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## I-9 Compliance Bulletin



## U.S. Supreme Court upholds Arizona immigration law

The U.S. Supreme Court upheld Arizona's law that revokes the business licenses of employers who knowingly employ undocumented workers.

The ruling provides legal support for a number of other state laws with similar provisions, including laws in Mississippi, South Carolina, and Utah. It may open the way for other states to pass similar laws. Bills with E-Verify provisions are under consideration in 40 states.

In his opinion for the majority, Chief Justice John Roberts said Arizona's law "fell well within the confines" set by Congress for what states may do to regulate the employment of unauthorized aliens. The court noted that the federal Immigration Reform and Control Act (IRCA) expressly forbids states to regulate employment of illegal aliens, "other than through licensing and similar laws." Roberts said Arizona's law did just that. "It makes little sense to preserve state authority to impose sanctions through licensing, but not allow States to revoke licenses when appropriate as one of those sanctions," Roberts wrote.

Under The Legal Arizona Workers Act, an employer may have its business licenses suspended for knowingly hiring an illegal alien, and revoked permanently for a second offense. The law was challenged in a lawsuit by The U.S. Chamber of Commerce.

**The court also upheld the E-Verify provisions in Arizona's law.** Roberts wrote that "Arizona's use of E-Verify does not conflict with the federal scheme ... And the consequences of not using E-Verify are the same under the state and federal law—an employer forfeits an otherwise available rebuttable presumption of compliance with the law."

Roberts also noted that the section in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) that established E-Verify "...contains no language circumscribing state action."

The court rejected arguments that the law would cause employers to err on the side of discrimination rather than risk a "business death penalty" by hiring unauthorized workers: "License termination is not an available sanction for merely hiring unauthorized workers, but is triggered only by far more egregious violations ... Employers also enjoy safe harbors from liability when using E-Verify as required by the Arizona law."

The opinion also defended E-Verify against reservations about its accuracy expressed both by the Chamber's challenge and by Justice Stephen Breyer in a dissent.

The court was silent, however, about provisions in Arizona's law that would require the use of E-Verify for employers who seek state-allocated economic development incentives. In a footnote, the decision said, "Because those provisions were not part of the statute when this suit was brought, they are not before us and we do not address their interaction with federal law."

For a copy of the Supreme Court's decision, please send an email to [mhanson@talx.com](mailto:mhanson@talx.com) with "Supreme Court decision" in the subject line.

### Bottom line

The Supreme Court decision underlines and encourages the trend towards requiring employers to accept a growing number of risks for failing to maintain an accurate and reliable I-9 process. A fully compliant I-9 process must avoid liability for discrimination while accurately and consistently verifying the work eligibility of new hires. The spread of E-Verify requirements means for many employers the best option may be to roll out an onboarding program that includes E-Verify consistently nationwide. To learn more about the TALX I-9 service with optional E-Verify integration, please contact Melinda Hanson at (314) 214-7143 or [mhanson@talx.com](mailto:mhanson@talx.com). Learn more at our blog at <http://blog.talx.com>.