

REFERENCE TITLE: employer sanctions; subpoenas

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SB 1403

Introduced by
Senator Pearce R

AN ACT

AMENDING SECTIONS 23-212 AND 23-212.01, ARIZONA REVISED STATUTES; RELATING TO
EMPLOYMENT OF UNAUTHORIZED ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-212, Arizona Revised Statutes, is amended to
3 read:

4 23-212. Knowingly employing unauthorized aliens; prohibition;
5 false and frivolous complaints; violation;
6 classification; license suspension and revocation;
7 affirmative defense

8 A. An employer shall not knowingly employ an unauthorized alien. If,
9 in the case when an employer uses a contract, subcontract or other
10 independent contractor agreement to obtain the labor of an alien in this
11 state, the employer knowingly contracts with an unauthorized alien or with a
12 person who employs or contracts with an unauthorized alien to perform the
13 labor, the employer violates this subsection.

14 B. The attorney general shall prescribe a complaint form for a person
15 to allege a violation of subsection A of this section. The complainant shall
16 not be required to list the complainant's social security number on the
17 complaint form or to have the complaint form notarized. On receipt of a
18 complaint on a prescribed complaint form that an employer allegedly knowingly
19 employs an unauthorized alien, the attorney general or county attorney shall
20 investigate whether the employer has violated subsection A of this section.
21 If a complaint is received but is not submitted on a prescribed complaint
22 form, the attorney general or county attorney may investigate whether the
23 employer has violated subsection A of this section. This subsection shall
24 not be construed to prohibit the filing of anonymous complaints that are not
25 submitted on a prescribed complaint form. The attorney general or county
26 attorney shall not investigate complaints that are based solely on race,
27 color or national origin. A complaint that is submitted to a county attorney
28 shall be submitted to the county attorney in the county in which the alleged
29 unauthorized alien is or was employed by the employer. The county sheriff or
30 any other local law enforcement agency may assist in investigating a
31 complaint. THE COUNTY ATTORNEY MAY TAKE EVIDENCE, ADMINISTER OATHS OR
32 AFFIRMATIONS, ISSUE SUBPOENAS REQUIRING ATTENDANCE AND TESTIMONY OF WITNESSES
33 AND CAUSE DEPOSITIONS TO BE TAKEN. When investigating a complaint, the
34 attorney general or county attorney shall verify the work authorization of
35 the alleged unauthorized alien with the federal government pursuant to 8
36 United States Code section 1373(c). A state, county or local official shall
37 not attempt to independently make a final determination on whether an alien
38 is authorized to work in the United States. An alien's immigration status or
39 work authorization status shall be verified with the federal government
40 pursuant to 8 United States Code section 1373(c). A person who knowingly
41 files a false and frivolous complaint under this subsection is guilty of a
42 class 3 misdemeanor.

43 C. ON THE REQUEST OF THE COUNTY ATTORNEY, THE SUPERIOR COURT MAY
44 AUTHORIZE THE ISSUANCE OF A SUBPOENA DUCES TECUM REQUIRING THE PRODUCTION,
45 INSPECTION OR COPYING OF BOOKS, PAPERS AND OTHER DOCUMENTS THAT ARE NECESSARY

1 FOR THE ENFORCEMENT OF THIS SECTION. THE COURT SHALL AUTHORIZE THE ISSUANCE
2 OF THE SUBPOENA ONLY AFTER A REVIEW OF ALL AFFIDAVITS THAT SET FORTH FACTS
3 TENDING TO ESTABLISH REASONABLE SUSPICION THAT A VIOLATION OF THIS SECTION
4 HAS OCCURRED. A SUBPOENA MAY BE SERVED BY PERSONAL SERVICE OR CERTIFIED
5 MAIL, RETURN RECEIPT REQUESTED. AN EMPLOYER OR ANY PERSON SUBJECT TO THE
6 SUBPOENA, WITHIN THE TIME SPECIFIED FOR COMPLIANCE, MAY FILE A MOTION IN
7 SUPERIOR COURT TO QUASH OR MODIFY THE SUBPOENA. A COPY OF THE MOTION TO
8 QUASH OR MODIFY SHALL BE SERVED ON THE PARTY SERVING THE SUBPOENA. IF THE
9 EMPLOYER OR ANY OTHER PERSON REFUSES TO OBEY A SUBPOENA OR FAILS TO ANSWER
10 QUESTIONS AS PROVIDED BY SUBSECTION B OF THIS SECTION, THE ATTORNEY GENERAL
11 OR THE COUNTY ATTORNEY MAY APPLY TO THE SUPERIOR COURT IN THE MANNER PROVIDED
12 IN SECTION 12-2212.

13 D. PROCEEDINGS HELD DURING THE COURSE OF A CONFIDENTIAL INVESTIGATION
14 ARE EXEMPT FROM TITLE 38, CHAPTER 3, ARTICLE 3.1.

15 ~~E.~~ E. If, after an investigation, the attorney general or county
16 attorney determines that the complaint is not false and frivolous:

17 1. The attorney general or county attorney shall notify the United
18 States immigration and customs enforcement of the unauthorized alien.

19 2. The attorney general or county attorney shall notify the local law
20 enforcement agency of the unauthorized alien.

21 3. The attorney general shall notify the appropriate county attorney
22 to bring an action pursuant to subsection ~~D~~ F of this section if the
23 complaint was originally filed with the attorney general.

24 ~~D.~~ F. An action for a violation of subsection A of this section shall
25 be brought against the employer by the county attorney in the county where
26 the unauthorized alien employee is or was employed by the employer. The
27 county attorney shall not bring an action against any employer for any
28 violation of subsection A of this section that occurs before January 1, 2008.
29 A second violation of this section shall be based only on an unauthorized
30 alien who is or was employed by the employer after an action has been brought
31 for a violation of subsection A of this section or section 23-212.01,
32 subsection A.

33 ~~E.~~ G. For any action in superior court under this section, the court
34 shall expedite the action, including assigning the hearing at the earliest
35 practicable date.

36 ~~F.~~ H. On a finding of a violation of subsection A of this section:

37 1. For a first violation, as described in paragraph 3 of this
38 subsection, the court:

39 (a) Shall order the employer to terminate the employment of all
40 unauthorized aliens.

41 (b) Shall order the employer to be subject to a three year
42 probationary period for the business location where the unauthorized alien
43 performed work. During the probationary period the employer shall file
44 quarterly reports in the form provided in section 23-722.01 with the county

1 attorney of each new employee who is hired by the employer at the business
2 location where the unauthorized alien performed work.

3 (c) Shall order the employer to file a signed sworn affidavit with the
4 county attorney within three business days after the order is issued. The
5 affidavit shall state that the employer has terminated the employment of all
6 unauthorized aliens in this state and that the employer will not
7 intentionally or knowingly employ an unauthorized alien in this state. The
8 court shall order the appropriate agencies to suspend all licenses subject to
9 this subdivision that are held by the employer if the employer fails to file
10 a signed sworn affidavit with the county attorney within three business days
11 after the order is issued. All licenses that are suspended under this
12 subdivision shall remain suspended until the employer files a signed sworn
13 affidavit with the county attorney. Notwithstanding any other law, on filing
14 of the affidavit the suspended licenses shall be reinstated immediately by
15 the appropriate agencies. For the purposes of this subdivision, the licenses
16 that are subject to suspension under this subdivision are all licenses that
17 are held by the employer specific to the business location where the
18 unauthorized alien performed work. If the employer does not hold a license
19 specific to the business location where the unauthorized alien performed
20 work, but a license is necessary to operate the employer's business in
21 general, the licenses that are subject to suspension under this subdivision
22 are all licenses that are held by the employer at the employer's primary
23 place of business. On receipt of the court's order and notwithstanding any
24 other law, the appropriate agencies shall suspend the licenses according to
25 the court's order. The court shall send a copy of the court's order to the
26 attorney general and the attorney general shall maintain the copy pursuant to
27 subsection ~~G~~ I of this section.

28 (d) May order the appropriate agencies to suspend all licenses
29 described in subdivision (c) of this paragraph that are held by the employer
30 for not to exceed ten business days. The court shall base its decision to
31 suspend under this subdivision on any evidence or information submitted to it
32 during the action for a violation of this subsection and shall consider the
33 following factors, if relevant:

- 34 (i) The number of unauthorized aliens employed by the employer.
- 35 (ii) Any prior misconduct by the employer.
- 36 (iii) The degree of harm resulting from the violation.
- 37 (iv) Whether the employer made good faith efforts to comply with any
38 applicable requirements.
- 39 (v) The duration of the violation.
- 40 (vi) The role of the directors, officers or principals of the employer
41 in the violation.
- 42 (vii) Any other factors the court deems appropriate.

1 2. For a second violation, as described in paragraph 3 of this
2 subsection, the court shall order the appropriate agencies to permanently
3 revoke all licenses that are held by the employer specific to the business
4 location where the unauthorized alien performed work. If the employer does
5 not hold a license specific to the business location where the unauthorized
6 alien performed work, but a license is necessary to operate the employer's
7 business in general, the court shall order the appropriate agencies to
8 permanently revoke all licenses that are held by the employer at the
9 employer's primary place of business. On receipt of the order and
10 notwithstanding any other law, the appropriate agencies shall immediately
11 revoke the licenses.

12 3. The violation shall be considered:

13 (a) A first violation by an employer at a business location if the
14 violation did not occur during a probationary period ordered by the court
15 under this subsection or section 23-212.01, subsection ~~F~~ H for that
16 employer's business location.

17 (b) A second violation by an employer at a business location if the
18 violation occurred during a probationary period ordered by the court under
19 this subsection or section 23-212.01, subsection ~~F~~ H for that employer's
20 business location.

21 ~~G~~ I. The attorney general shall maintain copies of court orders that
22 are received pursuant to subsection ~~F~~ H of this section and shall maintain a
23 database of the employers and business locations that have a first violation
24 of subsection A of this section and make the court orders available on the
25 attorney general's website.

26 ~~H~~ J. On determining whether an employee is an unauthorized alien,
27 the court shall consider only the federal government's determination pursuant
28 to 8 United States Code section 1373(c). The federal government's
29 determination creates a rebuttable presumption of the employee's lawful
30 status. The court may take judicial notice of the federal government's
31 determination and may request the federal government to provide automated or
32 testimonial verification pursuant to 8 United States Code section 1373(c).

33 ~~I~~ K. For the purposes of this section, proof of verifying the
34 employment authorization of an employee through the e-verify program creates
35 a rebuttable presumption that an employer did not knowingly employ an
36 unauthorized alien.

37 ~~J~~ L. For the purposes of this section, an employer that establishes
38 that it has complied in good faith with the requirements of 8 United States
39 Code section 1324a(b) establishes an affirmative defense that the employer
40 did not knowingly employ an unauthorized alien. An employer is considered to
41 have complied with the requirements of 8 United States Code section 1324a(b),
42 notwithstanding an isolated, sporadic or accidental technical or procedural
43 failure to meet the requirements, if there is a good faith attempt to comply
44 with the requirements.

1 Sec. 2. Section 23-212.01, Arizona Revised Statutes, is amended to
2 read:

3 23-212.01. Intentionally employing unauthorized aliens;
4 prohibition; false and frivolous complaints;
5 violation; classification; license suspension and
6 revocation; affirmative defense

7 A. An employer shall not intentionally employ an unauthorized alien.
8 If, in the case when an employer uses a contract, subcontract or other
9 independent contractor agreement to obtain the labor of an alien in this
10 state, the employer intentionally contracts with an unauthorized alien or
11 with a person who employs or contracts with an unauthorized alien to perform
12 the labor, the employer violates this subsection.

13 B. The attorney general shall prescribe a complaint form for a person
14 to allege a violation of subsection A of this section. The complainant shall
15 not be required to list the complainant's social security number on the
16 complaint form or to have the complaint form notarized. On receipt of a
17 complaint on a prescribed complaint form that an employer allegedly
18 intentionally employs an unauthorized alien, the attorney general or county
19 attorney shall investigate whether the employer has violated subsection A of
20 this section. If a complaint is received but is not submitted on a
21 prescribed complaint form, the attorney general or county attorney may
22 investigate whether the employer has violated subsection A of this section.
23 This subsection shall not be construed to prohibit the filing of anonymous
24 complaints that are not submitted on a prescribed complaint form. The
25 attorney general or county attorney shall not investigate complaints that are
26 based solely on race, color or national origin. A complaint that is
27 submitted to a county attorney shall be submitted to the county attorney in
28 the county in which the alleged unauthorized alien is or was employed by the
29 employer. The county sheriff or any other local law enforcement agency may
30 assist in investigating a complaint. **THE COUNTY ATTORNEY MAY TAKE EVIDENCE,**
31 **ADMINISTER OATHS OR AFFIRMATIONS, ISSUE SUBPOENAS REQUIRING ATTENDANCE AND**
32 **TESTIMONY OF WITNESSES AND CAUSE DEPOSITIONS TO BE TAKEN.** When investigating
33 a complaint, the attorney general or county attorney shall verify the work
34 authorization of the alleged unauthorized alien with the federal government
35 pursuant to 8 United States Code section 1373(c). A state, county or local
36 official shall not attempt to independently make a final determination on
37 whether an alien is authorized to work in the United States. An alien's
38 immigration status or work authorization status shall be verified with the
39 federal government pursuant to 8 United States Code section 1373(c). A
40 person who knowingly files a false and frivolous complaint under this
41 subsection is guilty of a class 3 misdemeanor.

42 C. **ON THE REQUEST OF THE COUNTY ATTORNEY, THE SUPERIOR COURT MAY**
43 **AUTHORIZE THE ISSUANCE OF A SUBPOENA DUCES TECUM REQUIRING THE PRODUCTION,**
44 **INSPECTION OR COPYING OF BOOKS, PAPERS AND OTHER DOCUMENTS THAT ARE NECESSARY**
45 **FOR THE ENFORCEMENT OF THIS SECTION. THE COURT SHALL AUTHORIZE THE ISSUANCE**

1 OF THE SUBPOENA ONLY AFTER A REVIEW OF ALL AFFIDAVITS THAT SET FORTH FACTS
2 TENDING TO ESTABLISH REASONABLE SUSPICION THAT A VIOLATION OF THIS SECTION
3 HAS OCCURRED. A SUBPOENA MAY BE SERVED BY PERSONAL SERVICE OR CERTIFIED
4 MAIL, RETURN RECEIPT REQUESTED. AN EMPLOYER OR ANY PERSON SUBJECT TO THE
5 SUBPOENA, WITHIN THE TIME SPECIFIED FOR COMPLIANCE, MAY FILE A MOTION IN
6 SUPERIOR COURT TO QUASH OR MODIFY THE SUBPOENA. A COPY OF THE MOTION TO
7 QUASH OR MODIFY SHALL BE SERVED ON THE PARTY SERVING THE SUBPOENA. IF THE
8 EMPLOYER OR ANY OTHER PERSON REFUSES TO OBEY A SUBPOENA OR FAILS TO ANSWER
9 QUESTIONS AS PROVIDED BY SUBSECTION B OF THIS SECTION, THE ATTORNEY GENERAL
10 OR THE COUNTY ATTORNEY MAY APPLY TO THE SUPERIOR COURT IN THE MANNER PROVIDED
11 IN SECTION 12-2212.

12 D. PROCEEDINGS HELD DURING THE COURSE OF A CONFIDENTIAL INVESTIGATION
13 ARE EXEMPT FROM TITLE 38, CHAPTER 3, ARTICLE 3.1.

14 ~~E.~~ E. If, after an investigation, the attorney general or county
15 attorney determines that the complaint is not false and frivolous:

16 1. The attorney general or county attorney shall notify the United
17 States immigration and customs enforcement of the unauthorized alien.

18 2. The attorney general or county attorney shall notify the local law
19 enforcement agency of the unauthorized alien.

20 3. The attorney general shall notify the appropriate county attorney
21 to bring an action pursuant to subsection ~~D~~- F of this section if the
22 complaint was originally filed with the attorney general.

23 ~~D~~- F. An action for a violation of subsection A of this section shall
24 be brought against the employer by the county attorney in the county where
25 the unauthorized alien employee is or was employed by the employer. The
26 county attorney shall not bring an action against any employer for any
27 violation of subsection A of this section that occurs before January 1, 2008.
28 A second violation of this section shall be based only on an unauthorized
29 alien who is or was employed by the employer after an action has been brought
30 for a violation of subsection A of this section or section 23-212,
31 subsection A.

32 ~~E~~- G. For any action in superior court under this section, the court
33 shall expedite the action, including assigning the hearing at the earliest
34 practicable date.

35 ~~F~~- H. On a finding of a violation of subsection A of this section:

36 1. For a first violation, as described in paragraph 3 of this
37 subsection, the court shall:

38 (a) Order the employer to terminate the employment of all unauthorized
39 aliens.

40 (b) Order the employer to be subject to a five year probationary
41 period for the business location where the unauthorized alien performed work.
42 During the probationary period the employer shall file quarterly reports in
43 the form provided in section 23-722.01 with the county attorney of each new
44 employee who is hired by the employer at the business location where the
45 unauthorized alien performed work.

1 (c) Order the appropriate agencies to suspend all licenses described
2 in subdivision (d) of this paragraph that are held by the employer for a
3 minimum of ten days. The court shall base its decision on the length of the
4 suspension under this subdivision on any evidence or information submitted to
5 it during the action for a violation of this subsection and shall consider
6 the following factors, if relevant:

7 (i) The number of unauthorized aliens employed by the employer.

8 (ii) Any prior misconduct by the employer.

9 (iii) The degree of harm resulting from the violation.

10 (iv) Whether the employer made good faith efforts to comply with any
11 applicable requirements.

12 (v) The duration of the violation.

13 (vi) The role of the directors, officers or principals of the employer
14 in the violation.

15 (vii) Any other factors the court deems appropriate.

16 (d) Order the employer to file a signed sworn affidavit with the
17 county attorney. The affidavit shall state that the employer has terminated
18 the employment of all unauthorized aliens in this state and that the employer
19 will not intentionally or knowingly employ an unauthorized alien in this
20 state. The court shall order the appropriate agencies to suspend all
21 licenses subject to this subdivision that are held by the employer if the
22 employer fails to file a signed sworn affidavit with the county attorney
23 within three business days after the order is issued. All licenses that are
24 suspended under this subdivision for failing to file a signed sworn affidavit
25 shall remain suspended until the employer files a signed sworn affidavit with
26 the county attorney. For the purposes of this subdivision, the licenses that
27 are subject to suspension under this subdivision are all licenses that are
28 held by the employer specific to the business location where the unauthorized
29 alien performed work. If the employer does not hold a license specific to
30 the business location where the unauthorized alien performed work, but a
31 license is necessary to operate the employer's business in general, the
32 licenses that are subject to suspension under this subdivision are all
33 licenses that are held by the employer at the employer's primary place of
34 business. On receipt of the court's order and notwithstanding any other law,
35 the appropriate agencies shall suspend the licenses according to the court's
36 order. The court shall send a copy of the court's order to the attorney
37 general and the attorney general shall maintain the copy pursuant to
38 subsection ~~G~~ I of this section.

39 2. For a second violation, as described in paragraph 3 of this
40 subsection, the court shall order the appropriate agencies to permanently
41 revoke all licenses that are held by the employer specific to the business
42 location where the unauthorized alien performed work. If the employer does
43 not hold a license specific to the business location where the unauthorized
44 alien performed work, but a license is necessary to operate the employer's
45 business in general, the court shall order the appropriate agencies to

1 permanently revoke all licenses that are held by the employer at the
2 employer's primary place of business. On receipt of the order and
3 notwithstanding any other law, the appropriate agencies shall immediately
4 revoke the licenses.

5 3. The violation shall be considered:

6 (a) A first violation by an employer at a business location if the
7 violation did not occur during a probationary period ordered by the court
8 under this subsection or section 23-212, subsection ~~F~~ H for that employer's
9 business location.

10 (b) A second violation by an employer at a business location if the
11 violation occurred during a probationary period ordered by the court under
12 this subsection or section 23-212, subsection ~~F~~ H for that employer's
13 business location.

14 ~~G~~ I. The attorney general shall maintain copies of court orders that
15 are received pursuant to subsection ~~F~~ H of this section and shall maintain a
16 database of the employers and business locations that have a first violation
17 of subsection A of this section and make the court orders available on the
18 attorney general's website.

19 ~~H~~ J. On determining whether an employee is an unauthorized alien,
20 the court shall consider only the federal government's determination pursuant
21 to 8 United States Code section 1373(c). The federal government's
22 determination creates a rebuttable presumption of the employee's lawful
23 status. The court may take judicial notice of the federal government's
24 determination and may request the federal government to provide automated or
25 testimonial verification pursuant to 8 United States Code section 1373(c).

26 ~~I~~ K. For the purposes of this section, proof of verifying the
27 employment authorization of an employee through the e-verify program creates
28 a rebuttable presumption that an employer did not intentionally employ an
29 unauthorized alien.

30 ~~J~~ L. For the purposes of this section, an employer that establishes
31 that it has complied in good faith with the requirements of 8 United States
32 Code section 1324a(b) establishes an affirmative defense that the employer
33 did not intentionally employ an unauthorized alien. An employer is
34 considered to have complied with the requirements of 8 United States Code
35 section 1324a(b), notwithstanding an isolated, sporadic or accidental
36 technical or procedural failure to meet the requirements, if there is a good
37 faith attempt to comply with the requirements.