

NEW IMMIGRATION-ENFORCEMENT LAW IN ARIZONA MAY HAVE FAR-REACHING IMPLICATIONS

Insights

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On April 23, 2010, Arizona Gov. Jan Brewer signed into law the toughest immigration law in the country, which makes it a misdemeanor for an individual to lack proper immigration paperwork in Arizona. Local police who have “reasonable suspicion” that an individual is undocumented now have the authority to determine that person’s immigration status. Under current law, officers may only inquire about immigration status if the person is a suspect in another crime.

Other provisions make it unlawful for people to hire illegal immigrants as day laborers, and allow citizen lawsuits against government agencies that hinder immigration law enforcement. An estimated 460,000 illegal immigrants live in Arizona. Arizona is the first state to enforce the federal requirement of carrying immigration-status documents.

Litigation Is Expected

Controversy swirls around the constitutional question of whether an individual state may enforce immigration law, and whether federal law trumps state law in this arena. Challenges on the federal supremacy clause and civil rights grounds will likely enter the courts, and could result in a judge blocking the law.

Opponents who fear the law will lead to possible racial profiling and other abuses have already staged protests in weekend rallies and directed political pressure toward the federal government for immigration reform at the national level.

President Obama criticized the law as “misguided” and called for close monitoring for civil rights implications. Department of Homeland Security Secretary Janet Napolitano, Brewer’s predecessor as Arizona governor, issued a statement that the Arizona immigration law “will likely hinder federal law enforcement from carrying out

its priorities of detaining and removing dangerous criminal aliens," and divert "critical law-enforcement resources."

National Implications

Several states are considering regulation in the area of controlling illegal immigration, citing a lack of action in Washington, D.C. Arizona has led the way, enacting a law in 2007 that prohibits employers from knowingly hiring illegal immigrants, and in 2005 making human smuggling a state crime. Arizona was also the first state, (in 2008), to require all employers to use E-Verify to verify the employment eligibility of newly-hired employees, or have their business licenses suspended or revoked.

In mid-April of this year, an investigation of commercial-transportation companies by Immigration and Customs Enforcement (ICE), targeted Arizona human-smuggling networks. The investigation involved the owners and employees of five Arizona shuttle services; 47 suspects were taken into custody on criminal charges. The year-long investigation, one of the largest human-smuggling operations in ICE history, focused on several Tucson-based shuttle companies which allegedly transported thousands of illegal aliens and included bi-national cooperation with Mexico's Secretaria Seguridad Publica.

Last month, a local rancher, Rob Krentz was killed by a suspected smuggler, resulting in additional public outcry regarding entry of illegal immigrants through Arizona's border with Mexico.

The law, barring challenges, would go into effect 90 days after the legislative session ends, which should be by August.

Actions By Other States

While no state yet has gone as far as Arizona, a number of them have taken other actions, particularly regarding E-Verify, the government's internet-based system that allows companies to determine the employment eligibility of their employees.

Here is a brief summary of which states have taken action as of today.

Utah

Effective July 1, 2010, private employers in Utah with 15 or more employees must register with and use a status-verification system to verify the legal working status of any new employees.

The only exceptions are those private employers of foreign workers in H-2A or H-2B visa status. The law also authorizes the Utah Department of Commerce to begin publishing a list of businesses registered with a verification system. Employers in violation are prohibited from entering into a state contract and may be held civilly liable under state law for unlawfully hiring an unauthorized alien.

Virginia

Beginning December 1, 2012, Virginia will require all state agencies to enroll in E-Verify and to use it for each newly-hired employee who is to perform work within the Commonwealth of Virginia.

Illinois

Illinois passed the "Right to Privacy in the Workplace Act Amendment," effective January 1, 2010.

Illinois employers conducting business in the state *choosing* to enroll in the federal government's E-Verify system are required to complete an attestation form, attesting that: 1) all employees using the E-Verify program have received the E-Verify training materials and completed the online training conducted by the Department of Homeland Security; 2) the required E-Verify notice from Department of Homeland Security is posted in a place that is clearly visible; 3) the original signed attestation form is available for copying and inspection at the request of the Department; and, 4) the required anti-discrimination notice issued by the Office of Special Counsel for Immigrant-Related Unfair Employment Practices is properly posted. Employers must complete this attestation form at the time of enrollment or by January 30, 2010, if already enrolled in the E-Verify. *This law does not require Illinois employers to use the E-Verify system.*

California

Since January 1, 2010, the City of Lancaster requires all employers to verify the employment eligibility of all newly-hired employees using E-Verify. For a first violation, the employer will be required to terminate all workers hired in violation of the ordinance. For a second violation, a city manager may revoke any license issued to employers who hired unauthorized workers.

This is a fast-changing area of the law. Please refer to our Survey of State Immigration Laws for a complete update on current state immigration laws.

For more information contact any member of our Global Immigration Practice Group at (404) 240-4224 or via email at immigration@fisherphillips.com.

This Legal Alert contains an overview of a specific new law. It is not intended to be and should not be construed as, legal advice for any particular fact situation.