



## Strategy & Insights<sup>®</sup>

# How Will the Supreme Court's Approval of Arizona's E-Verify Law Affect Your Organization? – 7 Action Items to Consider

On May 26, 2011, the U.S. Supreme Court issued *Chamber of Commerce of the United States v. Whiting*, a groundbreaking decision which upheld the Legal Arizona Workers Act (LAWA) and ushered in a new era of state immigration requirements for employers. LAWA – enacted in 2007 – requires employers in Arizona to enroll in E-Verify, the federal online employment-authorization screening tool, and empowers state officials to suspend or revoke the business licenses of employers that refuse to enroll or that knowingly employ workers who fail the E-Verify check.

The 5-3 majority in *Whiting* reached its decision (summarized [here](#)) by relying on an exemption in the 1986 Immigration Reform and Control Act (IRCA) from federal preemption of state-level immigration rules for “licensing and similar laws.” IRCA created the Form I-9 (Employment Eligibility Verification) paperwork obligation, while also penalizing employers that engage in immigration-related discrimination or that hire or continue to employ foreign citizens whom the employer knows lack the right to work in the United States. While the *Whiting* case only applies to Arizona’s law, it offers a roadmap for other states and government entities to supplement federal immigration law by enacting their own compliance and enforcement rules. For a blog post on what the future may hold for employers, see *10 Immigration Predictions: The Foreseeable Consequences of the Supreme Court's Arizona E-Verify Decision* (May 29, 2011).

With the threat of license suspension or revocation as tangible penalties, employers should consider a number of changes in their immigration compliance programs. Taking action now is especially important given that the Obama Administration has embarked on its own dramatically intensified program of federal immigration enforcement, as reported [here](#).

Here are seven action steps public and private employers should think about:

1. **Determine whether any state or municipal immigration rules apply in the locations where your organization operates.** Immigration-related changes at the state and municipal level are widely reported in online media, given that these changes are both newsworthy and controversial. For a list of states requiring E-Verify, click [here](#).
2. **Consider enrolling voluntarily in the E-Verify program, at least on a pilot basis.** (Note that some federal contractors and subcontractors must enroll in E-Verify.) The E-Verify Memorandum of Understanding allows participation on a site-specific basis. The program requires staff training, time for ramp-up and commitment of resources. By enrolling on a limited basis now, your organization will be better prepared if federal law or the rules in the states where you operate require E-Verify enrollment in the future.
3. **Consider engaging an external expert to review your immigration compliance practices.** There are many the pros and cons to consider in deciding whether to engage in a voluntary, internally-conducted self-audit of I-9 compliance,

discrimination-avoidance and immigration-hiring practices, or, to retain an external auditor who may be more experienced and impartial.

4. **Take corrective action promptly.** If an audit reveals shortfalls in compliance, unauthorized employment, or questionable circumstances, act promptly. Corrective actions such as I-9 amendments, termination of unauthorized workers and thorough investigation and resolution of potentially improper actions may go a long way in demonstrating good faith and mitigating fines and other penalties.
5. **Establish an investigation-preparedness protocol.** It is probably too late to prepare properly for an investigation when a U.S. Customs & Immigration Enforcement (ICE) agent has served a Notice of Inspection. Appoint a team of key stakeholders and plan how your organization will respond before an ICE audit notice is served. For information on investigation preparedness, click [here](#).
6. **Consider which immigration-related best practices may be suitable for your organization.** ICE offers a list of best immigration compliance practices (accessible [here](#)). Evaluate which may be appropriate for your organization.
7. **Get answers to your immigration compliance questions.** For answers to your questions and the latest news on federal, state or local changes in immigration requirements, please contact the Seyfarth attorney with whom you work or any member of our Immigration Practice Group (listed [here](#)).

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Seyfarth Shaw's Workforce Authorization Team (SWATeam), a key component of our [Immigration Practice Group](#), assists clients with the increasingly complex landscape surrounding I-9 verification issues (including E-Verify participation), social security mismatch letter best practices, state-level immigration obligations, ICE raids, and associated matters. Following are some of the workforce authorization competencies that we offer.

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- Electronic I-9 Creation and Storage
- E-Verify
- I-9 Policy Development, Compliance, and Training
- I-9 Auditing
- Contractor I-9 Compliance Program
- Immigration Consequences of Corporate Acquisitions and Restructuring
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*For more information, please contact the Seyfarth attorney with whom you work or any member of our [Labor & Employment](#) or [Immigration](#) Team.*



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