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New immigration law gives Tennessee ability to cancel business licenses

Memphis Business Journal - by [Einat Paz-Frankel](#)

A new law taking effect this week will allow the state to put companies that violate immigration laws out of business.

Tennessee House Bill No. 729, signed into law by Gov. Phil Bredesen in June 2007, allows the state to deny, suspend or revoke the business license of employers that knowingly employ illegal immigrants.

"If the state wants to make an example, it can shut down a hospital," says immigration attorney Greg Siskind, principal of **Siskind Susser Bland PC**.

Companies are mandated by federal laws to have all new hires fill out a Department of Homeland Security I-9 Form and present certain documents establishing identification and employment eligibility, including a U.S. passport, a permanent resident card or a combination of several other certificates.

"Employers have been extremely sloppy with the I-9," Siskind says.

That's why he strongly encourages his clients to receive I-9 forms and related documents from all new hires and to re-verify employment eligibility when their documentation is about to expire. According to the new state law, employers who verify employment eligibility through I-9 are safe even if the information is later found to be false. Employers are also protected if they use E-Verify, a voluntary online verification tool for the status of workers created by Homeland Security.

"Take a close look at your I-9," Siskind advises. "If it's 100% OK, then don't use E-Verify."

Siskind expects the new law to drive more business into his law firm, which can help companies do a preventative audit. For other businesses, the picture may not be as bright. If the state enforces the new law, which is complaint-driven, Siskind says it may open the door to mischievous competitors who will complain in an attempt to put companies in their industry out of business.

Using temp agencies, which conduct the employment eligibility verification, doesn't mean the employer itself is not liable.

While the new law that went into force Jan. 1 only affects direct employment relationships, prosecutors around the country "have been going after employers on alien harboring charges and conspiracy charges when the employer is deemed to know that the workers at the company are illegally present even if they are not the technical employer," Siskind says. "So employers should not assume they're off the hook because they're using contractors."

Whether using the services of companies such as Labor Ready, Inc., for construction labor or hiring immigrants directly, construction companies have been dominant employers of immigrants. Construction veteran E. P. 'Gene' Gibson Jr., a general contractor, says the cyclical nature of construction makes keeping up with workers challenging, regardless of their nationality.

"Construction people work a week here and a week there," he says. "They move around; they go where the work is."

Try to find them when it's time for tax returns. Gibson says about 50% of Jameson & Gibson Construction, Inc.'s year-end mailings have been returned to sender. During one of its peak years, the company employed 1,600 workers.

"Today they may live on Getwell, tomorrow on Lamar and next week on Summer," he says. "You can only do so much to track them down."

Siskind says employers are also liable for employees who are no longer with the company, according to federal laws.

"Employers are required to retain (I-9) records on terminated employees who are terminated for either three years from the date they were hired or one year from the date of termination, whichever is later," he says.

But that's not the only challenge employers are facing. Employees may forge documents, which look legitimate.

"At one point, we had six workers by the name of Jose Garcia," Gibson says.

Gibson, who is semi-retired, says the impact on businesses will depend on the enforcement of the new law.

"Laws are easy to make and hard to enforce," he says. "They've opened a can of worms. How are they going to regulate it? It would take a long time to shake out."

According to the **Pew Hispanic Center**, in 2005 there were 100,000-150,000 unauthorized aliens in Tennessee, about 2% of the state's population. There are about 12 million illegal aliens in the U.S.

Siskind says the nation's current unemployment rate -- 4.7% in November 2007, according to the Bureau of Labor Statistics -- is considered full employment by many economists.

While steps to legalize undocumented immigrants are pending on Capitol Hill, Americans need to consider what would happen if "we drive illegal workers out of the country," Siskind says.

"Once the subprime crisis is over and we return to normal, what will it do to housing prices when there are no workers available to build?"

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