

Column 34

From the Bench and Beyond

Retired District Judge Janice P. Dreiling

Oklahoma's New Immigration Law: Part 4

HB 1804, the comprehensive Oklahoma Taxpayer and Citizen Protection Act of 2007, co-sponsored by all three local Legislators, places the onus of illegal immigrants living in Oklahoma, squarely upon public and private employers.

Effective November 1, 2007, HB 1804 contains specific requirements on business owners who do business with any entity or subdivision of state or local government.

To understand the new requirements, it is necessary to explain what is now known as a "Status Verification System." According to Section 6 of the bill, that means "an electronic system operated by the federal government, through which an authorized official of an agency of the State of Oklahoma or of a political subdivision therein may make an inquiry....to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency...."

HB 1804 defines a "Status Verification System" as including data maintained by the United States Department of Homeland Security, the Social Security Administration, any other federal agency authorized to verify the work eligibility status of newly hired employees pursuant to the Immigration Reform and Control Act of 1986, and "any other independent, third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in this paragraph."

It should be noted that the above quoted language regarding "any other independent, third party system..." is not referenced anywhere else in HB 1804, and I, for one, have no idea who or what an "independent, third-party system" might be or who would be authorized to recognize such a system.

What I do understand from reading HB 1804 is that every entity of state or local government (school systems, county governments, district courts, county sheriffs, etc.) will have to designate an official within the respective entity who then becomes authorized to contact a Status Verification System to verify or ascertain the citizenship or immigration status of any new employee.

In other words, on or after November 1, 2007, EVERY PUBLIC EMPLOYER is required to register with and utilize a Status Verification System to verify the federal employment authorization status of every employee hired on or after that date.

A "public employer" is defined in HB 1804 as "every department, agency, or instrumentality of the state or a public subdivision of the state."

"Subcontractor" is defined as "a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier." (Its tier?)

How are private business owners affected?

If a private business owner does any business with a "public employer", then the private business owner is a "subcontractor."

Section 7(B)(1) of HB 1804 states the following: After July 1, 2008, no public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the Statue Verification System to verify the work eligibility status of ALL NEW EMPLOYEES.”

Section 7(B)(2) states: After July 1, 2008, no contractor or subcontractor who enters into a contract with a public employer shall enter into such a contract or subcontract in connection with the physical performance of services within this state unless the contractor or subcontractor registers and participates in the Status Verification System to verify information of ALL NEW EMPLOYEES.”

Do me a favor. Reread Section 7(B)(1) and Section 7(B)(2). Don't they say the same thing? Maybe the Legislature repeated it to make sure business owners who do business with the state or any political subdivision “get it.” Business owners who do business with governmental entities have to participate in the Status Verification System and verify the citizenship/immigration status of EVERY NEW EMPLOYEE THE BUSINESS OWNER HIRES on or after July 1, 2008.

And then there is the last subsection of Section 7. Wow.

Section 7(C)(1) states that if a public employer OR business owner doing business with the state or subdivision of the state fires an employee who is a United States citizen or permanent resident alien while retaining an employee with equal skills and job responsibilities who is an illegal alien hired after July 1, 2008, it is a discriminatory practice for which the public employer or business owner can be sued UNLESS the business owner or public employee was currently enrolled in a Status Verification System. So much for tort reform!

Whatever happened to getting government off the backs of private business owners?