

California Imposes Immigration Regulations on Employers

Monday, September 25, 2017

On September 13, 2017, California legislators passed [California Bill AB 450](#), also known as the Immigrant Worker Protection Act (“the Act”). The Act is one of three immigration bills currently awaiting Governor Jerry Brown’s approval or veto.^[1]

The Act imposes specific restrictions on employers in instances where U.S. Immigration and Customs Enforcement (“ICE”) agents seek access to their workplaces for immigration enforcement. Specifically, the Act prohibits employers from (1) voluntarily consenting to allow an ICE agent to enter nonpublic areas of the workplace absent a judicial warrant; and (2) voluntarily consenting to allow an ICE agent to access, review, or obtain employee records, absent a subpoena or a court order.

Additionally, the Act requires employers to (1) post written notice^[2] of an immigration agency’s intent to audit employee records, including I-9 Employment Eligibility Verification forms, within 72 hours of the employer receiving notice of such an inspection; and (2) following an immigration agency’s audit, provide each employee who was found to lack work authorization with a copy of the written results of the inspection within 72 hours of the employer’s receipt.

Violations of the Act may result in a civil penalty of between two thousand dollars (\$2,000) and five thousand dollars (\$5,000) for a first violation and between five thousand dollars (\$5,000) and ten thousand dollars (\$10,000) for each subsequent violation, to be enforced by the Labor Commissioner or the Attorney General. All penalties recovered under the Act shall be deposited in the Labor Enforcement and Compliance Fund.

At this time, the ultimate constitutionality of the Act is uncertain under *Chamber of Commerce v. Whiting*, 563 U.S. 582 (2011), in view of the steep monetary penalties it threatens to impose.

[1] California legislators also recently passed the [California Values Act](#) (which is intended to prevent law enforcement officials from questioning and detaining individuals based on immigration violations alone) and the [Immigrant Tenant Protection Act](#) (which prohibits landlords from reporting or threatening to report the immigration status of their tenants as a form of retaliation or to prompt an eviction.)

[2] No later than July 1, 2018, the Labor Commissioner will release a template to assist employers in complying with the notice posting requirements imposed by the Act.

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