



Legal Alert: Arizona Immigration Law May Soon be Tested

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Arizona is one of a number of states that has recently enacted laws imposing sanctions on employers who knowingly hire undocumented workers. Although the Legal Arizona Workers' Act (LAWA) took effect on January 1, 2008, as of yet, no employers have been prosecuted under the law. This may soon change as the result of a recent raid on two Arizona water parks, which resulted in the arrest of nine workers suspected of being illegal immigrants.

The raid was carried out by Maricopa County deputies, following a four-month investigation of hiring practices at the water parks, Golfland Sunsplash in Mesa and Waterworld Safari in Phoenix. According to news reports, deputies arrested the workers on charges of suspicion of identity theft and using forged documents to obtain employment. The deputies also seized personnel records from the water park owner, which will be used to determine whether the company violated the LAWA.

Under the LAWA, 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. Recent amendments to the law clarify that employers who can show they have complied in good faith with the federal work verification requirements have an affirmative defense to an allegation they knowingly or intentionally hired unauthorized aliens. Additionally, the amendments provide that proof that the employer has verified the employee's work authorization through the E-Verify system creates a rebuttable presumption that the employer did not knowingly or intentionally employ an unauthorized alien.

According to news reports, since January 2008, the water parks have used a federal database to check the immigration status of newly hired workers in accordance with the LAWA. If the recent arrests result in charges against the employer under the LAWA, this case may be the first test of the law's affirmative defenses.

Employers' Bottom Line:

This situation is a reminder of the importance of complying with federal and state laws governing work eligibility authorization. We will continue to keep you updated regarding the status of this case. If you have any questions regarding this case or other Arizona labor or employment related laws, please contact Troy Foster, a partner in our Phoenix, Arizona office at tfoster@fordharrison.com or 602-627-3504 or the Ford & Harrison attorney with whom you usually work.