksite without a judicial warrant, or document reviews without a subpoena or warrant, requires employers to provide their workers with notice of certain immigration enforcement actions and results, and imposes new

statutory penalties for violations of the law. Read more about the new law in our complete summary of AB 450 here.

California also enacted a well-publicized bill, Senate Bill 54, to essentially establish California as a "sanctuary state." Among other things, SB 54 placed significant limitations on the manner in which local law enforcement officials may cooperate with federal immigration authorities.

ICE Reaction is Frosty

Perhaps not surprisingly, the Trump Administration did not take too kindly to California's passage of SB 54. Tom Homan, the Director of Immigration and Customs Enforcement (ICE) was quoted as saying, "ICE will have no choice but to conduct at-large arrests in local neighborhoods and at worksites," and was reported to have given instruction for workplace enforcement activity to increase "four or five times."

Therefore, it seemed increasingly likely that there would be more interactions between ICE and California employers, which in turn would implicate the restrictions and obligations placed upon employers by AB 450.

We may be there now.

Imminent Federal Worksite Enforcement Activity in California?

This escalating war of words has taken a dramatic turn of late.

Earlier this month, ICE Director Homan told Fox News that "California better hold on tight," stating that if local politicians "don't want to protect their communities, then ICE will." Trump Administration officials were even quoted as saying that local elected officials should be prosecuted for not cooperating with the federal government on immigration matters.

And just last week, media reports indicated that federal immigration officials were planning a "major sweep" of Northern California that would constitute the largest immigration enforcement action of its kind under the Trump Administration. According to these reports, the large-scale ICE operation would target more than 1,500 undocumented individuals and "will include enforcement of work sites suspected of illegally employing undocumented immigrants."

If true, these reports may represent a significant up-tick in federal immigration enforcement activity, especially at workplaces. As we alerted you to a few weeks ago, ICE enforcement agents recently raided dozens of 7-Eleven stores across the country in search of undocumented workers and managers who knowingly employ them.

California Responds – Bring It On! Oh, And Look Out Employers!

California's response to the rumors of imminent immigration enforcement activity was swift and strong. (Are you sensing a pattern here?)

On January 18, California Attorney General Xavier Becerra held a press conference in which he pointedly warned California employers that he is prepared to seek fines if they violate the provisions of AB 450. During the conference he stated, "It's important, given these rumors out there, to let people and more specifically employers know that if they voluntarily start giving up information about their employees in ways that contradict our new California laws they subject themselves to actions by my office…enforcing AB 450." Potential fines for violations of AB 450 can reach as high as $10,000 per violation.

According to media reports, Becerra also said his Department of Justice and the State Labor Commissioner's Office plan to issue formal guidance to all California employers, public and private, notifying them of their responsibilities under AB 450. However, no timeframe was provided for such guidance.

So What's An Employer to Do?

If all of that is making your head spin, you are not alone. California employers are increasingly feeling like pawns in a high-stakes chess match between the state and federal government over immigration.

Here are some items to consider as next steps.

First, take a deep breath.

Second, all employers can take concrete steps now to limit their risk and do their best to avoid an invasive ICE raid altogether. My colleague Shanon Stevenson recently put together a handy 5-step action plan to avoid an ICE raid. It's definitely worth a read!

Third, in light of AB 450, employers should review the law's new requirements and have a plan in place to comply with these new obligations in the event ICE shows up on your doorstep. Once again, we are here to help! My colleagues Jocelyn Campanaro and Cody Nunn have compiled some "Frequently Asked Questions", including some "best practices" to help California employers ensure they are in compliance with the new provisions enacted by AB 450. This document will provide you with a good starting point to understanding and complying with the law.

And as always, we suggest you contact any member of the Fisher Phillips Global Immigration Practice Group, or your regular Fisher Phillips attorney, to assist with compliance efforts.

Related People

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