



Employment Law **ALERT**

JUNE 5, 2008

FEDERAL JUDGE BLOCKS ENFORCEMENT OF EMPLOYER-RELATED SECTIONS OF CONTROVERSIAL IMMIGRATION LAW

On Wednesday, June 4, 2008, a federal court in Oklahoma City issued an order temporarily enjoining the State of Oklahoma from enforcing certain business-related sections of HB 1804, the immigration law passed by the Oklahoma Legislature in 2007.

In the case, the U.S. Chamber of Commerce, the Oklahoma State Chamber of Commerce, the Oklahoma City Chamber of Commerce and the Tulsa Chamber of Commerce, together with other industry groups, challenged the constitutionality of portions of Section 7 and all of Section 9 of HB 1804, and requested injunctive relief to prevent the enforcement of these sections.

Section 7 contains two business-related provisions. First, Section 7(B) would require private employers who provide services to public employers (meaning Oklahoma government entities) to use the federal internet-based "E-Verify" system or other electronic verification system authorized by HB 1804 to verify work eligibility for new employees. Second, Section 7(C) would provide a basis for a discriminatory practice claim by any U.S. citizen or permanent resident employee who was discharged by an employer, if the employer retained an unauthorized worker in the same or similar position. Employers could protect themselves by using E-Verify or another statutorily-permitted verification system.

Section 9 would require any private or public entity contracting with an "individual" independent contractor for physical services in Oklahoma to either verify the contractor's work authorization or withhold income taxes from the contractor's compensation.

These provisions of Sections 7 were originally scheduled to take effect on July 1, 2008. Section 9 has been in effect since November 1, 2007.

The ruling by the Court states that the Chambers of Commerce established a substantial likelihood of prevailing on their claims that the federal Immigration Reform and Control Act of 1986 preempted Sections 7(B) and (C) and Section 9 of HB 1804. The Court temporarily enjoined the State of Oklahoma from enforcing these provisions pending a final determination of the Chambers' claims.

The Court's ruling means that Sections 7(B) and (C) of HB 1804 will not become effective on July 1, 2008 and neither these Sections nor Section 9 will be enforceable against private or public employers until a final ruling by the Court. Except for these provisions of Sections 7 and 9, all other provisions of HB 1804 remain in effect.

If you have further questions concerning the Court's decision or the impact of other provisions of HB 1804, please do not hesitate to contact any of the attorneys listed on the reverse side.



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