

---

---

## **OLR Bill Analysis**

**SB 371 (File 327, as amended by Senate "A" and "E")\***

### ***AN ACT CONCERNING RETALIATION AGAINST IMMIGRANT WORKERS.***

#### **SUMMARY:**

This bill prohibits employers, including the state and municipalities, from taking certain actions to retaliate against immigrant employees for exercising their rights under various state labor laws. Its prohibited "unfair immigration-related practices" cover any discriminatory practice directed at an immigrant employee, including (1) checking or threatening to check whether the employee can legally work in the country at a time or in a way not required by federal law or (2) contacting or threatening to contact immigration authorities to report an employee. But, the bill specifies that its provisions do not prevent an employer from complying with state or federal laws or regulations or the rules of self-regulatory organizations (e.g., businesses regulated by the Securities and Exchange Commission).

With one exception, the bill also requires, rather than allows, a court to award double damages plus court costs and attorney's fees if it finds that an employer failed to (1) pay an employee's wages, benefits, or arbitration award or (2) meet the law's requirements for an employee's minimum wage or overtime rates. The double-damage requirement does not apply to employers who establish a good-faith belief that their underpayments were legal. Such employers must, however, pay full damages, plus court costs and attorney's fees. Existing law also allows the labor commissioner to collect unpaid wages and payments or bring a civil suit on the employee's behalf.

Lastly, the bill exempts certain actions against diagnosed pedophiles from employment-related discriminatory practices.

\*Senate Amendment "A" adds the provision requiring double

damages for failure to pay wages or meet wage requirements.

\*Senate Amendment "E" adds the provision exempting certain actions against pedophiles from employment-related discriminatory practices.

EFFECTIVE DATE: October 1, 2014

### **UNFAIR IMMIGRATION-RELATED IMMIGRATION PRACTICES**

Under the bill, an unfair immigration-related practice is any discriminatory practice directed at an employee who has immigrated to this country, including:

1. asking the employee to provide documents other than those that must be provided under the federal law on the unlawful employment of aliens, or refusing to accept documents that reasonably appear genuine;
2. checking or threatening to check an employee's employment authorization at a time or in a way not required by the federal law on the unlawful employment of aliens;
3. contacting or threatening to contact immigration authorities to report an employee; or
4. filing or threatening to file a false police report against an employee.

(The bill does not specify, but presumably an employer must know or believe that an employee is an immigrant before taking any of the first three prohibited actions above. However, it is unclear if this prior knowledge would be necessary to make the employer's filing or threatening to file a false police report an unfair immigration-related practice.)

### ***Retaliation***

The bill prohibits employers from using unfair immigration-related practices to retaliate against an employee for exercising any of his or her rights provided under the state's laws on employment regulation,

wages, labor organizations, labor relations, personnel files, professional employer organizations (e.g., a business that co-employs a client's employees to provide human resources services), unemployment compensation, workers' compensation, or workplace safety. An exercise of these rights can include:

1. filing a complaint or telling anyone, in good faith, about an employer's alleged violation of the above labor laws;
2. seeking information on whether an employer is in compliance with these laws; or
3. telling someone about his or her potential rights and remedies under these laws or helping someone assert these rights or seek these remedies.

The bill establishes a rebuttable presumption that an employer who engages in unfair immigration-related practices within 90 days after an employee exercises his or her rights under the specified labor laws is taking a retaliatory action (i.e., the employer will have to prove that the action was not retaliatory).

### ***Enforcement***

The bill allows employees to file a complaint with the labor commissioner within 180 days of the employer's alleged retaliatory action. The commissioner must investigate and can hold a hearing, after which she must send the parties a written copy of her decision. If she finds violations, the commissioner can (1) impose civil fines of up to \$500 for initial violations and \$1,000 for each subsequent violation; (2) suspend an employer's license to do business in the state for up to 30 days for an initial violation and up to 90 days for each subsequent violation; and (3) award an employee appropriate relief, including rehiring or reinstatement, back pay, reestablishment of benefits, and any other appropriate remedies. (It is unclear if the commissioner's authority to increase penalties for subsequent violations applies to violations against the same employee or any subsequent violations by the same employer. It is also unclear if the labor commissioner has

authority to suspend licenses she did not issue.) An aggrieved party can appeal the commissioner's decision to the Superior Court.

### **DISCRIMINATION AGAINST PEDOPHILES**

The bill specifies that it is not a discriminatory employment practice if an employer, labor organization, or employment agency takes certain employment-related actions or otherwise discriminates against current or prospective employees who (1) have been diagnosed by a licensed psychiatrist as suffering from pedophilia and (2) work or seek to work in an environment that could require any interactions with a child. (The bill defines "child" through a reference to CGS § 49b-120, which does not exist. Presumably, the reference should be 46b-120, which defines a child as someone under 18 who has not been legally emancipated.)

The exempted actions against such people are (1) discharging, expelling, or barring them from employment; (2) failing or refusing to properly classify or refer them for employment; (3) refusing to hire or employ them; or (4) otherwise discriminating against them.

By law a person alleging discriminatory employment practices can bring a complaint to the Commission on Human Rights and Opportunities, which among other things, can investigate and order injunctive relief, punitive damages, and civil penalties.

### **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 8 Nay 2 (03/18/2014)

Judiciary Committee

Joint Favorable

Yea 34 Nay 6 (04/14/2014)