

AMENDED IN SENATE MAY 28, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2751

Introduced by Assembly Member Roger Hernández

March 13, 2014

An act to amend ~~Section 1019~~ Sections 98.6, 1019, and 1024.6 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2751, as amended, Roger Hernández. ~~Retaliation: unfair immigration-related practices: suspension of business licenses.~~ *Retaliation.*

Existing law prohibits an employer from discharging an employee or in any manner discriminating, retaliating, or taking any adverse action against any employee or applicant for employment because the employee or applicant has engaged in protected conduct, as specified. Existing law provides that an employee who made a bona fide complaint, and was consequently discharged or otherwise suffered an adverse action, is entitled to reinstatement and reimbursement for lost wages. Existing law makes it a misdemeanor for an employer to willfully refuse to reinstate or otherwise restore an employee who is determined by a specified procedure to be eligible for reinstatement. Existing law subjects a person who violates these provisions to a civil penalty of up to \$10,000 per violation.

This bill would require the \$10,000 penalty to be awarded to the employee or employees who suffered the violation.

Existing law prohibits an employer or any other person from engaging in, or directing another person to engage in, an unfair immigration-related practice 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 defines unfair immigration-related practice to include, among other things, threatening to file or filing a false police report. 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 for equitable relief and damages or penalties, as specified, 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 include in the definition of unfair immigration-related practice the threatening to file or the filing of a false report or complaint with any state or federal agency. The bill would authorize a civil action for equitable relief and any applicable damages or penalties by an employee or other person who is the subject of an unfair immigration-related practice. The bill would further authorize a court to order, upon application by a party or on its own motion, the appropriate government agencies to suspend certain business licenses held by the violating party for prescribed periods based on the number of violations.

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

Existing law prohibits an employer from discharging an employee or in any manner discriminating, retaliating, or taking any adverse action against an employee because the employee updates or attempts to update his or her personal information, unless the changes are directly related to the skill set, qualifications, or knowledge required for the job.

This bill would prohibit an employer from discharging or in any manner discriminating, retaliating, or taking any adverse action against an employee because the employee updates or attempts to update personal information based on a lawful change of name, social security

number, or federal employment authorization document. The bill would prohibit an employer's compliance with these provisions from serving as the basis for a claim of discrimination, including any disparate treatment claim.

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 98.6 of the Labor Code is amended to
2 read:

3 98.6. (a) A person shall not discharge an employee or in any
4 manner discriminate, retaliate, or take any adverse action against
5 any employee or applicant for employment because the employee
6 or applicant engaged in any conduct delineated in this chapter,
7 including the conduct described in subdivision (k) of Section 96,
8 and Chapter 5 (commencing with Section 1101) of Part 3 of
9 Division 2, or because the employee or applicant for employment
10 has filed a bona fide complaint or claim or instituted or caused to
11 be instituted any proceeding under or relating to his or her rights
12 that are under the jurisdiction of the Labor Commissioner, made
13 a written or oral complaint that he or she is owed unpaid wages,
14 or because the employee has initiated any action or notice pursuant
15 to Section 2699, or has testified or is about to testify in a
16 proceeding pursuant to that section, or because of the exercise by
17 the employee or applicant for employment on behalf of himself,
18 herself, or others of any rights afforded him or her.

19 (b) (1) Any employee who is discharged, threatened with
20 discharge, demoted, suspended, retaliated against, subjected to an
21 adverse action, or in any other manner discriminated against in
22 the terms and conditions of his or her employment because the
23 employee engaged in any conduct delineated in this chapter,
24 including the conduct described in subdivision (k) of Section 96,
25 and Chapter 5 (commencing with Section 1101) of Part 3 of
26 Division 2, or because the employee has made a bona fide
27 complaint or claim to the division pursuant to this part, or because
28 the employee has initiated any action or notice pursuant to Section
29 2699 shall be entitled to reinstatement and reimbursement for lost
30 wages and work benefits caused by those acts of the employer.

1 (2) An employer who willfully refuses to hire, promote, or
2 otherwise restore an employee or former employee who has been
3 determined to be eligible for rehiring or promotion by a grievance
4 procedure, arbitration, or hearing authorized by law, is guilty of a
5 misdemeanor.

6 (3) In addition to other remedies available, an employer who
7 violates this section is liable for a civil penalty not exceeding ten
8 thousand dollars (\$10,000) per employee for each violation of this
9 ~~section~~. *section, to be awarded to the employee or employees who*
10 *suffered the violation.*

11 (c) (1) Any applicant for employment who is refused
12 employment, who is not selected for a training program leading
13 to employment, or who in any other manner is discriminated
14 against in the terms and conditions of any offer of employment
15 because the applicant engaged in any conduct delineated in this
16 chapter, including the conduct described in subdivision (k) of
17 Section 96, and Chapter 5 (commencing with Section 1101) of
18 Part 3 of Division 2, or because the applicant has made a bona fide
19 complaint or claim to the division pursuant to this part, or because
20 the employee has initiated any action or notice pursuant to Section
21 2699 shall be entitled to employment and reimbursement for lost
22 wages and work benefits caused by the acts of the prospective
23 employer.

24 (2) This subdivision shall not be construed to invalidate any
25 collective bargaining agreement that requires an applicant for a
26 position that is subject to the collective bargaining agreement to
27 sign a contract that protects either or both of the following as
28 specified in subparagraphs (A) and (B), nor shall this subdivision
29 be construed to invalidate any employer requirement of an
30 applicant for a position that is not subject to a collective bargaining
31 agreement to sign an employment contract that protects either or
32 both of the following:

33 (A) An employer against any conduct that is actually in direct
34 conflict with the essential enterprise-related interests of the
35 employer and where breach of that contract would actually
36 constitute a material and substantial disruption of the employer's
37 operation.

38 (B) A firefighter against any disease that is presumed to arise
39 in the course and scope of employment, by limiting his or her
40 consumption of tobacco products on and off the job.

1 (d) The provisions of this section creating new actions or
2 remedies that are effective on January 1, 2002, to employees or
3 applicants for employment do not apply to any state or local law
4 enforcement agency, any religious association or corporation
5 specified in subdivision (d) of Section 12926 of the Government
6 Code, except as provided in Section 12926.2 of the Government
7 Code, or any person described in Section 1070 of the Evidence
8 Code.

9 **SECTION 1.**

10 *SEC. 2.* Section 1019 of the Labor Code is amended to read:

11 1019. (a) It shall be unlawful for an employer or any other
12 person or entity to engage in, or to direct another person or entity
13 to engage in, unfair immigration-related practices against any
14 person for the purpose of, or with the intent of, retaliating against
15 any person for exercising any right protected under this code or
16 by any local ordinance applicable to employees. Exercising a right
17 protected by this code or local ordinance includes the following:

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

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

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

26 (b) (1) As used in this chapter, "unfair immigration-related
27 practice" means any of the following practices, when undertaken
28 for the retaliatory purposes prohibited by subdivision (a):

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

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

38 (C) Threatening to file or the filing of a false police report, or
39 a false report or complaint with any state or federal agency.

40 (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 applicable damages or penalties.

13 (2) Upon a finding by a court of applicable jurisdiction of a
14 violation this section, upon application by a party or on its own
15 motion, a court may do the following:

16 (A) For a first violation, order the appropriate government
17 agencies to suspend all licenses that are held by the violating party
18 for a period of up to 14 days. On receipt of the court’s order and
19 notwithstanding any other law, the appropriate agencies shall
20 suspend the licenses according to the court’s order.

21 (B) For a second violation, order the appropriate government
22 agencies to suspend all licenses that are held by the violating party
23 for a period of up to 30 days. On receipt of the court’s order and
24 notwithstanding any other law, the appropriate agencies shall
25 immediately suspend the licenses.

26 (C) For a third or subsequent violation, order the appropriate
27 government agencies to suspend for a period of up to 90 days all
28 licenses that are held by the violating party. On receipt of the
29 court’s order and notwithstanding any other law, the appropriate
30 agencies shall immediately suspend the licenses.

31 (3) In determining whether a suspension of all licenses is
32 appropriate under this subdivision, the court shall consider whether
33 the employer knowingly committed an unfair immigration-related
34 practice, the good faith efforts of the employer to resolve any
35 alleged unfair immigration-related practice after receiving notice
36 of the violations, as well as the harm other employees of the
37 employer, or employees of other employers on a multiemployer
38 job site, will suffer as a result of the suspension of all licenses.

39 (4) An employee or other person who is the subject of an unfair
40 immigration-related practice prohibited by this section, and who

1 prevails in an action authorized by this section, shall recover his
2 or her reasonable attorney’s fees and costs, including any expert
3 witness costs.

4 (e) As used in this chapter:

5 (1) “License” means any agency permit, certificate, approval,
6 registration, or charter that is required by law and that is issued by
7 any agency for the purposes of operating a business in this state
8 and that is specific to the business location or locations where the
9 unfair immigration-related practice occurred. “License” does not
10 include a professional license.

11 (2) “Violation” means each incident when an unfair
12 immigration-related practice was committed, without reference to
13 the number of employees involved in the incident.

14 *SEC. 3. Section 1024.6 of the Labor Code is amended to read:*

15 1024.6. An employer may not discharge an employee or in any
16 manner discriminate, retaliate, or take any adverse action against
17 an employee because the employee updates or attempts to update
18 his or her personal information, ~~unless the changes are directly~~
19 ~~related to the skill set, qualifications, or knowledge required for~~
20 ~~the job.~~ *information based on a lawful change of name, social*
21 *security number, or federal employment authorization document.*
22 *An employer’s compliance with this section shall not serve as the*
23 *basis for a claim of discrimination, including any disparate*
24 *treatment claim.*