

Why Employers Everywhere Should Care About Florida's New Immigration Law

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On July 1, 2023, Florida's new law regulating immigration within the State of Florida became effective. Known as FL 1718, the law is far-reaching and will significantly affect most employers in the state. Especially affected are the agriculture, landscaping, hospitality, and construction industries which traditionally cannot meet their employment needs through the recruitment of U.S. workers or foreign workers with a U.S. employment authorization.

Whether this law, and those enacted by other states that may follow Florida's lead, will stand up to federal court scrutiny, remains to be seen. Because immigration law is constitutionally vested in the U.S. Congress, federal courts often strike down or limit state and local laws intended to "supplement" or contradict federal immigration law.

My company is not headquartered in Florida but we have workers there. How will the new law impact us?

Companies whose headquarters are not based in Florida, but have employees in Florida, need to comply with FL 1718 immediately. This law does the following:

- Mandates the use of E-Verify by employers with over 25 employees;
- Gives state law enforcement the ability to enforce immigration laws;
- Requires hospitals accepting Medicaid to collect and maintain information about their patients' immigration status;
- Restricts access to Florida driver's and certain professional licenses;
- Criminalizes the transportation of undocumented workers into the state of Florida; and
- Adds civil and criminal penalties for violations of the law's provisions.

How is Participation in E-Verify Mandatory?

E-Verify is a voluntary federal program employers may use to verify an employee's identity, immigration status, and whether the employee is authorized to work in the U.S. The E-verify system does not provide an enforcement mechanism or assess penalties for

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non-compliance. Instead, it relies on the U.S. Department of Labor and other federal regulators to enforce violations. The new Florida law not only requires that most employers participate in E-verify, it also creates its own penalties-and-fines system for violations.

What About Transporting Workers to Job Sites?

One of the bill's provisions makes it a crime in Florida to transport an undocumented individual into the state. While it is already a federal crime to aid and abet an undocumented worker, Florida is adding an additional level of potential liability and punishment by including transportation of workers in its definition of human trafficking when the employer knows, or should have known that the worker is unlawfully present in the U.S.

For example, assisting employee travel to a job site from another state into Florida could result in Florida charges for "human smuggling" against not only the employer, but also the person providing transportation. A second degree felony under Florida law, human smuggling can carry a 15-year prison sentence. The new law also expands Florida's RICO statute to include human smuggling in the definition of a racketeering activity. Federal RICO statutes initially were enacted to combat mafia activity.

What are the Hospital Reporting Requirements?

Another provision of the law requires hospitals to inquire about a patient's immigration status and report the data. This provision applies to hospitals accepting Medicaid, and hospital systems operating in Florida must report their data quarterly to the Florida Agency for Health Care Administration. Hospitals are not required to report personal patient information. Under the new law, the Agency must report the estimated cost of uncompensated care for immigrants not lawfully present in the U.S. by March 1 of each year.

Anyone hospitalized in Florida may be subject to this provision, including workers injured on the job, workers who temporarily reside in Florida during the workweek, or workers located in Florida for the duration of a long-term project. Not only does it impose a significant burden on hospital systems operating in Florida (whether headquartered there, or not), the provision could expose an employer to liability as well, should hospital personnel relay employment statistics to the state as part of its reporting burden.

Under What Standard Could an Employer be Held Liable?

The Florida law casts a wide net to include a range of activities that constitute violations, going even further than employers' obligations under federal law (see our prior postings regarding employers' federal obligations to verify work authorization linked [here](#) and [here](#)). The law states that a person cannot knowingly employ, hire, recruit, or refer, for either themselves or another (*attention, job contractors and recruiters!*) someone not authorized to work. While the law requires that a person act "knowingly," the definition of "knowingly" is untested. Penalties escalate depending upon the violations and the

number of workers involved, and a business could lose its license to operate in the state. The law imposes criminal penalties and prison sentences up to five years for violations.

Are Employers Required to Cooperate with Immigration Enforcement?

Federal I-9 regulations require employers to verify employment eligibility within three business days of when an employee begins working for pay. While the U.S. Department of Labor may conduct random site audits, Florida's new law authorizes state law enforcement agencies, including all local police departments, sheriff's offices, and state patrols, to conduct random audits to determine compliance with the law, without cause. Sustained noncompliance can result in the state canceling the business's license.

What are the Restrictions on Driver's Licenses?

Florida will not fund the mechanism or agency expense to issue identification documents for undocumented immigrants. When other states issue driver's licenses to undocumented immigrants, Florida considers them to be invalid. The new law states that law enforcement officers **must** issue a citation to anyone without lawful status driving in Florida with a lawful license issued by another state. For example, if you employ an undocumented worker from Minnesota to deliver a load of grain to a location in Florida, you and your driver are at risk of citation. Florida law enforcement authorities can stop and detain your employee and report the employee to federal authorities, since under the new law the state does not recognize the driver's license issued lawfully to your employee by the State of Minnesota.

Currently, the National Conference of State Legislatures notes that 19 states issue these licenses. These states—California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Virginia and Washington—issue a license if an applicant provides certain documentation, such as a foreign birth certificate, foreign passport, or consular card and evidence of current residency in the state.

What Else do Employers Need to Know About the New Law?

FL 1718 requires that, when a state agency has custody of someone to whom U.S. Immigration and Customs Enforcement (ICE) has issued an "immigration detainer," the agency must take a DNA sample from the detained person.

Directed at sanctuary cities, Florida's new law also prohibits any law that restricts any Florida law enforcement agency from sending employment eligibility information to a federal immigration agency. So, if in the past, the city in which your business operated in Florida did not cooperate with law enforcement, it will now be forced to cooperate.

What Should Employers Do?

Even if your business neither operates in Florida nor hires employees in Florida, it is still prudent to consider the ways that this law could affect your company and employees.

And, if your business does operate in any way in Florida, you must ensure compliance with this new law immediately.

Additionally, a number of other states have enacted or are considering enacting immigration-related laws that are likely more restrictive than federal law or require some reporting obligation to ICE. We anticipate that before Florida's new law is challenged in court, other states may take similar steps.

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