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By Michael Rose

State-Level Immigration Enforcement Efforts Less Vigorous than Anticipated, Panelists Say

Although some states have passed laws cracking down on employers who hire illegal immigrants, a greater number of states recently have taken a more tempered approach toward the issue, according to a panel of speakers on a May 20 conference call.

The teleconference was organized by ImmigrationWorks USA, a coalition of businesses and trade groups who represent employers that rely on large numbers of immigrant workers, and coincided with the organization's release of a new report, *The New Battleground: Immigration in the States--The Outlook for Business*. The report examines state-level efforts at immigration law enforcement, and draws contrasts between laws passed in 2007 and those either passed or introduced in state legislatures this year.

'Draconian' Measures

Tamar Jacoby, the president of ImmigrationWorks USA, described the legislation implemented in Arizona and Oklahoma in 2007 as "draconian." The Arizona law mandated that all employers in the state use the federal government's E-Verify system to check the employment eligibility of new employees, with penalties for not doing so including the loss of a business license after a second infraction. The Oklahoma law mandated the use of E-Verify for employers with state government contracts and for public employers (213 DLR A-1, 11/5/07 (Document link: a0b5h8f0p7)).

"The goal [of these laws] was not just immigration enforcement, but attrition [of immigrants]," Jacoby said. But, Jacoby said, not much attrition has occurred, even though the Arizona and Oklahoma laws were passed "at the high-tide mark of anti-immigrant sentiment in the U.S." last year.

Jacoby said five states have passed immigration laws so far this year. "They're serious enforcement measures, but their goal is not attrition, and they won't close down businesses in the states" in which they were enacted, she said. The penalties for breaking Arizona's law, for example, would easily shut down businesses that break the new law, Jacoby said.

According to the report, four states--Arizona, Mississippi, Utah, and Virginia--have enacted laws in 2008, while another, Missouri, passed a law in the legislature that has not yet been signed by the governor. The 2008 Arizona law amends certain provisions of the law passed in 2007, such as clarifying its application to employers who pay workers in cash.

Jacoby said that, with the exception of Mississippi's measure, the laws this year were "scaled back" from those passed in 2007 in terms of severity of penalties for employers found to be hiring illegal workers. For example, while Mississippi's law largely mirrors Arizona's in requiring all employers to use E-Verify, the laws in the other four states seek to make lesser changes to the current system and impose less severe penalties.

'Pragmatists' Versus 'Hardliners.'

Jacoby characterized the debate over state immigration laws as one between "pragmatists" who say that immigrant workers are necessary for employers' businesses, and "hardliners" who want to curb illegal immigration and deport any illegal workers who may be found. She said that the laws passed and enacted so far in 2008 are largely more in line with the pragmatic view.

Meanwhile, Greg Siskind, a Memphis-based immigration attorney, noted that currently there are court challenges to the laws enacted in Arizona and Oklahoma. But, he said, illustrating the range of state immigration law efforts, the Illinois legislature actually passed a law barring employers from using E-Verify. However, that law is also currently being challenged in court.

Siskind also argued that some states with scaled-back immigration laws have indicated that they want Congress to step in. "State officials are not immigration law experts," he said. "Virginia and Missouri have made it clear that they expect the federal government to be the primary enforcer of immigration law."

The new Virginia law mainly affects state contractors and those doing business with the state, requiring them to affirm that they did not knowingly hire illegal workers, while Missouri's law, not yet signed, requires public employers to use E-Verify.

Siskind also pointed to South Carolina, where some state legislators have proposed legislation that favors letting employers choose whether to use E-Verify, I-9 forms or driver's licenses to verify employment status.

Hobey Bauhan, the president of the Virginia Poultry Federation, said that the employers in his group, who rely heavily on immigrant workers, want only to hire legal employees. He favors "measures that don't target employers who are doing everything they can already" to make sure the workers they are hiring are legally permitted to work.

Jacoby said that the state-level laws detailed in her organization's report are not an ideal solution to the employment-related immigration issues the country currently faces.

"There's no mystery about what Congress needs to do, but it doesn't have the courage or will to do it," Jacoby said. "The solutions are on the table, but states have rushed in to fill the vacuum...Engaged and concerned employers will be able to fight at the congressional level when a new Congress is elected."

ImmigrationWorks USA's report is available on the Internet at
http://www.immigrationworksusa.org/uploaded/file/IW_SpringReport_08.pdf