



# PAYROLL CURRENTLY

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## Supreme Court Agrees to Review Case Involving Arizona E-Verify Law

The U.S. Supreme Court has agreed to hear the appeal of a dispute involving the validity of the Legal Arizona Workers Act (LAWA), which imposes penalties on employers that knowingly employ undocumented workers [*Chamber of Commerce v. Candelaria*, No. 09-115 (U.S. Sup. Ct., 6-28-10)].

LAWA, which became effective January 1, 2008, requires Arizona employers to verify the employment eligibility of newly hired employees through the E-Verify program. Employers that are found to knowingly employ unauthorized aliens may have their business licenses suspended or revoked. A first violation requires the employer to terminate the employment of all unauthorized aliens, file quarterly reports of all new hires for a probationary period, and file an affidavit stating that it terminated all unauthorized aliens and will not intentionally or knowingly hire any others. A second violation during the probationary period results in permanent revocation of the employer's business license (see **PAYROLL CURRENTLY, Issue No. 15, Vol. 15**).

Federal immigration law expressly preempts any state or local laws that impose civil or criminal sanctions "other than through licensing and similar laws" (8 USC §1324a(h)). In 2008, the U.S. Court of Appeals for the Ninth Circuit, responding to several appeals challenging the validity of LAWA, affirmed that the Act was a licensing law that was not preempted by federal immigration law (see **PAYROLL CURRENTLY, Issue No. 20, Vol. 16**). The requirement to use E-Verify (which is voluntary under federal law) is not expressly or impliedly preempted by federal policy. The court, which noted that LAWA had yet to be enforced against any employer, also said that LAWA does not violate the Due Process Clause because it creates a rebuttable presumption, which implicitly provides an employer with the opportunity to present rebuttal evidence during the state court proceeding held to determine whether a LAWA violation has been committed.