

Court Stops Municipal Duties Under 2007 Immigration Act

July 1, 2008 effective date enjoined.

Federal District Judge Robin J. Cauthron has postponed the effective date of part - but not all - of the employment portions of the 2007 Immigration bill (HB 1804). The injunction will remain in place until a decision is issued on the merits of the legal challenge. See Chamber of Commerce of the U.S. v. Brad Henry, No. CIV-08-109-C in the Western District of Oklahoma.

Status Verification Requirement Still Effective. The ruling did not apply to all employment portions of HB 1804 impacting public sector employers. The duty to register and use a Status Verification System to verify the federal employment authorization of all new municipal employees is still applicable. This provision was effective for public sector employers on November 1, 2007. See 25 O.S. Section 1313(A). The injunction does not cover this subsection of the Act.

Municipal Contractor Requirements. The injunction stops the July 1, 2008 effective date of the contractor portions of HB 1804 contained in 25 O.S. Section 1313(B) & (C) and 68 O.S. Section 2385.32. These sections prohibit public and private employers from contracting with any contractor or subcontractor who does not participate in the Status Verification System.

Discriminatory Practice. In addition, the ruling enjoins the Act's provision at Section 1313(C) creating a discriminatory practice if an employer discharges an employee who is a U.S. citizen or permanent resident alien while retaining an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2008. If the employer is participating in the Status Verification System, the Act exempts the employer from liability for this section.

Penalties. Judge Cauthron has enjoined HB 1804's penalties for independent contractors who fail to provide the contracting entity documentation to verify the contractor's employment authorization. The penalty required the contracting entity to withhold state income tax at the top marginal income tax rate.

If the contracting entity fails to comply with the withholding requirement, the Act states the contracting entity is liable for the taxes required to have been withheld. The only exemption is if the contracting entity properly filed IRS Form 8233. These penalties are enjoined pending a final decision on the merits.

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