

False or Frivolous Complaints; False Documentation

The County Attorney's Office will not bring an action against an employer unless it verifies the unauthorized status of the person alleged to be an unauthorized alien and concludes that there is persuasive evidence that the employer acted knowingly or intentionally when hiring or continuing to employ the individual. Frivolous complaints will not be pursued.

Additionally, the Pima County Attorney's Office will criminally prosecute any person who knowingly submits a false and frivolous complaint, which is a Class 3 misdemeanor under A.R.S. § 23-212 and is punishable by a fine of up to \$500.00 and up to 30 days in jail.

Finally, if it appears that an employee has provided false documentation to an employer in violation of A.R.S. § 13-2009(A)(3) (taking identity of another with intent to obtain employment), the County Attorney's Office will initiate an investigation and, if appropriate, criminal prosecution of the individual.

NOTIFICATIONS & FILING OF COURT ACTION

If a complaint is determined to be accurate and valid, we are required to notify local law enforcement and United States Immigration and Customs Enforcement (ICE) of the unauthorized alien. We then are required to file an action for sanctions against the employer in Pima County Superior Court. We are also required to determine if an employer has previously been found to have violated the Legal Arizona Workers Act, and whether the employer is still in a probationary period related to any prior offenses. The Attorney General will maintain a database of court orders issued under the Act that will be made available on the Attorney General's website. Repeat offenses carry stiffer penalties.

Presumptions and Proof

If as an employer you can show that you checked E-Verify and determined the employee to be authorized to work in the U.S., this creates a rebuttable presumption that you did not knowingly or intentionally hire an unauthorized alien, even if the E-Verify information turns out to be incorrect. To prove that an employer violated the Legal Arizona Workers Act, the County Attorney must then produce additional



evidence that the employer was actually aware of the employee's true unauthorized status.

Court Order and Penalties

If the Court finds that an employer violated the Legal Arizona Workers Act, the Court will impose various affirmative obligations on the employer, and may also suspend the employer's business licenses for a period of time. A second offense can result in permanent revocation of the employer's business licenses. Transacting business without the proper license is a Class 2 misdemeanor, punishable by a fine of up to \$750.00 and up to four months in jail. A.R.S. § 13-3706.

AVOIDING DISCRIMINATION

Although it is unlawful to employ aliens who are not authorized to work in the United States, it is also unlawful to discriminate against a person based on his or her race or national origin, or to engage in other federally prohibited "unfair immigration-related employment practices." As noted, complaints under the Legal Arizona Workers Act that are based only on the fact that an employer hires immigrants, persons of foreign national origin, or persons of a particular ethnicity, will not be pursued by the County Attorney and may subject the complainant to criminal liability.



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LEGAL ARIZONA WORKERS ACT COMPLIANCE

As of January 1, 2008, under the new Legal Arizona Workers Act, employers in Arizona are subject to civil penalties, including revocation of all Arizona business licenses, for knowingly or intentionally employing an "unauthorized alien," someone who is not a U.S. citizen or permanent resident, and who is not otherwise legally authorized to work in the United States.

The Act requires the County Attorney to investigate allegations that an employer has violated the Act. This brochure is designed to explain the investigation and enforcement procedures we will use in Pima County and also provides assistance to help you, the employer, comply with the Act's requirements.

E-VERIFY: THE EMPLOYER'S TOOL FOR COMPLIANCE

The Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services Bureau (USCIS) and the Social Security Administration (SSA) jointly operate the "E-Verify" system, which can be used to check their databases in order to verify the employment authorization of new employees. The program is free to all employers.

As of January 1, 2008, the Legal Arizona Workers Act requires all Arizona employers to use the federal E-Verify system, and doing so creates a presumption under the Act that an employer did *not* knowingly or intentionally hire an unauthorized alien. It is therefore very important that employers register to use the E-Verify system. Registration can be completed online.

Employers should check their employment authorization verification procedures (both the I-9 process and E-Verify system) to ensure that they are in compliance with federal and state law.

How to Register for E-Verify Online

Instructions for the online E-Verify registration process can be found at <https://www.uscis.gov/e-verify>.

An employer's participation in E-Verify is voluntary and is currently free to employers. E-Verify is web based and can be accessed through the Internet.

To participate, an employer must register online and accept the electronic Memorandum of Understanding (MOU) that sets forth the responsibilities of the Social Security Administration, U.S. Citizenship and Immigration Services, and the employer. The online instructions set out the simple action steps required for registration and participation.

If you need assistance in completing the registration process or need additional information related to E-Verify, please call E-Verify Customer Support at 1-888-464-4218.



As an employer you are strongly urged to register with and begin using the federal E-Verify system in order to check on the status of your new employees and comply with the Legal Arizona Workers Act.

HOW COMPLAINTS ALLEGING UNAUTHORIZED EMPLOYMENT WILL BE HANDLED

The Pima County Attorney's Office will initiate an investigation against an employer only upon receipt of a valid complaint from a member of the public.



A person alleging that an employer has violated the Legal Arizona Workers Act in Pima County will be required to fill out a complaint form, which can be obtained beginning January 1, 2008 from the Pima County Attorney's Office website at www.pcao.pima.gov or in person at 32 N. Stone #2100.

A Meeting with a Detective is Required

The complainant will be required to schedule an appointment at the County Attorney's Office to provide information for the initiation of an investigation. The written Complaint must be signed under oath and in the presence of a notary. The Complaint can be notarized at our office for no charge.

A Sworn Complaint is Required

The complaint form must provide the following information:

- The complainant's name, address, and date of birth.
- The name and address of the employer against whom the complaint is being filed, and a description of the type of business conducted by the employer.
- The address of the office or worksite where the alleged unauthorized alien is working, if different from the above.
- If possible, the name, address, date of hire, and birth date of the alleged unauthorized alien.
- A description of the specific facts and circumstances that lead the complainant to conclude that an employee or employees of the employer are not citizens or permanent residents of the United States and are not otherwise authorized to work in the United States. Allegations regarding national origin, race, religion,

knowledge and use of a foreign language, or the mere fact of being an immigrant, will *not* in and of themselves be considered a reasonable basis for such a conclusion.

- A description of the specific facts and circumstances that lead the complainant to conclude that the employer *intended* to employ an unauthorized alien or *knew*, at the time of hire or afterwards, that the employee was an unauthorized alien.

Confidentiality of Complainant

The County Attorney's Office will not accept anonymous complaints. Filed complaints are public records and, therefore, the information contained within the complaint would not necessarily remain confidential. This may be especially true if a court action is filed. However, in appropriate circumstances, where there is a compelling reason to protect the identity of a complainant, the County Attorney's Office will make best efforts to maintain confidentiality and may seek a protective order from court. An individual may consult with the enforcement attorney in this regard prior to meeting with the detective and filing a complaint.

A Conflict Check is Required

Before undertaking an investigation of any type, the County Attorney's Office is required to determine whether such an investigation could create a conflict of interest for the office. This could happen if the employer being investigated is an entity that we represent, or one with which we have some other special relationship that would substantially affect our ability to investigate or prosecute the employer.

If a conflict of interest is identified, the case will be referred to another prosecuting agency for investigation and possible enforcement action.

Starting the Investigation

If the verified complaint is determined to be complete and contains information that, if true, would support a conclusion that the employer violated the Act, we will conduct an appropriate investigation. This will include verification of the alleged unauthorized alien's status through the Department of Homeland Security.

