

**To: Clients doing business in Missouri**  
**From: Siskind Susser Bland**  
**Re: New Missouri Law**

Missouri's legislature has just passed HB 1549, a tough employer sanctions bill. The bill is expected to be signed by the governor in the next few days. For more information, contact Greg Siskind ([gsiskind@visalaw.com](mailto:gsiskind@visalaw.com)) or your SSB attorney.

**What does the new law in Missouri say generally with respect to hiring “unauthorized aliens”?**

HB 1549 bars business entities and employers from knowingly employing, recruiting, hiring for employment or continuing to employ unauthorized aliens.

**What is a “federal work authorization program” under HB 1549?**

A “federal work authorization program” is an electronic employment verification system run by the Department of Homeland Security as authorized by IRCA. Currently, that would only include E-Verify.

**Who is a “public employer”?**

Every department and agency in the state or any political subdivision of the state is a “public employer.”

**How does HB 1549 affect public employers?**

Public employers are required to enroll in a federal work authorization program.

**How does HB 1549 affect employers contracting with state agencies?**

As a condition to any contract worth more than \$5,000, employers are required to certify and document that it is enrolled in a federal work authorization program. The certification is limited to employees working in connection with the contracted services. Businesses must also certify that they do not knowingly employ unauthorized aliens in connection with contracted services.

**Is there a safe harbor in HB 1549?**

Yes. Employers who enroll in a federal work authorization program shall have an affirmative defense against claims under HB 1549 related to hiring unauthorized aliens.

### **Are businesses liable for the actions of contractors and subcontractors?**

No as long as the contract with the contractor or subcontractor states that the contractor or subcontractor has not hired unauthorized aliens and is enrolled in a federal work authorization program. A sworn affidavit swearing that the contractor or subcontractor's workers are not unauthorized aliens shall also be acceptable.

### **How are complaints filed and handled under HB 1549?**

Any state official, business entity or resident of Missouri can file a written complaint alleging the actions constituting the violation as well as the date and location of the violation. Complaints based on national origin, race or ethnicities are invalid. Within 15 days, the Attorney General will request identity information from the employer and if the employer fails to respond, the Attorney General will direct the municipality or county to suspend the employer's licenses or permits. T

Once the Attorney General gets the identifying information, he or she shall check the names with the federal government to determine if the workers are authorized to be employed. If the federal government says the workers are authorized or that it is unable to make a determination, then the Attorney General will drop the investigation. State officials are not to make independent determinations of work authorization status and the law explicitly states that only the federal government can make such a determination.

If the federal government indicates that an employee is not work authorized, the Attorney General shall bring an action in a court in Cole County.

### **What penalties may a court impose when the Attorney General brings an action under HB 1549?**

If an employer did not knowingly violate the law against hiring unauthorized aliens, the employer shall have 15 business days to terminate the unauthorized alien or gets new documentation that the employee is authorized. The employer shall provide an affidavit swearing that the violation has ended and that it has enrolled in a federal work authorization program.

If the employer knowingly violated the law, the applicable municipality or county shall suspend any license or permit held by the employer for fourteen days or one day after

the employer provides an affidavit that it no longer has unauthorized workers and is enrolled in a federal work authorization program.

Municipalities and counties that fail to suspend a license or permit as directed by the court shall be considered “sanctuary cities” and subject to penalties.

Second violations shall result in a one year suspension of a license or permit. Subsequent violations will result in a permanent revocation.

Businesses contracting with the state that are found to have hired unauthorized aliens will be deemed to be in breach of the contract and the state may break the contract and debar the employer from doing business with the state for up to three years for first violations. The debarment may be permanent for subsequent violations. The state may also withhold up to 25% of the money due the employer under the contract.

### **What happens if someone files a frivolous complaint?**

Anyone who submits a frivolous complaint shall be liable for actual, compensatory and punitive damages to the alleged violator.

### **How are employer tax deductions for the wages paid to unauthorized aliens affected?**

Employers are not allowed to deduct wages paid to unauthorized aliens.

### **Does the new law contain transporting provisions?**

Yes. It is now a state crime to knowingly move or transport an illegal alien for the purposes of employment and shall be subject to jail for not less than a year and at least a \$1000 fine.

### **When does HB 1549 become effective?**

January 1, 2009.