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ARIZONA'S TOUGH NEW "LEGAL ARIZONA WORKERS ACT" IS SET TO GO INTO EFFECT JANUARY 1, 2008;

In the Face of Litigation Challenging the Legality of the Act, Maricopa County Prepares to Enforce and Defend the Law

On July 2, 2007, Arizona Governor Janet Napolitano signed into law the Legal Arizona Workers Act (H.B. 2779), then the toughest state-level employer sanctions law in the country. The Act, from the outset suspected by legal experts to be unconstitutional, is set to go into effect on January 1, 2008, and would impose significant additional burdens on Arizona employers.

Chief among the employer burdens imposed by the Act are the following:

1. Mandated employer use, beginning January 1, 2008, of the Federal Basic Pilot/E-Verify electronic employment eligibility verification system, a voluntary federal program currently used by approximately .5% of U.S. employers to verify employment eligibility.
2. Severe state law penalties for "intentionally" or "knowingly" employing undocumented workers on or after January 1, 2008, with the possibility of suspension of a business's license to do business for a second violation within a three-year or five-year probationary period following a first violation.
3. Mandatory enforcement lawsuit by the Attorney General against employers upon the finding that an anonymous complaint against the employer for employing an undocumented worker was not frivolous.

The Federal Basic Pilot/E-Verify program, is voluntary for employers. Most employers do not participate in the program, which is based on verification of employment eligibility via reference to the Social Security Administration's database. The Social Security Administration database is known to contain erroneous records relating to millions of U.S. citizen workers. Under the Legal Arizona Workers Act, a verification failure would result in lost employment opportunities for these U.S. workers in the State of Arizona.

Due to the potentially significant impact on U.S. workers, as well as apparent conflicts with federal law, the Arizona Constitution, and the U.S. Constitution, on July 13, 2007, the first in a series of lawsuits was filed challenging the legality of the Act's provisions.

Subsequently, two lawsuits were consolidated, and on November 14, 2007, the Federal District Court for the District of Arizona heard arguments. On December 7, 2007, U.S. District Court Judge Neil Wake dismissed the consolidated lawsuit based on the plaintiffs' procedural failure to name all necessary defendants. On December 9, 2007, the plaintiffs refiled the lawsuit, naming the additional necessary defendants, and requested a Temporary Restraining Order enjoining enforcement of the law beginning January 1, 2008.

Plaintiffs' claims include complaints that the Legal Arizona Workers Act violates: procedural due process rights under the Arizona State and U.S. Constitutions, the Commerce Clause of the U.S. Constitution, the Supremacy Clause of the U.S. Constitution, the Separation of Powers Doctrine of the Arizona Constitution, and the Fourth and Fourteenth Amendments of the U.S. Constitution. Plaintiffs' Motion for a Temporary Restraining Order (TRO) to enjoin enforcement of the Act points to the irreparable harm that would be caused by such violations should the law go into effect and be enforced beginning January 1, 2008. If granted, the TRO would remain in effect pending a hearing on plaintiffs' demand for a preliminary injunction. Should the plaintiffs prevail on the merits of their constitutional claims, any preliminary injunction would become a permanent injunction barring enforcement of the law.

In the face of these constitutional challenges and the plaintiff's pending request for a TRO, Maricopa County prepares to enforce and defend the legality of the Legal Arizona Workers Act. In a [Press Release dated December 10, 2007](#), Maricopa County Attorney Andrew Thomas called Arizona's employer sanctions law "the law of the land", adding that he intends to "fully and fairly enforce it" while defending its legality in federal court.

Because employers must make preparations and undergo costly staff trainings in advance of participation in the Federal E-Verify program, many employers are concerned about what steps should be taken in this interim period of uncertainty surrounding the effective date and enforcement of the Legal Arizona Workers Act. Preparation for and enrollment in E-Verify in advance of January 1, 2008 is required for compliance with the law in the event that it does go into effect on January 1st. Should a TRO issue, and a preliminary injunction be granted, an employer's proactive preparation to comply in advance of January 1, 2008, could have an adverse impact in terms of unnecessary resource expenditure and application of a mandatory notice period during which employers seeking to terminate participation in E-Verify must continue their participation for an additional 30 days. Should the TRO and/or preliminary injunction be denied, an employer's attempt to avoid such expenditures by delaying preparations for and enrollment in E-Verify now could significantly disadvantage the employer's ability to comply with the law beginning January 1, 2008.

Employers who employ personnel in Arizona should be aware of the requirements of the law, and the steps that must be taken in advance of January 1, 2008 in order to ensure effective compliance. Employers must also be cognizant of the potentially harmful impact of both compliance and a failure to comply, while keeping a watchful eye on the actions of the Federal District Court for the District of Arizona.

Should you have questions regarding the effective date and enforcement of the Legal Arizona Workers Act, the advance steps necessary to ensure compliance, or possible

strategies to minimize the adverse impact of the legal limbo Arizona employers now face, contact your Tindall & Foster immigration attorney. Our team of experienced Workforce Compliance and Employer Sanctions practice specialists will be able to provide individual employer assessments and recommendations to minimize potential liability in the face of multiple alternative outcomes of the current legal battle over the Legal Arizona Workers Act. As always, Tindall & Foster will continue to monitor the latest news and events with respect to the Act and its enforcement and will make future updates available via [the Tindall & Foster web site](#) and future Email Bulletins.