

Arizona, South Carolina Use Radically Different Approaches to Stop the Hiring of Illegal Immigrants

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COLUMBIA, S.C. -- When it comes to cracking down on employers who hire illegal immigrants, Arizona may be getting the headlines, but South Carolina seems to be getting results. Only three businesses - all in the Phoenix area - have been prosecuted in the nearly three years since Arizona's highly publicized employer-sanctions law took effect.

During that time, not a single business outside of Maricopa County has been punished for hiring illegal immigrants. By contrast, South Carolina has cited more than 200 businesses for being out of compliance since that state's employer-sanctions law went into effect in 2009. South Carolina officials say that their efforts have paid off with far fewer illegal hires.

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The two states have radically different approaches on how to stop the hiring of illegal immigrants.

South Carolina's system gives authorities the power to scrutinize businesses' hiring records and the state has a comprehensive program to educate employers about the legal consequences of hiring illegal immigrants. If auditors find illegal immigrants on the payroll, employers are cited, fined and forced to fire the workers.

In Arizona, county prosecutors must build an individual court case against each employer suspected of hiring illegal immigrants. And they must do it without easy access to the employer's records, because the Arizona law does not provide subpoena power for those types of investigations.

Both states require that employers use a federal database to make sure that they don't hire illegal immigrants. But in Arizona, no business has been cited for not using E-Verify; it's tough to do so without access to company files.

In Arizona, "it's very difficult oftentimes to prosecute cases under this particular statute, and one of the reasons for the difficulty is that the Legislature in its wisdom determined not to afford subpoena power to investigators so that they would be able to compel the production of documents," said Barnett Lotstein, a former special assistant county attorney who was also the spokesman for former County Attorney Andrew Thomas.

A spokesman for County Attorney Rick Romley could not be reached for comment.

South Carolina efforts

The South Carolina law aimed at curtailing the hiring of undocumented workers is known as the Illegal Immigration Reform Act.

The law requires all businesses in the state to verify the legal status of their employees, according to public documents. They can do that through the federal E-Verify system - which checks multiple federal government databases to ensure that an employee is able to work legally in the United States - or by checking driver's licenses from a state that issues licenses only to legal residents.

Verifications must take place within five days of a hire, authorities say.

Businesses that are cited for possible violations have 72 hours to correct problems. Businesses that can't prove they have cleared their employees can be fined up to \$1,000 for each violation and face possible revocation of business licenses.

From July 1, 2009, when the program started, to June of this year, the state has assessed \$700,000 in fines.

In 2009, the state Department of Labor, Licensing and Regulation, which is in charge of enforcing the law, began auditing companies with 100 employees or more to make sure they were following the law.

The department also launched an education and information campaign. It mailed notices to every business in the state to inform them about the law and conducted dozens of training programs for civic clubs, trade associations and chambers of commerce. The department also offers online training.

And the state alerts the news media every time an employer is caught with a significant number of unauthorized workers. The publicity is an effective deterrent, said Jim Knight, spokesman for South Carolina's Department of Labor, Licensing and Regulation.

"I believe the law is having its intended effect," he said. "That is, the vast majority of South Carolina employers are verifying the work authorization of their new hires and are terminating unauthorized workers as they are identified."

According to South Carolina officials, 106,000 licensed employers operate in the state.

Today, South Carolina has a 92 percent compliance rate among the larger companies, meaning most were using the E-Verify system to weed out illegal workers, according to state figures.

As of July, 1,750 large companies - those with 100 employees or more - out of 2,300 had been audited. Nearly 150 were issued citations; the majority of those were cited for failing to verify the status of their new hires within the five-day period. Only one employer was cited

for intentionally employing unauthorized workers.

This summer, state officials began focusing their enforcement efforts on smaller businesses, those with fewer than 100 employees.

They have audited 959 of those businesses and estimate that 88 percent are complying with the law.

Part of the state's success has to do with funding, Knight said. The state budgeted \$2 million in 2010 for the program, up from \$750,000 last year, and added 13 investigators to a staff of 10.

Arizona's effort

The Legal Arizona Worker Act, Arizona's employer-sanctions law, has generated more national attention than South Carolina's. That's partly because it's considered one of the toughest in the nation and in part because of legal challenges.

Opponents who say the law encroaches on federal authority have taken their case to U.S. District Court in Arizona and to the 9th U.S. Circuit Court of Appeals. Both times they have lost. They have appealed the case to the U.S. Supreme Court, which is scheduled to hear arguments in December.

Under the law, which took effect on Jan. 1, 2008, businesses that knowingly or intentionally hire unauthorized workers can see their licenses suspended or revoked, putting them out of business. Businesses also must use E-Verify, the federal system to check workers' legal status.

Officials from the Arizona Chamber of Business and Industry and the Arizona Small Business Association estimate about 100,000 to 110,000 Arizona businesses have employees.

But according to the state Attorney General's Office, only about 33,000 businesses use the E-Verify system. The numbers suggest that Arizona employers are either not aware of the law or are simply not complying with it.

But unlike South Carolina, Arizona officials have no power to look at businesses' hiring records, no statewide agency oversees enforcement of the law and only a limited education program is available for employers.

To enforce the law, Arizona relies on county attorneys and sheriff's offices, which typically wait for complaints to be filed, then conduct individual investigations.

During the first year of the program, the state attorney general received \$100,000 to provide administrative support for the law, and another \$2.4 million was allocated to county attorneys for enforcement, according to the populations of their counties. In addition, the state Department of Revenue got \$70,000 to educate businesses about the law.

With few prosecutions statewide, this year the state Legislature ended enforcement funding for all but Maricopa County.

The three businesses that have been prosecuted so far were located in Maricopa County, which also has received the most funding - \$3.6 million since the law went into effect.

But in Arizona's largest county, law-enforcement leaders have sparred over how to enforce the law. The Sheriff's Office has conducted a series of work-site raids, resulting mostly in the arrests of undocumented workers. Sheriff Joe Arpaio's office has reported that its workplace raids have netted 415 arrests of illegal immigrants and identity theft charges against 277 people.

Romley has been critical of Arpaio's raids and how his predecessor, Thomas, enforced the law. Romley announced this summer that the \$1.2 million allocated to his office annually to enforce the law would be used to investigate individual violators, coordinate enforcement with other agencies and educate businesses about the law.

A state lawmaker stopped short of saying there are weaknesses in Arizona's employer-sanctions law. But state Rep. John Kavanagh, R-Fountain Hills, would like to give prosecutors more power.

"The power of the employer-sanctions law is more that of deterrent than it is of actual club, and one of the reasons for that, by the way, is the lack of subpoena power," he said.

The business community, represented by the local and state chambers of commerce, has successfully dissuaded the Legislature from granting subpoena power, Kavanagh said. But he said supporters would continue to bring the issue up in the Legislature.

Despite low prosecution numbers, the law's supporters say it has had a positive effect, he said. "After its passage, a number of indirect reports came in that illegal immigrants have been leaving Arizona," Kavanagh said.

He acknowledged the economy was the "major reason" that the state had seen a decrease in illegal immigration. But the net result is good for the state, Kavanagh said. "While I like to think they're going back to their home countries, my suspicion is that they're relocating to other U.S. states, but that still reduces the problem in Arizona."

South Carolina's next step

South Carolina authorities are taking a closer look at small businesses and how they are complying. This summer alone, 74 small-business employers were cited for failing to verify that their new hires were authorized to work in the U.S.

State Sen. Larry Martin, a Republican who helped draft South Carolina's law, said he thought compliance will improve once small businesses become familiar with the new law and with the E-Verify system "and realize that it's real easy to do."

The new law made a stickler out of Randy Austin, president and CEO of Austin International, a York, S.C.-based company with 150 employees.

Before the law, Austin would get Social Security Administration letters each year listing employees whose names did not match their Social Security numbers. Austin would send memos telling the employees they needed to get their information corrected, but he said he didn't worry much because there was no real enforcement.

In November, state auditors fined Austin \$850 because an employee's name did not match his Social Security number. Like all business owners, Austin was given the opportunity to verify the employee's status and to use the E-Verify system. The employee chose to leave, and the fine was waived.

Before he made the switch to E-Verify, Austin said 25 to 50 Spanish speakers would come in each week looking for a job. Now, none come.

"When it became apparent that South Carolina was going to start enforcing the laws," Austin said, he told workers "they didn't have a choice but to get their Social Security number sorted out or we would have to ask them to leave."

He added: "And most of them just left on their own."

	Arizona	South Carolina
Population, 2009 estimate	6.6 million	4.56 million
Median household income, 2008	\$51,009	\$44,695
Unemployment rate, September	9.7%	11%
Key industries	Aerospace, defense and semiconductor manufacturing, tourism, copper mining, agriculture.	Textiles and other manufacturing, tourism and agriculture, especially tobacco and peaches.