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THE IMPACT OF SB 81, “ILLEGAL IMMIGRATION” ON UTAH

** This analysis should not be construed as legal advice. If a legal issue arises, please seek the advice of an attorney. **

>> IMMIGRATION STATUS CHECKS IN JAILS

The sheriff’s department must make a reasonable effort to determine the citizenship status of a person charged with a felony or DUI. If no determination is made within 48 hours of confinement, the department must contact DHS-ICE [Immigration] for further information. Includes a rebuttable presumption that undocumented immigrants are a flight risk for setting bail.

WHAT DOES THIS MEAN?

If you are charged with a felony or a DUI in Utah, you will have your citizenship or immigration status inspected by the Sheriff’s Department. If you do not have proof of status on your person, Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) will be contacted. If you are charged with a felony and have no proof of status, this could lead to an ICE Hold. An ICE Hold, in the case of a felony by an undocumented person, will prevent that person’s release from jail, even if bail is made.

If you are not being charged with a felony, you might be granted bail. However, in order to receive bail, you must show the criminal court that you are not a flight risk for one of the following reasons: ties to the community (family, friends, job,) and intent to appear for your hearing.

>> ISSUANCE OF IDENTIFICATION

(IMPLEMENTATION DELAYED UNTIL JULY 1, 2010)

Acceptable IDs will be those issued by government agencies for their employees, and those issued by appropriate agencies in the form of driver’s licenses, social security cards and passports. Educational institutions also can print official IDs.

IDs can only be given to Citizens and Legal Permanent Residents. People who are not Citizens or Legal Permanent Residents may receive IDs with proof of legal status or pending legal status, but the IDs are only valid for as long as the immigrant is authorized to stay in the U.S. (or for one year). The card must say it is temporary, and include an expiration date; documentation from DHS must be presented at the time of renewal.

Educational institutions can grant IDs to unauthorized individuals if IDs clearly show that they are usable only on campus. Driving privilege cards are not affected.

WHAT DOES THIS MEAN?

As of July 1, 2010, IDs from institutions other than government agencies or educational institutions (e.g. banks) will no longer be acceptable to establish identity. Only Government IDs will be acceptable. IDs given to non-immigrants will have to be renewed on a regular basis with the proper immigration documentation. Driving privilege cards can only be used for driving, not for identification (this is not a change from the current policy).

>> USE OF “E-VERIFY” SYSTEM TO VERIFY LEGAL STATUS

Public employers, as well as their contractors, are required to use the Status Verification System [SVS] to verify the legal status of all employees hired on or after July 1, 2009. Public employers cannot fire a U.S. Citizen or Legal Permanent Resident in order to replace them with someone they know (or should have known) to be undocumented. If the employer is enrolled in the SVS system and uses it, he cannot be sued or investigated for violating this provision.

WHAT DOES THIS MEAN?

New employees who obtain a job with a public/government agency or with a contractor holding a public contract, will have their immigration status and eligibility to work verified by the SVS system. *New employees' status will be checked after they are hired.* Even Citizens must be verified. *If you began working for a public/government agency or contractor before July 1, 2009, the employer is not required to run your name through the SVS system.*

The E-verify system is flawed and may incorrectly show Citizens and Legal Permanent Residents as unable to work. Any such errors must be corrected by the employee within 10 days, or a permanent "no-match" letter will be issued to the employer. A no-match *does not* require that the employer inform ICE of the new employee's legal status.

>> PUBLIC BENEFITS

Public agencies must verify the legal status of individuals 18 years or older who are applying for specific public benefits (as already required by federal and state law). This does not apply to: emergency healthcare and aid; treatment for communicable diseases; short-term, non-cash, in-kind emergency disaster relief; soup kitchens; crisis counseling and intervention; short-term shelter; and short-term aid for the protection of life and safety. Individuals falsifying applications are subject to criminal penalties.

WHAT DOES THIS MEAN?

This law is no different than what is already in effect in Utah. It should have no new impact on those already receiving - or those seeking - public benefits.

>> FRAUDULENT DOCUMENT IDENTIFICATION UNIT

The Attorney General's Office will create a Fraudulent Documents Identification Unit to investigate, apprehend and prosecute people who participate in the sale or distribution of fraudulent documents.

WHAT WILL THIS MEAN?

People buying and selling false documents are more likely to be caught and subject to penalties. More Latino people (including those here legally) may be stopped and questioned. Harassment or racial profiling should be reported.

>> MEMORANDUMS OF UNDERSTANDING ("MOU")

The Attorney General will negotiate MOUs with DHS to allow local and state police to enforce immigration laws. Local governments cannot enact laws that limit or prohibit government entities from cooperating with, or transmitting information on undocumented immigrants, to DHS. Citizens and Legal Permanent Residents can file a writ of *mandamus* to compel noncompliant agencies to comply with the law.

WHAT WILL THIS MEAN?

Currently, there are local sheriffs in Utah prisons who are trained by ICE to determine the immigration status of new inmates. New MOUs will expand this arrangement to include more police forces and sheriffs' departments, but with oversight from the Attorney General's office.

Public trust in local law enforcement may decrease because of actual or perceived connections to ICE and DHS. More Latino people (including those here legally) may be stopped and questioned. Harassment or racial profiling should be reported.

>> TRANSPORTING OR HARBORING "ILLEGAL ALIENS"

It is a Class A misdemeanor to transport or harbor an undocumented person for commercial advantage or private financial gain, knowing (or in reckless disregard of the fact) that the person is undocumented. This does not apply to public or charitable aid and non-paid religious service.

WHAT WILL THIS MEAN?

Though intended to penalize human traffickers and disreputable employers, it is unclear if this provision will impact landlord-tenant situations.