



**FREEMAN FREEMAN &
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**EMPLOYMENT LAW
BULLETIN**

August 19, 2015

*Specializing in
Employment Law and
Business Litigation*

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A New Pitfall for California Employers: Use of the Terms "Alien" and "Illegal"

Although federal law uses the term "alien" in a variety of laws and regulations to refer to individuals who are in the United States but were not born here, this term has been vanquished in California, at least as to public works.

Senate Bill 432 was signed into law on August 10, 2015, and becomes effective January 1, 2016. It repeals sections 1725 and 2015 of the California Labor Code.

Section 1725 defined "alien" as "any person who is not a born or fully naturalized citizen of the United States." Section 2015 addressed the extension of public works during periods of unemployment and gave preference for employment first to California citizens, next to citizens of other states who are in California at the time of the application, and next to "aliens" who are in California at the time of the application.

Labor Code section 1171.5 already extended all employment protections, rights and remedies under state law (except as prohibited by federal law) to individuals regardless of immigration status, and over the past several years California has passed several laws strengthening labor law protections for immigrant workers.

Although the new law, on its face, only deals with the term in the context of public works, it is being heralded as banning the word from California labor laws. The legislator who introduced and championed the bill said that the term "alien" is now commonly considered to be a derogatory term for a foreign-born person and has very negative connotations. Others have described the use of the term as being "racist."

A firestorm also recently started over a Southern California newspaper that used the term "illegal immigrant" in an article. Objectors characterized the term "illegal" as being offensive when paired with "immigrant." In all probability, the newspaper was using this term to avoid using "illegal alien."

Regardless of where one falls on the political spectrum, personal beliefs about the many issues involved in immigration policies, or views of political correctness, the characterization of rather commonly-used terms as "racist" or "offensive" creates problems for employers and a basis for potential liability. The use of these terms in the workplace can clearly hurt feelings and result in interpersonal animosity and workplace friction. It is also likely that employers will start to see the continued use of these terms in the workplace as the basis for charges of harassment and discrimination.

Prudent employers should consider using more neutral terms in the workplace where it is necessary to describe someone who, under federal law, does not have the legal right to work in the United States. Examples of such terms (although the usage is not viewed as entirely



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accurate by many) are "undocumented immigrants," "undocumented workers," "unauthorized immigrants," "unauthorized workers," or "undocumented person."

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