

Which Provisions of California's So-Called 'Sanctuary State' Legislation Affecting Employers are Currently in Effect?

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While portions of California's Immigrant Worker Protection Act have been enjoined, employers remain subject to notice obligations. California passed a statute limiting the extent to which employers could cooperate with federal immigration officials. Litigation quickly ensued, and a recent decision enjoined enforcement of part of the law, while leaving other provisions unaffected. With the speed of the news cycle, employers may understandably require clarification as to which immigration policies are actually in effect.

What portions of the sanctuary state law were enjoined, and what parts remain effective?

The Immigration Worker Protection Act (AB 450), which went into effect in January 2018, imposed three primary obligations on employers:

1. A prohibition against allowing or consenting to a federal immigration enforcement agent's request to enter nonpublic areas in the workplace, or to access employee records, without a judicial warrant;
2. A prohibition against re-verifying the employment eligibility of a current employee outside the time and manner required by federal law; and
3. A requirement to provide notice to employees upon receipt of a Notice of Inspection of Form I-9, and after the inspection, provide notice regarding the results of the inspection.

Almost immediately, the law was challenged in court, in a case called *United States v. California*. On July 5, 2018, John A. Mendez of the United States District Court for the Eastern District of California issued a preliminary injunction blocking the enforcement of the first two of the above obligations, but not the third obligation concerning notice. The court reasoned that the first prohibition on cooperation with federal immigration officials likely "impermissibly discriminates against those who choose to deal with the Federal Government," and therefore violates the intergovernmental immunity doctrine. The court also found that the second prohibition on early re-verifications likely violates the Supremacy Clause. The notice obligation, on the other hand, regulates the employer's "failure to communicate with its employees," and is therefore likely a permissible exercise

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of state power.

Accordingly, as it currently stands, the notice provisions are in effect. Under the statute, employers must notify employees and labor union representatives within 72 hours of receiving a Notice of Inspection of Form I-9. Employers must include the name of the federal agency conducting the inspection, the nature of the inspection, the date the employer received the inspection notice, and a copy of the inspection notice. Additionally, within 72 hours after the inspection takes place, employers must also provide affected employees and their labor union representatives with the results of the inspection, a timeframe for correcting any deficiencies found, the date and time of any meetings with the employer to correct any deficiencies found, and a notice to the employees about their rights to representation during any meeting with the employer.

It is important to note that at this point the court entered a preliminary injunction; the ultimate enforcement of the statute may change when the case reaches completion, and even then, an appeal to the Ninth Circuit (and perhaps ultimately to the Supreme Court) is likely.