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Some California "Sanctuary State" Employer Obligations Are Struck Down

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On July 4th, U.S. District Judge John A. Mendez issued an order enjoining California from enforcing parts of the California Immigration Workers Protection Act (Assembly Bill 450), a new state law that restricted private employers from cooperating with federal immigration enforcement.

Among other things, the law imposed fines on private employers of up to $10,000 per violation if they "voluntarily consent" to giving federal immigration authorities access to nonpublic areas of a "place of labor" and/or to employee records, and it mandated that the employer insist that the authorities obtain a judicial warrant or subpoena before such information would be turned over. Cal. Gov't Code §§ 7285.1 and 7285.2. The court sided with the U.S. Department of Justice in finding that several provisions of AB 450 discriminate against private employers who cooperate with the federal government.

In his Order, Judge Mendez stated that "these fines inflict a burden on those employers who acquiesce in a federal investigation but not on those who do not." Thus, the court found that "a law which imposes monetary penalties on an employer solely because the employer voluntarily consents to federal immigration enforcement's entry into nonpublic areas of their place of business or access to their employment records impermissibly discriminates against those who choose to deal with the federal government."

The court also struck down a provision of the law limiting an employer's ability to re-verify an employee's employment eligibility unless otherwise required by federal law on the ground that it "frustrates the system of accountability that Congress designed." Cal. Lab. Code § 1019.2. The court left standing an employer obligation to warn employees in writing of an imminent inspection of I-9 forms by federal immigration authorities. Cal. Lab. Code § 90.2(a)(1).

This decision means that private sector employers may not be prosecuted for: (i) consenting to a federal immigration enforcement agent's request to enter nonpublic areas in the workplace; (ii) granting federal immigration enforcement agents access to employee records; or (iii) re-verifying an employee's eligibility to work in the United States. The decision will likely be appealed, which means there may be more twists in store.

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