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Ariz. Immigration Ruling May Save Cos. From State Law Hassles

By **Abigail Rubenstein**

Law360, New York (June 25, 2012, 8:49 PM ET) -- The U.S. Supreme Court's ruling that several portions of Arizona's controversial immigration law were preempted by federal law will likely stanch the proliferation of similar state-level legislation and spare employers the high costs of complying with a patchwork of state immigration statutes, attorneys say.

The high court on Monday held 5-3 that the federal government's power to regulate immigration trumped three of the four sections of Arizona's S.B. 1070 that had previously been blocked by the Ninth Circuit.

The decision means that similar immigration laws enacted in Alabama, Georgia, Indiana, South Carolina and Utah after Arizona got the ball rolling on state immigration crackdowns will also soon be struck down either as a whole or in part, according to Ian Macdonald of Littler Mendelson PC.

While a ruling in favor of the Arizona law was widely expected to spur the enactment of similar laws in other states, forcing employers to tailor their compliance efforts on a state-by-state basis, the high court majority instead handed down a strong endorsement of the federal government's authority to set immigration policy for the nation.

"The decision made it very clear that the regulation of immigration law is completely within the purview of the federal government," Susan Cohen of Mintz Levin Cohn Ferris Glovsky & Popeo PC told Law360. This is good news for employers, for whom compliance with various state statutes can be costly and complicated.

"Employers will benefit from the decision because the preemption argument was so resoundingly upheld," Cohen said. "It should have a chilling effect on some other states that were considering similar kinds of immigration laws, and those [laws] can be very burdensome to employers."

The three provisions of Arizona's law that the majority deemed preempted would have made it a crime for an illegal immigrant to apply for jobs or for an immigrant not to carry identification papers, and would have authorized the warrantless arrest of a person who could be deported due to a public offense.

The justices also found that the portion of the law requiring police to determine the immigration status of any person stopped under state or local law if reasonable suspicion exists that the person is unlawfully present in the U.S. could be construed so that it was not preempted and so should be implemented and interpreted by state courts. But even in allowing that part of the law to stand, the court pointed out that it was not foreclosing future preemption or constitutional challenges to the provision.

Employers will, of course, still have to abide by federal immigration law, which the Supreme Court's decision acknowledged is "extensive and complex," and there may be continued state efforts to mandate some kinds of immigration compliance, but attorneys say it should keep most immigration concerns for employers at the federal level.

"The federal power to determine immigration policy is well settled," the majority opinion penned by Justice Anthony Kennedy said. "Immigration policy can affect trade, investment, tourism and diplomatic relations for the entire nation, as well as the perceptions and expectations of aliens in this country who seek the full protection of its laws."

The ruling will cause other states to think twice before trying to put measures similar to Arizona's in place in the future, attorneys say.

Specifically, the ruling could curb efforts in other states to try to impose their own state-level civil or criminal penalties on employers for employing undocumented workers with laws that depart from the federal regulations, according to Andrew Merrills of Ogletree Deakins Nash Smoak & Stewart PC.

"The Supreme Court appears to be pretty clear that the Immigration Reform and Control Act of 1986 really is a comprehensive framework for preventing the employment of undocumented workers," Merrills said.

"This limits the states' abilities to do anything [immigration-related] directed at employers," he added.

The ruling still leaves some big questions open for employers about what actions states are permitted to take on the immigration issue and therefore will still leave employers wrestling with a variety of state immigration requirements, according to Macdonald.

For example, the ruling did not address other kinds of challenges to state immigration laws, like First Amendment or equal protection challenges, Macdonald said. And companies will still be expected to comply with state compliance measures like E-Verify laws concerning new hires, unless the executive branch or the Supreme Court determines that to be solely within the purview of the federal government, he said.

"This whole thing just leaves employers still scratching their heads looking for bright-line rules that they can follow," Macdonald said.

Arizona is represented by Paul D. Clement, H. Christopher Bartolomucci and Nicholas J. Nelson of Bancroft PLLC and John J. Bouma, Robert A. Henry and Kelly Kszywinski of Snell & Wilmer LLP.

The case is State of Arizona et al. v. U.S., case number 11-182, in the U.S. Supreme Court.

--Editing by Elizabeth Bowen and Katherine Rautenberg.

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