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Supreme Court Decision Clears The Way For States To Mandate E-Verify

On Thursday, May 26, the Supreme Court of the United States upheld an Arizona law that makes employer participation in E-Verify mandatory and which provides for the revocation of business licenses for employers that employ unauthorized workers. Georgia, Tennessee, and a number of other states have recently enacted similar laws, and the Supreme Court's ruling eliminates the primary challenge to the enforceability of those laws. In other words, it is now much more likely that the various employment-authorization mandates being imposed on employers in Georgia, Tennessee, and other states will take effect and apply to employers within those states.

In 1996, the federal government implemented E-Verify, a computerized employment eligibility verification system in which employers could voluntarily participate. To promote use of E-Verify, the federal Illegal Immigration Reform and Immigrant Responsibility Act granted employers that confirmed a worker's eligibility through E-Verify a rebuttable presumption that the employer had not violated federal law against hiring undocumented workers. This rebuttable presumption could be raised in court as a defense to charges of hiring unauthorized workers in violation of federal law.

In 2007, Arizona enacted the Legal Arizona Workers Act, which made the use of E-Verify mandatory for employers doing business in the state. If an employer is found to have intentionally employed an unauthorized alien, the employer's authority to do business in the state could be permanently revoked. The Supreme Court's decision holds that these statutory provisions of the Arizona law are not preempted by the federal immigration laws.

Other state legislatures across the nation have also recently assumed the mantle of immigration enforcement. As part of this trend, state laws imposing sanctions for the employment of unauthorized aliens and imposing requirements for the use of E-Verify have become more common. For example, Georgia's new immigration law will require every employer with over ten employees to use E-Verify for every new hire. (See Miller & Martin's [recent Alert](#) on the Georgia law.) Tennessee's new immigration law requires businesses with over five employees to obtain a copy of the driver's license of new hires or to utilize the E-Verify system. (Tennessee Alert coming soon.) The Supreme Court's decision paves the way for these and 48 more separate and unique immigration-related hiring laws for employers to navigate. It falls now to Congress to find a way to unify and address this problem, which will potentially include a nation-wide mandate on E-Verify.

Miller & Martin has represented clients in criminal investigations and civil suits based on allegations concerning the recruitment, hiring, and employment of undocumented workers. If you have questions about the potential impact of the Supreme Court's decision in Chamber of Commerce of the United States v. Whiting, No. 09-115, on your business, please contact [Travis McDonough](#), [Zac Greene](#), or another member of Miller & Martin's [White Collar Crime and Corporate Compliance Practice Group](#) or [Kelly Weston](#) or [Sarah Maxwell](#) in our [Immigration](#) and [International](#) Employment Practice Group.

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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