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DOJ Brings Lawsuit Against Alabama Immigration Law, Focus on Strict Compliance Intensifies

On August 1, 2011, the U.S. Department of Justice (DOJ) filed a complaint in a federal district court in Birmingham against Alabama's H.B. 56 – a move that came on the heels of its June 24, 2011, announcement to review that law along with those of Utah, Indiana and Georgia.

H.B. 56, signed into law on June 9, 2011, by Alabama Governor Robert J. Bentley, is set to take effect on September 1, 2011, and currently stands as the nation's strictest bill against illegal immigration. Known as the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, it encompasses provisions similar to those in Arizona's controversial S.B. 1070. Unlike its counterparts in other states, however, H.B. 56 mandates even stricter requirements on undocumented immigrants.

In its complaint, the DOJ argues that a state can neither set its own immigration policy nor pass laws that conflict with the federal enforcement power. H.B. 56, it contends, undermines immigration priorities and objectives enacted at the federal level, and could result in allegations of harassment and unfair detention by individuals unable to readily prove their lawful status. Moreover, enforcing this law, it argues, would place a hefty burden on federal agencies, drawing from much-needed resources and shifting the focus from criminal aliens and other cases of high priority. The suit also seeks a preliminary injunction.

Key Provisions in the Alabama Legislation

- A person stopped for a traffic violation can be detained by a police officer based on "reasonable suspicion" that the person is an undocumented immigrant. The officer must then make a reasonable attempt to determine the person's citizenship and immigration status.
- Undocumented immigrants convicted of a crime are to be fined and turned over to federal authorities for deportation at the time of their release.
- Officials in K-12 public schools must collect information on a student's immigration status, determine whether the student is an illegal immigrant and submit an annual report to Alabama's Board of Education noting the number of illegal immigrant students enrolled.
- Illegal immigrants are barred from:
 - receiving any state or local public benefits;
 - enrolling and or attending public universities; and
 - applying or soliciting for employment; anyone harboring or transporting undocumented immigrants could face fines or jail time.

- Beginning April 1, 2012, all businesses must use the federal E-Verify system to determine whether a potential employee is a legal resident; continued failure to properly verify employment eligibility and hiring undocumented workers places the business at risk of losing its license. All businesses must be in compliance by January 1, 2012.
- In an effort to provide E-Verify compliance assistance to small businesses that employ less than 25 people, an E-Verify designated agent will check new hires on their behalves.

Spotlight on Stricter Compliance

The passage of H.B. 56 signified Alabama's entry into the growing league of states enacting substantive immigration laws. This, combined with recent legislative activity on E-Verify and a round of Immigration and Customs Enforcement (ICE) audits, has intensified the trend toward stricter compliance when employing individuals.

Also significant is the U.S. Supreme Court's recent 5-3 decision in May of 2011 holding that federal immigration law does not preempt Arizona law S.B. 1070, which sanctions businesses that hire illegal immigrants. Significantly, the Court upheld the provision that makes E-Verify mandatory.

This decision by the Court is also noteworthy given that many of the battles surrounding various immigration-related laws are being fought in the federal courts. In fact, shortly after Alabama passed H.B. 56, the American Civil Liberties Union (ACLU) along with many other civil rights groups, declared its intent to challenge it on constitutional grounds.

In Georgia, on June 2, 2011, the ACLU, the Southern Poverty Law Center and several immigrant rights organizations and individuals filed suit in a federal district court in Atlanta to stop the enforcement of H.B. 87, which was passed in May of 2011.

In the Georgia case, an expedited hearing for arguments was set for June 20, 2011, as many provisions of the law were scheduled to take effect on July 1, 2011. On June 27, 2011, Judge Thomas Thrash blocked the parts he deemed to be an encroachment by the state into the federal domain, specifically, those that would penalize individuals who knowingly and willingly transported or harbored illegal immigrants while committing another crime, and those which authorized law enforcement officers to verify the immigration status of individuals unable to provide proper identification.

Clearly, state laws are changing rapidly even as new battles are waged to combat them. In particular, E-Verify-based requirements vary from state to state and can be frustrating to navigate. It is thus critical that companies conducting business across state lines stay updated on immigration compliance responsibilities. This issue, combined with more sophisticated government Form I-9 investigations and increasing scrutiny from the Department of Justice on matters concerning alleged discrimination, should be of concern to all employers. GT will continue to monitor developments in this dynamic area in an effort to keep our clients updated.

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[Greenberg Traurig’s Business Immigration and Compliance Group](#) has extensive experience in advising multinational corporations on how to minimize exposure and liability regarding a variety of employment-related issues, particularly I-9 employment eligibility verification matters. In addition to assisting in H-1B (Labor Condition Application) audits, GT develops immigration-related compliance strategies and programs and performs internal I-9 compliance inspections. GT has also successfully defended businesses involved in large-scale government worksite enforcement actions, I-9 Audits and Department of Labor Wage and Hour investigations. GT attorneys provide counsel on a variety of compliance-related issues, including penalties for failure to act in accordance with government regulations, IRCA anti-discrimination laws–Office of Special Counsel Investigations, and employers’ responsibilities when faced traditional no-match situations as well as more serious workplace identity theft or other alleged misrepresentations made by employees.

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