



Employment Law **ALERT** FEBRUARY 3, 2010

APPEALS COURT REJECTS KEY PROVISIONS OF OKLAHOMA IMMIGRATION LAW

Yesterday's ruling by a federal appeals court stops enforcement of key portions of Oklahoma's sometimes controversial immigration law known as House Bill 1804.

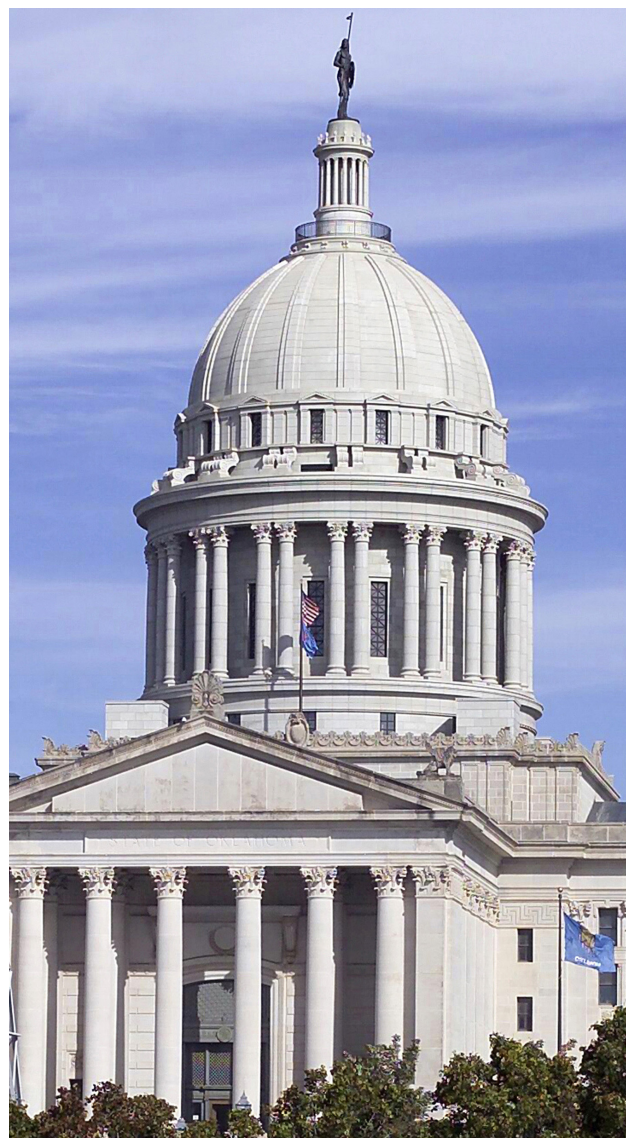
First, a brief history: House Bill 1804 went into effect on November 1, 2007, and its business-related immigration provisions were immediately challenged in court. On June 4, 2008, a federal court in Oklahoma City ruled the following aspects of House Bill 1804 could not be enforced:

- Making it a discriminatory practice for an employer to terminate or discharge an authorized worker, if the employer continued to retain unauthorized employees in the same or similar position.
- Requiring employers who contract with private independent contractors to verify the contractor's employees are authorized to work in the United States or to withhold Oklahoma income taxes at the top tax rate.
- Requiring private employers who have contracts with public employers or entities to participate in the federal internet-based "E-Verify" system to verify work eligibility for new employees.

The federal court refused to enforce these provisions of House Bill 1804 based on its conclusion the Oklahoma law conflicted with federal employment and immigration laws.

On February 2, 2010, the 10th U.S. Circuit Court of Appeals in Denver agreed that the discriminatory discharge and tax withholding provisions were unlawful and could not be enforced. However, the appeals court found House Bill 1804's provision requiring employers who contract with public entities to enroll and use the e-verifying work eligibility system could be enforced.

In terms of what you can expect in the future, there has been discussion at the Oklahoma State House about enlarging House Bill 1804's mandatory e-verify provision so that it applies to all Oklahoma employers, not just businesses who have contracts with governmental entities. We will continue to track activity on the immigration law front and keep you posted.



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