

Fair and Legal Employment Act

OVERVIEW

Arizona's new Fair and Legal Employment Act does not mandate any particular hiring practice. However, the Act does prohibit Arizona businesses from hiring or employing unauthorized workers.

The Act prescribes penalties for businesses which either knowingly or intentionally hire unauthorized workers. Under the Act, a business which hires or employs an unauthorized worker is subject to the temporary suspension of its business license. A business which repeatedly violates the Act is subject to the permanent revocation of its business license--the "corporate death penalty".

Understanding the Fair and Legal Employment Act, and how it applies, is key to ensuring that you and your business are properly protected. This quick reference guide briefly explains important aspects of the Act, and how to best manage its requirements.

best practices for

Keeping Your Company Legal

The Act

Arizona's Fair and Legal Employment Act (A.R.S. § 23-211, *et seq.*) was signed into law on July 3, 2007. The Act requires that companies conducting business in Arizona to hire and employ only authorized workers. Enforcement begins on January 1, 2008.

Regardless of where you stand politically on the issue of immigration, the Fair and Legal Employment Act, also known as the Fair Workers Act, has important implications for your business.

The Act prohibits knowingly hiring or employing an unauthorized worker, and establishes penalties imposed on employers who violate the Act. Its requirements are different than those set forth in the federal Immigration Reform and Control Act (IRCA), which made employers responsible for verifying the identify and work authorization of their employees. Unlike IRCA, the Fair and Legal Employment Act mandates that all employers utilize the federal Employment Eligibility Verification Program (EEVP), and penalizes employers who violate the Act with suspension or revocation of their business license or licenses.

Violations of the Act

Under the Act, an employer may not knowingly or intentionally employ an unauthorized worker. An unauthorized worker (referred to as an "unauthorized alien") is an individual who does not have legal right or authorization under federal law to work in the United States. The Act prohibits both hiring and employment.

The Act requires the Attorney General's Office to investigate complaints. If appropriate, the matter will be forwarded to the County Attorney for prosecution in Superior Court.

There are two standards for violating the act, knowingly and intentionally. "Knowingly" requires either (1) that the employer know that the worker is unauthorized with respect to the subject employment, or (2) that the employer failed to verify the worker's employment eligibility. An employer who "knowingly" violates the Act is subject to the suspension of its business license(s) until the employer files an affidavit with the Attorney General's Office. The affidavit must state that: (1) the employer has terminated all unauthorized workers, (2) that the employer will not knowingly employ any unauthorized workers. A second violation can result in license revocation--a penalty which permanently prevents a business from operating in Arizona. This penalty is applied differently to businesses with multiple locations. "Intentionally" is a higher standard, and requires that an employer acted with the objective of hiring or employing an unauthorized worker. The first violation subjects an employer to license suspension lasting a minimum of ten (10) days. Again, any subsequent violation will result in license revocation.

Either type of violation subjects the employer to multi-year probation, during which the employer must file quarterly reports with the County Attorney, verifying the identities of all new employees.

Thus, even a single violation of the Act can subject a business to days without income and increased reporting requirements. Repeat violations will strip a company of its right to conduct business in Arizona. This makes compliance with the Fair and Legal Employment Act a necessity.

Complying with the Act

Under the Act, a business must verify the eligibility of its employees. Under the Act, only the federal government's eligibility determination counts. Proof that a business verifies eligibility through the federal government's Employment Eligibility Verification Program (EEVP) creates a rebuttable presumption that the employer did not violate the Act.

Thus, every company conducting business in Arizona should utilize the EEVP. The EEVP provides near-instantaneous, online verification of employment eligibility. An employer must first be registered to enroll in EEVP. The Program's website is currently located at: www.vis-dhs.com/employerregistration/StartPage.aspx.

Enrollment and use of EEVP is currently free, but its use is restricted. An employer must use EEVP will all of its intended hires (companies with multiple locations are subject to different requirements). Verification uses information from the worker's I-9 Form, and generally must be complete within three (3) days of hire. It requires picture identification from the employee. The Program's Memorandum of Understanding (MOU) prohibits use on existing employees. This represents a potential conflict with the Act, which applies to existing employees as well as new hires.

Still, using the EEVP--even limited by the MOU--is the best way to ensure compliance with the Fair and Legal Employment Act.

Note, however, that the Act does not replace current federal requirements for verifying the identity of new hires and maintaining paperwork.

The Act and Civil Rights

Nothing in the Fair and Legal Employment Act authorizes an employer to violate the civil rights of a new hire or current employee. When devising a compliance strategy, be certain that requirements for documentation are imposed uniformly, without respect to an individual's race, national origin, or other prohibited characteristic.

The Future of the Act

As of July 13, 2007, the Fair and Legal Employment Act is subject to court challenge. The constitutionality of the Act is being questioned under the doctrine of federal preemption. The outcome of this suit is uncertain.

Consequently, a prudent company will assume that the Act will go into effect on January 1, 2008, and plan accordingly.

ABOUT THE AUTHORS

Schern Richardson, PLC was founded in 2006 from several of the Valley's most knowledgeable and respected attorneys. An agile, dedicated legal group, the Firm's practice is devoted to construction, contract, and business law. The Firm represents entrepreneurs and business owners with an eye toward resolving disputes efficiently and favorably.

This guide is presented for general informational purposes only. It is not intended as, nor should it be relied on for, specific legal advice. Consult a qualified corporate, business, or employment law attorney with questions about your own situation, and to determine changes to applicable laws and regulations.



Understanding Arizona's Fair and Legal Employment Act

On January 1, 2008, Arizona's business community will be turned upside-down. Under Arizona's newly enacted Fair and Legal Employment Act, no business may hire or employ unauthorized workers. Violating the Act subjects a business to the suspension or even the permanent revocation of its business license.

Is your company ready?

The guide offers important considerations for understanding and complying with the Fair and Legal Employment Act. Properly implemented policies and hiring procedures could mean the difference between a business that is in business--and a business that is not.

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