New Immigration-Related Legislation: California Dreaming or Just a Nightmare?

Friday, November 18, 2016

The following highlights just a few recently passed laws relating to immigration and impacting California employers. All were signed by the Governor and take effect on January 1, 2017.

Fair and Just Compensation for Undocumented Injured Persons, **AB 2159** – In the course of personal injury or wrongful death litigation evidence of a person’s immigration status shall not be admissible nor shall discovery be permitted, with certain exceptions, into a person’s immigration status.

Providing All Californians Access to Covered California, **SB 10** – Requires Covered California to apply to the US Department of Health and Human Services, Section 1332 waiver to allow undocumented immigrants and Deferred Action for Childhood Arrivals recipients to purchase a health plan through Covered California. [The impact of this law may be short-lived under a Trump Administration].

Notaries Public: Acceptance of Identification, **AB 2566** – Revises the list of acceptable non-state and foreign issued documents that notaries may rely on to include a valid consular identification document, issued by a consulate, or a valid foreign passport regardless of whether it has been stamped by the United States Citizenship and Immigration Services of the Department of Homeland Security.
Preventing Discriminatory Practice of Document Abuse, **SB 1001** – This comprehensive bill expands previous immigration-related discrimination protections enacted last year establishing a new $10,000 penalty for E-Verify violations (**AB 622**), the 2014 amendment to FEHA prohibiting discrimination against drivers licenses issued to undocumented workers (**AB 1660**), and the 2013 bills prohibiting retaliation for “immigration-related practices” (**AB 263** and **SB 666**). The bill traces federal rules enumerated in **8 USC §1324B** and making it unlawful for an employer to:

- Request more or different documents than are required under federal law;
- To refuse to honor documents tendered that on their face reasonably appear to be genuine;
- To refuse to honor documents or work authorization based upon the specific status or term of status that accompanies the authorization to work; or
- To reinvestigate or reverify an incumbent employee’s authorization to work, as specified.

Per the legislative analysis supporting SB 101, the California Assembly Committee on Labor Employment, likely taking a page from the guidance issued by the federal agency policing immigration-related discrimination, the Department of Justice, Office of Special Counsel For Immigration-Related Unfair Employment Practices, offered the following examples of employer document abuse:

- Demanding to see a worker’s U.S. passport;
- Asking for an Employment Authorization Document when the worker has already shown a state ID and “unrestricted” Social Security card;
- Refusing to accept an EAD (Employment Authorization Document) because it contains a future expiration date;
- Asking to reverify work documents of an employee who presented a Green Card at the point of hire; and
- Demanding to see an employee’s renewed driver’s license because the previous license used for the I-9 expired.

As to remedies and enforcement, an applicant for employment or an employee who is subject to a violation of the above may file a complaint with the California Division of Labor Standards Enforcement. Furthermore, the new law specifies that any person who violates these provisions shall be subject to a penalty imposed by the California Labor Commissioner not exceeding $10,000, and be liable for equitable relief.

While the New Year and new administration is likely to bring significant changes in policy and enforcement priorities relating to immigration compliance and immigration-related discrimination, California continues to march to its own beat. Therefore, employers doing business in California should listen to the music and take notice.

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