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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF COLUMBIA

MARCY WESTERLING, CHIP BUBL,)
CRAIG FRASIER, PRATITI FULLERTON,)
ELOISE BATES, MIKE EDERA, GIGI)
GORDON, MARJORIE KUNDIGER,)
JEFF FULLERTON, JEFF ROGERS and)
CHRISTINE SANTORO)

Case No. 08-2234

JUDGMENT (BALLOT TITLE)

COLUMBIA COUNTY CLERK'S OFFICE

MAY 23 2008

DATE RECEIVED

Petitioners,

vs.

STEVE ATCHISON, District Attorney of)
Columbia County)

Respondent.

THIS MATTER came before the Court on May 20, 2008. Petitioner had requested that the Court review and revise the ballot title for a proposed initiative prepared by the District Attorney. The proposed initiative at issue was entitled.

Employment of Unauthorized Aliens.

At the hearing petitioners were represented by Meg Heaton of Portland, respondent appeared on his own behalf. After considering the pleadings, memoranda and arguments of counsel, the Court modifies the ballot title prepared by respondent.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the following ballot title is approved:

CAPTION

5-190 Requiring county to prohibit employment of unauthorized aliens

QUESTION

Shall Columbia County prohibit knowing or intentional hiring of unauthorized aliens; and set penalties in addition to Federal prohibitions?

ORDER. Case No. 08-2234

STATEMENT

This measure would make it illegal for any employer in Columbia County to knowingly or intentionally hire unauthorized aliens.

The measure sets out a system of penalties. These include fines of up to \$10,000, suspension of licenses and suspension of building permits. Probation for violators is also authorized. Penalties could vary in severity based on several factors, such as: whether the violation was knowing or intentional; evidence of good-faith efforts by employer to comply with the law; whether or not the violation is a repeat violation; and/or filing of an affidavit of compliance by an employer after being found in violation.

The measure sets out procedures for enforcement. The "county attorney" would investigate complaints as directed by the measure. Any action brought against an employer would require notifying the federal government and local law enforcement. The county commission would be required to hold hearings on violations.

Employers are required after December 31, 2008, to verify employment eligibility through Department of Homeland Security.

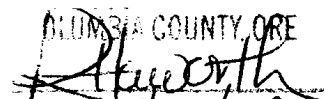
This program would be funded from the county's general fund.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the modified ballot title is hereby forwarded to the Columbia County Clerk.

DATED this 23rd day of May, 2008.


Ted E. Grove, Circuit Court Judge



AMU
COLUMBIA COUNTY, ORE

5/23/08

Be it ordained by the County of Columbia State of Oregon

4th '08

Section

COL
BY

EMPLOYMENT OF UNAUTHORIZED ALIENS

In this act, unless the context otherwise requires

1. "Agency" means any agency, department, board or commission of this county, city or town that issues a license for purposes of operating a business in this county or a building permit.
2. "Basic pilot program" means the basic employment verification pilot program as jointly administered by the United States department of homeland security and the social security administration or its successor program.
3. "Employee" means any person who performs employment services for an employer pursuant to an employment relationship between the employee and employer.
4. "Employer" means:
 - a. any individual or type of organization that transacts business in this county, that has a license issued by an agency in this county, or
 - b. any individual or type of organization that holds a building permit in this county, and that employs one or more individuals who perform employment services in this state. Employer includes this state, any political subdivision of this state and self-employed persons.
5. "Intentionally" has the same meaning prescribed in section ORS
6. "Knowingly employ an unauthorized alien" means the actions described in 8 united states code section 1324a. This term shall be interpreted consistently with 8 United States Code Section 1324a and any applicable federal rules and regulations.
7. "License"

(a) Means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this county.

(b) Includes:

(i) A building permit issued by Columbia County Oregon or any city within Columbia County Oregon.

(ii) Any business license.

8. "Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 United States Code section 1324a(h)(3)

Employment of unauthorized aliens; prohibition; violation; classification; license suspension and revocation

A. An employer shall not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.

B. On receipt of a complaint that an employer allegedly intentionally employs an unauthorized alien or knowingly employs an unauthorized alien, the county attorney shall investigate whether the employer has violated subsection A. When investigating a complaint, the county attorney shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 United States Code section 1373(c). A state, county or local official shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States. An alien's immigration status or work authorization status shall be verified with the federal government pursuant to 8 United States Code section 1373(c).

C. If, after an investigation, the county attorney

1. The county attorney shall notify the United States immigration and customs enforcement of the unauthorized alien.

2. The county attorney shall notify the local law enforcement agency of the unauthorized alien.

D. An action for a violation of subsection A shall be brought against the employer by the county attorney in an administrative hearing before the board of county commissioners. The hearing shall be conducted in a manner provided for contested case hearings under chapter 183 of Oregon Statutes. Appeals shall be to justice court and shall be de novo and shall be treated as an action at law. Appeals from justice court shall be in accordance with state statutes governing appeals from justice court.

E. For any action before the board of commissioners and appeals to justice or circuit court under this section, the board or the court shall expedite the action, including assigning the hearing at the earliest practicable date.

F. On a finding of a violation of subsection A:

1. For a first violation during a three year period that is a knowing violation of subsection A, the board or the court:

(a) Shall order the employer to terminate the employment of all unauthorized aliens.

(b) Shall Order the employer who is a contractor or a subcontractor to be fined the sum of \$10,000.

[C] The employer contractor, subcontractor shall be placed on probation for a period of three years. During the probationary period the employer shall file quarterly reports with the county attorney of each new employee who is hired by the employer .

(c) Shall order the employer to file a signed sworn affidavit with the county attorney within three

business days after the order is issued. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. The board or the court shall order the appropriate agencies to suspend all licenses and building permits subject to this subdivision that are held by the employer if the employer fails to file a signed sworn affidavit with the county attorney within three business days after the order is issued. All licenses and building permits that are suspended under this subdivision shall remain suspended until the employer, contractor, subcontractor files a signed sworn affidavit with the county attorney. The employer shall not be entitled to obtain new licenses or building permits until in compliance with the requirements of this subdivision and has terminated all illegal employees. If a license is not necessary to operate the employer's business at the specific location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer at the employer's primary place of business. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the county attorney.

(d) May order the appropriate agencies to suspend all licenses described in subdivision (c) of this paragraph that are held by the employer for not to exceed ten business days. The court shall base its decision to suspend under this subdivision on any evidence or information submitted to it during the action for a violation of this subsection and shall consider the following factors, if relevant:

(i) The number of unauthorized aliens employed by the employer.

(ii) Any prior misconduct by the employer

(iii) The degree of harm resulting from the violation.

(iv) Whether the employer made good faith efforts to comply with any applicable requirements.

(v) The duration of the violation.

(vi) The role of the directors, officers or principals of the employer in the violation.

(vii) Any other factors the court deems appropriate.

2. For a first violation during a five year period that is an intentional violation of subsection A, the court shall:

(a) Impose a fine of \$10,000 on building contractors only. This fine is not subject to suspension. This fine is mandatory.

(B) Order the employer to terminate the employment of all unauthorized aliens.

(C) Order the employer to be subject to a five year probationary period. During the probationary period the employer shall file quarterly reports with the county attorney of each new employee who is hired by the employer at the specific location where the unauthorized alien performed work.

(D) Order the appropriate agencies to suspend all licenses, and building permits and issue stop work orders on all pending building projects described in subdivision (d) of this paragraph that are held by the employer for a minimum of ten days. The court shall base its decision on the length of the suspension under this subdivision on any evidence or information submitted to it during the action for a violation of this subsection and shall consider the following factors, if relevant:

(i) The number of unauthorized aliens employed by the employer.

(ii) Any prior misconduct by the employer.

(iii) The degree of harm resulting from the violation.

(iv) Whether the employer made good faith efforts to comply with any applicable requirements.

(v) The duration of the violation.

(vi) The role of the directors, officers or principals of the employer in the violation.

(vii) Any other factors the court deems appropriate.

(d) Order the employer to file a signed sworn affidavit with the county attorney. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. All licenses and permits that are suspended under this subdivision shall remain suspended until the employer files a signed sworn affidavit with the county attorney. For the purposes of this subdivision, the licenses and building permits that are subject to suspension under this subdivision are all licenses and building permits that are held by the employer and that are necessary to operate the employer's business at any location the employer's conducts work. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the county attorney and the county attorney general shall maintain the copy pursuant to subsection G.

3. For a second violation of subsection A during the period of probation, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer and that are necessary to operate the employer's business and permanently deny the employer the right to obtain building permits in the future. On receipt of the order and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses and building permits and shall not issue licenses or building permits to the employer in the future.

G. The county attorney shall maintain copies of court orders that are received pursuant to subsection F and shall maintain a database of the employers who have a first violation of subsection A and make the court orders available on the county website.

H. On determining whether an employee is an unauthorized alien, the court shall consider only the federal government's determination pursuant to 8 United States Code section 1373(c). The federal government's determination creates a refutable presumption of the employee's lawful status. The court may take judicial notice of the federal government's determination and may request the federal government to provide automated or testimonial verification pursuant to 8 United States Code section 1373(c).

I. For the purposes of this section, proof of verifying the employment authorization of an employee through the basic pilot program creates a refutable presumption that an employer did not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.

J. For the purposes of this section, an employer who establishes that it has complied in good faith with the requirements of 8 United States Code section 1324b establishes an affirmative defense that the employer did not intentionally or knowingly employ an unauthorized alien.

Employer actions; federal or state law compliance

This article shall not be construed to require an employer to take any action that the employer believes in good faith would violate federal or state law.

Verification of employment eligibility; basic pilot program

After December 31, 2008, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the basic pilot program.

On or before October 1, 2008, the county shall provide a notice to every employer that is required to withhold tax. The notice shall explain the requirements of this act, including the following:

1. A new county law prohibits employers from intentionally employing an unauthorized alien or knowingly employing an unauthorized alien.
2. For a first violation of this new county law during a three year period that is a knowing violation, the court will order the appropriate licensing agencies to suspend all licenses and building permits held by the employer unless the employer files a signed sworn affidavit with the county attorney within three business days. The filed affidavit must state that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. A license and permits that are suspended will remain suspended until the employer files a signed sworn affidavit with the county attorney. A copy of the court order will be made available on the county's website.
3. For a first violation of this new state law during a five year period that is an intentional violation, the court will order the appropriate licensing agencies to suspend all licenses held by the employer for a minimum of ten days. The employer must file a signed sworn affidavit with the county attorney. The filed affidavit must state that the employer has terminated the employment of all unauthorized aliens and that the employer will not intentionally or knowingly employ an unauthorized alien. A license that is suspended will remain suspended until the employer files a signed sworn affidavit with the county attorney. A copy of the court order will be made available on the attorney general's website.
4. For a second violation of this new state law, the court will order the appropriate licensing agencies

to permanently revoke all licenses and permits that are held by the employer.

5. Proof of verifying the employment authorization of an employee through the basic pilot program, as defined above, as added by this act, will create a refutable presumption that an employer did not violate the new county law.

6. After December 31, 2007, every employer, after hiring an employee, is required to verify the employment eligibility of the employee through the basic pilot program, as defined in this act.

7. Instructions for the employer on how to enroll in the basic pilot program.

Sec. 5. Severability

If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 6. Short title

This act shall be known as and may be cited as the **"Columbia County Fair Trade and Employment Act."**

Sec. 7. No New Taxes

A. The county shall not impose any new tax as a result of this act. Funding for this act shall be taken from the general fund. The county may not cut law enforcement, road department, or parks and recreation funding to pay for any costs associated with the implementation of this act. The income generated from fines imposed under this act shall first be applied to costs of implementing this act, and all surplus shall be applied to law enforcement through the Columbia County Sheriff's Office.

This measure may not be amended, modified, or repealed without being referred to the voters.

Section 9. Enforcement

All county officials are required to enforce and uphold this measure. Willful refusal to follow the terms of this measure and perform the duties assigned herein, shall constitute official misconduct and shall be dealt with accordingly.

All citizens have the right to petition the justice court for appointment as a special county counsel, to be paid out of general funds at a rate no less than 1.5 times the hourly rate of the most junior county counsel and may perform enforcement functions in the event any county official fails to enforce this measure as required.