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It's Time to Try E-Verify

On May 26, 2011, the Supreme Court upheld Arizona's recent law that imposes sanctions on employers who "knowingly or intentionally" employ undocumented workers and requires employers to use federal government's E-Verify program to verify the status of its workers. One of the sanctions contained in the Arizona law allows, and in certain circumstances, mandates, the suspension or revocation of the business "license" of violating employers. "License" is defined under the Arizona law as any authorization that is issued for the purposes of operating a business in Arizona and includes articles of incorporation, certificates of partnership, articles of organization, and grants of authority to companies organized outside of Arizona to transact business in Arizona. The suspension or revocation of a these types of formation documents or authorizations can ultimately deprive a company of its separate legal existence which can have numerous adverse affects on the company, including the inability to enter into contracts or file lawsuits.

Originally implemented in 1997, E-Verify is an internet-based free program operated by the Department of Homeland Security that provides employers with a way to verify an employee's work-authorization status. It compares information from an employee's I-9 form to data from federal records and informs the employer whether it matches up. In the case of a mismatch, the employer is alerted and the employee is allowed to continue working while the problem is resolved, provided that they must contact the appropriate agency to resolve the mismatch within eight (8) work days.

Federal law prohibits the DHS from requiring any non-federal government entity to use E-Verify. According to the Supreme Court, however, states are free to require the use of E-Verify. Arizona is one of thirteen states that have passed some type of mandatory E-Verify law. More are likely to follow.

Regardless of state law, it is good practice for employers to use E-Verify, particularly if employers employ workers in various states. E-Verify will provide employers with a uniform mechanism to confirm employment eligibility and avoid discrimination claims by workers in the event employers request alternate forms of identification. Not only is E-Verify free and relatively simple, but an employer who uses this service and obtains confirmation of an employee's eligibility for employment establishes a "rebuttable presumption" that it has not violated federal laws prohibiting employment of undocumented workers. For these reasons, there has never been a better time to start using E-Verify for all new hires. Employers should also consider conducting I-9 audits to ensure that their companies have complete employment eligibility certifications for all of their employees. Our firm recently conducted a webinar addressing employment eligibility certification and I-9 issues. If you have questions regarding these matters, please contact us.

For any questions regarding how this ruling may affect your business, or to learn more about I-9 audits or labor and employment claims, please contact a member of Venable's **Labor and Employment Group**.

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