



## Legal Alert: Ninth Circuit Upholds Legal Arizona Workers Act

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On September 17, 2008, the Ninth Circuit Court of Appeals upheld the controversial Legal Arizona Workers Act (LAWA). Under the LAWA, which took effect January 1, 2008, a business found guilty of "knowingly" or "intentionally" hiring undocumented workers faces suspension or revocation of its business license and is placed on probationary status for a period of time. LAWA also requires employers to use the controversial federal E-Verify system to check the work-authorization status of employees.

The suit was brought by a coalition of business and immigrant rights groups, including Chicanos por la Causa Inc., U.S. Chamber of Commerce, and Arizona Employers for Immigration Reform.

The Court rejected the challengers' argument that the law was preempted by the Immigration Reform and Control Act. In addition, the Court determined that employers' due process rights are not violated by the law. The challengers contended that the Act violates due process because it deprives employers of their business licenses without providing them an opportunity to dispute whether an employee was authorized to work. The Court determined that the language of the Act, although confusing, did contemplate a state court hearing where employers could dispute the presumption of the employee's status.

The Court also upheld the requirement that employers use the E-Verify system. Concerned groups nationwide contend that the system is based on incomplete information, leading to an inevitable bureaucratic nightmare when legal employees are denied work because of faulty information in the system. In the present case, the challengers argued that the LAWA provision mandating the use of E-Verify was invalid because it conflicted with Congress' intent to keep the use voluntary while any issues with the system continue to be ironed out. The Court said that the requirement to use E-Verify was valid, noting there is no substitute under development in either the state, federal, or private sectors.

Despite these rulings, the court noted that its decision was issued "against a blank factual background of enforcement and outside the context of any particular case," and would not be controlling authority if and when a challenge is made to the law by an employer facing sanctions. Therefore, the Court said that when the statute is finally enforced, challenges to the Act will not be controlled by its decision.

**Employers' Bottom Line:**

It looks like LAWA is here to stay. So, employers in Arizona need to keep plugging away with the E-Verify system. Certainly there will be more challenges over LAWA and the E-Verify system in the coming months, so stay tuned.

If you have any questions about the LAWA or the issues discussed in this article, please contact the author, Troy Foster, a partner in our Phoenix office, at [tfoster@fordharrison.com](mailto:tfoster@fordharrison.com) or 602-627-3504.