

Enforcement of Tennessee Illegal Alien Employment Act

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Since the enactment and implementation of the Tennessee Illegal Alien Employment Act in January 2008, there have been 27 complaints filed with the Tennessee Department of Labor and Workforce Development (TDOLWD) alleging violations of the Act. Of these 27 complaints, the DOLWD determined two of the complaints presented "substantial evidence" of a violation.

The Illegal Alien Employment Act makes it unlawful for an employer to "knowingly employ . . . an illegal alien." "Knowingly" is defined as having "actual knowledge that a person is an illegal alien or having a duty imposed by law to determine the immigration status of an illegal alien and failing to perform that duty." For a first violation, the employer's business license shall be suspended until it can demonstrate it no longer employs any illegal immigrants. For a second or subsequent violation within three years of the first violation, the business licenses are suspended for one year.

One of the complaints, filed in 2009, involved a Mexican restaurant in Nashville, which employed two undocumented workers. The restaurant filed an affidavit stating it no longer employed any "illegal aliens"; thus, the suspension of the business licenses and the reactivation of the business licenses occurred simultaneously.

The second "substantial evidence" complaint is set for a contested hearing in late April 2010. The investigation of the Asian restaurant was conducted after a complaint was filed and in conjunction with an investigation by the Immigration and Customs Enforcement (ICE) of the Department of Homeland Security.

According to Dan Bailey, General Counsel of the TDOLWD, when the department receives a complaint alleging a violation of the statute, and it is based on more than "profiling" (driving by a work location and seeing or hearing workers who appear to be Hispanic or speak Spanish), it will contact ICE to determine whether ICE is conducting a current investigation. If so, ICE and the TDOLWD may coordinate their investigations or TDOLWD may hold off on its investigation until ICE concludes their investigation.

Although few complaints have been filed in the past two years and even fewer have been found to be meritorious, employers in Tennessee should not be "lulled to sleep" and believe they are not vulnerable to state immigration law violations. Such a belief could cause a lapse in complying with immigration laws and invite the TDOLWD and/or ICE to show up at your facility.

If you have any questions on this statute or other immigration matters, please contact me at (615) 726-5484, or bbuchanan@kingballow.com.