



HR: Leading People,
Leading Organizations

March 2, 2007

The Honorable Michael Chertoff
United States Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff:

We are writing to request a meeting to discuss a serious situation that is interfering with the ability of employers to comply with the employment verification requirements of the Immigration Reform and Control Act of 1986 (IRCA). A growing number of state and local governments are enacting their own employment verification laws that interfere or are in conflict with IRCA despite the fact that such laws are clearly preempted by Section 274A(h)(2) of the Immigration and Nationality Act (INA). While individual efforts have been made to challenge these laws, the Department of Homeland Security (DHS) has remained silent. To avoid reliance on individual legal challenges and deter further piecemeal legislation by state and local governments, we respectfully urge you to initiate litigation against each of these laws seeking an injunction against their enforcement and to clearly state DHS' view that such laws are preempted by federal immigration law.

We collectively represent the human resource professionals of public and private entities who are responsible for ensuring that those entities comply with the employment verification requirements under IRCA.

- HR Policy Association represents the chief human resource officers representing more than 250 of the largest corporations in the United States.
- The Society for Human Resource Management (SHRM) is the world's largest association devoted to human resource management. Representing more than 210,000 individual members, the Society's mission is both to serve human resource management professionals and to advance the profession. Founded in 1948, SHRM currently has more than 550 affiliated chapters within the United States and members in more than 100 countries.
- The American Council on International Personnel represents the in-house immigration professionals at over 200 multinational employers and has received OSC grants to conduct IRCA training for employers.
- The International Public Management Association for Human Resources is a professional association with over 8,000 members representing the interests of human resource professionals at the Federal, State and Local levels of government.
- The College and University Professional Association for Human Resources (CUPA-HR) serves as the voice of human resources in higher education, representing more than 9,600 human resource professionals at nearly 1,600 colleges and universities across the country.

Section 274A of the INA requires employers to verify the employment eligibility of every individual hired after November 6, 1986. The problems with the current verification system are well documented and we support the development of an efficient and reliable federal electronic verification system. Until this is implemented, however, it is simply not possible for employers to comply with 50 different sets of state requirements that inevitably conflict with the already complex federal employee verification process. This is especially true for multi-state employers where uniform procedures are a critical feature in ensuring our ability to serve the needs of our workforces in a lawful and efficient manner. Indeed, because of the need for uniformity, IRCA and other employment laws, most notably the Employee Retirement Income Security Act (ERISA), contain strong preemption language.

The INA Section 274A(h)(2) contains strong preemption, which states:

Preemption. The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

Notwithstanding this clear prohibition, a number of states in recent months have imposed additional requirements on the employment verification process. Most notably Colorado has passed a package of laws that require several things. First, all employers in the State of Colorado must take additional steps to verify the status of all new hires beginning January 1, 2007. Employers must complete additional paperwork, make copies of examined documents and, it is recommended, check the Basic Pilot and/or Social Security databases. In addition, effective August 7, 2006, all employers signing contracts for services with the State of Colorado must use Basic Pilot to verify employees who will be working on the contract whether the employees are in Colorado or not. This is causing great confusion for large multi-state employers who make extensive efforts to have a consistent verification process at all locations and who are not equipped take additional steps for only a small subset of employees. Georgia, Tennessee, Pennsylvania, and Louisiana also have enacted laws that require some employers to participate in Basic Pilot. As demonstrated on the enclosed charts, almost half the states have considered or are considering laws impacting employment verification. These range from additional paperwork requirements on employers to enrollment in Basic Pilot to additional penalties for employing unauthorized workers. A variety of local jurisdictions are also taking action.

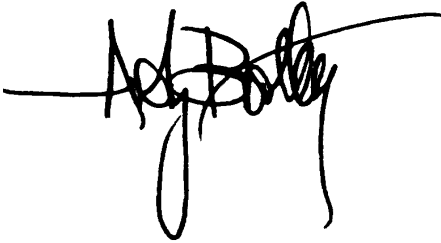
As can be expected, these requirements, which are likely to proliferate on the local and state level unless decisive action is taken by DHS, impede the ability of employers to carry out their federal employee verification responsibilities. For example, can an employer use Basic Pilot to verify only a subset of its employees, e.g. only employees in Colorado or only employees working on a Colorado contract even if they are located in another state? For large multi-state employers, effective and consistent implementation of the Basic Pilot program at all locations requires months of planning and training.

Rushing to implement any new program in a piecemeal fashion leads to confusion at best and discrimination and denial of employment opportunities at worst.

We believe it is incumbent upon the federal government to take a leadership role in restoring uniformity and consistency. Even more so than other employment laws with preemptive provisions, the immigration laws are an inherently federal concern. The interests and values that underlie our immigration laws do not vary from one state to another—they are exclusively national in character.

Only the federal government is in a position to undertake a broad-based protection of its exclusive jurisdiction in this area. Therefore, we urge you to initiate legal challenges against state and local enactments that are in violation of IRCA's strong preemption provisions. We respectfully request the opportunity to meet with you and your staff to share our concerns in more detail.

Sincerely,



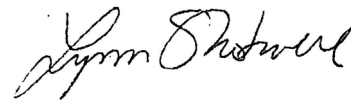
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cc: The Honorable Stewart A. Baker
Mr. Emilio Gonzalez
The Honorable Julie L. Myers