

AMENDED IN ASSEMBLY MARCH 23, 2017

CALIFORNIA LEGISLATURE—2017—18 REGULAR SESSION

ASSEMBLY BILL

No. 450

Introduced by Assembly Member Chiu

February 13, 2017

An act to ~~amend Section 1019 of~~ *add Sections 90.1, 90.2, 90.25, 90.8, 90.9, 98.85, and 1019.2* to the Labor Code, relating to employment regulation.

LEGISLATIVE COUNSEL'S DIGEST

AB 450, as amended, Chiu. ~~Employment regulation.~~ *regulation: immigration worksite enforcement actions.*

Existing

(1) Existing law prohibits an employer or other person or entity to engage from engaging in, or to direct directing another person or entity to engage in, unfair immigration-related practices against a person for exercising specified rights. Existing law defines unfair immigration-related practices for these purposes. Existing law grants the Labor Commissioner access to places of labor and authorizes the commissioner to conduct investigations and prosecute actions in relation to the prescribed duties of the office.

This bill would make nonsubstantive changes to these provisions: impose various requirements on public and private employers with regard to federal immigration agency immigration worksite enforcement actions. Except as otherwise provided by federal law, the bill would prohibit an employer from providing a federal immigration enforcement agent access to a place of labor without a properly executed warrant and would prohibit an employer, or a person acting on behalf of the employer, from providing voluntary access to a federal government

immigration enforcement agent to the employer's employee records without a subpoena. The bill would require an employer to provide an employee, and the employee's representative, a written notice containing specified information, in the language the employer normally uses to communicate employment information, of an immigration worksite enforcement action to be conducted by a federal immigration agency at the employer's worksite, unless prohibited by federal law. The bill would require an employer to provide to an affected employee, and to the employee's representative, a copy of the written federal immigration agency notice describing the results of an immigration worksite enforcement audit or inspection and written notice of the obligations of the employer and the affected employee arising from the action, as specified. The bill would prescribe penalties for failure to satisfy requirements and prohibitions of not less than \$10,000, and not more than \$25,000, for each violation, to be recoverable by the Labor Commissioner.

The bill would require an employer to notify the Labor Commissioner of a federal government immigration agency immigration worksite enforcement action within 24 hours of receiving notice of the action and, if the employer does not receive advance notice, to immediately notify the Labor Commission upon learning of the action, unless prohibited by federal law. The bill would authorize the Labor Commissioner, among other things, to provide specified information to employees affected by the action. The bill would require an employer to notify the Labor Commissioner before conducting a self-audit or inspection of specified employment eligibility verification forms, and before checking the employee work authorization documents of a current employee, unless prohibited by federal law. The bill would prohibit an employer from checking the employment eligibility of a current employee, including conducting a self-audit or inspection of specified employment eligibility verification forms at a time or in a manner not required by specified federal law. The bill would prescribe penalties for failure to satisfy requirements and prohibitions of not less than \$10,000, and not more than \$25,000, for each violation, to be recoverable by the Labor Commissioner.

By requiring local officials to perform various actions, this bill would impose a state-mandated local program.

The bill would require the Labor Commissioner, upon a determination that an employee complainant or employee witness is necessary to conduct an investigation or prosecution, as specified, to issue a

certification to the employee stating that he or she has submitted a valid complaint and is cooperating in the investigation and prosecution.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

- 1 *SECTION 1. Section 90.1 is added to the Labor Code, to read:*
- 2 *90.1. (a) Except as otherwise required by federal law, an*
- 3 *employer, or a person acting on behalf of the employer, shall not*
- 4 *provide access to a federal government immigration enforcement*
- 5 *agent to a place of labor without a properly executed judicial*
- 6 *warrant.*
- 7 *(b) An employer, or a person acting on behalf of the employer,*
- 8 *who violates subdivision (a) shall be subject to a civil penalty of*
- 9 *not less than ten thousand dollars (\$10,000), but not more than*
- 10 *twenty-five thousand dollars (\$25,000), for each violation. The*
- 11 *penalty shall be recoverable by the Labor Commissioner.*
- 12 *(c) This section applies to public and private employers.*
- 13 *SEC. 2. Section 90.2 is added to the Labor Code, to read:*
- 14 *90.2. (a) Except as otherwise provided by federal law, an*
- 15 *employer, or a person acting on behalf of the employer, shall not*
- 16 *provide voluntary access to a federal immigration enforcement*
- 17 *agent to the employer’s employee records, including, but not*
- 18 *limited to, I-9 Employment Eligibility Verification forms, without*
- 19 *a subpoena.*
- 20 *(b) An employer, or a person acting on behalf of the employer,*
- 21 *who violates subdivision (a) shall be subject to a civil penalty of*
- 22 *not less than ten thousand dollars (\$10,000), but not more than*
- 23 *twenty-five thousand dollars (\$25,000), for each violation. The*
- 24 *penalty shall be recoverable by the Labor Commissioner.*
- 25 *(c) This section applies to public and private employers.*

1 *SEC. 3. Section 90.25 is added to the Labor Code, to read:*

2 *90.25. (a) Except as prohibited by federal law, an employer*
3 *shall provide to each employee, and the employee's representative,*
4 *a written notice, in the language the employer normally uses to*
5 *communicate employment-related information to the employee, of*
6 *any immigration worksite enforcement action to be conducted by*
7 *a federal immigration agency at the employer's worksite, within*
8 *24 hours of receiving notice of the immigration worksite*
9 *enforcement action. Immigration worksite enforcement action*
10 *includes audits or inspections of I-9 Employment Eligibility*
11 *Verification forms or other employment records, worksite*
12 *investigations, worksite interviews of employees, worksite raids,*
13 *or any other immigration worksite enforcement action conducted*
14 *by a federal immigration agency. The notice shall be delivered by*
15 *hand at the workplace if possible and, if hand delivery is not*
16 *possible, by mail and email, if the email address of the employee*
17 *is known, and to the employee's representative. The notice shall*
18 *contain the following information:*

19 *(1) The name of the federal immigration agency conducting the*
20 *immigration worksite enforcement action, audits or inspections*
21 *of I-9 Employment Eligibility Verification forms or other*
22 *employment records, worksite investigations, worksite interviews*
23 *of employees, worksite raids, or any other worksite immigration*
24 *enforcement action.*

25 *(2) The date that the employer received notice of the worksite*
26 *enforcement action.*

27 *(3) The nature of the worksite enforcement action to the extent*
28 *known.*

29 *(4) A copy of the notice of an immigration worksite enforcement*
30 *audit or inspection of I-9 Employment Eligibility Verification forms*
31 *or other employment records, worksite investigations, worksite*
32 *interviews of employees, worksite raids, or any other immigration*
33 *worksite enforcement action to be conducted.*

34 *(5) Any other information that the Labor Commissioner deems*
35 *material and necessary.*

36 *(b) Except as prohibited by federal law, an employer shall*
37 *provide to each affected employee, and to the employee's*
38 *representative, a copy of the written federal government*
39 *immigration agency notice that provides the results of the*
40 *immigration worksite enforcement audit or inspection of I-9*

1 *Employment Eligibility Verification forms or other employment*
2 *records, worksite investigations, worksite interviews of employees,*
3 *worksite raids, or any other immigration worksite enforcement*
4 *actions within 24 hours of its receipt of the notice. Within 24 hours*
5 *of its receipt of this notice, the employer shall also provide to each*
6 *affected employee, and to the affected employee's representative,*
7 *written notice of the obligations of the employer and the affected*
8 *employee arising from the results of the immigration worksite*
9 *enforcement action. The notice shall relate to the affected employee*
10 *only and shall be delivered by hand at the workplace if possible*
11 *and, if hand delivery is not possible, by mail and email, if the email*
12 *address of the employee is known, and to the employee's*
13 *representative. The notice shall contain the following information:*

14 *(1) A description of any and all deficiencies or other items*
15 *identified in the written federal immigration audit or immigration*
16 *worksite enforcement action results notice.*

17 *(2) The time period for correcting any potential deficiencies*
18 *identified by the federal immigration worksite enforcement action.*

19 *(3) The time and date of any meeting with the employer to*
20 *correct any identified deficiencies.*

21 *(4) Notice that the employee has the right to representation*
22 *during any meeting scheduled with the employer.*

23 *(5) Any other information that the Labor Commissioner deems*
24 *material and necessary.*

25 *(c) An employer who fails to provide notice to all affected*
26 *employees or their representatives shall be subject to a civil penalty*
27 *of not less than ten thousand dollars (\$10,000), but not more than*
28 *twenty-five thousand dollars (\$25,000), for each violation. This*
29 *section does not require a penalty to be imposed upon an employer*
30 *or person who fails to provide notice to an affected employee at*
31 *the express and specific direction or request of the federal*
32 *government. The penalty shall be recoverable by the Labor*
33 *Commissioner.*

34 *(d) This section applies to public and private employers.*

35 *SEC. 4. Section 90.8 is added to the Labor Code, to read:*

36 *90.8. (a) This section applies to public and private employers.*

37 *(b) Except as prohibited by federal law, every employer shall*
38 *notify the Labor Commissioner of any federal immigration agency*
39 *immigration worksite enforcement action within 24 hours of*
40 *receiving notice of the action from the federal immigration agency.*

1 *Immigration worksite enforcement action includes audits or*
2 *inspections of I-9 Employment Eligibility Verification forms or*
3 *other employment records, worksite investigations, worksite*
4 *interviews of employees, worksite raids, or any other immigration*
5 *worksite enforcement action conducted by the federal immigration*
6 *agency. The employer shall provide access to the Labor*
7 *Commissioner to the place of labor as required by Section 90. The*
8 *Labor Commissioner may, at its discretion, conduct an*
9 *investigation of the place of labor pursuant to Section 90.5.*

10 (c) *Except as prohibited by federal law, if an employer does not*
11 *receive advance notice of an immigration worksite enforcement*
12 *action and a federal immigration agent appears on or near the*
13 *employer's place of employment, the employer shall immediately*
14 *notify the Labor Commissioner upon learning of the immigration*
15 *worksite enforcement action and shall provide access to the Labor*
16 *Commissioner to the place of labor as required by Section 90. The*
17 *Labor Commissioner may conduct an investigation of the place*
18 *of labor as provided for in Section 90.5.*

19 (d) *An employer, or a person acting on behalf of the employer,*
20 *who fails to provide a notice required by this section shall be*
21 *subject to a civil penalty of not less than ten thousand dollars*
22 *(\$10,000), but not more than twenty-five thousand dollars*
23 *(\$25,000), for each violation. This section does not require a*
24 *penalty to be imposed upon an employer or person who fails to*
25 *notify the Labor Commissioner of the immigration worksite*
26 *enforcement action at the express and specific direction or request*
27 *of the federal government or if otherwise required by federal law.*
28 *The penalty shall be recoverable by the Labor Commissioner.*

29 (e) (1) *During an immigration worksite enforcement action,*
30 *the Labor Commissioner may elect to have access to the place of*
31 *employment pursuant to Section 90 and may provide employees*
32 *affected by the immigration worksite enforcement action with the*
33 *following information:*

34 (A) *An employee has the right to remain silent.*

35 (B) *An employee has the right to speak to a lawyer before*
36 *answering any questions.*

37 (C) *An employee has the right to speak to his or her foreign*
38 *consulate.*

39 (2) *During an immigration worksite enforcement action, the*
40 *Labor Commissioner may elect to ensure that an employer*

1 *complies with all health and safety requirements prescribed by*
2 *Part 1 (commencing with Section 6300) of Division 5 as well as*
3 *the safety standards required by the Health and Safety Code.*
4 *During an immigration worksite enforcement action, the Chief of*
5 *the Division of Occupational Safety and Health may conduct an*
6 *inspection of a place of employment as provided for in Section*
7 *6314.*

8 *SEC. 5. Section 90.9 is added to the Labor Code, to read:*

9 *90.9. (a) This section applies to public and private employers.*

10 *(b) Except as otherwise required by federal law, every employer*
11 *shall notify the Labor Commissioner before conducting a self-audit*
12 *of, inspection of, or review of, I-9 Employment Eligibility*
13 *Verification forms and before checking the employee work*
14 *authorization documents of a current employee at a time or in a*
15 *manner not required by Section 1324a(b) of Title 8 of the United*
16 *States Code. The employer shall provide access to the Labor*
17 *Commissioner to the place of labor as required by Section 90. The*
18 *Labor Commissioner may conduct an investigation of the place*
19 *of labor as provided for in Section 90.5.*

20 *(c) An employer who fails to provide notice shall be subject to*
21 *a civil penalty of not less than ten thousand dollars (\$10,000), but*
22 *not more than twenty-five thousand dollars (\$25,000), for each*
23 *violation. This section does not require a penalty to be imposed*
24 *upon an employer or person who fails to notify the Labor*
25 *Commissioner of the immigration worksite enforcement action at*
26 *the express and specific direction or request of the federal*
27 *government or if otherwise required by federal law. The penalty*
28 *shall be recoverable by the Labor Commissioner.*

29 *SEC. 6. Section 98.85 is added to the Labor Code, to read:*

30 *98.85. If the Labor Commissioner determines that an employee*
31 *complainant or employee witness is necessary to conduct an*
32 *investigation or prosecution for the collection of wages, penalties,*
33 *other compensation, or for the return of workers' tools as set forth*
34 *in Section 98.3, or that the employee is necessary to conduct an*
35 *investigation or prosecution of a discrimination charge as set forth*
36 *in Sections 98.6 and 98.7, the Labor Commissioner shall issue a*
37 *certification to the employee complainant or employee witness*
38 *stating that he or she has submitted a valid complaint for violations*
39 *of this code and is cooperating in the investigation and prosecution*
40 *of the violations.*

1 SEC. 7. Section 1019.2 is added to the Labor Code, to read:
 2 1019.2. (a) Except as otherwise required by federal law, a
 3 public or private employer, or a person acting on behalf of a public
 4 or private employer, shall not check the employment eligibility of
 5 a current employee, including conducting a self-audit of, or
 6 inspection of, I-9 Employment Eligibility Verification forms, at a
 7 time or in a manner not required by Section 1324a(b) of Title 8 of
 8 the United States Code.

9 (b) An employer who violates subdivision (a) shall be subject
 10 to a civil penalty of not less than ten thousand dollars (\$10,000),
 11 but not more than twenty-five thousand dollars (\$25,000), for each
 12 violation. The penalty shall be recoverable by the Labor
 13 Commissioner.

14 SEC. 8. If the Commission on State Mandates determines that
 15 this act contains costs mandated by the state, reimbursement to
 16 local agencies and school districts for those costs shall be made
 17 pursuant to Part 7 (commencing with Section 17500) of Division
 18 4 of Title 2 of the Government Code.

19 SECTION 1. ~~Section 1019 of the Labor Code is amended to~~
 20 ~~read:~~

21 ~~1019. (a) It is unlawful for an employer or other person or~~
 22 ~~entity to engage in, or to direct another person or entity to engage~~
 23 ~~in, unfair immigration-related practices against a person for the~~
 24 ~~purpose of, or with the intent of, retaliating against a person for~~
 25 ~~exercising a right protected under this code or by local ordinance~~
 26 ~~applicable to employees. Exercising a right protected by this code~~
 27 ~~or local ordinance includes the following:~~

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

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

33 ~~(3) Informing a person of his or her potential rights and remedies~~
 34 ~~under this code or local ordinance, and assisting him or her in~~
 35 ~~asserting those rights.~~

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

39 ~~(A) Requesting more or different documents than are required~~
 40 ~~under Section 1324a(b) of Title 8 of the United States Code, or a~~

1 refusal to honor documents tendered pursuant to that section that
2 on their face reasonably appear to be genuine.

3 ~~(B) Using the federal E-Verify system to check the employment
4 authorization status of a person at a time or in a manner not
5 required under Section 1324a(b) of Title 8 of the United States
6 Code, or not authorized under any memorandum of understanding
7 governing the use of the federal E-Verify system.~~

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

10 ~~(D) Threatening to contact or contacting immigration authorities.~~

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

14 ~~(e) Engaging in an unfair immigration-related practice against
15 a person within 90 days of the person’s exercise of rights protected
16 under this code or local ordinance applicable to employees shall
17 raise a rebuttable presumption of having done so in retaliation for
18 the exercise of those rights.~~

19 ~~(d) (1) An employee or other person who is the subject of an
20 unfair immigration-related practice prohibited by this section, or
21 a representative of that employee or person, may bring a civil
22 action for equitable relief and any applicable damages or penalties.~~

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

26 ~~(A) For a first violation, order the appropriate government
27 agencies to suspend all licenses that are held by the violating party
28 for a period of up to 14 days. On receipt of the court’s order and
29 notwithstanding any other law, the appropriate agencies shall
30 suspend the licenses according to the court’s order.~~

31 ~~(B) For a second violation, order the appropriate government
32 agencies to suspend all licenses that are held by the violating party
33 for a period of up to 30 days. On receipt of the court’s order and
34 notwithstanding any other law, the appropriate agencies shall
35 immediately suspend the licenses.~~

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

1 ~~(3) In determining whether a suspension of all licenses is~~
2 ~~appropriate under this subdivision, the court shall consider whether~~
3 ~~the employer knowingly committed an unfair immigration-related~~
4 ~~practice, the good faith efforts of the employer to resolve any~~
5 ~~alleged unfair immigration-related practice after receiving notice~~
6 ~~of the violations, as well as the harm other employees of the~~
7 ~~employer, or employees of other employers on a multiemployer~~
8 ~~job site, will suffer as a result of the suspension of all licenses.~~

9 ~~(4) An employee or other person who is the subject of an unfair~~
10 ~~immigration-related practice prohibited by this section, and who~~
11 ~~prevails in an action authorized by this section, shall recover his~~
12 ~~or her reasonable attorney's fees and costs, including any expert~~
13 ~~witness costs.~~

14 ~~(e) As used in this chapter:~~

15 ~~(1) "License" means any agency permit, certificate, approval,~~
16 ~~registration, or charter that is required by law and that is issued by~~
17 ~~any agency for the purposes of operating a business in this state~~
18 ~~and that is specific to the business location or locations where the~~
19 ~~unfair immigration-related practice occurred. "License" does not~~
20 ~~include a professional license.~~

21 ~~(2) "Violation" means each incident when an unfair~~
22 ~~immigration-related practice was committed, without reference to~~
23 ~~the number of employees involved in the incident.~~