

August, 2011

I-9 Compliance Bulletin



U.S. DOJ sues Alabama over H.B. 56 but E-Verify requirements would stand

The U.S. Department of Justice has sued to strike down certain provisions of Alabama's strict new immigration bill, **but the suit would not affect the sections requiring E-Verify, the federal system for verifying the work eligibility of new hires.**

The suit, filed Aug. 1 in a U.S. District Court in Alabama (Case 5:11-cv-02746-SLB), asks the court to strike down various sections of Alabama's House Bill 56. The suit challenges two sections of the law that directly affect employers: Section 16, which would disallow any state tax deductions for wages paid to unauthorized workers, and Section 17, which makes it discriminatory for an employer to fire, or fail to hire, a legal worker while employing an unauthorized alien.

However, the DOJ suit does not challenge two other key sections of Alabama's law that may affect you as an employer.

Section 9 of H.B. 56 would stand. This section requires contractors to the state to use E-Verify as a condition of the contract.

For a copy of the DOJ lawsuit, please send an email to pkrieshok@talx.com with "U.S. v Alabama" in the subject line

Also not mentioned in the suit is Section 15, which makes it illegal to hire unauthorized workers and would suspend your licenses to do business in the state for a first offense and permanently revoke them for a second offense. In addition, Section 15 requires the use of E-Verify by all employers starting April 1, 2012. The section also provides that once your business licenses have been suspended you must begin using E-Verify before the licenses are restored.

As reported in our [May Compliance Bulletin](#), the U.S. Supreme Court recently affirmed the ability of states to regulate the employment of unauthorized aliens through licensing. The court upheld Arizona's law that revokes the business licenses of employers who knowingly employ undocumented workers.

On Aug. 29, Chief U.S. District Court Judge Sharon Blackburna blocked H.B. 56 from taking effect until Sept. 29, saying she needed time to review the lawsuit. However, we expect the E-Verify provisions of the law to be upheld. In June a U.S. district court judge in Atlanta issued a temporary injunction on parts of a [similar immigration law in Georgia](#), but the injunction did not affect E-Verify provisions of Georgia's law.

DOJ fining employers for discriminatory I-9 practices

The U.S. Department of Justice has announced a number of settlements with employers over accusations of "document abuse" in their hiring practices.

These settlements generally come out of inconsistent handling of the I-9 process. Many of these cases arise when the employer asks some new hires for more documents than others, or asks for documents that are not normally required in the hiring process. In some cases employers have reached settlements after the DOJ accused them of asking for documentation before the job prospect was hired.

DOJ has announced settlements for six cases of "document abuse" so far in 2011, with the latest coming August 25, 2011. **In that case, an employer in the food industry paid a fine of \$290,400 after the DOJ found one of its plants had required non-citizens to produce a "List A" document during the I-9 process.** Eight settlements were reached with employers for "document abuse" in 2010. No settlements in this category were reached in 2007, 2008 or 2009.

Bottom line

You should prepare to become an E-Verify user, either directly or through a designated agent like TALX. Alabama, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Utah, and Tennessee all have laws mandating E-Verify usage for all employers and bills with E-Verify provisions are under consideration in 40 states. You should also make sure your I-9 process is uniform and consistent for all new hires.

To learn more about how TALX can help you create a consistent I-9 process with optional by-state E-Verify integration, please contact Pete Krieshok at 314-214-7325 or pkrieshok@talx.com.