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Judge lets employer-sanctions law stand

Takes effect Jan. 1 after judge says no to business groups

By Howard Fischer

CAPITOL MEDIA SERVICES

PHOENIX — Arizona's new employer-sanctions law will take effect as scheduled Jan. 1.

On Friday, U.S. District Court Judge Neil Wake rejected a request by business groups and others to bar the state from enforcing the law before a final ruling on its constitutionality.

And just hours later, the 9th U.S. Circuit Court of Appeals refused an emergency request to second-guess Wake and keep the law from being enforced.

That leaves those challenging the law without legal options until at least Jan. 16, when Wake will hear arguments on whether it is constitutional.

The law makes it illegal to knowingly hire undocumented workers. Offenders could find all their state licenses to do business suspended or revoked.

In his decision Friday, Wake had to decide who would be hurt more if he let the law take effect or kept it from being enforced. The judge said he easily concluded the greater harm would be to the state and, in particular, legal Arizona residents.

"Those who suffer the most from unauthorized alien labor are those whom federal and Arizona law most explicitly protect," Wake wrote.

"They are the competing lawful workers, many unskilled, low-wage, sometimes near or under the margin of poverty, who strain in individual competition and in a wage economy depressed by the great and expanding number of people who will work for less."

If the act is suspended, even for a month, "the human cost" will be high, the judge said.

Conversely, Wake said, the law's challengers have not proved they will suffer hardship if it takes effect Jan. 1.

The county attorneys who would investigate complaints against employers all said in court they would not file charges against any violators before Feb. 1. Wake said that gives him time to consider the constitutionality arguments.

Nor was Wake convinced companies will suffer from the law's other requirement: that they check the legal status of new employees through the U.S. government's E-Verify system.

He said their attorneys offered only "sweeping generalities" about harm, mostly related to the cost of using the program.

Attorney Julie Pace, who represents many of the business groups challenging the law, was particularly critical of Wake's conclusion that poor workers would be affected if enforcement is postponed.

What's next

- Starting Jan. 1, Arizona employers must verify the legal status of new workers through a U.S. database, though there is no penalty for failing to comply.
- The federal judge will hear legal arguments on the constitutionality of the law Jan. 16.
- Whichever side loses will seek review by the 9th U.S. Circuit Court of Appeals and, ultimately, the U.S. Supreme Court.

"He didn't cite any evidence to support his conclusions," Pace said.

Coming Sunday

Arizona's new employer-sanctions law is having effects even before taking effect. Business

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