

NEW DRIVER'S LICENSE LAW WILL IMPACT OREGON EMPLOYERS

Insights

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Transportation Difficulty Will Reduce Number of Undocumented Workers In Key Industries

Over the weekend, the state finalized a new law that may end up having a dramatic impact on several important industries. Oregon Governor Ted Kulongoski signed into effect a much stricter driver's license requirement that forces applicants to prove American citizenship or legal immigrant status before getting a new or renewed driver's license. It goes into effect on July 1, 2008, and could have far-reaching consequences in the agriculture, construction and hospitality industries, among others.

What is Changing?

Starting on July 1, in order to obtain a new, replacement or renewal driver's license, a person will need to provide a social security number and proof of identity, such as a U.S. birth certificate, a current driver's license, a U.S. passport, or a U.S. military ID. The Department of Motor Vehicles will then verify the social security number provided to ensure that it is a valid number and matches the applicant's identity. In fact, the DMV began verifying social security numbers on February 4 under orders from the Governor's office – but the new law will provide the executive order with the power of state law and therefore the practice can no longer be questioned or ignored. If an applicant does not have a social security number but is in the country legally, he or she can also provide an immigrant visa, a Department of Homeland Security ID document, or a foreign passport. What the applicant will NOT be able to provide is a foreign birth certificate or a consular ID card, which have been popular with illegal immigrants obtaining driver's licenses in Oregon for years. In short, if the person cannot prove that he or she is in the country legally, the applicant will not be able to get or to keep an Oregon driver's license.

How Will This Impact the Workforce?

An estimated 120,000 to 175,000 people in the state of Oregon are not documented to work in the country. Although it is not known how many of these people are in the workforce, it is a reasonable assumption that they occupy many positions in key industries across the state. The industries typically impacted by illegal workers – agriculture, construction, and hospitality – are all mainstays of the state's economy, and figure to be hardest hit by this new law. We expect that over the next six months, Oregon employers will begin to see a decrease in their workforces as illegal immigrants either find work that does not require them to drive or they leave the state altogether. This is not expected to be a temporary situation, as the new law should result in fewer undocumented workers for years to come. Those employers on mass transit lines – especially those in dense metropolitan areas – will be least affected by the law, as their entire workforce will be able to commute to work on buses and light rail. But those employers in removed and rural locations, or who have jobs that are transitory, will undoubtedly suffer the consequences of employing undocumented workers.

What Can Employers Do?

Employers who are prepared for this change will be able to weather whatever storm comes your way. There are a number of steps that can be implemented immediately and in the near future to keep a step ahead of the competition.

1. Expect a Labor Crunch. Assuming a significant percentage of the illegal workers will be hampered in their ability to get to work in 2008, it follows that there will be a labor shortage for several key industries. Employers should begin to plan ahead – even if you are certain you have no undocumented workers, and your offices are right outside an easily accessible mass transit route, you may feel the pinch as other employers scour the streets looking for help and recruit away some of your employees. Consider alternative staffing arrangements through staffing companies and temporary employment agencies during this time period. Those workplaces that anticipate having lower workforce rolls in 2008 may wish to begin ramping up recruitment efforts now to replace those workers who move on when this new law takes effect. You might consider offering “stay bonuses” if you really start to feel the labor shortage pains.

2. Conduct an Audit Today. Especially if you are in one of the higher-risk industries, you might consider immediately reviewing all of, or a random sampling of, your I-9 forms for current employees to ensure compliance. This way, you are taking immediate action to stay ahead of the curve. It is also recommended that you conduct an audit of your compliance practices to ensure that you continue to manage your immigration records properly. A proactive audit may uncover problems you can remedy before the federal government decides to inspect your records. Our Global Immigration Practice can conduct such an audit for you.

3. Include Social Security Number Verification. Besides checking to ensure that all of your I-9 forms are completed correctly, you can use a social security number verification service to catch any mismatches now. If you discover any problems, you can (and should) address them now and document your efforts. Moreover, you should consider verifying numbers for all new hires on a go-forward basis.

4. Revise Your Company Policies. Take a look at your personnel handbook and make sure you have a policy requiring each employee to have a valid name/social security number combination. The more proactive steps you take to demonstrate good faith compliance with the law, the better the chances of you avoiding serious punishment if the government decides to review your practices.

Don't Take Rash Action!

As you become more aware of potential penalties and problems that could result from undocumented workers, your first instinct might be to fire any employee who you suspect might be illegal without going through a verification procedure. Don't be rash in your decision making, but be thorough in reviewing your documents. You could end up facing a discrimination lawsuit if you act prematurely.

If you have any questions, we welcome you to contact our Global Immigration Practice or any of the attorneys in our Portland office at 503-242-4262.

This Legal Alert is intended to provide an overview of an important new law. It is not intended to be, nor should it be construed as, legal advice for any particular fact situation.