

Arizona Immigration Law to Take Effect January 1, 2008

December 17, 2007

Starting January 1, 2008, employers operating in Arizona under a business license issued in that state are required to comply with the Legal Arizona Workers Act. This Immigration Alert briefly describes the Arizona law.

Brief Overview of the Legal Arizona Workers Act

The employer sanctions law intends to prevent any employer in the State of Arizona from knowingly or intentionally hiring and/or employing illegal immigrants. As of January 1, 2008, **all employers** in Arizona, regardless of size, will be required to use the federal government's E-Verify program to verify the status of new employees. Although the new law faces many legal challenges, ongoing efforts have not succeeded thus far in preventing the law from taking effect as originally intended.

According to the U.S. Citizenship and Immigration Services (USCIS), "E-Verify is an Internet-based system operated by [USCIS] in partnership with the Social Security Administration (SSA). E-Verify is currently free to employers and is available in all 50 states. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers." Links to the E-Verify website appear below.

While the legislative sponsors of the bill have publicly stated that the law will only apply to employees hired on or after January 1, 2008, legal commentators have opined that the legislation could technically be applied to ALL employees, regardless of date of hire. This issue could lead to additional litigation, depending on how the law is enforced and assuming that the law survives the pending litigation.

Penalties for intentionally or knowingly hiring or employing illegal immigrants are severe. Employers face mandatory suspension of their business licenses for first offenses and permanent revocation of their business licenses for second offenses. The law appears to treat each business location as separate from its corporate affiliates. Consequently, the dominant interpretation of the law is that an entity with a violation at one location might be shut down, but affiliated operations operating under separate licenses would not be affected unless they also are found to have knowingly hired illegal workers. However, businesses that operate multiple locations under a shared business license would likely be viewed as a single entity, and a violation at one site could impact all related business operations.

Arizona's 15 county attorneys are responsible for enforcing the law and must investigate all nonfrivolous complaints. Enforcement requires contacting U.S. Immigration and Customs Enforcement (ICE) as well as local police. The federal government will be responsible for ultimately determining the status of the workers at issue.

Legal Challenges

On December 7, 2007, a federal judge dismissed without prejudice litigation filed by a coalition of business groups and immigration rights organizations challenging the constitutionality of the Arizona employer sanctions

law. According to the court, plaintiffs improperly filed suit against the State of Arizona, which is not ultimately responsible for enforcement of the law. On December 9, 2007, a second lawsuit was filed naming the 15 counties responsible for enforcement of the law as defendants. While the pending litigation seeks a temporary restraining order to prevent the law from becoming effective until the litigation is resolved, it is unclear at this point whether the effective date will be delayed.

How This Affects You

As of this Immigration Alert's publication date, the employer sanctions law will become effective January 1, 2008. It is likely that the Arizona court will rule on the pending motion for a temporary injunction shortly; however, even if the injunction is granted, it is unclear for how long it would be in place.

The law penalizes employers for knowingly or intentionally hiring unauthorized workers; however, it does not expressly punish an employer's failure to register with E-Verify by January 1, 2008. Nonetheless, the most conservative approach appears to be for employers to take appropriate measures to comply with the law, or to be prepared to comply with the law, in the event the litigation fails.

E-Verify registration requires that employers enter into a Memorandum of Understanding (MOU) with USCIS. The MOU outlines the obligations assumed by the employer through participation in the E-Verify program. Employers can register for the E-Verify program on the USCIS website noted below. Additional information concerning the program and the registration process is also provided on this site.

E-Verify can be used only for new hires within three business days of their start date. It is improper to use E-Verify to screen individuals prior to making an offer or to screen existing employees. Also, the program checks only employment eligibility. It does not reflect a worker's immigration status.

Recommended Steps for Employers

- Register for E-Verify. Employers should register in sufficient time for them to begin conducting verifications of new hires on January 1, 2008. Employers should take into account the lead time needed to complete the registration process, train personnel on the program, and adapt to this new step in the hiring process.
- As part of an ongoing compliance program, consider performing an internal I-9 audit to make certain that proper policies are being followed.
- As needed, train personnel on proper completion of the Form I-9. (Note: Beginning on December 26, 2007, employers must use a modified Form I-9, available at <http://www.uscis.gov/files/form/i-9.pdf>.)
- Review, revise, and develop policies for storing and retaining I-9 documents.

Helpful Links

Legal Arizona Workers Act:

<http://www.azleg.gov/search/ooop/qfullhit.asp?CiWebHitsFile=/legtext/48leg/1r/bills/hb2779c.htm&CiRestriction=2779&CiBeginHilite=%3cb%3e&CiEndHilite=%3c/b%3e&CiHiliteType=Full>

50-State Survey of Immigration Laws:

http://www.morganlewis.com/documents/50StateSurvey_StateImmigrationLaws.pdf

E-Verify: <http://www.dhs.gov/e-verify>

E-Verify Introduction for Employers: http://www.uscis.gov/files/natedocuments/E4_english.pdf

E-Verify MOU: <http://www.uscis.gov/files/native/documents/MOU.pdf>

Contacts

Morgan, Lewis & Bockius will continue to monitor developments and to issue updates as events warrant. In the meantime, employers should consider seeking the advice of experienced employment and/or immigration law counsel with any questions or concerns. If you have any questions about any of the issues raised in this Morgan Lewis Immigration Alert, please contact:

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