

REFERENCE TITLE: employer sanctions; enforcement

State of Arizona
House of Representatives
Forty-eighth Legislature
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2008

HB 2345

Introduced by
Representatives Konopnicki, Brown, Pancrazi, Ulmer, Senators Aguirre,
Allen, O'Halleran; Arzberger, Flake

AN ACT

AMENDING SECTION 23-212, ARIZONA REVISED STATUTES; RELATING TO EMPLOYMENT OF
UNAUTHORIZED ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-212, Arizona Revised Statutes, is amended to
3 read:

4 23-212. Employment of unauthorized aliens; prohibition; false
5 and frivolous complaints; violation; classification;
6 license suspension and revocation; affirmative
7 defense

8 A. An employer shall not intentionally employ an unauthorized alien or
9 knowingly employ an unauthorized alien.

10 B. On receipt of a complaint that an employer allegedly intentionally
11 employs an unauthorized alien or knowingly employs an unauthorized alien, the
12 ~~attorney general or~~ county attorney shall investigate whether the employer
13 has violated subsection A. When investigating a complaint, the ~~attorney~~
14 ~~general or~~ county attorney shall verify the work authorization of the alleged
15 unauthorized alien with the federal government pursuant to 8 United States
16 Code section 1373(c). A state, county or local official shall not attempt to
17 independently make a final determination on whether an alien is authorized to
18 work in the United States. An alien's immigration status or work
19 authorization status shall be verified with the federal government pursuant
20 to 8 United States Code section 1373(c). A person who knowingly files a
21 false ~~and~~ COMPLAINT OR A frivolous complaint under this subsection is guilty
22 of a class 3 misdemeanor.

23 C. If, after an investigation, the ~~attorney general or~~ county attorney
24 determines that the complaint is not frivolous:

25 1. The ~~attorney general or~~ county attorney shall notify the United
26 States immigration and customs enforcement of the unauthorized alien.

27 2. The ~~attorney general or~~ county attorney shall notify the local law
28 enforcement agency of the unauthorized alien.

29 ~~3. The attorney general shall notify the appropriate county attorney~~
30 ~~to bring an action pursuant to subsection D if the complaint was originally~~
31 ~~filed with the attorney general.~~

32 D. An action for a violation of subsection A shall be brought against
33 the employer by the county attorney in the county where the unauthorized
34 alien employee is employed. The county attorney shall not bring an action
35 against any employer for any violation of subsection A that occurs before
36 January 1, 2008. A second violation of this section shall be based only on
37 an unauthorized alien who is employed by the employer after an action has
38 been brought for a violation of subsection A.

39 E. For any action in superior court under this section, the court
40 shall expedite the action, including assigning the hearing at the earliest
41 practicable date.

42 F. On a finding of a violation of subsection A:

43 1. For a first violation during a three year period that is a knowing
44 violation of subsection A, the court:

1 (a) Shall order the employer to terminate the employment of all
2 unauthorized aliens.

3 (b) Shall order the employer to be subject to a three year
4 probationary period. During the probationary period the employer shall file
5 quarterly reports with the county attorney of each new employee who is hired
6 by the employer at the specific location where the unauthorized alien
7 performed work.

8 (c) Shall order the employer to file a signed sworn affidavit with the
9 county attorney within three business days after the order is issued. The
10 affidavit shall state that the employer has terminated the employment of all
11 unauthorized aliens and that the employer will not intentionally or knowingly
12 employ an unauthorized alien. The court shall order the appropriate agencies
13 to suspend all licenses subject to this subdivision that are held by the
14 employer if the employer fails to file a signed sworn affidavit with the
15 county attorney within three business days after the order is issued. All
16 licenses that are suspended under this subdivision shall remain suspended
17 until the employer files a signed sworn affidavit with the county attorney.
18 Notwithstanding any other law, on filing of the affidavit the suspended
19 licenses shall be reinstated immediately by the appropriate agencies. For
20 the purposes of this subdivision, the licenses that are subject to suspension
21 under this subdivision are all licenses that are held by the employer and
22 that are necessary to operate the employer's business at the employer's
23 business location where the unauthorized alien performed work. If a license
24 is not necessary to operate the employer's business at the specific location
25 where the unauthorized alien performed work, but a license is necessary to
26 operate the employer's business in general, the licenses that are subject to
27 suspension under this subdivision are all licenses that are held by the
28 employer at the employer's primary place of business. On receipt of the
29 court's order and notwithstanding any other law, the appropriate agencies
30 shall suspend the licenses according to the court's order. The court shall
31 send a copy of the court's order to the attorney general and the attorney
32 general shall maintain the copy pursuant to subsection G.

33 (d) May order the appropriate agencies to suspend all licenses
34 described in subdivision (c) of this paragraph that are held by the employer
35 for not to exceed ten business days. The court shall base its decision to
36 suspend under this subdivision on any evidence or information submitted to it
37 during the action for a violation of this subsection and shall consider the
38 following factors, if relevant:

- 39 (i) The number of unauthorized aliens employed by the employer.
40 (ii) Any prior misconduct by the employer.
41 (iii) The degree of harm resulting from the violation.
42 (iv) Whether the employer made good faith efforts to comply with any
43 applicable requirements.
44 (v) The duration of the violation.

1 (vi) The role of the directors, officers or principals of the employer
2 in the violation.

3 (vii) Any other factors the court deems appropriate.

4 2. For a first violation during a five year period that is an
5 intentional violation of subsection A, the court shall:

6 (a) Order the employer to terminate the employment of all unauthorized
7 aliens.

8 (b) Order the employer to be subject to a five year probationary
9 period. During the probationary period the employer shall file quarterly
10 reports with the county attorney of each new employee who is hired by the
11 employer at the specific location where the unauthorized alien performed
12 work.

13 (c) Order the appropriate agencies to suspend all licenses, ~~as~~ described
14 in subdivision (d) of this paragraph that are held by the employer for a
15 minimum of ten days. The court shall base its decision on the length of the
16 suspension under this subdivision on any evidence or information submitted to
17 it during the action for a violation of this subsection and shall consider
18 the following factors, if relevant:

19 (i) The number of unauthorized aliens employed by the employer.

20 (ii) Any prior misconduct by the employer.

21 (iii) The degree of harm resulting from the violation.

22 (iv) Whether the employer made good faith efforts to comply with any
23 applicable requirements.

24 (v) The duration of the violation.

25 (vi) The role of the directors, officers or principals of the employer
26 in the violation.

27 (vii) Any other factors the court deems appropriate.

28 (d) Order the employer to file a signed sworn affidavit with the
29 county attorney. The affidavit shall state that the employer has terminated
30 the employment of all unauthorized aliens and that the employer will not
31 intentionally or knowingly employ an unauthorized alien. All licenses that
32 are suspended under this subdivision shall remain suspended until the
33 employer files a signed sworn affidavit with the county attorney. For the
34 purposes of this subdivision, the licenses that are subject to suspension
35 under this subdivision are all licenses that are held by the employer and
36 that are necessary to operate the employer's business at the employer's
37 business location where the unauthorized alien performed work. If a license
38 is not necessary to operate the employer's business at the specific location
39 where the unauthorized alien performed work, but a license is necessary to
40 operate the employer's business in general, the licenses that are subject to
41 suspension under this subdivision are all licenses that are held by the
42 employer at the employer's primary place of business. On receipt of the
43 court's order and notwithstanding any other law, the appropriate agencies
44 shall suspend the licenses according to the court's order. The court shall

1 send a copy of the court's order to the attorney general and the attorney
2 general shall maintain the copy pursuant to subsection G.

3 3. For a second violation of subsection A during the period of
4 probation, the court shall order the appropriate agencies to permanently
5 revoke all licenses that are held by the employer and that are necessary to
6 operate the employer's business at the employer's business location where the
7 unauthorized alien performed work. If a license is not necessary to operate
8 the employer's business at the specific location where the unauthorized alien
9 performed work, but a license is necessary to operate the employer's business
10 in general, the court shall order the appropriate agencies to permanently
11 revoke all licenses that are held by the employer at the employer's primary
12 place of business. On receipt of the order and notwithstanding any other
13 law, the appropriate agencies shall immediately revoke the licenses.

14 G. The attorney general shall maintain copies of court orders that are
15 received pursuant to subsection F and shall maintain a database of the
16 employers who have a first violation of subsection A and make the court
17 orders available on the attorney general's website.

18 H. On determining whether an employee is an unauthorized alien, the
19 court shall consider only the federal government's determination pursuant to
20 8 United States Code section 1373(c). The federal government's determination
21 creates a rebuttable presumption of the employee's lawful status. The court
22 may take judicial notice of the federal government's determination and may
23 request the federal government to provide automated or testimonial
24 verification pursuant to 8 United States Code section 1373(c).

25 I. For the purposes of this section, proof of verifying the employment
26 authorization of an employee through the basic pilot program creates a
27 rebuttable presumption that an employer did not intentionally employ an
28 unauthorized alien or knowingly employ an unauthorized alien.

29 J. For the purposes of this section, an employer who establishes that
30 it has complied in good faith with the requirements of 8 United States Code
31 section 1324b establishes an affirmative defense that the employer did not
32 intentionally or knowingly employ an unauthorized alien.

33 Sec. 2. Emergency

34 This act is an emergency measure that is necessary to preserve the
35 public peace, health or safety and is operative immediately as provided by
36 law.