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U.S. Supreme Court upholds Arizona E-Verify law

By Patrice B. Morrison

On May 26, 2011, in a 5-3 ruling, the U.S. Supreme Court upheld the Legal Arizona Workers Act (LAWA) [Chamber of Commerce of the United States of America v. Whiting, No. 09-115]. LAWA prohibits the unauthorized employment of foreign nationals in the state and requires all employers doing business in the state to use the federal E-Verify system to confirm the work authorization of new hires. Arizona employers who knowingly hire unauthorized workers will have their business licenses suspended after a first offense; a second offense could result in the permanent revocation of an employer’s license. Both business groups and civil rights groups had opposed the Arizona law for different reasons.

Although Chamber of Commerce argued that LAWA conflicted with federal immigration law, Chief Justice John Roberts, Jr. ruled that LAWA can co-exist with the two principal federal laws, the Immigration Reform and Control Act of 1986 (IRCA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Roberts based the ruling on a clause of IRCA that bars states from imposing separate criminal or civil sanctions for illegal hiring other than through licensing or similar laws. According to Roberts, LAWA was designed to fall within the licensing exemption and therefore does not conflict with federal legislation.

Opponents of the ruling fear that the mandatory use of E-Verify in Arizona will fuel anti-immigration activists to promote mandatory use of E-Verify in other states and on a federal level. Since 2005, more than half of U.S. states have passed some form of immigration enforcement or E-Verify statute. Eight states have laws similar to LAWA. Shortly after the Supreme Court’s decision was published on May 26, House Judiciary Committee Chairman Lamar Smith (R-TX) announced he would introduce a mandatory E-Verify bill.

Background of E-Verify

E-Verify, administered jointly by the U.S. Department of Homeland Security and the Social Security Administration, is an internet-based system that allows businesses to determine the eligibility of their employees to work in the United States.
E-Verify compares the information an employee provides on Form I-9, Employment Eligibility Verification, against government records. If the information matches, that employee is considered eligible to work in the United States. If a match is not found, E-Verify will alert the employer and the employee will be allowed to work while he or she resolves the problem. Opponents of E-Verify contend that (1) the database information contains gaps, and is not always accurate or up-to-date; and (2) the system is unable to detect identity fraud, meaning that the documents are valid but do not belong to the person presenting them to the employer.

E-Verify can be accessed at the following web address: http://www.uscis.gov/everify.

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