

Federal Judge Delays Enforcement of Two Provisions of the Oklahoma Anti-Immigrant Law

By Helen Harnett

Last year, the Oklahoma Legislature enacted the Oklahoma Taxpayer and Citizen Protection Act of 2007, commonly known as H.B. 1804. This omnibus anti-immigrant legislation touched on a number of different areas, including local law enforcement of immigration, prohibitions against harboring and transporting, strict rules regarding the issuance of ID cards, and restrictions on immigrant employment. While most of the H.B. 1804's provisions came into force in November 2007, the prohibition on immigrant employment is not scheduled to be enforced until July 2008. (The entire Act is available on-line at: www.sos.state.ok.us/documents/Legislation/51st/2007/1R/HB/1804.pdf. A complete analysis of the Act can be found on CLINIC's website at <http://cliniclegal.org/StateandLocal/OKanalysisfinal.pdf>.)

In terms of its employment-related provisions, H.B. 1804 requires all government agencies and businesses (including independent contractors and subcontractors) that contract with the state to participate in E-Verify (or a similar federal program). In addition, if an independent contractor does not prove that he is work authorized, the contracting entity must withhold state income tax at the top marginal income tax rate or it will be liable for the taxes that it should have withheld. H.B. 1804 also created a new cause of action, allowing a U.S. citizen or Lawful Permanent Resident who is dismissed by an employer who continues to employ undocumented workers to file a claim of discrimination against that employer.

The U.S. Chamber of Commerce and other business organizations challenged these provisions in federal court, arguing that they were preempted by the Immigration Reform and Control Act (IRCA), a comprehensive federal law that regulates immigrant employment. IRCA specifically states that "The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens." (See 8 USC §1324a(h)(2)).

The plaintiffs filed a Motion for Preliminary Injunction, seeking to preclude H.B. 1804's employment-related provisions from coming into force on July 1st. U.S. District Court Judge Robin J. Cauthron granted the Motion for Preliminary Injunction, finding that the plaintiffs are substantially likely to prevail on the merits of the case. The defendants argued that the penalties that H.B. 1804 imposes on employers are not expressly prohibited by 8 USC §1324a(h)(2). Judge Cauthron, however, found that, despite the defendants' "clever parsing," the Oklahoma statute at issue is clearly a civil sanction (and thus expressly prohibited by §1324a(h)(2)). Judge Cauthron pointed out that H.B. 1804's penalties are imposed only on those failing to comply with the state's immigrant employment regime. The provisions therefore constitute an impermissible attempt to regulate immigration by imposing state-level sanctions.

Judge Cauthron's decision can be found at:

<http://www.uschamber.com/assets/nclc/henrypreliminjunction.pdf>