Indiana's FAIRNESS Act: What Employers Need to Know Before July 1

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Indiana's FAIRNESS Act — formally Senate Enrolled Act 76 — will take effect on **July 1, 2026**, bringing major new compliance obligations for employers across the state. The law focuses on preventing the employment of undocumented workers and introduces significant new enforcement mechanisms and penalties for employment-eligibility violations.

What the Act Prohibits

Specifically, the FAIRNESS Act makes it unlawful for employers to knowingly or intentionally recruit, hire, or continue to employ individuals without legal work authorization. The law does not apply retroactively — it only covers conduct occurring on or after July 1, 2026.

Enforcement and Penalties

The FAIRNESS Act provides the Indiana Attorney General's Office with the authority to investigate employers suspected of violations, issue civil investigative demands (similar to subpoenas), and file civil actions seeking injunctive relief. If a court finds a violation by a preponderance of the evidence, the penalties which a court may exact are graduated:

- **First-time single violation:** Five-business-day suspension of operating authorizations (e.g., licenses, permits, registrations) at the violation location, which may result in a complete shutdown at that site or other significant operational disruptions
- **Multiple first-time violations:** 10-business-day suspension
- **Repeat violations:** 180-day suspension
- **Egregious repeat offenders:** Permanent revocation of all operating authorizations statewide

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Courts may also place employers on probation for six months to two years and require quarterly compliance reports to the Attorney General's Office.

Procedural Safeguard for Employers with a First Violation

Importantly, the FAIRNESS Act includes a procedural safeguard for employers with no prior violations: before filing suit, the Attorney General's Office must provide written notice of a probable cause determination. The employer then has 15 business days to either demonstrate it exercised reasonable diligence in verifying work eligibility or submit a sworn affidavit confirming that it has terminated all unauthorized workers, verified its entire workforce, and will not knowingly employ unauthorized aliens going forward. If the employer takes either step, the Attorney General's Office may not proceed with the action.

Who Is Covered

The FAIRNESS Act's definitions are intentionally broad, extending coverage to every employer operating in Indiana — private companies, not-for-profits, government contractors, and out-of-state employers with workers in Indiana — regardless of size or industry. An "employer" is any person, including an agent, that employs employees in Indiana, and "employ" means to engage services or labor for wages or other remuneration, including to suffer or permit to work. Because these definitions reach beyond traditional W-2 employment relationships, the FAIRNESS Act may also encompass subcontractor and labor-broker arrangements — a point of particular relevance in the construction industry.

Demonstrating Compliance

To avoid potential liability, employers must demonstrate they took reasonable steps to verify work eligibility by using E-Verify or following "industry standard best practices." However, the law does not define what these industry standard best practices are.

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The construction sector is expected to be a primary enforcement target. Indiana's attorney general has already been touring job sites and meeting with unions to prepare for July 1 enforcement.

Steps Employers Should Take Prior to July 1

1. Audit Your Workforce

Confirm I-9 documentation is complete and accurate. Identify any gaps in your verification procedures.

2. Implement or Strengthen Your E-Verify Use

While not mandatory, E-Verify is one recognized method of "reasonable diligence" under the FAIRNESS Act. However, E-Verify is not an automatic safe harbor — the statute specifies that it does not count as reasonable diligence if the circumstances would have put a reasonable person on notice that the verification was unreliable. Ensure that staff are trained to flag and investigate inconsistencies rather than treating E-Verify results as conclusive.

3. Document "Reasonable Diligence"

Because "industry standard best practices" are undefined, employers should maintain written hiring policies, keep detailed records of verification steps, and train HR and hiring managers.

4. Prepare for Possible Investigations

The Indiana Attorney General's Office will rely heavily on:

- Public tips
- Jobsite visits
- Civil investigative demands

Be aware that the Attorney General's Office may investigate violations that occurred at any point within the preceding three years, meaning conduct from as early as July 1, 2026, forward could be scrutinized well after the fact.

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5. Communicate with Your Workforce

Explain the new requirements to supervisors and employees to reduce confusion and ensure consistent compliance.

Anti-Retaliation

The FAIRNESS Act also prohibits employers from retaliating against any employee who reports concerns to or cooperates with the Indiana Attorney General's Office regarding compliance. Employers should ensure that supervisors understand this anti-retaliation protection and that no adverse action is taken against employees who raise immigration-compliance concerns.

For questions or assistance in preparing for the FAIRNESS Act's July 1, 2026, effective date, please contact the authors or any attorney in FBT Gibbons' Labor and Employment or Construction practices.

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