Federal Court Blocks Portions of California's New Workplace Immigration Law

Insights
7.06.18

Immigration has, and continues to be, a major flashpoint between California and the Trump administration. In 2017, the California legislature passed significant legislation (AB 450) impacting how California employers deal with federal immigration authorities. The Trump administration sued over these policies, putting California on a collision course with the federal government—with California employers stuck squarely in the middle.

On July 4, a federal judge issued a preliminary injunction siding with the Trump Administration and blocked enforcement of several of the key provisions AB 450 as applied to private employers – while allowing other provisions to move forward.

The Backstory on AB 450
In 2017, the California Legislature responded with dramatic measures to draw a line in the sand on immigration. Most significantly for California employers, the state enacted Assembly Bill 450. Among other things, AB 450 prohibited employers from voluntarily consenting to federal immigration authorities having access to the worksite without a judicial warrant, or document reviews without a subpoena or warrant; required employers to provide their workers with notice of certain immigration enforcement actions and results; and imposed new statutory penalties for violations of the law. Read more about the new law in our complete summary of AB 450. The new law went into effect on January 1, 2018.

Trump Administration Fires Back
As we reported in March, U.S. Attorney General Jeff Sessions announced a lawsuit against the state of California seeking to invalidate three recent pieces of immigration-related legislation enacted by the California legislature, including AB 450. The lawsuit filed by the U.S. Department of Justice argued that state laws, including AB 450, are preempted by the Supremacy Clause of the United States Constitution, which makes enforcement of the nation's immigration laws the exclusive purview of the federal government.

The Trump administration raised several different arguments to challenge these provisions of AB 450. First, it argued that these provisions were preempted by federal law because they stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress ("obstacle preemption"). Second, under what is known as the "intergovernmental immunity"

doctrine, it argued that a state may not regulate the federal government directly or discriminate against the federal government or those with whom it deals.

Court Enjoins Provisions of AB 450 Dealing with Employer "Consent"

One of the main provisions of AB 450 essentially removed the ability of employers to "voluntarily consent" to ICE access in this manner. Employers (or persons acting on behalf of employers) are prohibited from providing voluntary consent for access, and instead would have to insist on a judicial warrant. Similarly, AB 450 prohibited an employer (or person acting on behalf of the employer) from granting voluntary access to the employer's personnel records without a subpoena or judicial warrant. However, this does not apply to I-9 forms and other documents for which a Notice of Inspection has been provided to the employer. An employer violating these requirements would be subject to a civil penalty of $2,000 to $5,000 for a first violation, and $5,000 to $10,000 for each subsequent violation.

The federal court reviewing the Justice Department lawsuit discussed both sides of the "obstacle preemption" argument, but said it was "hesitant" to find AB 450 preempted. However, the court said it was ultimately unnecessary for it to resolve this question, as the Trump administration was likely to prevail on its arguments under the "intergovernmental immunity" doctrine. Specifically, it found that "a law which imposes monetary penalties on an employer solely because that employer voluntarily consents to federal immigration enforcement's entry into nonpublic areas of their place of business or access to their employment records impermissibly discriminates against those who choose to deal with" the federal government.

Therefore, the court granted a preliminary injunction halting the enforcement of the "consent" provisions of AB 450 as applied to private employers.

Court Also Enjoins AB 450's Prohibition on "Reverification"

AB 450 also prohibited an employer from re-verifying the employment eligibility of a current employee at a time or in a manner not required by federal law. The state Labor Commissioner is authorized to recover civil penalties of up to $10,000 for violations of this provision of the law.

Here, the court similarly ruled that the Trump administration was likely to prevail on its challenge to this provision of AB 450, and therefore enjoined it from being enforced against private employers.

Specifically, the court found that the prohibition on reverification "appears to stand as an obstacle" to the accomplishment of Congress's purpose in enacting federal law prohibiting employers from knowingly employing unauthorized individuals. "The law frustrates the system of accountability that Congress designed," the judge concluded.

However, the court was careful to caution that more complete evidentiary records could impact its analysis of this issue in later litigation.

"Notice" Requirements of AB 450 Not Enjoined and Continue to Be the Law

The new law also imposed a number of new notification requirements on California employers. First, employers must provide current employees with a notice of any inspection of I-9 forms or other employment records within 72 hours of receiving a notice of the inspection. Second, upon reasonable request, an employer must provide an affected employee with a copy of a Notice of Inspection of I-9 forms. Third, employers must provide affected employees (and their representatives) a copy of the notice that provides the inspection results within 72 hours of receiving it, as well as written notice of the obligations of the employer and the affected employees arising from the results of the inspection.

The court found that the Trump administration's challenges to these notice provisions were without merit and denied its request for a preliminary injunction. The court held that these provisions merely enacted a notice requirement to employees, and did not otherwise interfere with an employer's obligations under federal immigration law. Moreover, the court held that, under these notice provisions, an employer is not punished for its choice to work with the federal government (as with the "consent" provisions), but rather for its failure to communicate with employees.

Therefore, California employers should continue to comply with the notice requirements contained in AB 450.

Employer Takeaways

With the court's ruling, the state is prevented from enforcing several of the major provisions of AB 450 against private employers: those dealing with employer "consent" to access to worksite and employment records, and those prohibiting certain "reverification" of employment. But the "notice" provisions of AB 450 are still in effect, so employers should understand and comply with those requirements.

However, it is likely that litigation over this matter will continue. The State of California could appeal the granting of the preliminary injunction. In addition, while the court granted an injunction for now, the ultimate outcome of the Trump administration challenges to AB 450 remains to be determined via further litigation. This is just the latest step in an epic battle between the California Legislature and the Trump administration over immigration issues—and neither side is likely to give up this fight easily.

So stay tuned. We'll keep you posted on any further court action that impacts the applicability of AB 450.

This blog post provides an overview of a specific federal court case. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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