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Ninth Circuit Upholds Arizona Law Targeting Employers Hiring Undocumented Workers

The U.S. Court of Appeals for the Ninth Circuit recently upheld the district court in *CPLC v. Napolitano*, a facial challenge to a 2007 Arizona state law, the Legal Arizona Workers Act (LAWA), that targets employers who hire undocumented workers. The law's principal sanction is the revocation of state licenses to do business in Arizona. The Ninth Circuit noted that the law has yet to be enforced against any employer. The plaintiffs, various business and civil rights organizations, alleged that the LAWA violates employers' rights to due process by denying them an opportunity to challenge the federal determination of the work authorization status of their employees before sanctions are imposed.

The district court had held that the law was not preempted. The main argument on appeal was that the law is expressly preempted by federal immigration law preempting state regulation other than through licensing and similar laws. The Ninth Circuit found that the district court correctly determined that the LAWA was a "licensing" law within the meaning of the federal provision and therefore was not expressly preempted.

The court also noted a secondary, implied preemption issue that principally relates to the provision requiring employers to use the electronic verification system, E-Verify, to check the work authorization status of employees through federal records. Under current federal immigration law, use of the system is voluntary; the court noted that the Arizona law makes it mandatory. The court held that such a requirement to use the federal verification tool, for which there is no substitute under development in the state, federal, or private sectors, is not expressly or impliedly preempted by federal policy.

The plaintiffs also contended that the Arizona statute does not guarantee employers an opportunity to be heard before their business licenses may be revoked. The statute, the court said, "can and should be reasonably interpreted to allow employers, before any license can be adversely affected, to present evidence to rebut the presumption that an employee is unauthorized." The Ninth Circuit upheld the statute in all respects against the facial challenge, but observed that it was brought against "a blank factual background of enforcement and outside the context of any particular case. If and when the statute is enforced, and the factual background is developed, other challenges to the [LAWA] as applied in any particular instance or manner will not be controlled by our decision," the court stated.

The Ninth Circuit's opinion is available at

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/F05A5F67FDA9AEE6882574C7005021AB/\\$file/0717272.pdf](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/F05A5F67FDA9AEE6882574C7005021AB/$file/0717272.pdf).