



Supreme Court Upholds Arizona Legal Workers Act

May 31, 2011

On May 26, 2011, the United States Supreme Court issued a 5-3 decision in *Chamber of Commerce v. Whiting* upholding the Arizona Legal Workers Act (“the Act”). The Act provides that the business licenses of employers who knowingly or intentionally employ unauthorized aliens may be, and in certain circumstances must be, suspended or revoked. The law also requires that all Arizona employers use E-Verify. The Court held that neither of these provisions was preempted by federal immigration law.

This case arose when the Chamber of Commerce of the United States and various business and civil rights organizations filed a federal pre-enforcement suit against those charged with administering the Act in the Arizona District Court, arguing that the Act was preempted by federal immigration law. The District Court held that the Act was not preempted by federal law, and the decision was affirmed by the Ninth Circuit.

The Supreme Court agreed that the Act was not preempted. Specifically, the Court found that the Act’s licensing provisions fell well within the confines of the authority Congress chose to leave to the States in the Immigration Reform and Control Act (IRCA); while the IRCA prohibits the States from imposing “civil or criminal sanctions” on employers of unauthorized aliens, it preserves state authority to impose sanctions “through licensing and similar laws.” The Court also held that the Act’s E-Verify provision was not preempted by the Immigration Reform and Immigrant Responsibility Act (IIRIRA). While the IIRIRA does limit the federal government’s ability to mandate the use of E-Verify, it contains no language limiting state action.

The Supreme Court’s approval of state e-Verify mandates and more stringent laws prohibiting the employment of unauthorized aliens underscores the importance of employers taking all legally required steps to insure that they are properly verifying the ability of their employees to work in the United States. Employers are encouraged to carefully track current legislative activity in any states in which they maintain operations, and to review their policies and procedures for compliance with applicable law.

Related Practices

Labor & Employment

Copyright © Franczek Radelet P.C. All Rights Reserved. Disclaimer: Attorney Advertising. This is a publication of Franczek Radelet P.C. This publication is intended for general informational purposes only and should not be construed as legal advice