

# How States and Localities Can Strengthen Workplace Protections for Immigrant Workers

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## Summary

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States and localities have the power to enact policies to increase workplace protections for immigrant workers and fortify workplace rights from the negative impacts of immigration enforcement. Enacting these policies brings us closer to a good-jobs economy, in which all workers have the power to assert their rights and shape their working conditions. This is more important than ever given the current federal administration's egregious immigration enforcement targeting workers of color in underpaid industries.

Worker leaders, organizers, and other advocates across the U.S. are already leading many such policy campaigns. This issue brief aims to support these efforts and provide ideas for advocates in other states and localities that want to consider similar workplace policies. These broad recommendations, most of which have been successfully adopted in jurisdictions across the country, are meant to serve as a starting point; each would need to be tailored to respond to local workers' demands and to fit within any applicable federal and, for local policies, state legal limitations. Depending on the jurisdiction and provision at issue, these recommendations could be implemented through administrative or legislative action.

## Key Recommendations

- Provide robust protections against immigration-related retaliation and preemptive threats.
- Create workplace protections related to worksite immigration enforcement.
- Invest in increasing workers' and employers' knowledge about their constitutional rights.
- Ensure immigrant workers can assert their rights at labor and employment agencies and in court.
- Provide strong enforcement mechanisms and remedies for rights violations.

## Recommendations

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### 1. Provide Robust Protections Against Immigration-Related Retaliation & Preemptive Threats.

**The problem:** Employers often leverage immigration status against immigrant workers—including those with work authorization—to retaliate against them when they assert their workplace rights. Employers also at times preemptively threaten workers with immigration consequences, even when workers have not made any complaint or otherwise asserted their workplace rights. Both types of employer conduct create a significant chilling effect that benefits exploitative employers, erodes labor standards for all workers, and prevents states and localities from enforcing workplace laws. The current administration's egregious immigration enforcement practices are only making this worse.

#### What states and localities can do:

- Explicitly prohibit employers from engaging in immigration-related retaliation against workers for exercising their rights under any and all state or local workplace laws. Although generally applicable retaliation laws should apply to this, adding protections that clearly define and prohibit immigration-related retaliation make these protections easier to enforce and more effective at deterring this type of behavior. Define immigration-related retaliation to include actions such as, but not limited to:
  - threats to report or actual reports of workers or their family members to immigration authorities or other law enforcement, regardless of workers' actual immigration status;
  - retaliatory employer Form I-9 self-audits;
  - retaliatory verification or reverification of work authorization;
  - retaliatory use of E-Verify.
- Create a rebuttable presumption that any of the above adverse actions taken by an employer within 90 days of a worker exercising their rights is retaliatory absent clear and convincing evidence to the contrary.
- Prohibit employers from firing or otherwise retaliating against workers because they update their Social Security number or other personal information.
- Prohibit employers from preemptively using threats of immigration enforcement for the purpose of chilling workers from exercising their workplace rights in the future.
- For states: prohibit localities from requiring employers to participate in E-Verify. (Given applicable laws, this is *not* a recommendation to prohibit employers from participating in E-Verify.)
- See [Recommendation 5](#) for related enforcement and remedies recommendations.

## **2. Create Workplace Protections Related to Worksite Immigration Enforcement.**

**The problem:** Worksite immigration enforcement severely undermines labor standards for immigrant and non-immigrant workers while causing family separation, multi-generational trauma, and economic harm to communities. As noted above, this type of enforcement, including Form I-9 audits, can be used as a retaliatory tool by unscrupulous employers, especially when there are no requirements that employers are transparent with workers regarding any such audit. Form I-9 audits conducted by Immigration and Customs Enforcement (ICE) can also be a precursor to worksite raids that result in workers' arrests. Immigrant workers working paycheck to paycheck may also lack paid leave protections that could enable them to attend immigration-related proceedings or appointments without forfeiting their family's access to daily necessities.

### **What states and localities can do:**

- Require employers to notify employees when immigration authorities or the employer initiates an audit of the employer's Form I-9s and of the results of that audit. The latter notification would ensure that workers have an opportunity to correct any information, if possible, to prevent their termination. The relevant local or state agency should create template notifications for employers' use.
- Include attendance at one's own or a family member's immigration proceeding or appointment as one of the permissible grounds for job-protected paid leave for employees.
- Allocate state or local funding to support immigrant workers and their families if they are impacted by worksite immigration enforcement, including via legal defense funds and grants to community organizations to run rapid response networks and provide services to immigrant workers.
- See [Recommendation 5](#) for related enforcement and remedies recommendations.

## **3. Invest in Increasing Workers' and Employers' Knowledge About their Constitutional Rights.**

**The problem:** The current administration is engaging in rampant constitutional rights violations as it targets workers for immigration enforcement based on their perceived ethnicity and the type of job they do. This harms workers, business owners, and their broader communities. Bolstering everyone's knowledge about their constitutional rights and how to exercise them increases safety for everyone, while mitigating immigration enforcement's potential impact on driving down labor standards. While many community groups are engaged in important Know Your Rights campaigns, local and state governments also have an important role to play in lending their own capacity and resources to increase the reach of this essential information.

**What states and localities can do:**

- In collaboration with community organizations, create multi-lingual and accessible guidance for workers and employers regarding their constitutional rights when interacting with law enforcement in the workplace. This should include model signage to clearly mark the non-public areas of the workplace. Allocate funds to do outreach and training, including in partnership with community groups, regarding these materials.
- As states and localities already do with respect to other rights, create and require workplace postings about workers' and employers' constitutional rights when interacting with law enforcement in the workplace that include information for available immigration and workers' rights resources.
- See [Recommendation 5](#) for related enforcement and remedies recommendations.

**4. Ensure Immigrant Workers Can Assert Their Rights at Labor and Employment Agencies and in Court.**

**The problem:** Even under the best of circumstances, many barriers exist for workers who want to assert their rights and hold their employers accountable via legal processes. This is even more true now, and especially for immigrant workers, given the current climate of fear and very real immigration-related risks immigrant workers face if they step forward to assert their rights. States and localities can create policies that increase immigrant workers' ability to safely assert their rights in agency and court proceedings. This will enhance labor standards enforcement for all workers and help level the playing field for employers who are following the law.

**What states and localities can do:**

- Increase the safety of facilities and data systems at local and state agencies that enforce workplace standards and/or administer employment-related benefits by prohibiting government employees at these agencies from:
  - Asking individuals for information regarding their immigration or work authorization status, unless required to do so under applicable laws;
  - Providing voluntary consent to immigration authorities to enter non-public areas of agency buildings, unless required by law. This should not prohibit, for example, compliance with a valid judicial warrant or authorities' entry under exigent circumstances.
  - Providing access to workers' information in agency databases unless required to do so under applicable laws, or under a valid judicial order.
- Require state and local labor and employment agencies to adopt internal policies and staff trainings aligned with the above prohibitions and consistent with federal immigration law. Among other topics, these policies should address immigration enforcement at agency facilities and against workers, and agencies' procedures for supporting workers with workplace-related immigration applications or relief. The state attorney general or an equivalent local governmental office could create these model policies.

- Enact additional policies to increase immigrant workers' ability to enforce their workplace rights, such as:
  - ensuring third parties like worker centers can file claims on workers' behalf;
  - allowing anonymous complaint filing by workers;
  - providing remote hearing options;
  - allowing agencies to initiate investigations without first receiving a complaint, including regarding immigration-related retaliation;
  - and protecting the identity of people who provide information to the agency in its investigation into a workplace claim;
- Prevent employers from using the legal process to intimidate immigrant workers and attempt to avoid consequences for violating workplace laws by:
  - Prohibiting inquiries or discovery into a party's immigration status in relation to employers' *liability* under workplace laws;
  - Prohibiting inquiries or discovery into immigration status in relation to *remedies* for employers' violation of workplace laws, unless the proponent of that discovery has demonstrated by clear and convincing evidence that it is necessary to comply with federal immigration law (which could potentially be met only where a worker seeks backpay or reinstatement);
  - Generally, bar the admission of immigration status evidence in court and create safeguards, such as prior in camera review, for the court to consider admitting this evidence if narrow exceptions are met.

## 5. Provide Strong Enforcement Mechanisms and Remedies for Rights Violations.

**The problem:** Workers' rights are real only if they can be effectively enforced. The under-funding of labor agencies at all levels of government and ineffective worker remedies create significant barriers to this being realized. This is especially true for undocumented workers given some remedies may be unavailable to them. Rampant employer retaliation against immigrant workers and federal worksite immigration enforcement compound this reality. States and localities can address this in part by empowering labor agencies to take significant and swift action and creating remedies that deter employers from engaging in future violations and are accessible to all workers regardless of their immigration status.

### What states and localities can do:

- Increase state and local labor and employment agencies' funding so they can more effectively enforce existing and newly created workplace protections.

- Ensure that workplace laws can be enforced by workers (known as a private right of action) and by labor and employment agencies. Provide for the availability of attorneys' fees for private actions to increase workers' access to representation.
- Create expedited processes within labor agencies to investigate and remedy complaints of immigration-related retaliation or immigration-related preemptive threats by employers.
- Provide labor agencies with robust powers such as the ability to seek preliminary injunctive relief to address or prevent further immigration-related retaliation.
- Create significant and tailored remedies to compensate workers and deter employers from continuing to break the law. Depending on the provision at issue, this might include:
  - Monetary remedies that are accessible to all workers, regardless of their immigration status. For example, aside from backpay, monetary remedies can also include severance pay and statutory, punitive, liquidated, consequential, and emotional distress damages.
  - Monetary penalties on employers who break the law, which can be tied to factors such as employer size and the number of violations.
  - Index any monetary remedies (aside from those based on actual damages) and penalties to inflation so they automatically increase over time.
  - Provide for injunctive relief, including reinstatement, conditional reinstatement, and post-judgment monitoring of employers' continued compliance with workplace laws.
  - Suspension and/or revocation of employers' business licenses for repeat and/or significant violations and responsible contracting policies to ensure government contracts are awarded to employers who comply with workplace laws.

## Conclusion

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The recommendations in this brief can play a key role in strengthening workplace protections for immigrant workers and bringing us closer to a good-jobs economy in which all workers have the power to assert their rights and shape a better future. This is especially true if these policies form part of broader campaigns led and shaped by immigrant worker leaders and base-building groups as we collectively strive to shift the imbalance of power in the workplace and create a world where all workers, regardless of their immigration status, are valued and respected.

## About NELP

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Founded in 1969, the National Employment Law Project (NELP) is a nonprofit advocacy organization dedicated to building a just and inclusive economy where all workers have expansive rights and thrive in good jobs. Together with local, state, and national partners, NELP advances its mission through transformative legal and policy solutions, research, capacity-building, and communications. NELP is the leading national nonprofit working at the federal, state, and local levels to create a good-jobs economy. Learn more at [www.nelp.org](http://www.nelp.org).