

## Update: The Legal Arizona Workers Act

---

For the third time in as many months, a federal court has declined to prohibit enforcement of the Legal Arizona Workers Act, which provides for the suspension or revocation of Arizona business licenses of employers who employ unauthorized workers. The court's ruling on Thursday opens the door for business associations and civil rights groups that have challenged the law to raise their claims with the Ninth Circuit Court of Appeals.

The Legal Arizona Workers Act, also known as the employer sanctions law, prohibits the knowing or intentional employment of unauthorized alien workers and requires employers to verify employment authorization of all new hires through a federal database called E-Verify. Numerous business associations and civil rights groups have challenged the constitutionality of the law in two lawsuits. U.S. District Court Judge Neil Wake, who presided over both lawsuits, has dismissed both actions and denied requests to stay enforcement of the law.

In upholding the law, Judge Wake held that it did not infringe on the federal government's area of responsibility for regulating immigration, because the state law is consistent with federal law and penalties under the Arizona law target the state-issued licenses of a business. The court also found that Arizona's law grants employers ample opportunity to defend themselves against an alleged violation through a hearing before a Superior Court. Although the court found that the law could be subject to challenge if employers were actually denied appropriate opportunities to present a defense in future lawsuits, those hypothetical possibilities are not sufficient reason to strike down or delay implementation of the statute.

The court also held that the Legal Arizona Workers Act cannot be applied to employees of Arizona companies where those employees are located entirely outside Arizona. It declined, however, to decide the debated question whether employers may be held liable for workers who were hired prior to January 1, 2008.

The business associations and civil rights groups reportedly intend to appeal the court's upholding of the Legal Arizona Workers Act to the Ninth Circuit Court of Appeals, and to seek an expedited ruling in upcoming weeks. Arizona's county attorneys have agreed not to bring any action against employers under the new law until at least March 1.

If you have questions about the Legal Arizona Workers Act or other employment and immigration issues, please contact Sandra Sanders at 602-257-5247 or [ssanders@steptoe.com](mailto:ssanders@steptoe.com)

[www.steptoelaw.com](http://www.steptoelaw.com)