



Nothing Changes During Appeal of Arizona's Immigration Law, S.B. 1070

On July 28, 2010, Judge Susan R. Bolton of the United States District Court for the District of Arizona enjoined portions of Arizona's controversial immigration law, S.B. 1070, from going into effect. Normally, the legal challenges to the Arizona law would be subject to a trial before Judge Bolton. However, arguing the importance of the issue, the State of Arizona filed an appeal to the Ninth Circuit the next day, asking the court to review Judge Bolton's order on an expedited schedule. The appeal asks the Ninth Circuit to lift [the injunctions put in place by Judge Bolton](#), and to allow those provisions to go into effect until a decision is made on the merits of the law.

What does this mean for employers?

- The fact that the State has filed an appeal does not change anything about Judge Bolton's order: the portions of the law that she enjoined are still enjoined, and [the portions of the law that went into effect are still in effect](#).
- Until the Ninth Circuit issues its own opinion, Judge Bolton's order is the law. The Ninth Circuit could uphold some, all or none of Judge Bolton's order.
- Even though the Ninth Circuit will likely agree to an expedited appeal, the exact dates are not decided and the court's opinion is still probably months away. In the meantime, [Judge Bolton's order is in effect](#) while the case is on appeal.
- If the Ninth Circuit affirms (upholds) Judge Bolton's ruling, then the State of Arizona could file an expedited appeal to the United States Supreme Court.

What should employers do while the appeal is pending?

During the appeal, and pending Judge Bolton's final ruling on the merits of the lawsuits, employers should remain attentive to the [currently effective provisions of S.B. 1070](#). Particularly relevant to employers is the added requirement that, in addition to E-verifying newly-hired employees as required by the Legal Arizona Workers Act (effective January 1, 2008), employers are to maintain the E-verify employment verification records for the duration of the employee's employment or for three years, whichever is longer.

Employers should also:

- Continue to verify the employment eligibility of newly-hired employees, including by using the federal E-Verify program if the employer is enrolled.
- Review employee files to ensure that all I-9 documentation is complete and accurate.
- Discharge any employees you know are not authorized to work in the United States. If there are employees for whom employment authorization is unclear, contact your employment attorney.
- Review your company's employment authorization procedures and, if you are not currently enrolled in E-verify or have any questions about your compliance with current law, contact your employment attorney.

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QUESTIONS?

If you have any questions about the status of S.B. 1070, its effects on your company, employment eligibility verification generally, or any other Arizona employment-related matter, please contact:

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