

Immigration Update

IMMIGRATION UPDATE

The much discussed Immigration Act passed during the 2007 legislative session will be in effect on Thursday, November 1, 2007. This law contains municipal employment and contracting requirements as well as detailed law enforcement provisions. Although a federal lawsuit has been filed in Tulsa challenging the law, the court denied a last minute order suspending the Act's effective date.

U.S. District Judge James H. Payne dismissed the first constitutional challenge to the new law early last week. However, it was refiled with additional plaintiffs who allege they are "facing imminent harm" due to the law. As a result, an eleventh hour hearing on a temporary injunction was scheduled for Wednesday, October 31. Judge Payne denied the temporary injunction around 7:00 p.m. Wednesday, so HB 1804 became law.

NEW EMPLOYEE HIRING REQUIREMENTS

Sections 6 and 7 of the new law require public employers to verify the citizenship or immigration status of all new employees. One electronic system specifically mentioned is the "Basic Pilot Program operated by the Department of Homeland Security."

The Immigration Act makes it a discriminatory practice to fire a U.S. citizen or permanent resident alien while keeping an employee the employer knows, or should have known, is an unauthorized alien, hired after July 1, 2008. To trigger the discriminatory practice, the unauthorized alien must work in a job category requiring skills, effort and responsibility equal to the discharged employee, and which is performed under similar working conditions as defined by 29 U.S.C., section 206(d)(1).

If the employing entity on the date of discharge was enrolled in a Status Verification System, the employer shall be exempt from liability, investigation, or suit.

BASIC PILOT PROGRAM INFORMATION

To participate in the Employment Eligibility Verification/Basic Pilot Program, an employer must register online and sign a Memorandum of Understanding (MOU) with the U.S. Citizenship and Immigration Service (USCIS) and the Social Security Administration (SSA). For more information on registering and completing an MOU go to <https://www.visdhs.com/EmployerRegistration>.

Registered employers will receive a User ID and temporary password and must complete a web-based tutorial. Three possible user accounts include the Program Administrator, General User and Corporate Administrator. In addition, an employer can designate an outside company as a Designated Agent.

You can view detailed information by going to the U.S. Citizenship and Immigration Service web site. Search on the web site for the SAVE Program.

For further information call (888) 464-4218 or contact the U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue, NW, ULLICO, 4th Floor, Attention: SAVE Program, Washington, DC 20529.

LAW ENFORCEMENT FORCE MULTIPLIER

Section 5 of the new law contains "force-multiplier" language and its application to municipalities acting for federal authorities. The Attorney General will work out an agreement with the federal government on the details of the training and duties of municipal police officers in performing immigration officer functions. This agreement, once it is in effect, will be the key to the determination of the law enforcement mandates of this Act.

OML staff has been informed that the agreement between the state and the federal government will not mandate municipal participation in enforcing federal immigration law. If this is optional, it will allow your local governing body to retain control over the duties of municipal officers.

The Tulsa County Sheriff Department is the only known agency that has undergone the required training, having approximately 30 officers who have completed a five-week training course with the Department of Homeland Security's immigration enforcement division.

In addition, the new law requires a municipal or regional jail authority to use a reasonable effort to determine the citizenship status of a person charged with a felony or DUI. The law does not define what constitutes a reasonable effort. However, the Department of Public Safety has asserted that an Oklahoma driver's license can be considered proof of a person's lawful presence in the country.

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