



Rep. Lilian Jiménez

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10300HB5071ham001

LRB103 39402 SPS 71815 a

1 AMENDMENT TO HOUSE BILL 5071

2 AMENDMENT NO. _____. Amend House Bill 5071 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the Work
5 Without Fear Act.

6 Section 5. Legislative findings. The General Assembly
7 finds as follows:

8 (1) Wage theft is a serious and widespread problem
9 that causes severe hardship to low-wage workers, their
10 families, and their communities.

11 (2) When a worker is denied wages or is forced to work
12 "off the clock", there is an immediate and irreparable
13 harm to the worker and his or her family.

14 (3) Low-wage, often immigrant, workers are among the
15 most frequent victims of wage theft and are also exposed
16 to the greatest hazards at work.

1 (4) Immigrant workers are among those most frequently
2 injured or killed on the job.

3 (5) Workers who come forward to expose unfair, unsafe,
4 or illegal conditions face retaliation from employers with
5 alarming frequency. When those workers are immigrants,
6 employer retaliation often involves threats or efforts to
7 contact law enforcement agencies, including immigration
8 enforcement agencies, if a worker engages in protected
9 conduct.

10 (6) No applicant or employee should have to fear
11 adverse action, whether it involves threats to cut hours,
12 move a worker to an undesirable schedule, or contact law
13 enforcement agencies, for exercising employment rights
14 guaranteed by the State of Illinois.

15 (7) It is in the public policy interest of the State of
16 Illinois that workers be able to report concerns to their
17 employers and to Illinois labor enforcement agencies
18 without fear of retaliation or discrimination.

19 (8) It is in the public policy interest of the State of
20 Illinois for workers to be willing to come forward to
21 expose hazardous, unsafe, and unfair conditions at their
22 work sites so that local, State, and federal agencies can
23 effectively enforce the law.

24 (9) It is essential to the enforcement of Illinois'
25 labor laws that broad, clear, and effective protections
26 from all forms of employer retaliation, including

1 prohibiting immigration-related threats, exist for workers
2 engaging in conduct protected by law.

3 Section 10. Definitions. As used in this Act:

4 "Applicable employment laws" means the Illinois Wage
5 Payment and Collection Act, the Prevailing Wage Act, the
6 Minimum Wage Law, the Day and Temporary Labor Services Act,
7 the Equal Pay Act of 2003, the One Day Rest in Seven Act, the
8 Victims' Economic Security and Safety Act, the Employee Sick
9 Leave Act, the Child Labor Law, the Employee Classification
10 Act, the Domestic Workers Bill of Rights, the Right to Privacy
11 in the Workplace Act, the Illinois Worker Adjustment and
12 Retraining Notification Act, the Family Bereavement Leave Act,
13 the Job Opportunities for Qualified Applicants Act, the Paid
14 Leave for All Workers Act, the Personnel Record Review Act,
15 and any new Act concerning employment rights that the
16 Department of Labor maintains jurisdiction to enforce.

17 "Applicant" means any person pursuing employment with an
18 employer or with or through an employment agency or a day and
19 temporary labor service agency.

20 "Department" means the Department of Labor.

21 "Director" means the Director of Labor.

22 "Employer" means an individual, sole proprietorship,
23 partnership, firm, association, corporation, limited liability
24 company, business trust, and any other entity that has one or
25 more employees in this State or any person or group of persons

1 acting directly or indirectly in the interest of an employer
2 in relation to an employee.

3 "Employee" means any individual permitted to work by an
4 employer in an occupation, but shall not include any
5 individual:

6 (1) who has been and will continue to be free from
7 control and direction over the performance of his or her
8 work, both under a contract of service with the employer
9 and in fact;

10 (2) who performs a service that is outside the usual
11 course of services performed by the employer; and

12 (3) who is in an independently established trade,
13 occupation, profession, or business.

14 "Employee" includes a worker who an employer incorrectly
15 classifies as an independent contractor.

16 "Family or household member" means a spouse or party to a
17 civil union, parent, grandparent, child, grandchild, sibling,
18 or any other person related by blood or by present or prior
19 marriage or civil union, any other person who shares a
20 relationship through a child, or any other individual whose
21 close association with the applicant, employee, or independent
22 contractor is the equivalent of a family relationship as
23 determined by the applicant, employee, independent contractor,
24 or persons jointly residing in the same household.

25 "Immigration-related retaliation" means any of the
26 following practices, when undertaken for a retaliatory

1 purpose:

2 (1) contacting or threatening to contact United States
3 immigration authorities, or otherwise reporting or
4 threatening to report a person's or employee's suspected
5 citizenship or immigration status or the suspected
6 citizenship or immigration status of a family or household
7 member of the person or employee to a federal, State, or
8 local agency;

9 (2) using the federal E-Verify system to check the
10 employment authorization status of a person at a time or
11 in a manner not required under 8 U.S.C. 1324a(b) or not
12 authorized under any memorandum of understanding governing
13 the use of the federal E-Verify system;

14 (3) engaging in unfair documentary practices by
15 demanding more or different documents than necessary,
16 requesting specific documents, or rejecting reasonably
17 genuine-looking documents while verifying a worker's
18 citizenship, immigration status, or national origin, as
19 described in 8 U.S.C. 1324b(a)(6); and

20 (4) filing or threatening to file a false police
21 report.

22 "Immigration-related retaliation" does not include conduct
23 undertaken at the express and specific direction or request of
24 the federal government.

25 "Person" means every natural person, firm, partnership,
26 copartnership, limited liability company, corporation,

1 association, business trust, or other legal entity, or its
2 legal representatives, agents, or assignees.

3 "Violation" means each incident of immigration-related
4 retaliation with respect to each of applicant, employee, and
5 independent contractors against whom immigration-related
6 retaliation was taken.

7 Section 15. Prohibited immigration-related retaliation.

8 (a) Notwithstanding any other provision of law, it shall
9 be unlawful for an employer or any other person or entity to
10 engage in, or to direct another person or entity to engage in,
11 immigration-related retaliation against any applicant,
12 employee, independent contractor, or his or her family member
13 or household member for the purpose of, or with the effect of,
14 retaliating against any applicant, employee, or independent
15 contractor who in good faith:

16 (1) files a complaint or informs any person of an
17 employer's or other party's alleged violation of an
18 applicable employment law;

19 (2) seeks information regarding whether an employer or
20 other party is in compliance with an applicable employment
21 law;

22 (3) informs a person of his or her potential rights
23 and remedies under an applicable employment law or assists
24 them in asserting those rights;

25 (4) files a complaint, seeks information, informs any

1 person of an employer's or third-party's alleged violation
2 of rights, or informs a person of his or her rights
3 concerning conduct prohibited by Section 2-101 of the
4 Illinois Human Rights Act;

5 (5) has exercised his or her rights protected by an
6 applicable employment law in any former employment; or

7 (6) discloses or threatens to disclose that an
8 activity, policy, or practice of the employer poses a
9 substantial and specific danger to public health or
10 safety.

11 (b) Engaging in immigration-related retaliation against a
12 person within 90 days after the person's exercise of rights
13 protected under this Act shall raise a rebuttable presumption
14 of having done so in retaliation for the exercise of those
15 rights. The presumption of an unfair immigration-related
16 action taken by an employer or other entity may be rebutted by
17 clear and convincing evidence that the action was taken for a
18 lawful purpose.

19 Section 20. Enforcement by Department.

20 (a) It shall be the duty of the Department to inquire
21 diligently into any alleged violations of this Act, to
22 institute the actions for the penalties provided in this
23 Section, and to enforce the provisions of this Act.

24 (1) An applicant or employee may file a complaint with
25 the Department alleging a violation of this Act, except

1 for a violation of paragraph (4) of subsection (a) of
2 Section 15, by submitting a signed, completed complaint on
3 the form provided by the Department alleging
4 immigration-related retaliation and by submitting copies
5 of all supporting documentation. Complaints shall be filed
6 within one year after the date of the retaliation.

7 (2) Complaints shall be reviewed by the Department to
8 determine whether there is cause for investigation.

9 (b) The Department shall have the following powers to
10 enforce this Act:

11 (1) Investigate and attempt equitably to adjust
12 controversies between applicants or employees and
13 employers regarding claims of immigration-related
14 retaliation under this Act, including administering oaths,
15 subpoenaing and examining witnesses, issuing subpoenas
16 duces tecum requiring the production of books, papers,
17 records, and documents as may be evidence of any matter
18 under inquiry, and examining and inspecting the books,
19 papers, records, and documents as may relate to the
20 question in dispute. Service of subpoenas shall be made by
21 any sheriff or any person. Any court in this State, upon
22 the application of the Department, may compel attendance
23 of witnesses, the production of books and papers, and the
24 giving of testimony before the Department by attachment
25 for contempt or in any other way as the production of
26 evidence may be compelled before the court.

1 (2) Take complaints of immigration-related retaliation
2 in the name of the Director and his or her successors in
3 office and prosecute actions for the collection of
4 remedies and penalties for immigration-related retaliation
5 for persons financially unable to prosecute the claims
6 when in the judgment of the Department the claims are
7 valid and enforceable in the courts. No court costs or any
8 fees for necessary process and proceedings shall be
9 payable in advance by the Department for prosecuting the
10 actions. If there is a judgment rendered against the
11 defendant, the court shall assess as part of the judgment
12 the costs of the proceeding. Upon collection of the
13 judgment, the Department shall pay from the proceeds of
14 the judgment the costs to the person who is by law entitled
15 to compensation. The Department may join in a single
16 proceeding any number of immigration-related retaliation
17 claims against the same employer, but the court shall have
18 discretionary power to order a severance or separate trial
19 for hearings.

20 (3) Make complaint in any court of competent
21 jurisdiction of violations of this Act.

22 In addition to these powers, the Department may establish
23 an administrative procedure to adjudicate claims and to issue
24 final and binding administrative decisions on claims subject
25 to the Administrative Review Law. To establish the procedure,
26 the Director or the Director's authorized representative may

1 adopt rules. The adoption, amendment, or rescission of rules
2 for the procedure shall be in conformity with the requirements
3 of the Illinois Administrative Procedure Act. If a final and
4 binding administrative decision issued by the Department
5 requires an employer or other party to pay wages, penalties,
6 or other amounts in connection with an immigration-related
7 retaliation claim, and the employer or other party has
8 neither: (i) made the required payment within 35 days after
9 the issuance of the final and binding administrative decision;
10 nor (ii) timely filed a complaint seeking review of the final
11 and binding administrative decision pursuant to the
12 Administrative Review Law in a court of competent
13 jurisdiction, the Department may file a verified petition
14 against the employer or other party to enforce the final
15 administrative decision and to collect any amounts due in
16 connection therewith in the circuit court of any county where
17 an official office of the Department is located.

18 Section 25. Enforcement by Attorney General.

19 (a) Whenever the Attorney General has reasonable cause to
20 believe that any employer, putative employer, or person acting
21 on behalf of an employer has violated this Act, the Attorney
22 General may, pursuant to the authority in Section 6.3 of the
23 Attorney General Act, initiate or intervene in a civil action
24 in the name of the People of the State in any circuit court to
25 obtain appropriate relief.

1 (b) Before initiating or intervening in an action, the
2 Attorney General may, pursuant to the authority in Section 6.3
3 of the Attorney General Act, conduct an investigation and may:

4 (1) require any individual to file a statement or
5 report in writing under oath or otherwise as to all
6 information the Attorney General may consider necessary;

7 (2) examine under oath any individual alleged to have
8 participated in or with knowledge of the alleged
9 violation; or

10 (3) issue subpoenas or conduct hearings in aid of any
11 investigation.

12 (c) Whenever a party refuses to produce a document, answer
13 an interrogatory, or provide testimony under oath in response
14 to a subpoena from the Attorney General, the Attorney General,
15 pursuant to the authority in Section 6.3 of the Attorney
16 General Act, may petition the circuit court for an order
17 compelling compliance.

18 Section 30. Private right of action. Nothing in this Act
19 shall be construed to prevent any applicant, employee,
20 putative employee, or independent contractor from making
21 complaint or prosecuting his or her own claim for damages
22 caused by immigration-related retaliation. Any applicant,
23 employee, putative employee, or independent contractor
24 aggrieved by an actual or suspected violation of this Act or
25 any rule adopted under this Act may, within 2 years after the

1 date of the retaliation, file suit in circuit court, in the
2 county where the alleged violation occurred or where any
3 person who is party to the action resides, or in the Court of
4 Claims for any action filed against the State, without regard
5 to exhaustion of any alternative administrative remedies
6 provided in this Act. Actions may be brought by one or more
7 applicants, employees, or independent contractors for and on
8 behalf of themselves and other persons similarly situated.

9 Section 35. Remedies and penalties.

10 (a) An applicant, employee, or other person who is the
11 subject of an immigration-related retaliation prohibited by
12 this Act, or a representative of that applicant, employee, or
13 person, may bring a civil action for any one or more of the
14 following remedies:

15 (1) back pay, with interest, and front pay, or, in
16 lieu of actual damages, at the employee's election,
17 liquidated damages of \$30,000;

18 (2) a civil penalty in an amount not to exceed
19 \$10,000, payable to the applicant, employee, or
20 independent contractor;

21 (3) reasonable attorney's fees and court costs,
22 including any expert witness costs; and

23 (4) equitable relief as the court may deem appropriate
24 and just.

25 An action under this Act shall not limit or otherwise

1 affect the applicability of other rights and remedies under an
2 applicable employment law or under the Whistleblower Act.

3 (b) An employer that violates any provision of this Act
4 shall be subject to an additional civil penalty in an amount of
5 \$25,000 for each violation of Section 15 and \$50,000 for each
6 repeat violation of Section 15 within a 5-year period.

7 The penalty amount may be recovered in any administrative
8 proceeding by the Department or a civil action filed in any
9 circuit court by the Director or the Attorney General. All
10 moneys received by the Department as fees and civil penalties
11 under this Act shall be used by the Department for
12 administration, investigation, and other expenses incurred in
13 carrying out its powers and duties under this Act.

14 In any civil action brought by the Attorney General, the
15 penalty amount shall be deposited into the Attorney General
16 Court Ordered and Voluntary Compliance Payment Projects Fund.
17 Moneys in the Fund shall be used for the performance of any
18 function pertaining to the exercise of the duties of the
19 Attorney General, including, but not limited to, enforcement
20 of any law of this State and conducting public education
21 programs. However, any moneys in the Fund that are required by
22 the court or by an agreement to be used for a particular
23 purpose shall be used for that purpose. Any uncollected
24 penalty amount shall be subject to the provisions of the
25 Illinois State Collection Act of 1986.

26 (c) An applicant, employee, or other person who is the

1 subject of immigration-related retaliation prohibited by this
2 Section, and who prevails in an action authorized by this
3 Section, shall recover its reasonable attorney's fees and
4 costs, including any expert witness costs.

5 Section 40. Administration. The Director or the Director's
6 authorized representatives shall administer and enforce the
7 provisions of this Act. In order to accomplish the objectives
8 of this Act and to carry out the duties prescribed by this Act,
9 the Director or the Director's authorized representatives
10 shall, within one year after the effective date of this Act,
11 adopt rules necessary to administer and enforce the provisions
12 of this Act, including the procedures that shall be followed
13 for investigations and hearings under Section 20, in
14 accordance with the Illinois Administrative Procedure Act.

15 Section 99. Effective date. This Act takes effect January
16 1, 2025."