

Office of Pinal County Attorney Lando Voyles



Legal Arizona Workers Act Compliance

Beginning January 1, 2008, under the new Legal Arizona Workers Act, employers in Arizona are subject to civil penalties, including revocation of all Arizona business licenses, for knowingly or intentionally employing an "unauthorized alien." An "unauthorized alien" is defined as an alien who does not have the legal right or authorization under federal law to work in the United States.

The Act requires the County Attorney to investigate allegations that an employer has violated the Act. This brochure is designed to explain the investigation and enforcement procedures we will use in Pinal County and also provides assistance to help you, the employer, comply with the Act's requirements.

E-VERIFY: THE EMPLOYER'S TOOL FOR COMPLIANCE

The Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services Bureau (USCIS) and the Social Security Administration (SSA) jointly operate the "E-Verify" system, which can be used to check their databases in order to verify the employment authorization of new employees. The program is free to all employers.

The Legal Arizona Workers Act requires Arizona employers to use the federal E-Verify system, and doing so creates a presumption under the Act that an employer did not knowingly or intentionally employ an unauthorized alien. It is therefore very important that employers register to use the E-Verify system. Registration can be completed online.

Between now and January 1, 2008, employers should check their employment authorization verification procedures (both the I-9 process and E-Verify system) to ensure that they are in compliance with the Act by that date.

How to Register for E-Verify Online

Participation in E-Verify is free to employers. E-Verify is web based and instructions for the online E-Verify registration process can be found at <https://www.vis-dhs.com/EmployerRegistration>.

To participate, an employer must register online and accept the electronic Memorandum of Understanding (MOU) that sets forth the responsibilities of the SSA, USCIS and the employer. The online instructions set out the simple action steps required for participation.

If you need assistance in completing the registrations process or need additional information related to E-Verify, please call the Office of Verification toll free at 1-888-464-4218.

As an employer you are strongly urged to register with and begin using the federal E-Verify system before January 1, 2008, in order to check on the status of your new employees and to comply with the Legal Arizona Workers Act.

Properly Completing I-9 Forms

Proper completion of federal form I-9 can create an affirmative defense that the employer did not intentionally or knowingly employ an unauthorized alien. Changes have recently been made in the documents that can be accepted in filling out the I-9 form. This form and instructions for its use, including DHS's "Handbook for Employers," are available on line at <http://www.uscis.gov>.

HOW COMPLAINTS ALLEGING UNAUTHORIZED EMPLOYMENT WILL BE HANDLED

The Pinal County Attorney's Office will initiate investigations against employers only upon receipt of credible and non-frivolous complaints.

Members of the public wishing to allege that an employer has violated the Legal Arizona Workers Act in Pinal County will be required to fill out a complaint form, which can be obtained beginning January 1, 2008 from the Pinal County Attorney's Office website located at www.co.pinal.az.us.

A Meeting with an Investigator will be Scheduled

An investigator from the Pinal County Attorney's Office will meet with the complainant to obtain information for the complaint and obtain any supplementary statements. At the meeting, any complaint or any statement must be verified before a notary public.

Information Required in Compliant

In order to expedite the investigation, the compliant form must provide the following information:

- The complainant's name, address, and date of birth.
- The name and address of the employer against whom the complaint is being filed, and a description of the type of business conducted by the employer.
- The address of the office or worksite where the alleged unauthorized alien is working, if different from the above.
- If possible, the name, address, date of hire, birth date or other identifying information of the alleged unauthorized alien.
- A description of the specific facts and circumstances that led the complainant to conclude that an employee or employees of the employer are not citizens or permanent residents of the United States and are not otherwise authorized to work in the United States. Allegations regarding national origin, race, religion, knowledge and use of a foreign language, or the mere fact of being an immigrant, will **not** in and of themselves be considered a reasonable basis for such a conclusion.
- A description of the specific facts and circumstances that led the complainant to conclude that the employer **intended** to employ an unauthorized alien or **knew**, at the time of employment, that the employee was an unauthorized alien.

A Check for Conflicts Will be Made

Before undertaking an investigation of any type, the County Attorney's Office is required to determine whether such an investigation could create a conflict of interest for the office. This could happen if the employer being investigated is an entity that we represent, or one with which we have some other special relationship that would substantially affect our ability to investigate or take enforcement action against the employer.

If a conflict of interest is identified, the case will be promptly referred to another prosecuting agency for investigation and possible enforcement action.

Starting the Investigation

If the complaint is determined to be complete and contains information that, if true, would support a conclusion that the employer violated the Act, we will conduct an appropriate investigation. This will include verification of the alleged unauthorized alien's status through DHS.

False or Frivolous Complaints; False Documentation

The County Attorney's Office will not bring an action against an employer unless the Office verifies the unauthorized status of the person alleged to be an unauthorized alien and concludes that there is sufficient evidence to provide a reasonable likelihood that the employer acted knowingly or intentionally when employing the individual. Frivolous complaints will not be pursued.

Additionally, the Pinal County Attorney's Office may criminally prosecute any person who knowingly submits a false complaint. Filing a false and frivolous complaint is a Class 3 misdemeanor pursuant to A.R.S. § 23-212 and is punishable by a fine of up to \$500.00 and up to 30 days in jail.

Finally, if it appears that an employee has obtained employment by providing false documentation and taking the identity of another in violation of A.R.S. § 13-2009(A)(3), the County Attorney's Office may initiate an investigation and, if appropriate, initiate a criminal prosecution of the individual.

NOTIFICATIONS & FILING OF COURT ACTION

If a complaint is determined to be accurate and valid, we are required to notify local law enforcement and United States Immigration and Customs Enforcement (ICE) of the unauthorized alien. We are then required to file an action in Superior Court for sanctions against the employer. We are also required to determine if an employer has previously been found to have violated the Legal Arizona Workers Act, and to determine whether the employer is still in a probationary period related to any prior violations of the Act. The Attorney General will maintain a database of court orders issued under the Act that will be made available on the Attorney General's website. Repeat offenses carry stronger penalties.

Rebuttable Presumption and Affirmative Defense

If an employer used E-Verify to determine that an employee hired after January 1, 2008, is authorized to work in the U.S., a rebuttable presumption is created that the employer did not knowingly or intentionally employ an unauthorized alien, even if the E-Verify information turns out to be incorrect. Also, good faith compliance with federal hiring regulations and proper use of federal form I-9 will establish an affirmative defense that the employer did not intentionally or knowingly employ an unauthorized alien.

Court Order and Penalties

If the Court finds that an employer violated the Legal Arizona Workers Act, the Court will impose various affirmative obligations on the employer, and may also suspend the employer's business licenses for a period of time. A second offense can result in permanent revocation of the employer's business licenses. Transacting business without the proper license is a Class 2 misdemeanor, punishable by a fine up to \$750.00 and up to four months in jail. A.R.S. § 13-3706.

AVOIDING DISCRIMINATION

Although it is unlawful to employ aliens who are not authorized to work in the United States, it is also unlawful to discriminate against a person based on his or her race or national origin, or to engage in other federally prohibited "unfair immigration-related employment practices." As noted, complaints under the Legal Arizona Workers Act that are based only on the fact that an employer hires immigrants, persons of foreign national origin, or persons of a particular ethnicity, will not be pursued by the County Attorney.

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