



## COURT STRIKES ILLINOIS LAW PROHIBITING EMPLOYERS FROM USING E-VERIFY

by Laura Balson



LAURA BALSON

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### E-VERIFY IMPACTS ALL EMPLOYERS

One of the most difficult responsibilities of hiring new employees is to verify that the employee is legally eligible to work in the United States. It is a burden imposed on all companies, no matter their size, and the penalties for failing to do so correctly include not only significant fines, but also potential criminal sanctions against individual corporate executives and Human Resource professionals.

In order to verify eligibility of new employees, companies are required to complete a Form I-9 for each individual within three days of the employee's first day of work. For several years, companies across the country have also been utilizing an online program called E-Verify, to confirm the information on the I-9 with the information in the federal government's database. The downside of the E-Verify program is that the program can return errors, sometimes indicating that an employee is not authorized to work in the United States, even if they are. Many opponents of the E-Verify program have criticized the federal government for allowing the program to continue with these errors.

### WHAT THE COURT'S RULING MEANS

After more than a year of uncertainty, the dispute between the U.S. and Illinois has been resolved. As a result, Illinois employers may now use E-Verify to confirm the employment eligibility of their new employees. Use of E-Verify is optional, not mandatory, for most employers, but many companies find that it provides an easy way to confirm the information provided by the employee. E-Verify does not take the place of the Form I-9 which all employers are still required to use, but it can be a helpful, supplemental tool.

### ILLINOIS LEGISLATURE OPPOSES E-VERIFY

In August 2007, the Illinois legislature passed a law prohibiting employers in Illinois from participating in the E-Verify program. Illinois had taken a bold step by passing this law, essentially calling the federal government's authority into question and threatening to penalize employers who used the federal program. Illinois was unique in this regard as no other state had passed a similar law opposing E-Verify and, to the contrary, some states like Arizona had passed laws that require all employers located within the state to use the program.

Over a year ago, the United States brought a lawsuit to stop the Illinois law from becoming effective. Shortly after the lawsuit was filed, the parties entered into a stipulation under which Illinois agreed not to enforce its law during the pendency of the litigation. Throughout the litigation, the answer to whether Illinois employers may use E-verify has remained in flux, causing confusion and uncertainty in an already tricky area of employment practices.

### COURT RULES AGAINST ILLINOIS

On March 11, 2009, the court hearing the case issued its opinion striking the Illinois law. By way of background on the dispute, the Court's opinion stated as follows:

"In 1996, Congress enacted the Federal Act to authorize the creation of a pilot program to enable employers to confirm electronically the employment eligibility of newly-hired employees. This program was originally known as the Basic Pilot Program, and now is referred to as "E-Verify" (hereinafter the Federal Program). Congress provided that any employer in a state where the Federal Program would be available may elect to participate in the Federal Program.



CAREN A. LEDERER

## ANNOUNCEMENTS

**GOLAN & CHRISTIE IS PLEASED TO ANNOUNCE** that both Darrin S. Baim and Caren A. Lederer have become partners of the Firm. Mr. Baim joined Golan & Christie in 2000 and handles the full spectrum of corporate, real estate, and transactional matters for the Firm's clients. Ms. Lederer began working for Golan & Christie in 2004 and focuses her practice on commercial litigation, reorganization and bankruptcy. The Firm extends its warmest congratulations to our new partners and wishes them both many years of continued success in their new positions.



DARRIN S. BAIM

## GOLAN & CHRISTIE IS ALSO EXCITED TO WELCOME THREE NEW ATTORNEYS AS OF COUNSEL TO THE FIRM:

**MICHAEL K. HENDERSHOT** specializes in trademark and copyright matters, and is the principal and founder of Hendershot Intellectual Property Law. He has represented a wide range of clients, from Fortune 100 companies to small business start-ups, and has experience working with clients in a diverse array of industries. Mr. Hendershot received a B.S., summa cum laude, in molecular genetics from the Ohio State University, and a J.D. from the University of Virginia, School of Law, where he earned membership in the Order of the Coif. Mr. Hendershot was named a 2008 Rising Star by Illinois Super Lawyers magazine and he is a registered patent attorney and a member of the Illinois bar.

**PATRICK M. JONES** is a commercial litigator, focusing on creditor representations in bankruptcy and insolvency-related litigation. He has worked as national outside bankruptcy counsel for Farmers Insurance Group and has acted as lead counsel in bankruptcy cases involving multi-million dollar claims and allegations of fraudulent transfers. He is widely published on insolvency related topics, including fiduciary duties in the zone of insolvency, and lender protections in single asset real estate

restructurings. Mr. Jones received his B.A. in psychology from the University of Oklahoma and a J.D. from DePaul University College of Law, where he earned membership in the Order of the Coif and was on the Law Review. Mr. Jones is a member of the American Bankruptcy Institute and the Turnaround Management Association.

**HOWARD Z. GOPMAN** has experience in private placements, public offerings, securities litigation and arbitration, and general securities matters, as well as having a general corporate and real estate practice through his firm, Howard Z. Gopman & Associates, Ltd., which was established in 1974. Mr. Gopman is rated "AV," the highest rating available, in the Martindale-Hubbell Peer Review Ratings. Mr. Gopman received a B.S. in economics and a Masters in Business Administration from the University of Wisconsin and a J.D. from the University of Wisconsin Law School. Mr. Gopman is a member of the Illinois and Wisconsin bars.



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"Employers that participate in the Federal Program submit the employee identifying information of new hires to the Federal Program over the Internet. The employers receive either: (1) confirmation that the new hire is authorized to work in the United States, or a (2) a Tentative Nonconfirmation Notice (TNC), indicating that the Federal Program can not confirm the new hire is authorized to work in the United States. Employers must notify a new hire if the Federal Program issues a TNC and provide the new hire with information on how to pursue secondary verification. If the new hire does not pursue secondary verification, the TNC becomes final, and the Federal Program issues a final nonconfirmation. If the new hire

pursues secondary verification, the Federal Program completes the secondary verification process before issuing a final determination. The Federal Program must complete this secondary verification process within ten business days. Employers may not terminate a new hire until a final nonconfirmation is issued."

After providing this background, the court issued its definitive ruling which stated: "Section 12(a) of Illinois Public Act 95-138 is hereby declared to be invalid in violation of the Supremacy Clause of the United States Constitution, and the State of Illinois is permanently enjoined from enforcing this invalid act."



## EMPLOYMENT LAW ALERT



### COBRA SUBSIDY IN EFFECT FOR ELIGIBLE EMPLOYEES

Under the stimulus package signed into law by President Obama on February 17, 2009 (the American Recovery and Reinvestment Act or "ARRA"), any employee who has lost their job since September 1, 2008 through December 31, 2009, may be eligible for a government subsidy of 65% of the cost of the premium payments required to elect COBRA health insurance coverage from their former employer.

#### *What does the law require from employers?*

The ARRA requires employers to cover the initial cost, which will then be reimbursed by the government through tax credits. The employee is responsible for the other 35% of the cost of the premiums. Even employees who did not elect coverage after the termination of their employment must be given a chance to elect coverage now. In addition to the employer's responsibility to pay a portion of the monthly premium, companies are also required to send a written notice to any potentially eligible former employees. The notice must contain specific language as drafted by the Department of Labor.

#### *Who is an eligible employee?*

An employee is eligible to receive the subsidy (and therefore must receive a notice from the employer) if their employment is involuntarily terminated at any time during the period beginning September 1, 2008 and ending December 31, 2009. The employee must also elect COBRA coverage and must not be eligible for any other group health plan (such as a spouses plan) or Medicare. The subsidy covers premiums paid after February 17, 2009, when the ARRA was enacted.

#### *How does the employer get reimbursement from the federal government for the premium payments?*

The Internal Revenue Service has created an updated version of form 941, Employer's Quarterly Federal Tax Return, which includes a line item for COBRA subsidy premium payments. For a copy of the form and further instructions, go to <http://www.irs.gov/pub/irs-pdf/f941.pdf>



### NEW FORM I-9 REQUIRED FOR ALL EMPLOYERS

#### *Old version no longer permitted*

Starting on April 3, 2009, the new version of the U.S. Citizenship and Immigration Services Form I-9, Employment Eligibility Verification (often referred to as simply the "I-9") is required for all employers. The revision date of 02/02/09 is printed on the lower right-hand corner of the form. Previous versions of the form are no longer acceptable. As a reminder, an I-9 must be filled out for every new employee hired by every employer, no matter what the size of the company.

#### *What has changed?*

The changes in the new I-9 now prevent employers from accepting expired documents, including expired U.S. passports and removes certain documents from the "List A" of acceptable documents. It is illegal for an employer to specify which documents an employee must present, and any document listed on the I-9 must be treated the same. Remember that failure to follow these requirements means very harsh penalties for employers and potentially for the individuals in charge of compliance. The new version of the form includes detailed instructions that must be carefully followed when completing the form and can be downloaded at: [www.uscis.gov/files/form/i-9.pdf](http://www.uscis.gov/files/form/i-9.pdf)

### TO LEARN MORE...

If you would like additional information, please contact:

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# HOW WE MEASURE SUCCESS

Putting our clients first is not just a slogan for Golan & Christie. Everything we do stems from your needs, goals and objectives.

From the moment we first meet, we are driven by one thing: your ultimate success. And we go the extra mile to achieve it.

We devote as much time as necessary to get to know you. Only then can we make a thorough assessment of your situation and develop solutions that are the most appropriate for you. As our team goes to work for you, we continue to invest time in listening to, observing and advising you.

In the end, we measure our success by your success.

## OUR PRACTICE

*Our practice covers many aspects of law and business, with an emphasis on the areas listed below:*

- Business Law & Governance
- Commercial & Corporate Litigation
- Commercial Real Estate
- Employment Law
- Estate Planning & Taxation
- Finance
- Reorganization & Bankruptcy
- Property Tax Appeals

*Golan & Christie is pleased to announce a new addition to our extended family:*

Ryan Matthew Baim joined us on Thursday, June 25 at 10:20 p.m., weighing 6 pounds, 15 ounces and measuring 19.5 inches.

Ryan is the third child of Golan & Christie attorney Darrin Baim and his wife Stacy. He joins their other children Jacob and Claire.

We wish the entire Baim family much health and happiness.

[www.golanchristie.com/news.html](http://www.golanchristie.com/news.html)

*viewed online at:*

*This newsletter and others can also be*

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