



## Challenging H.B. 1804: What the Recent Injunction Means for Oklahoma Employers

June 6, 2008

On June 4, 2008, the United States District Court for the Western District of Oklahoma granted an injunction preventing the enforcement of two sections of House Bill 1804 ("H.B. 1804"), an Oklahoma law addressing several immigration issues, including the employment of illegal aliens and the verification of workers' eligibility for employment. H.B. 1804 went into effect on November 1, 2007; the seventh and ninth sections of the bill were scheduled to become enforceable beginning July 1, 2008. The injunction issued on June 4, 2008, however, suspends the enforcement of these two sections indefinitely.

### Challenging the Seventh and Ninth Sections of H.B. 1804

The seventh section of H.B. 1804 requires public employers entering into contracts with private contractors to verify that the contractors and their subcontractors use a state-approved system of status verification to confirm each employee's work eligibility. The section also creates a private right of action against employers for discrimination when an employee legally in the United States is terminated while an illegal employee is retained. While the federal court's injunction is in place, private employers cannot be penalized for failing to utilize the status verification system for new hires, and cannot be sued for discrimination related to the retention of illegal employees.

The ninth section of H.B. 1804 requires independent contractors who contract to physically perform services in Oklahoma to provide contracting entities with documentation of employment eligibility. If contractors do not provide such documentation, contracting entities are required to withhold income taxes from those contractors at the highest marginal income tax rate. The contracting entities are also liable to the state for all taxes they were required to withhold.

Several organizations representing Oklahoma employers requested the injunction to prevent the enforcement of these two sections, citing conflicting federal laws and raising questions concerning the law's constitutionality. The court did not rule on the constitutionality issue, but did rule that they should not be enforced against employers until both sides of the issue could be thoroughly presented to the court. The court, therefore, issued the injunction.

### What this Injunction Means for Employers

The seventh and ninth sections of H.B. 1804 cannot be enforced against Oklahoma employers unless the court lifts the ban on their enforcement. Employers should be aware, however, that these laws are still in place, and the injunction banning their enforcement may be lifted at any time. Furthermore, this injunction affects only the seventh and ninth sections of H.B. 1804. Eight other sections of H.B. 1804 remain in place and can be enforced. Finally, all federal laws regarding verification of employees' status remain in place for Oklahoma employers, and are subject to enforcement.

We want you to be as informed as possible about H.B. 1804 and its impact on your business. If you have any questions or would like to discuss any aspect of this bill or the injunction, please do not hesitate to call us.

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