

Preface to the 2025 Edition

With the failure of comprehensive immigration reform legislation at the federal level in the early 2000s, efforts at the state (and even county and municipal) level to enact legislation directed at undocumented immigrants took on new life. In particular, state and local governments enacted numerous laws aimed at combating what was often perceived to be a growing problem of unauthorized immigration. These efforts slowed substantially, however, after the Supreme Court's June 2012 decision which struck down three of four challenged provisions of the Support Our Law Enforcement and Safe Neighborhoods Act (S.B. 1070), Arizona's controversial immigration enforcement law.

In 2013, Congress finally took up the issue of immigration reform again. In June 2013, the Senate passed the Border Security, Economic Opportunity and Immigration Modernization Act of 2013 (S. 744). In October, Democratic leaders in the House of Representatives introduced their own comprehensive immigration reform bill, modeled on the bipartisan Senate bill, but replaced the \$45 billion "border surge" amendment that smoothed the Senate bill's passage with a border security provision that was already approved as a standalone bill (H.R. 1417) by the House Homeland Security Committee. However, Republican leadership in the House blocked consideration of either bill, and both bills died at the end of the 113th Congress. With President Obama's November 2014 announcement of executive action on immigration, the focus of attention initially shifted to the millions of undocumented workers who were expected to come forward and apply for deferred action (i.e., for interim protection against deportation) and for employment authorization. However, while the initial Deferred Action for Childhood Arrivals (DACA) program was rolled out, a lawsuit by 26 states challenging the Obama Administration's plans to expand the DACA program and implement a new program of Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) put those plans on hold.

Donald Trump made reform of the U.S. immigration system a key part of his 2016 presidential campaign, and it remained a major focus throughout his first term in office. In June 2017, the Trump Administration announced that it was revoking the DAPA program. In September 2017, the Administration announced that it was terminating the DACA program on March 5, 2018 (although that plan was challenged and was ultimately stopped by the U.S. Supreme Court). In the Administration's first year, it issued three travel bans, pushed forward with plans to build a wall along the U.S.-Mexico border, strengthened interior enforcement efforts, increased its scrutiny of employment-based visa petitions of all kinds, and implemented new systems for the "extreme vetting" of prospective immigrants abroad before they are granted visas. Later, it implemented policies at the U.S.-Mexico border, including the so-called Migrant Protection Protocols, that forced asylum seekers to remain in Mexico while their cases remained pending in U.S. immigration court. With the advent of the COVID-19 pandemic in 2020, the Trump Administration invoked a public health law (42 U.S.C.A. § 265) to deter or expel virtually any migrant arriving at our southern border. On the business front, the administration was promulgating regulations aimed at reducing both temporary and permanent foreign workers well into the autumn of 2020.

With a new administration led by Joseph R. Biden, Jr. in the White House as of January 2021, many of the changes made via executive order, proclamation, or

regulation or simply by means of sub-regulatory policy changes in the Trump Administration were quickly rolled back. Nonetheless, with employment serving as the major magnet attracting undocumented workers to the United States, there remain many state immigration-related laws whose focus is on deterring employers from hiring or continuing to employ unauthorized workers, either by imposing additional work verification requirements (e.g., many states now require employers to utilize the federal E-Verify Program) and/or imposing additional penalties apart from those existing under federal law for employing workers who are unlawfully present in the United States (e.g., many states now punish noncompliance with denial of business licenses or public contracts). For example, in California in 2018, a law went into effect that seeks to mitigate the impact on workers of federal worksite enforcement efforts by imposing new prohibitions and affirmative obligations upon employers that are targeted by immigration enforcement agents. While portions of this law have been enjoined, California employers are still required to give workers notice of any federal inspection of I-9 employment eligibility verification forms or other employment records. More recently, Florida implemented a new E-Verify law, significant parts of which went into effect on January 1, 2021, and enacted another E-Verify law (broadening aspects of the 2021 law) that went into effect on July 1, 2023.

A new development covered starting in the 2023 edition of this publication is the proliferation of state and local laws requiring employers to be transparent about salaries. These laws are generally focused on addressing inequities in pay that have most often affected women and people of color. In the immigration context, these laws may change how employers go about posting job offers related to PERM labor certification cases. Because pay transparency laws involve complex questions of state and local employment law, employers should seek advice from employment counsel as an essential part of their approach to compliance. Some key state and local pay transparency requirements are summarized in this volume solely to assist employers in spotting immigration issues related to pay transparency. There are other states and localities that have enacted—or may enact in the near future—similar laws about pay transparency, and employers should be alert to how such laws can impact their immigration programs.

In the 2024 presidential election campaign, immigration again became a major issue in the headlines and in the national political discourse. Laws enacted in Florida and Texas in 2023, and in Iowa and Oklahoma in 2024, are examples of new state-level immigration enforcement bills that may again become common if Congress continues to remain gridlocked in addressing immigration at the federal level. The second Trump Administration's promises of mass deportations will only add more chaos and uncertainty.

In light of these various state laws, it is imperative that businesses and their attorneys be aware of the various state efforts to regulate immigration at the worksite when developing and maintaining their immigration compliance programs. This publication—a companion volume to our *Immigration Employment Compliance Handbook*, which focuses on compliance with federal employment-related immigration laws and regulations—is designed to provide employers with important information in assessing their current compliance programs in light of the requirements and liabilities under the new state laws. This volume will be of particular utility to large companies that operate in multiple states as these businesses must now tread carefully through a maze of new obligations and penalties that may significantly impact their ability to operate in particular jurisdictions or to obtain public contracts.

The *State Immigration Employment Compliance Handbook* is intended to give readers—including attorneys, employers, human resources professionals, relocation specialists, social workers, immigrant advocates, educators, and state and local government officials—one source that monitors and analyzes legislation passed at the state level addressing employment-related immigration issues. While we cannot report on the hundreds of proposed bills at the state, county, and municipal level designed to combat illegal immigration, nor do we purport to possess any specific expertise in the laws of individual states, we do provide detailed analysis of state laws that attempt to restrict or otherwise regulate the employment of foreign nationals and bring the full text of such laws and associated regulations under one cover.

In this volume, we focus on the states where the most activity related to the employment of immigrants has occurred to date. In an introductory chapter, we provide an overview of state immigration laws related to employment of non-citizens, discuss the issue of preemption of state laws under the U.S. Constitution and federal law, include a synopsis of the current federal regulatory scheme (including a discussion of the impact of the new state laws on immigration compliance programs), and provide information on the federal government’s Web-based “E-Verify” employment eligibility verification system (which many states now require employers to use). We also discuss federal worksite enforcement trends and their impact on the enforcement of state regulations, how employers should respond when they receive “no-match” letters, and address the REAL ID Act, which created federal guidelines for the design, issuance and management of state driver’s licenses and provides that residents of states that fail or refuse to comply will be unable to use their driver’s licenses for “official purposes” such as boarding an airplane, entering a federal building or verifying one’s employment eligibility.

Subsequently, each chapter covers a specific state, providing an analysis of that jurisdiction’s key laws that attempt to restrict or otherwise regulate the employment of foreign nationals. The detailed analysis includes a discussion of how the laws will impact the ability of employers to hire foreign nationals, such as any compliance requirements and/or penalties over and above what is already provided under federal law. The full text of enacted laws and associated regulations and guidance documents are also provided in each state chapter.

While every effort has been made to ensure the accuracy and timeliness of the information presented, it should be noted that all immigration laws, regulations and policies are subject to rapid and frequent change. For the latest information after this edition is published, readers should check for interim updates in the bi-weekly newsletter, *Immigration Business News & Comment*, or through the “Fragomen Business Alerts” available on Westlaw.

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