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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION NEWS AROUND THE STATES: ALABAMA, ARIZONA, MASSACHUSETTS

Posted on June 14, 2011 by Cyrus Mehta

A variety of harsh enforcement measures have gained ground in several states:

Alabama. Alabama's Governor Robert Bentley signed a new bill, HB 56 ("Beason-Hammon Alabama Taxpayer and Citizen Protection Act"), which requires employers doing business with Alabama to use E-Verify, beginning in 2012, and ties it to state economic incentives. The employer's business license may be suspended if it fails to comply.

The law states that Alabama "finds that illegal immigration is causing economic hardship and lawlessness in this state and that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status." The law therefore includes a number of other enforcement provisions, such as requiring public schools to determine the citizenship and immigration status of students enrolling.

Wade Henderson, president and CEO of the Leadership Conference on Civil and Human Rights, said the law "is designed to do nothing more than terrorize the state's Latino community." He said the only possible end result of HB 56 becoming law "is a permanent, largely Latino underclass in Alabama that would be driven even further into the shadows of society."

The text of HB 56 is available at http://e-lobbyist.com/gaits/AL/HB56.

Arizona. On May 26, 2011, the U.S. Supreme Court in *Chamber of Commerce v. Whiting* upheld the Legal Arizona Workers Act, requiring all Arizona employers to use E-Verify and suspending or revoking the licenses of employers who

knowingly or intentionally hire unauthorized workers. Numerous civil liberties organizations joined the U.S. Chamber of Commerce in challenging the law.

At issue in this decision was whether the federal employment sanctions regime under the Immigration Reform and Control Act of 1986 (IRCA) preempted states like Arizona from enacting similar immigration-related legislation that would sanction employers who hire unauthorized workers. Section 274A of the Immigration and Nationality Act, which was introduced by IRCA, prohibits the hiring or the continuing employment of unauthorized workers.

Although IRCA preempted states from imposing criminal or civil sanctions on employers relating to the hiring of unauthorized workers, it created an exception with respect to "licensing and similar laws," which states could still regulate.

The Supreme Court held that the Legal Arizona Workers Act fell within the "licensing and similar laws" exception of IRCA and rejected arguments that the law was not truly a licensing law or that it conflicted with IRCA.

The Supreme Court decision will impact businesses that operate in Arizona and other states with similar laws. They will need to comply with a hodgepodge of employer compliance laws with respect to hiring workers. Furthermore, *Chamber of Commerce v. Whiting* will encourage other states to enact similar laws and to make E-Verify mandatory when hiring any worker, as Alabama has done. Because the Supreme Court's ruling is narrow and revolves around the "licensing and similar laws" exception, it is not clear whether the Court will uphold the constitutionality of broader state legislation, such as Arizona's SB 1070, whose most controversial provisions have thus far been found to be unconstitutional in the Ninth Circuit.

The full decision in *Chamber of Commerce v Whiting* is available at: http://www.supremecourt.gov/opinions/10pdf/09-115.pdf. For a summary, see http://www.lexisnexis.com/community/litigationresourcecenter/blogs/litigationblog/archive/2011/05/26/a-summary-of-the-supreme-court-s-ruling-on-the-legal-arizona-workers-act.aspx .

For a commentary of the Supreme CourtXs decision, *See* David IsaacsonXs blog "If Even the Chief Justice Can Misunderstand Immigration Law, How Can We Expect States To Enforce It Properly? Removal Orders and Work Authorization" at http://cyrusmehta.blogspot.com/2011/06/if-even-chief-justice-can-misunderstand.html.

Massachusetts. An official speaking anonymously reported that the U.S. government plans to require Massachusetts to participate in the Secure Communities program. Governor Deval Patrick had refused to support it, although his administration had pledged to sign a Secure Communities agreement. The program includes name and fingerprint checks of offenders against federal immigration and criminal databases. It is now being piloted in 42 states.

In a letter to U.S. Immigration and Customs Enforcement dated June 3, 2011, Massachusetts' Public Safety Secretary Mary Heffernan said that Gov. Patrick would not sign a memorandum of agreement. The letter notes that only about one out of four of those removed from the U.S. since the inception of Boston's pilot participation in Secure Communities were convicted of a serious crime, and more than half of those removed were identified as "non-criminal." Ms. Heffernan said this was an indication that Secure Communities does not achieve the objective of focusing on the identification and removal of those convicted of serious criminal offenses. Ms. Heffernan said, "The Governor and I are dubious of the Commonwealth taking on the federal role of immigration enforcement. We are even more skeptical of the potential Secure Communities could have on the residents of the Commonwealth. The letter concludes, "We are reluctant to participate if the program is mandatory and unwilling to participate if it is voluntary."

Other governors refusing to sign Secure Communities memoranda of agreement include Gov. Andrew Cuomo of New York, http://on.wsj.com/jajwEi and Pat Quinn of Illinois, http://tinylink.in/J52.

Ms. Heffernan's letter is available at http://altopolimigra.com/documents/Acting-Director-Rapp-6.3.11.pdf.

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