State's New Hiring Law

What Employers Need to Know



Adam H. Berry

Senate Enrolled Act 76 became law this year, giving the Indiana Office of the Attorney General (OAG) new authority to investigate employers suspected of knowingly or intentionally employing unauthorized workers and to pursue civil enforcement when appropriate. The law is aimed at promoting fairness for Hoosier employers and workers by ensuring businesses do not gain a competitive advantage through unlawful employment practices.

To help employers understand what the new law means in practice, the Indiana Chamber recently hosted a webinar – free for our members – featuring Blake Lanning, assistant chief deputy with the OAG. The discussion offered valuable insight into how the OAG intends to implement SEA 76, the types of cases likely to draw scrutiny and employer safeguards built into the law.

Perhaps the most important takeaway from the webinar was the OAG's emphasis that enforcement efforts will focus on intentional violators and not employers making good-faith efforts to comply with the law. Lanning said the office expects to rely primarily on credible complaints and information from federal partners, including the U.S. Department of Homeland Security, when determining whether further investigation is warranted.

The SEA webinar also underscored six key safeguards employers should understand:

1. The law applies only to employers who knowingly or intentionally employ unauthorized workers. The statute does not impose liability for inadvertent mistakes or isolated paperwork errors. The OAG emphasized that proving a knowing or intentional violation is a fundamental prerequisite to enforcement.
2. Employers who exercise reasonable diligence receive meaningful protection. SEA 76 includes a safe harbor for businesses that proactively verify work authorization using E-Verify, industry best practices and maintain appropriate documentation. The OAG previewed forthcoming guidance that will further explain what reasonable diligence and compliance look like in practice.
3. The law applies prospectively. Conduct occurring before July 1 is not subject to investigation under SEA 76. Although the statute contains a three-year lookback period, that period begins on the law's effective date, meaning investigations cannot reach conduct that predates July 1, 2026.
4. The statute applies only to W-2 employees. Lanning explained that the definition of "employee" mirrors the definition used under the federal Fair Labor Standards Act, providing employers with a familiar legal framework. As a general matter, employers are not responsible for verifying the work authorization of independent contractors, subcontractors or temporary workers supplied by staffing agencies unless a dual-employment relationship exists.
5. Employers are afforded an opportunity to correct violations. For an initial violation, the statute provides a notice-and-cure process that allows employers to address identified deficiencies before more significant consequences become available.
6. Finally, SEA 76 establishes a graduated enforcement framework. Rather than requiring automatic license suspension or revocation, the statute gives courts discretion to impose remedies based on the circumstances of each case, including placing an employer on probation. Lanning noted that the licensing provisions were modeled after constitutional principles recognized by the U.S. Supreme Court, which has held that states have greater authority to regulate business licenses than to create separate state immigration enforcement systems.



Lanning also noted that Indiana is breaking new ground. While several states have enacted employment verification laws, relatively few have implemented a comprehensive enforcement framework like SEA 76. The OAG views the legislation as part of Indiana Attorney General Todd Rokita's broader priority of promoting fairness for Hoosier employers and workers by discouraging businesses from obtaining a competitive advantage by knowingly employing unauthorized workers.

The OAG expects to publish formal employer guidance this summer through its website at www.in.gov/attorneygeneral. An online complaint portal is also available for businesses to use if necessary.

The Indiana Chamber will distribute the OAG's guidance to members once it is released and will continue providing practical resources to help employers understand and comply with SEA 76.

AUTHOR: Adam H. Berry is the Indiana Chamber's general counsel and vice president of public policy. He can be reached at (317) 264-6892, aberry@indianachamber.com. | www.indianachamber.com