



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5071

Introduced 2/8/2024, by Rep. Lilian Jiménez

SYNOPSIS AS INTRODUCED:

New Act

Creates the Work Without Fear Act. Provides that it is unlawful for any person to engage in, or to direct another person to engage in, immigration-related retaliation against any person or his or her family member or household member for the purpose of, or with the effect of, retaliating against any person for exercising any right protected under State employment laws or by any local employment ordinance. Sets forth the duties and powers of the Department of Labor under the Act. Allows the Attorney General to initiate or intervene in a civil action to obtain appropriate relief if the Attorney General has reasonable cause to believe that any person has violated the Act. Provides that nothing in the Act shall be construed to prevent any person from making complaint or prosecuting his or her own claim for damages caused by retaliation. Allows a person who is the subject of retaliation prohibited by the Act to bring a civil action for: (1) back pay, with interest, and front pay, or, in lieu of actual damages, liquidated damages of \$30,000; (2) a civil penalty in an amount not to exceed \$10,000; (3) reasonable attorney's fees and court costs; and (4) equitable relief as the court may deem appropriate and just. Provides that a person that violates any provision of the Act shall be subject to an additional civil penalty in an amount of \$25,000 for each violation, or \$50,000 for each repeat violation within a 5-year period. Sets forth license suspension penalties for violations of the Act. Effective January 1, 2025.

LRB103 39402 SPS 69583 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

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.

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

19 (5) Workers who come forward to expose unfair, unsafe,
20 or illegal conditions face retaliation from employers with
21 alarming frequency. When those workers are immigrants,
22 employer retaliation often involves threats or efforts to
23 contact law enforcement agencies, including immigration

1 enforcement agencies, if a worker engages in protected
2 conduct.

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

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

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

17 (9) It is essential to the enforcement of Illinois'
18 labor laws that broad, clear, and effective protections
19 from all forms of employer retaliation, including
20 prohibiting immigration-related threats, exist for workers
21 engaging in conduct protected by law.

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

23 "Applicable employment laws" means the Wage Payment and
24 Collection Act, the Prevailing Wage Act, the Minimum Wage Law,
25 the Day and Temporary Labor Services Act, the Equal Pay Act of

1 2003, the Workers Compensation Act, the One Day Rest in Seven
2 Act, the Victims' Economic Security and Safety Act, the
3 Employee Sick Leave Act, the Child Labor Law, the Collective
4 Bargaining Freedom Act, the Employee Classification Act, the
5 Domestic Workers Bill of Rights, the Right to Privacy in the
6 Workplace Act, the Illinois Worker Adjustment and Retraining
7 Notification Act, the Family Bereavement Act, the Job
8 Opportunities for Qualified Applicants Act, the Paid Leave for
9 All Workers Act, the Personnel Record Review Act, and any new
10 Act concerning employment rights.

11 "Applicant" means any person pursuing employment with an
12 employer or with or through an employment agency or a day and
13 temporary labor service agency.

14 "Department" means the Department of Labor.

15 "Director" means the Director of Labor.

16 "Employer" means an individual, sole proprietorship,
17 partnership, firm, association, corporation, limited liability
18 company, business trust, and any other entity that has one or
19 more employees in this State or any person or group of persons
20 acting directly or indirectly in the interest of an employer
21 in relation to an employee.

22 "Employee" means any individual permitted to work by an
23 employer in an occupation, but shall not include any
24 individual:

25 (1) who has been and will continue to be free from
26 control and direction over the performance of his or her

1 work, both under a contract of service with the employer
2 and in fact;

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

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

7 "Family or household member" means a spouse or party to a
8 civil union, parent, grandparent, child, grandchild, sibling,
9 or any other person related by blood or by present or prior
10 marriage or civil union, any other person who shares a
11 relationship through a child, or any other individual whose
12 close association with the applicant, employee, or independent
13 contractor is the equivalent of a family relationship as
14 determined by the applicant, employee, independent contractor,
15 or persons jointly residing in the same household.

16 "Immigration-related retaliation" means any of the
17 following practices, when undertaken for a retaliatory
18 purpose:

19 (1) contacting or threatening to contact United States
20 immigration authorities, or otherwise reporting or
21 threatening to report a person's or employee's suspected
22 citizenship or immigration status or the suspected
23 citizenship or immigration status of a family or household
24 member of the person or employee to a federal, State, or
25 local agency;

26 (2) using the federal E-Verify system to check the

1 employment authorization status of a person at a time or
2 in a manner not required under 8 U.S.C. 1324a(b) or not
3 authorized under any memorandum of understanding governing
4 the use of the federal E-Verify system;

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

11 (4) filing or threatening to file a false police
12 report.

13 "Immigration-related retaliation" does not include conduct
14 undertaken at the express and specific direction or request of
15 the federal government.

16 "License" means any agency permit, certificate, approval,
17 registration, or charter that is required by law and that is
18 issued by any agency for the purposes of operating a business
19 in this State. "License" does not include a professional
20 license.

21 "Person" means every natural person, firm, partnership,
22 copartnership, limited liability company, corporation,
23 association, business trust, or other legal entity, or its
24 legal representatives, agents, or assignees.

25 "Violation" means each incident when an act of
26 immigration-related retaliation was committed, without

1 reference to the number of applicants, employees, or
2 independent contractors involved in the incident.

3 Section 15. Prohibited immigration-related retaliation.

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

12 (1) files a complaint or informs any person of an
13 employer's or other party's alleged violation of an
14 applicable employment law;

15 (2) seeks information regarding whether an employer or
16 other party is in compliance with an applicable employment
17 law;

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

21 (4) files a complaint, seeks information, or informs a
22 person of his or her rights concerning conduct prohibited
23 by Section 2-101 of the Illinois Human Rights Act;

24 (5) has exercised his or her rights protected by an
25 applicable employment law or local ordinance in any former

1 employment; or

2 (6) discloses or threatens to disclose that an
3 activity, policy, or practice of the employer poses a
4 substantial and specific danger to public health or
5 safety.

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

14 Section 20. Enforcement by Department.

15 (a) It shall be the duty of the Department to inquire
16 diligently into any alleged violations of this Act, to
17 institute the actions for the penalties provided in this
18 Section, and to enforce the provisions of this Act.

19 (1) An applicant, employee, or independent contractor
20 may file a complaint with the Department alleging
21 violations of this Act by submitting a signed, completed
22 complaint on the form provided by the Department alleging
23 immigration-related retaliation and by submitting copies
24 of all supporting documentation. Complaints shall be filed
25 within one year after the date of the retaliation.

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

3 (b) The Department shall have the following powers to
4 enforce this Act:

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

21 (2) Take complaints of immigration-related retaliation
22 in the name of the Director and his or her successors in
23 office and prosecute actions for the collection of
24 remedies and penalties for immigration-related retaliation
25 for persons financially unable to prosecute the claims
26 when in the judgment of the Department the claims are

1 valid and enforceable in the courts. No court costs or any
2 fees for necessary process and proceedings shall be
3 payable in advance by the Department for prosecuting the
4 actions. If there is a judgment rendered against the
5 defendant, the court shall assess as part of the judgment
6 the costs of the proceeding. Upon collection of the
7 judgment, the Department shall pay from the proceeds of
8 the judgment the costs to the person who is by law entitled
9 to compensation. The Department may join in a single
10 proceeding any number of immigration-related retaliation
11 claims against the same employer, but the court shall have
12 discretionary power to order a severance or separate trial
13 for hearings.

14 (3) Make complaint in any court of competent
15 jurisdiction of violations of this Act.

16 (4) Order the appropriate government agency to suspend
17 licenses held by violating parties.

18 In addition to these powers, the Department may establish
19 an administrative procedure to adjudicate claims and to issue
20 final and binding administrative decisions on claims subject
21 to the Administrative Review Law. To establish the procedure,
22 the Director or the Director's authorized representative may
23 adopt rules. The adoption, amendment, or rescission of rules
24 for the procedure shall be in conformity with the requirements
25 of the Illinois Administrative Procedure Act. If a final and
26 binding administrative decision issued by the Department

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

14 Section 25. Enforcement by Attorney General.

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

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

25 (1) require any individual to file a statement or

1 report in writing under oath or otherwise as to all
2 information the Attorney General may consider necessary;

3 (2) examine under oath any individual alleged to have
4 participated in or with knowledge of the alleged
5 violation; or

6 (3) issue subpoenas or conduct hearings in aid of any
7 investigation.

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

14 Section 30. Private right of action. Nothing in this Act
15 shall be construed to prevent any applicant, employee,
16 putative employee, or independent contractor from making
17 complaint or prosecuting his or her own claim for damages
18 caused by immigration-related retaliation. Any applicant,
19 employee, putative employee, or independent contractor
20 aggrieved by an actual or suspected violation of this Act or
21 any rule adopted under this Act may, within 2 years after the
22 date of the retaliation, file suit in circuit court, in the
23 county where the alleged violation occurred or where any
24 person who is party to the action resides, without regard to
25 exhaustion of any alternative administrative remedies provided

1 in this Act. Actions may be brought by one or more applicants,
2 employees, or independent contractors for and on behalf of
3 themselves and other persons similarly situated.

4 Section 35. Remedies and penalties.

5 (a) An applicant, employee, or other person who is the
6 subject of an immigration-related retaliation prohibited by
7 this Act, or a representative of that applicant, employee, or
8 person, may bring a civil action for any one or more of the
9 following remedies:

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

13 (2) a civil penalty in an amount not to exceed
14 \$10,000, payable to the applicant, employee, or
15 independent contractor;

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

18 (4) equitable relief as the court may deem appropriate
19 and just.

20 An action under this Act shall not limit or otherwise
21 affect the applicability of other rights and remedies under an
22 applicable employment law or under the Whistleblower Act.

23 (b) An employer that violates any provision of this Act
24 shall be subject to an additional civil penalty in an amount of
25 \$25,000 for each violation of Section 10 and \$50,000 for each

1 repeat violation of Section 10 within a 5-year period.

2 The penalty amount may be recovered in any administrative
3 proceeding by the Department or a civil action filed in any
4 circuit court by the Director or the Attorney General. All
5 moneys received by the Department as fees and civil penalties
6 under this Act shall be deposited into the Child Labor and Day
7 and Temporary Labor Services Enforcement Fund and shall be
8 used by the Department for administration, investigation, and
9 other expenses incurred in carrying out its powers and duties
10 under this Act.

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

23 (c) Upon a finding by a court of applicable jurisdiction
24 of a violation of this Act:

25 (1) For a first violation, the court may order the
26 appropriate government agencies to suspend all licenses

1 subject to this Act that are held by the violating party
2 for a period of up to 14 days. On receipt of the court's
3 order and notwithstanding any other law, the appropriate
4 agencies shall immediately suspend the licenses.

5 (2) For a second violation, the court may order the
6 appropriate government agencies to suspend all licenses
7 subject to this Act that are held by the violating party
8 for a period of up to 30 days. On receipt of the court's
9 order and notwithstanding any other law, the appropriate
10 agencies shall immediately suspend the licenses.

11 (3) For a third violation and any violation
12 thereafter, the court may order the appropriate government
13 agencies to suspend all licenses subject to this Act that
14 are held by the violating party for a period of up to 90
15 days. On receipt of the court's order and notwithstanding
16 any other law, the appropriate agencies shall immediately
17 suspend the licenses.

18 For the purposes of this subsection, the licenses that are
19 subject to suspension are all licenses held by the violating
20 party specific to the business location or locations where the
21 immigration-related retaliation occurred. In determining
22 whether a suspension of all licenses is appropriate, the court
23 shall consider whether the employer knowingly committed
24 immigration-related retaliation, the good faith efforts of the
25 employer to resolve any alleged immigration-related
26 retaliation after receiving notice of the violations, and the

1 harm other applicants, employees, or independent contractors
2 of the employer, or applicants, employees, or independent
3 contractors of other employers on a multi-employer job site,
4 will suffer as a result of the suspension of all licenses.

5 (d) An applicant, employee, or other person who is the
6 subject of immigration-related retaliation prohibited by this
7 Section, and who prevails in an action authorized by this
8 Section, shall recover its reasonable attorney's fees and
9 costs, including any expert witness costs.

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

20 Section 99. Effective date. This Act takes effect January
21 1, 2025.