

PUBLICATION

Alabama's Immigration Law Remains in Effect, but Some Relief is Granted Employers

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On September 28, 2011, the Chief Judge of the United States District Court for the Northern District of Alabama, Sharon Blackburn, issued three orders addressing the recently enacted Alabama immigration law, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (H.B. 56). Judge Blackburn refused to enjoin enforcement of large portions of H.B. 56, but temporarily enjoined several provisions, meaning that they will not go into effect, pending a final judgment in the case. Those portions of H.B. 56 not impacted by the ruling will become effective, and Alabama employers must begin complying with those provisions.

There was some good news for employers in the judge's orders. Two provisions that would have proved very costly for employers were enjoined by the federal court. Section 16 of H.B. 56, which prohibits taking a state tax deduction for wages paid to an unauthorized alien, was enjoined, and Section 17, which creates a state "discrimination" cause of action based on the retention or hiring of an unauthorized alien over a United States citizen or an alien authorized to work in the United States, was also enjoined. The enjoining of these two provisions is significant for employers. This removes an extra layer of taxation compliance, as well as a potential private cause of action that would have been costly for employers.

Section 11(a) of H.B. 56, which makes it unlawful for an illegal alien to apply for work, solicit work, or perform work as an employee or independent contractor, was also enjoined. This provision's elimination will likely not be a significant cost saver because it was intended to penalize the unauthorized aliens rather than the employers.

The federal court also enjoined the state of Alabama from enforcing Sections 11 (f) and (g) of H.B. 56, which make it illegal for an occupant of a motor vehicle stopped on the street to attempt to hire someone to work at a different location if it impedes traffic and for an individual to enter into a motor vehicle for such purpose if it impedes traffic. Eliminating these sections will not lift much of a burden for most businesses, but may ease compliance for small employers and contractors who use this method to find laborers.

Finally, Section 13 of H.B. 56, which prohibits concealing, transporting, harboring, etc. of unauthorized aliens, was also enjoined.

Most of the provisions in H.B. 56 relating to employers were allowed to stand. Businesses must still confirm the legal status of *all* newly hired workers using the federal E-Verify system, and the stiff penalties for hiring unauthorized aliens remain. These provisions become effective April 1, 2012. Also, effective January 1, 2012, in order to receive government contracts, grants or incentives from the state or a recognized political subdivision, a business entity must enroll in the E-Verify program; not knowingly employ, hire or continue to employ an unauthorized alien; and attest to both of those requirements by sworn affidavit. All tiers of subcontractors on these projects must also meet the same requirements.

None of these rulings are final. Some provisions have been enjoined for now, but many remain. Violations of these provisions are extremely costly under the law and can result in hefty fines and loss of the right to do

business in Alabama. Employers across Alabama must vigorously ensure compliance with the provisions to avoid those consequences.