

Wisconsin Senate Considers Bill to Penalize Employers for Employing Unauthorized Workers

July 18, 2011

Practices

Immigration

Wisconsin employers that hire employees not legally authorized to work in the United States may risk tough new penalties should Senate Bill 137 become law. The bill, in its current form, does not distinguish between employment of an unauthorized person that is intentional or unintentional. Another bill under consideration, Senate Bill 151, on the other hand, would allow employers to pay their employees for making a customer or client referral. Currently, an employee who receives such payment may be prosecuted under Wisconsin's gambling statute for a Class B misdemeanor. We discuss the bills below.

Senate Bill 137

On June 27, 2011, [Senate Bill 137](#) was introduced by Senators Dave Hansen, Robert Wirch, Jim Holperin, Jon Erpenbach and Tim Carpenter, all Democrats. The bill calls for harsh, new penalties for employers that hire employees who are not legally in the United States, regardless of whether an employer did so deliberately or knowingly. This bill would both amend current Wisconsin statutory authority, as well as create new Wisconsin statutory authority.

If this bill becomes law, employers who hire illegal aliens:

1. Will be ineligible to enter into a contract with the state or a local governmental unit for the purchase of materials, supplies, equipment, or contractual services for a period of seven (7) years;
2. Will be ineligible to enter into a contract with the state or a local governmental unit for engineering or architectural services or for construction work (as defined in Wis. Stat. § 16.87(1)(a)) for a period of seven (7) years;
3. Will be ineligible to enter into a public contract with a local governmental unit for a period of seven (7) years;
4. Will be ineligible to receive certain tax exemption (under chapter 70) or certain tax credit (under chapter 71) for a period of seven (7) years;
5. Will be ineligible to receive any grants or loans from a local governmental unit for a period of seven (7) years;
6. Will be subject to a \$10,000 fine for each such person the company hires who is not in the United States legally.

Employers who make a "good faith" effort to determine if the employee is legally in the United States will be excepted from the above penalties. However, an employer's "good faith" effort will be found inadequate if the employer received notice from the federal government that the employee provided a false or incorrect Social Security number and the employer did not address the issue in the manner prescribed under federal law.

Senate Bill 151

On June 13, 2011, [Senate Bill 151](#) was introduced by Senator Robert Cowles (R), Dave Hansen (D), and Neal Kedzie (R). Under the bill, employees who receive consideration (as defined under statute) from an employer for a customer or client referral would be exempted from prosecution under Wisconsin's gambling statute. This bill would amend current Wisconsin statutory authority, § 945.01(5)(b)(2)(h), concerning the definition of "lottery" under the gambling statute to *exclude* employees who receive compensation for a referral of a potential customer to his or her employer. Under current law, the definition of lottery only excludes employees who are not compensated for a referral of a potential customer to his or her employer.

Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace

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