



Eleventh Circuit Strikes Down Portions of Alabama's Immigration Law

A three-member panel of the Eleventh Circuit recently struck down certain provisions of Alabama's immigration law.

On June 9, 2011, Governor Robert Bentley signed into law House Bill 56, titled the "Beason-Hammon Alabama Taxpayer and Citizen Protection Act." The stated purpose of this legislation was to discourage illegal immigration within Alabama and maximize enforcement of federal immigration laws. Portions of HB 56 were later amended by HB 658, which Governor Bentley signed into law on May 18, 2012.

The United States filed suit against the State of Alabama seeking to enjoin certain provisions of HB 56, claiming that they were an impermissible attempt by a state to regulate immigration, and therefore, were preempted by federal law. Additionally, the United States moved for a preliminary injunction against enforcement of HB 56, which was granted in part and denied in part by the district court. The United States appealed, and the State of Alabama cross-appealed.

The Eleventh Circuit struck down certain provisions of HB 56 since it found that these provisions had been expressly preempted by specific federal laws:

- Section 11(a), which criminalizes an unauthorized alien's application for, or performance of, work inside the State of Alabama, was expressly preempted by the Immigration Reform and Control Act of 1986, which imposes federal criminal sanctions for employers who hire illegal aliens, but does not punish employees. The Eleventh Circuit also struck down this portion of HB 56 based on the U.S. Supreme Court's opinion in Arizona v. United States, 132 S. Ct. 2492 (2012), where a similar provision enacted by Arizona was enjoined from enforcement.
- Section 16, which bans an employer's state tax deduction for wages and compensation paid to an unauthorized alien, and section 17, which makes an employer's act of firing, or failing to hire, a U.S. citizen or authorized alien while employing an unauthorized alien a discriminatory practice, were expressly preempted by 8 U.S.C. § 1324(h)(2), which prevents states from imposing civil or criminal sanctions against anyone who employs unauthorized aliens.
- Section 28, which requires public schools to request documentation from enrolling children to determine their immigration status, violates the Equal Protection Clause of the U.S. Constitution.

Eleventh Circuit Strikes Down Portions of Alabama's Immigration Law *continued from page 1*

Furthermore, the Eleventh Circuit struck down other provisions of HB 56 since these provisions were preempted based on an existing congressional legislative scheme that left no room for state involvement:

- Section 10, criminalizing an unlawfully-present alien's failure to complete or carry an alien registration document. This decision was also based on the U.S. Supreme Court's decision in Arizona v. United States.
- Section 13, which creates three new state crimes for harboring and transporting unlawfully-present aliens.
- Section 27, which prohibits Alabama courts from enforcing a contract between a party and an unlawfully present alien.

Even though the Eleventh Circuit did find that many provisions of HB 56 were preempted by federal law, it did permit some provisions to remain intact. The Court refused to prevent the enforcement of these sections:

- Section 12, requiring police officers to determine a lawfully-seized individual's immigration status, if reasonable suspicion exists that the individual is not lawfully present in the U.S.
- Section 18, requiring a reasonable effort to determine a driver's citizenship, if that driver does not have a valid driver's license.
- Section 30, prohibiting unlawfully-present aliens from applying for or renewing a driver's license or motor vehicle license plate.

United States v. Alabama, 2012 WL 3553503 (11th Cir. 2012)

PROTECTIVE MEASURES

WHEN AN EMPLOYEE SAYS "HEY, Y'ALL, WATCH THIS!" What Does "Arising Out of Employment" Mean?

An employer's liability for employees under workers' compensation laws rests on whether an injury arose out of employment. In Mercy Logging, L.L.C., v. Odom, No. 2101061, 2012 WL 3055570 (Ala. Jul. 27, 2012), the Alabama Supreme Court reiterated the differences between "in the course of" and "arising out of."

Odom, a logger working for Mercy, saw a snake on the road near an area in which they were logging. Odom testified that snakes are an occupational hazard to loggers in the woods, and a fellow employee testified that a logger's nature required them to kill snakes because of the threat they posed.

WHEN AN EMPLOYEE SAYS “HEY, Y’ALL, WATCH THIS!”

What Does “Arising Out of Employment” Mean? *continued from page 2*

Instead of running the snake over and killing it, though, a fellow employee suggested that they catch the snake instead. When Odom tried to do so, he was bitten; hospitalized; and incurred significant medical bills.

Mercy argued, and the Court agreed, that Odom’s injuries did not “arise out of” his employment. “[T]he words ‘arising out of’ involve the idea of causal relationship between the employment and the injury, while the term ‘in the course of’ relates more particularly to the time, place and circumstances under which the injury occurred[.]” In this case, getting out of a truck to catch a snake was not causally related to Odom’s logging job.

Employers and insurance professionals need to keep in mind the important distinction of “arising out of” employment when addressing any claim for workers’ compensation benefits.

FEES & BURGESS, P.C. — Calendar of Events

Fees & Burgess, P.C., is proud to present, and participate in the presentation of, the following upcoming seminar:

Employment Records: Retention, Retrieval, and Destruction Master Class

Date: September 20, 2012

Time: Registration begins at 7:30 a.m., program starts at 8:30

Location: Birmingham Marriott (3590 Grandview Parkway, Birmingham, Alabama 35243)

Cost: \$397.00 for first attendee, \$297.00 for each additional attendee

Allen Anderson, Ryan Blount, and Allison Chandler, with the Huntsville, Alabama, law firm of Fees & Burgess, P.C., in partnership with M. Lee Smith Publishers, a national provider of information resources for human resources professionals, will present Employment Records: Retention, Retrieval, and Destruction Master Class, a one-day workshop on document management best practices. The event, designed for Alabama employers, HR executives, and corporate legal counsel, will be held Wednesday, September 20, 2012.

Those who attend this event will learn:

- Which documents should be kept and which are vital
- How to keep a record of a workplace investigation
- Who "owns" an employee's personnel records
- Special document challenges
- How to store electronic data
- Time requirements in recordkeeping
- Proper methods of disposal

This program has been approved for 5.75 recertification credit hours through the HR Certification Institute and has also been approved for CLE in the state of Alabama for 5.8 general hours.

For more information, including how to register, please click [here](#), or click [here](#) to contact Amy Kelly, with M. Lee Smith Publishers.

Seminars

During these rough economic times, it is important to get the most for your money. The lawyers of Fees & Burgess, P.C., combined, have many years experience working in various fields, as both in-house and private counsel, representing a diverse clientele. Our attorneys have extensive experience in many areas of law, including employment law; intellectual property; supply chain management; mergers and acquisitions; contract negotiation; dispute resolution; and various other fields.

This wide field of knowledge provides our attorneys with the insight and know-how to be able to provide quality training on various topics. Our programs can be customized to fit any business need while keeping the costs of our training competitive, without sacrificing quality.

Topics that Fees & Burgess, P.C., can provide training on include, but are not limited to:

A Recession Era Guide to Collecting on Construction Contracts	Managing Gender Identity Issues in the Workplace
Conducting Effective Workplace Investigations	Negotiation and Resolution of Federal Contract Claims
Construction Contracting	Privacy in the Workplace
Contingent Employees and Labor Outsourcing	Reducing Employee Benefits Costs for Alabama Businesses
Diversity Training	Reducing Risk in Purchasing Terms and Conditions
Elements of an Electrical Manufacturing Services Contract	Reduction in Workforce Strategies
Employment Law Survival Training for Managers	Retaliation and Whistleblowers
Family Medical Leave Act	Uniform Commercial Code: Primer to Articles 1, 2, and 2A
Hiring and Firing	Violence in the Workplace
Immigration Compliance	Wage and Hour Issues/Fair Labor Standards Act
Incoterms® 2010	Americans with Disabilities Act
Indemnity and Limitation of Liability Contract Clauses	Managing Employee Use of Internet and E-mail in the Workplace
International Contracting	Ethics, Business Conduct and Compliance in Government Contracting
Limiting Liability for Sexual Harassment	

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