

New Penalties for Indiana Employers Who Fail to Check Immigration Status

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A new Indiana law provides that employers who knowingly employ unauthorized workers will be required to reimburse the state for unemployment insurance benefits paid to the unauthorized worker.

The new law, which takes effect July 1, 2011, requires the Indiana Department of Workforce Development to confirm the status of individuals seeking unemployment compensation benefits. If the Department finds an individual receiving benefits is not authorized to work in the United States, the law permits the Department to sue the employer for reimbursement of the benefits paid to the unauthorized worker. A court will then determine whether the individual is indeed an unauthorized worker, and whether the employer knew or should have known of the employee's lack of work authorization.

Whether an employer acted "knowingly" is determined under the same standard applied to employers under the Immigration Reform and Control Act ("IRCA"), which governs an employer's obligations in completing I-9 forms for newly hired employees. IRCA requires the employer to inspect and properly record documentation establishing an employee's identification and work

authorization, and deems an employer who acts in reckless disregard of facts that suggest a worker is unauthorized to have knowledge of such fact.

Under the new Indiana law, where the court finds that the employer knowingly hired an unauthorized worker, the court will require the employer to reimburse the Department for the benefits already paid. The court may also require the employer to pay attorney's fees and costs.

In addition, the new legislation requires contracts with state agencies or political subdivisions to include a provision requiring the contractor to use E-Verify, and mandates that day laborers attest to immigration status prior to commencing work.

While employers risk paying substantial costs for violating the new law, employers may avoid these risks by utilizing the federal E-Verify system. The law prohibits the Department from suing an employer who used E-Verify to verify employment eligibility of a worker later determined to be unauthorized. The law also prohibits the Department from suing an employer that has knowingly employed an unauthorized worker if the worker was employed by the employer before July 1, 2011.

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