

REFERENCE TITLE: e-verify program; employers; immunity

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

SB 1477

Introduced by
Senator Sherwood

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 immunity; 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~~ DOES NOT prohibit the filing of anonymous complaints that
25 are not submitted on a prescribed complaint form. The attorney general or
26 county attorney shall not investigate complaints that are based solely on
27 race, color or national origin. A complaint that is submitted to a county
28 attorney shall be submitted to the county attorney in the county in which the
29 alleged unauthorized alien is or was employed by the employer. The county
30 sheriff or any other local law enforcement agency may assist in investigating
31 a complaint. ~~When~~ IF investigating a complaint, the attorney general or
32 county attorney shall verify the work authorization of the alleged
33 unauthorized alien with the federal government pursuant to 8 United States
34 Code section 1373(c). A state, county or local official shall not attempt to
35 independently make a final determination on whether an alien is authorized to
36 work in the United States. An alien's immigration status or work
37 authorization status shall be verified with the federal government pursuant
38 to 8 United States Code section 1373(c). A person who knowingly files a
39 false and frivolous complaint under this subsection is guilty of a class 3
40 misdemeanor.

41 C. If, after an investigation, the attorney general or county attorney
42 determines that the complaint is not false and frivolous:

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

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

3 3. The attorney general shall notify the appropriate county attorney
4 to bring an action pursuant to subsection D of this section if the complaint
5 was originally filed with the attorney general.

6 D. An action for a violation of subsection A of this section shall be
7 brought against the employer by the county attorney in the county where the
8 unauthorized alien employee is or was employed by the employer. The county
9 attorney shall not bring an action against any employer for any violation of
10 subsection A of this section that occurs before January 1, 2008. A second
11 violation of this section shall be based only on an unauthorized alien who is
12 or was employed by the employer after an action has been brought for a
13 violation of subsection A of this section or section 23-212.01, subsection A.

14 E. For any action in superior court under this section, the court
15 shall expedite the action, including assigning the hearing at the earliest
16 practicable date.

17 F. On a finding of a violation of subsection A of this section:

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

20 (a) Shall order the employer to terminate the employment of all
21 unauthorized aliens.

22 (b) Shall order the employer to be subject to a three year
23 probationary period for the business location where the unauthorized alien
24 performed work. During the probationary period the employer shall file
25 quarterly reports in the form provided in section 23-722.01 with the county
26 attorney of each new employee who is hired by the employer at the business
27 location where the unauthorized alien performed work.

28 (c) Shall order the employer to file a signed sworn affidavit with the
29 county attorney within three business days after the order is issued. The
30 affidavit shall state that the employer has terminated the employment of all
31 unauthorized aliens in this state and that the employer will not
32 intentionally or knowingly employ an unauthorized alien in this state. The
33 court shall order the appropriate agencies to suspend all licenses subject to
34 this subdivision that are held by the employer if the employer fails to file
35 a signed sworn affidavit with the county attorney within three business days
36 after the order is issued. All licenses that are suspended under this
37 subdivision shall remain suspended until the employer files a signed sworn
38 affidavit with the county attorney. Notwithstanding any other law, on filing
39 of the affidavit the suspended licenses shall be reinstated immediately by
40 the appropriate agencies. For the purposes of this subdivision, the licenses
41 that are subject to suspension under this subdivision are all licenses that
42 are held by the employer specific to the business location where the
43 unauthorized alien performed work. If the employer does not hold a license
44 specific to the business location where the unauthorized alien performed
45 work, but a license is necessary to operate the employer's business in

1 general, the licenses that are subject to suspension under this subdivision
2 are all licenses that are held by the employer at the employer's primary
3 place of business. On receipt of the court's order and notwithstanding any
4 other law, the appropriate agencies shall suspend the licenses according to
5 the court's order. The court shall send a copy of the court's order to the
6 attorney general and the attorney general shall maintain the copy pursuant to
7 subsection G of this section.

8 (d) May order the appropriate agencies to suspend all licenses
9 described in subdivision (c) of this paragraph that are held by the employer
10 for not ~~to exceed~~ MORE THAN ten business days. The court shall base its
11 decision to suspend under this subdivision on any evidence or information
12 submitted to it during the action for a violation of this subsection and
13 shall consider the following factors, if relevant:

- 14 (i) The number of unauthorized aliens employed by the employer.
- 15 (ii) Any prior misconduct by the employer.
- 16 (iii) The degree of harm resulting from the violation.
- 17 (iv) Whether the employer made good faith efforts to comply with any
18 applicable requirements.
- 19 (v) The duration of the violation.
- 20 (vi) The role of the directors, officers or principals of the employer
21 in the violation.
- 22 (vii) Any other factors the court deems appropriate.

23 2. For a second violation, as described in paragraph 3 of this
24 subsection, the court shall order the appropriate agencies to permanently
25 revoke all licenses that are held by the employer specific to the business
26 location where the unauthorized alien performed work. If the employer does
27 not hold a license specific to the business location where the unauthorized
28 alien performed work, but a license is necessary to operate the employer's
29 business in general, the court shall order the appropriate agencies to
30 permanently revoke all licenses that are held by the employer at the
31 employer's primary place of business. On receipt of the order and
32 notwithstanding any other law, the appropriate agencies shall immediately
33 revoke the licenses.

34 3. The violation shall be considered:

35 (a) A first violation by an employer at a business location if the
36 violation did not occur during a probationary period ordered by the court
37 under this subsection or section 23-212.01, subsection F for that employer's
38 business location.

39 (b) A second violation by an employer at a business location if the
40 violation occurred during a probationary period ordered by the court under
41 this subsection or section 23-212.01, subsection F for that employer's
42 business location.

43 G. The attorney general shall maintain copies of court orders that are
44 received pursuant to subsection F of this section and shall maintain a
45 database of the employers and business locations that have a first violation

1 of subsection A of this section and make the court orders available on the
2 attorney general's website.

3 H. On determining whether an employee is an unauthorized alien, the
4 court shall consider only the federal government's determination pursuant to
5 8 United States Code section 1373(c). The federal government's determination
6 creates a rebuttable presumption of the employee's lawful status. The court
7 may take judicial notice of the federal government's determination and may
8 request the federal government to provide automated or testimonial
9 verification pursuant to 8 United States Code section 1373(c).

10 I. For the purposes of this section, ~~proof of verifying~~ AN EMPLOYER
11 THAT VERIFIES the employment authorization of an employee through the
12 e-verify program ~~creates a rebuttable presumption that an employer did not~~
13 ~~knowingly employ an unauthorized alien~~ IS IMMUNE FROM CIVIL LIABILITY AND IS
14 NOT SUBJECT TO SUIT PURSUANT TO THIS SECTION FOR ANY ACT THAT RESULTS IN A
15 VIOLATION OF SUBSECTION A OF THIS SECTION.

16 J. For the purposes of this section, an employer that establishes that
17 it has complied in good faith with the requirements of 8 United States Code
18 section 1324a(b) establishes an affirmative defense that the employer did not
19 knowingly employ an unauthorized alien. An employer is considered to have
20 complied with the requirements of 8 United States Code section 1324a(b),
21 notwithstanding an isolated, sporadic or accidental technical or procedural
22 failure to meet the requirements, if there is a good faith attempt to comply
23 with the requirements.

24 K. It is an affirmative defense to a violation of subsection A of this
25 section that the employer was entrapped. To claim entrapment, the employer
26 must admit by the employer's testimony or other evidence the substantial
27 elements of the violation. An employer who asserts an entrapment defense has
28 the burden of proving the following by a preponderance of the evidence:

29 1. The idea of committing the violation started with law enforcement
30 officers or their agents rather than with the employer.

31 2. The law enforcement officers or their agents urged and induced the
32 employer to commit the violation.

33 3. The employer was not predisposed to commit the violation before the
34 law enforcement officers or their agents urged and induced the employer to
35 commit the violation.

36 L. An employer does not establish entrapment if the employer was
37 predisposed to violate subsection A of this section and the law enforcement
38 officers or their agents merely provided the employer with an opportunity to
39 commit the violation. It is not entrapment for law enforcement officers or
40 their agents merely to use a ruse or to conceal their identity. The conduct
41 of law enforcement officers and their agents may be considered in determining
42 if an employer has proven entrapment.

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; immunity; 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~~ DOES NOT prohibit the filing of
24 anonymous complaints that are not submitted on a prescribed complaint form.
25 The attorney general or county attorney shall not investigate complaints that
26 are 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. ~~When~~ IF investigating a complaint, the
31 attorney general or county attorney shall verify the work authorization of
32 the alleged unauthorized alien with the federal government pursuant to
33 8 United States Code section 1373(c). A state, county or local official
34 shall not attempt to independently make a final determination on whether an
35 alien is authorized to work in the United States. An alien's immigration
36 status or work authorization status shall be verified with the federal
37 government pursuant to 8 United States Code section 1373(c). A person who
38 knowingly files a false and frivolous complaint under this subsection is
39 guilty of a class 3 misdemeanor.

40 C. If, after an investigation, the attorney general or county attorney
41 determines that the complaint is not false and frivolous:

- 42 1. The attorney general or county attorney shall notify the United
43 States immigration and customs enforcement of the unauthorized alien.
44 2. The attorney general or county attorney shall notify the local law
45 enforcement agency of the unauthorized alien.

1 3. The attorney general shall notify the appropriate county attorney
2 to bring an action pursuant to subsection D of this section if the complaint
3 was originally filed with the attorney general.

4 D. An action for a violation of subsection A of this section shall be
5 brought against the employer by the county attorney in the county where the
6 unauthorized alien employee is or was employed by the employer. The county
7 attorney shall not bring an action against any employer for any violation of
8 subsection A of this section that occurs before January 1, 2008. A second
9 violation of this section shall be based only on an unauthorized alien who is
10 or was employed by the employer after an action has been brought for a
11 violation of subsection A of this section or section 23-212, subsection A.

12 E. For any action in superior court under this section, the court
13 shall expedite the action, including assigning the hearing at the earliest
14 practicable date.

15 F. On a finding of a violation of subsection A of this section:

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

18 (a) Order the employer to terminate the employment of all unauthorized
19 aliens.

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

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

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

33 (ii) Any prior misconduct by the employer.

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

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

37 (v) The duration of the violation.

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

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

41 (d) Order the employer to file a signed sworn affidavit with the
42 county attorney. The affidavit shall state that the employer has terminated
43 the employment of all unauthorized aliens in this state and that the employer
44 will not intentionally or knowingly employ an unauthorized alien in this
45 state. The court shall order the appropriate agencies to suspend all

1 licenses subject to this subdivision that are held by the employer if the
2 employer fails to file a signed sworn affidavit with the county attorney
3 within three business days after the order is issued. All licenses that are
4 suspended under this subdivision for failing to file a signed sworn affidavit
5 shall remain suspended until the employer files a signed sworn affidavit with
6 the county attorney. For the purposes of this subdivision, the licenses that
7 are subject to suspension under this subdivision are all licenses that are
8 held by the employer specific to the business location where the unauthorized
9 alien performed work. If the employer does not hold a license specific to
10 the business location where the unauthorized alien performed work, but a
11 license is necessary to operate the employer's business in general, the
12 licenses that are subject to suspension under this subdivision are all
13 licenses that are held by the employer at the employer's primary place of
14 business. On receipt of the court's order and notwithstanding any other law,
15 the appropriate agencies shall suspend the licenses according to the court's
16 order. The court shall send a copy of the court's order to the attorney
17 general and the attorney general shall maintain the copy pursuant to
18 subsection G of this section.

19 2. For a second violation, as described in paragraph 3 of this
20 subsection, the court shall order the appropriate agencies to permanently
21 revoke all licenses that are held by the employer specific to the business
22 location where the unauthorized alien performed work. If the employer does
23 not hold a license specific to the business location where the unauthorized
24 alien performed work, but a license is necessary to operate the employer's
25 business in general, the court shall order the appropriate agencies to
26 permanently revoke all licenses that are held by the employer at the
27 employer's primary place of business. On receipt of the order and
28 notwithstanding any other law, the appropriate agencies shall immediately
29 revoke the licenses.

30 3. The violation shall be considered:

31 (a) A first violation by an employer at a business location if the
32 violation did not occur during a probationary period ordered by the court
33 under this subsection or section 23-212, subsection F for that employer's
34 business location.

35 (b) A second violation by an employer at a business location if the
36 violation occurred during a probationary period ordered by the court under
37 this subsection or section 23-212, subsection F for that employer's business
38 location.

39 G. The attorney general shall maintain copies of court orders that are
40 received pursuant to subsection F of this section and shall maintain a
41 database of the employers and business locations that have a first violation
42 of subsection A of this section and make the court orders available on the
43 attorney general's website.

44 H. On determining whether an employee is an unauthorized alien, the
45 court shall consider only the federal government's determination pursuant to

1 8 United States Code section 1373(c). The federal government's determination
2 creates a rebuttable presumption of the employee's lawful status. The court
3 may take judicial notice of the federal government's determination and may
4 request the federal government to provide automated or testimonial
5 verification pursuant to 8 United States Code section 1373(c).

6 I. For the purposes of this section, ~~proof of verifying~~ AN EMPLOYER
7 THAT VERIFIES the employment authorization of an employee through the
8 e-verify program ~~creates a rebuttable presumption that an employer did not~~
9 ~~intentionally employ an unauthorized alien~~ IS IMMUNE FROM CIVIL LIABILITY AND
10 IS NOT SUBJECT TO SUIT PURSUANT TO THIS SECTION FOR ANY ACT THAT RESULTS IN A
11 VIOLATION OF SUBSECTION A OF THIS SECTION.

12 J. For the purposes of this section, an employer that establishes that
13 it has complied in good faith with the requirements of 8 United States Code
14 section 1324a(b) establishes an affirmative defense that the employer did not
15 intentionally employ an unauthorized alien. An employer is considered to
16 have complied with the requirements of 8 United States Code section 1324a(b),
17 notwithstanding an isolated, sporadic or accidental technical or procedural
18 failure to meet the requirements, if there is a good faith attempt to comply
19 with the requirements.

20 K. It is an affirmative defense to a violation of subsection A of this
21 section that the employer was entrapped. To claim entrapment, the employer
22 must admit by the employer's testimony or other evidence the substantial
23 elements of the violation. An employer who asserts an entrapment defense has
24 the burden of proving the following by a preponderance of the evidence:

25 1. The idea of committing the violation started with law enforcement
26 officers or their agents rather than with the employer.

27 2. The law enforcement officers or their agents urged and induced the
28 employer to commit the violation.

29 3. The employer was not predisposed to commit the violation before the
30 law enforcement officers or their agents urged and induced the employer to
31 commit the violation.

32 L. An employer does not establish entrapment if the employer was
33 predisposed to violate subsection A of this section and the law enforcement
34 officers or their agents merely provided the employer with an opportunity to
35 commit the violation. It is not entrapment for law enforcement officers or
36 their agents merely to use a ruse or to conceal their identity. The conduct
37 of law enforcement officers and their agents may be considered in determining
38 if an employer has proven entrapment.