

ASSEMBLY BILL

No. 2751

**Introduced by Committee on Labor and Employment
(Roger Hernández (Chair), Alejo, Chau, Gomez, and Holden)**

March 13, 2014

An act to amend Section 1019 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2751, as introduced, Committee on Labor and Employment. Retaliation: unfair immigration-related practices: suspension of business licenses.

Existing law prohibits an employer or any other person from engaging in, or directing another person to engage in, an unfair immigration-related practice, as defined, against a person for the purpose of, or with the intent of, retaliating against any person for exercising a right protected under state labor and employment laws or under a local ordinance applicable to employees, as specified. Existing law creates a rebuttable presumption that an adverse action taken within 90 days of the exercising of a protected right is committed for the purpose of, or with the intent of, retaliation. Existing law authorizes a civil action by an employee or other person who is the subject of an unfair immigration-related practice. Existing law also authorizes a court to order the appropriate government agencies to suspend certain business licenses held by the violating party for prescribed periods based on the number of violations, and requires the court to consider specified circumstances in determining whether a suspension of all licenses is appropriate.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1019 of the Labor Code is amended to
2 read:

3 1019. (a) It shall be unlawful for an employer or any other
4 person or entity to engage in, or to direct another person or entity
5 to engage in, unfair immigration-related practices against any
6 person for the purpose of, or with the intent of, retaliating against
7 any person for exercising any right protected under this code or
8 by any local ordinance applicable to employees. Exercising a right
9 protected by this code or local ordinance includes, ~~but is not limited~~
10 ~~to~~, the following:

11 (1) Filing a complaint or informing any person of an employer’s
12 or other party’s alleged violation of this code or local ordinance,
13 so long as the complaint or disclosure is made in good faith.

14 (2) Seeking information regarding whether an employer or other
15 party is in compliance with this code or local ordinance.

16 (3) Informing a person of his or her potential rights and remedies
17 under this code or local ordinance, and assisting him or her in
18 asserting those rights.

19 (b) (1) As used in this chapter, “unfair immigration-related
20 practice” means any of the following practices, when undertaken
21 for the retaliatory purposes prohibited by subdivision (a):

22 (A) Requesting more or different documents than are required
23 under Section 1324a(b) of Title 8 of the United States Code, or a
24 refusal to honor documents tendered pursuant to that section that
25 on their face reasonably appear to be genuine.

26 (B) Using the federal E-Verify system to check the employment
27 authorization status of a person at a time or in a manner not
28 required under Section 1324a(b) of Title 8 of the United States
29 Code, or not authorized under any memorandum of understanding
30 governing the use of the federal E-Verify system.

31 (C) Threatening to file or the filing of a false police report.

32 (D) Threatening to contact or contacting immigration authorities.

1 (2) “Unfair immigration-related practice” does not include
2 conduct undertaken at the express and specific direction or request
3 of the federal government.

4 (c) Engaging in an unfair immigration-related practice against
5 a person within 90 days of the person’s exercise of rights protected
6 under this code or local ordinance applicable to employees shall
7 raise a rebuttable presumption of having done so in retaliation for
8 the exercise of those rights.

9 (d) (1) An employee or other person who is the subject of an
10 unfair immigration-related practice prohibited by this section, or
11 a representative of that employee or person, may bring a civil
12 action for equitable relief and any damages or penalties, in
13 accordance with this section.

14 (2) Upon a finding by a court of applicable jurisdiction of a
15 violation this section:

16 (A) For a first violation, the court in its discretion, may order
17 the appropriate government agencies to suspend all licenses subject
18 to this chapter that are held by the violating party for a period of
19 up to 14 days. For the purposes of this paragraph, the licenses that
20 are subject to suspension are all licenses held by the violating party
21 specific to the business location or locations where the unfair
22 immigration-related practice occurred. In determining whether a
23 suspension of all licenses is appropriate, the court shall consider
24 whether the employer knowingly committed an unfair immigration
25 practice, the good faith efforts of the employer to resolve any
26 alleged unfair immigration related practice after receiving notice
27 of the violations, as well as the harm other employees of the
28 employer, or employees of other employers on a multiemployer
29 ~~jobsite~~ *job site*, will suffer as a result of the suspension of all
30 licenses. On receipt of the court’s order and notwithstanding any
31 other law, the appropriate agencies shall suspend the licenses
32 according to the court’s order.

33 (B) For a second violation, the court, in its discretion, may order
34 the appropriate government agencies to suspend all licenses that
35 are held by the violating party specific to the business location or
36 locations where the unfair immigration-related practice occurred,
37 for a period of up to 30 days. In determining whether a suspension
38 of all licenses is appropriate, the court shall consider whether the
39 employer knowingly committed an unfair immigration practice,
40 the good faith efforts of the employer to resolve any alleged unfair

1 immigration related practice after receiving notice of the violations,
 2 as well as the harm other employees of the employer, or employees
 3 of other employers on a multiemployer ~~jobsite~~ *job site*, will suffer
 4 as a result of the suspension of all licenses. On receipt of the court’s
 5 order and notwithstanding any other law, the appropriate agencies
 6 shall immediately suspend the licenses.

7 (C) For a third *or subsequent* violation, ~~or any violation~~
 8 ~~thereafter~~, the court, in its discretion, may order the appropriate
 9 government agencies to suspend for a period of up to 90 days all
 10 licenses that are held by the violating party specific to the business
 11 location or locations where the unfair immigration-related practice
 12 occurred. In determining whether a suspension of all licenses is
 13 appropriate, the court shall consider whether the employer
 14 knowingly committed an unfair immigration practice, the good
 15 faith efforts of the employer to resolve any alleged unfair
 16 immigration related practice after receiving notice of the violations,
 17 as well as the harm other employees of the employer, or employees
 18 of other employers on a multiemployer ~~jobsite~~ *job site*, will suffer
 19 as a result of the suspension of all licenses. On receipt of the court’s
 20 order and notwithstanding any other law, the appropriate agencies
 21 shall immediately suspend the licenses.

22 (3) An employee or other person who is the subject of an unfair
 23 immigration-document practice prohibited by this section, and
 24 who prevails in an action authorized by this section, shall recover
 25 its reasonable attorney’s fees and costs, including any expert
 26 witness costs.

27 (e) As used in this chapter:

28 (1) “License” means any agency permit, certificate, approval,
 29 registration, or charter that is required by law and that is issued by
 30 any agency for the purposes of operating a business in this state.
 31 “License” does not include a professional license.

32 (2) “Violation” means each incident when an unfair immigration
 33 practice was committed, without reference to the number of
 34 employees involved in the incident.