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IMMIGRATION

California Legislature acts to protect immigrant workers

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California's workforce includes many documented and undocumented immigrant workers. Businesses sometimes use unlawful or unfair employment practices to exploit immigrant workers and prevent them from exercising their legal rights. Despite the expansive protections of the federal Immigration Reform and Control Act of 1986 (IRCA), the California Legislature, supported by Governor Edmund G. Brown, continues to enact changes to the law designed to protect California's immigrant workforce.

Existing laws governing immigration-related employment practices

The IRCA was enacted in an attempt to control and deter unlawful immigration to the United States. Under the Act, it is unlawful for an employer to hire or employ a worker if it knows the individual is an "unauthorized alien." Specifically, the IRCA creates an "employment verification system" designed to identify and screen out non-U.S. citizens who are not lawfully admitted for residence or authorized to work in the United States.

Under the IRCA's verification system, employers must complete the Form I-9 ("Employment Eligibility Verification") to confirm all new hires' identity and eligibility to work and retain supporting documentation. Employers may not knowingly provide employment-related services, including training and recruitment, to unauthorized aliens. The IRCA also prohibits discrimination and retaliation in recruitment, hiring, discharge, and referral practices based on a person's citizenship or national origin. The IRCA protects U.S. citizens and nationals, permanent and temporary resident aliens, refugees, asylees, and newly legalized aliens who have filed a notice of intent to become citizens. It does not protect unauthorized aliens.

At the state level, California law extends employment-related protections to all employees and job applicants, including immigrants authorized to work in the United States and undocumented immigrants. In particular, California's Labor Code prohibits employers from taking actions related to the immigration status of employees in retaliation for exercising their legally protected rights.

AB 2532 eliminates redundancy and anti-immigrant language

On September 28, 2016, Governor Brown signed **Assembly Bill (AB) 2532**, authored by Assemblymember David Chiu (D-San Francisco). AB 2532 repeals Sections 9601 and 9601.7 of California's Unemployment Insurance Code, which require nonprofit organizations, government or community action agencies, and private companies providing job training and placement services to verify an individual's immigration status and work authorization before providing those services. It also repeals language mandating that the providers post a workplace notice to inform the public that they will provide services only to individuals who are legally authorized to work.

Proponents of AB 2532 state that the IRCA already regulates the provision of job-related social services, requires employers to check work authorization, and prohibits the hiring, recruitment, and fee-based referral of unauthorized workers. The federal law also expressly preempts any state or local law penalizing employers that violate its provisions. Because the relevant sections of the Unemployment Insurance Code duplicate the IRCA, proponents of AB 2532 argue that they are unnecessary and reflect an anti-immigrant bias. For those reasons, Assemblymember Chiu supported the repeal of the problematic sections of the Unemployment Insurance Code.

AB 2532 does not change any work eligibility requirements for immigrants. Federal law continues to require employers to verify an individual's authorization to work before hiring him or providing certain employment-related services. The new legislation simply removes conflicting and arguably discriminatory state-law provisions and minimizes the threat of potential litigation under state law.

SB 1001 is designed to deter document abuse

Federal law requires employers to verify through examination of specific documents that individuals are authorized to work in the United States. If a document reasonably appears genuine, an employer need not ask a prospective employee to provide other documentation. Further, federal law prohibits immigration-related employment practices, including discrimination and refusal to honor documents that appear genuine.

California law extends antidiscrimination and wage and hour protections to immigrant workers. For instance, California prohibits retaliatory "document abuse" (i.e., requesting documentary proof of the right to work in the United States beyond what is required by federal law) against immigrant workers but does not offer the same protection at the application and hiring stage. **Senate Bill (SB) 1001**, authored by Senator Holly J. Mitchell (D-Los Angeles) and signed by Governor Brown, seeks to fill that gap in California law.

SB 1001 amends the Labor Code to explicitly state that it is an unlawful employment practice to:

- (1) Request more or different documents than are required under federal law to verify that an individual is authorized to work in the United States;
- (2) Refuse to honor documents that reasonably appear to be genuine on their face;
- (3) Refuse to honor documents or work authorization based on a specific status or term that accompanies the authorization to work; or
- (4) Attempt to reinvestigate or reverify an incumbent employee's authorization to work using an unfair immigration-related practice.

The legislation does not create a private claim for job applicants and employees who suffer an "unfair immigration-related practice." Instead, job applicants and employees can file a complaint with the California Division of Labor Standards and Enforcement, which will have the power to impose civil penalties of up to \$10,000.

Statistics and studies reflect that employers often use unfair immigration-related practices, including document abuse, to prevent workers from exercising their employment rights. Senator Mitchell asserts that SB 1001's amendments to the Labor Code will help protect immigrant workers from that practice.

Bottom Line

Immigrant workers, both documented and undocumented, have long played a significant role in California's economy. Undocumented immigrants work in traditionally low-wage occupations in industries in which workers face the greatest risk of exploitation, such as agriculture, construction, manufacturing, and the service sector. Many undocumented workers decline to file claims for fear of retaliation, including the risk of

their employer alerting immigration officials. For those reasons, the legislature continues to expand the legal protections for immigrant workers.

Businesses should work closely with legal counsel to understand and comply with the complex mix of state and federal immigration-related employment requirements. Hiring, firing, and even taking disciplinary action against legal immigrants or unauthorized aliens could significantly affect a business and its workforce.

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