

**THOMPSON  
HINE**

June 2011

### **Supreme Court Ruling Clarifies States' Authority to Impose Sanctions for Hiring Unauthorized Workers and Require Use of E-Verify**

On May 26 the U.S. Supreme Court upheld a 2007 Arizona law aimed at curtailing employment of unauthorized workers. *Chamber of Commerce of the United States v. Whiting*, No. 09-115, 2011 U.S. Lexis 4018 (U.S., May 26, 2011). Two aspects of the law were challenged: its sanction that allowed the state to revoke business licenses for knowing and willful hiring of illegal workers and its requirement that employers use the federal E-Verify program to confirm the work authorization status of new hires. Those challenging the law argued that these provisions were pre-empted by federal law. The Supreme Court rejected the argument.

The Immigration Reform and Control Act of 1986 (IRCA) makes it unlawful for employers to hire unauthorized foreign nationals. It imposes both civil and criminal penalties for violations, but restricts the type of sanctions states can impose on employers to only licensing sanctions.

Arizona defended its licensing sanction as fitting squarely within the type allowed by IRCA. The Supreme Court agreed, stating that the provision falls well within the authority that Congress expressly left to the states. The Court rejected the argument that the Arizona law will encourage employers to discriminate rather than risk facing sanctions for hiring unauthorized workers, pointing out that license termination is not a sanction for merely hiring unauthorized workers, but is reserved only for the more egregious conduct of knowingly or willfully hiring such workers.

On the second prong of the Arizona law – mandatory use of E-Verify – the Court ruled that federal law does not preclude a state from requiring employers to enroll and participate in E-Verify. The Court held that Arizona's requirement that employers use E-Verify neither conflicts with nor obstructs the aims of federal law on the issue.

Several states have passed similar laws to combat the hiring of unauthorized workers and others are likely to follow suit now that they have clearer guidance regarding the parameters for such laws. In light of the pro-enforcement environment this case allows, employers in any state are wise to review their hiring process policies to ensure they do not create risk for knowingly employing unauthorized workers.

#### **FOR MORE INFORMATION**

For more information, please contact **Sarah Flannery**, **Staci Jenkins** or any other member of our **Labor & Employment** practice group.



---

If you do not wish to receive future communications by email, please send an email with “Unsubscribe: Employment @lert” in the subject line to [Unsubscribe@ThompsonHine.com](mailto:Unsubscribe@ThompsonHine.com).

This advisory may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions. Some of the design images and photographs in this document may be of actors depicting fictional scenes.

© 2011 THOMPSON HINE LLP. ALL RIGHTS RESERVED.