

Protecting Immigrant Workers in a Shifting Federal Landscape: A Checklist for State and Local Labor Standards Enforcement Agencies

Trump's return to office brings with it the imminent threat of mass deportations, detention, and workplace raids. As in his first administration, these actions will undoubtedly create a climate of fear that suppresses worker complaints, undermines workplace protections, and destabilizes industries with large immigrant workforces. This anti-immigrant environment will embolden unscrupulous employers to exploit and attempt to silence immigrant workers, including by weaponizing immigration enforcement to retaliate against those who speak out.

As federal worker protections are rolled back and immigrant workers are targeted, state and local agencies serve as critical bulwarks against the erosion of workplace standards, safeguarding the rights of *all* workers. However, as fear of government grows among immigrant workers, enforcing labor standards will be much more difficult, especially in industries with high proportions of immigrant workers, rendering partnerships with trusted community organizations more important than ever.

This checklist provides practical guidance for state and local agencies to reevaluate and adapt their enforcement practices, strengthen partnerships with community organizations embedded in immigrant communities, and prepare for the challenges and dangers of enforcing labor standards in a climate of heightened fear and retaliation.

Checklist

1. Prepare for increased retaliation against immigrant workers.

- Review your laws, including retaliation provisions and related powers.
- Determine: Do your laws allow for temporary or preliminary injunctive relief (e.g. temporary restraining order), allowing you to stop retaliation before it occurs or continues? If so:
 - Create a process in place to quickly deploy this power.
 - Work with your attorneys to ensure they are prepared to go to court with little notice to seek injunctive relief.
- Ensure investigators and relevant enforcement staff understand how immigration-

based threats or actions fit within the retaliation framework/s of the laws you enforce.

- Train investigators and relevant enforcement staff to recognize and investigate retaliation related to a worker's immigration status (real or perceived).
- Reassess procedures for retaliation cases to:
 - Ensure you are prioritizing retaliation complaints involving allegations of egregious violations, including adverse actions related to immigration status
 - Establish a clear process for promptly contacting employers—by phone or in writing—at the first indication of potential retaliation to inform them of the legal consequences and prevent the adverse action from escalating.
- Reevaluate your approach to settling retaliation cases to ensure agreements include the most full and effective remedies possible.
- Create/update a template for settlement agreements that includes remedies related to immigration status. Examples include:
 - Training for employees on their rights and/or supervisors and managers on their obligations under relevant laws,
 - Employer sponsorship of work authorizations,
 - Ordering an employer pay into a fund the equivalent of the amount it would have owed an impacted worker who is undocumented.
 - Other remedies that would prevent an employer from being unjustly enriched by its unlawful treatment of undocumented workers.
 - Requiring the employer to reimburse the employee for any legal or application fees and travel costs incurred while seeking to regain a lost work authorization.
- Fully utilize monetary damages and penalties, e.g., consequential damages, emotional distress damages, treble damages, or any other money damage applicable by statute or regulations for immigration-related retaliation to deter future violations.¹
- Create and provide workers experiencing immigration-related retaliation with a list of immigration attorneys.
- Create a plan so that if a worker is detained by ICE as result of immigration-related retaliation you can quickly call your local ICE office to explain the situation and your agency's enforcement interests in the situation and request they exercise their enforcement discretion. In preparing the plan:

¹ When assessing available remedies and damages to workers, ensure you are familiar with the U.S. Supreme Court's ruling in *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*. For a discussion on the impact of *Hoffman Plastics*, see Amy Sugimori, Rebecca Smith, Ana Avendaño and Marielena Hincapië, *Assessing the Impact of the Supreme Court's Decision in Hoffman Plastic Compounds v. NLRB on Immigrant Workers and Recent Developments*, Nat'l Immigr. L. Ctr. & Nat'l Emp. L. Project, https://www.nilc.org/wp-content/uploads/2016/04/Hoffman_NELP_NILC_FINAL.pdf (last visited Dec. 6, 2024).

- Ensure you have the appropriate contact information for ICE.
- Designate staff from your agency to act as points of contact with ICE.
- Consider reaching out to your local ICE office ASAP to attempt to build a relationship so that you have a clear point of contact at ICE who is familiar with your agency. (Whether this is viable or reasonable option may depend on your jurisdiction.)
- Integrate this plan into your [rapid response plan](#).
- Review and update your T visa certification process.
 - Where a worker was retaliated against with threats to call authorities to arrest or deport the worker, consider certifying T Visa under a theory of abuse of process.²

Policy Action: Where possible, work with policymakers to amend laws to strengthen retaliation provisions.³

Policy Example: Seattle’s labor standards ordinances have strong anti-retaliation protections that include:

- A rebuttable presumption if any person takes an adverse action against any person because they exercised a protected activity, which can only be rebutted by clear and convincing evidence;⁴
- A comprehensive definition of “adverse action” that includes engaging in unfair immigration-related practices and failing to rehire for the next season;⁵
- An explicit prohibition against communicating the willingness to inform a government employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency because the employee has exercised a right;⁶
- Motivating factor causation test;⁷

² To meet the criteria for a T Visa, a person must show the perpetrator “engaged in a prohibited action by means of force, fraud, or coercion.” Coercion can include abuse or threatened abuse of the legal process, which means the use or threatened use of a law or legal process, including threats to call authorities arrest or deport worker.

³ For a guide on strong anti-retaliation legislation, see *At a Glance: Anti-Retaliation Legislation to Protect Workers and the Rule of Law*, Workplace Justice Lab@Rutgers University & State Innovation Exchange, https://smlr.rutgers.edu/sites/default/files/Documents/Centers/WJL/wjl-SiX_Anti-RetaliationLegislation.pdf (last visited Dec. 6, 2024).

⁴ See e.g. [Seattle Municipal Code 14.20.035\(D\)](#).

⁵ See e.g. [Seattle Municipal Code 14.20.010](#).

⁶ See e.g. [Seattle Municipal Code 14.20.035\(C\)](#).

⁷ See e.g. [Seattle Municipal Code 14.20.035\(E\)](#). For a thorough discussion of causation tests, see, Michael Felsen, *The Nuts and Bolts of Retaliation Investigations: Part 1*, Workplace Justice Lab@Rutgers

- Extensive remedies including any appropriate temporary or interim relief to mitigate the violation or maintain the status quo,⁸ any appropriate relief at law or equity, reinstatement or front pay, treble damages, a penalty to the impacted worker of up to \$5,000, and additional amounts in penalties and fines to the City;⁹
- Three-year statute of limitations;¹⁰ and
- Private right of action.¹¹

2. Review and update investigative forms or processes to mitigate risks to workers.

- Review your complaint form/s and remove any questions that could reveal immigration status or chill complaints from immigration workers (e.g. social security number, work authorization)
- Revise complaints forms to affirmatively message to immigrant communities that the laws you enforce protect all workers and that you will not ask about immigration status.

Example: California's wage claim [webpage](#) states: In California, all workers are protected by labor laws. The Labor Commissioner's Office will not question your immigration status nor report it to other government agencies. There is no need for a social security number or photo identification to file a report of labor law violation.

- Revise investigation templates, including requests for information and interview questionnaires to:
 - Remove any questions or requests that solicit information that could be related to a worker's immigration status.
 - Add language to RFIs that directs employers to redact information that could be related to workers' immigration status.

University. Rels. 8–9, https://smlr.rutgers.edu/sites/default/files/Documents/Centers/WJL/Toolbox_Tool11_Retaliation_Nuts_and_Bolts.pdf (last visited Dec. 6, 2024).

⁸ See e.g. [Seattle Municipal Code 14.20.050\(h\)](#).

⁹ See e.g. [Seattle Municipal Code 14.20.060\(C\), \(F\), & \(G\)](#).

¹⁰ See e.g. [Seattle Municipal Code 14.20.050\(C\)](#).

¹¹ See e.g. [Seattle Municipal Code 14.20.090](#).

Example language: *When providing employee records and contact information, remove or redact social security numbers.*

- Communicate to investigators that it is the agency’s policy not to ask for information that could reveal workers’ immigration status unless it is directly necessary to a case.
- Train investigators on how to handle testimony or documents that are not relevant to the investigation but that reveal a worker’s immigration status.
- Provide enforcement staff with a refresher on your jurisdiction’s public disclosure laws, including applicable disclosure exemptions.
- Consult with your attorneys to identify available protections for information related to immigration status.
- Establish a process that is compliant with applicable laws for responding to public disclosure requests that could expose a worker’s immigration status.
- Review any information sharing agreements or MOUs you have with US DOL.
 - Evaluate obligations or risks stemming from the agreement/s.
 - Assess the process for cancelling the agreement/s.

Generally, this process is straightforward. E.g. A recent MOU between NJ DOL, etc. and US DOL states: “The agreement may be cancelled by either party by giving thirty (30) days advance written notice prior to the date of termination.”¹²
 - Determine whether immediate action to cancel the agreement/s is necessary. If not, establish a plan to periodically reassess the decision to maintain the agreement/s.
 - Consider whether there are certain types of cases you can safely refer to US DOL (even if US DOL is coordinating with DHS), e.g. H-2A/B cases, or cases that likely don’t involve at-risk immigrant workers. If so, establish a policy and protocol for these referrals.

3. Prepare for aggressive federal immigration enforcement.

- For agencies in a sanctuary state or locality, create protocols and staff trainings to ensure compliance with sanctuary laws.

¹² U.S. Dep’t of Lab., *Memorandum of Understanding Between the United States Department of Labor and the New Jersey Department of Labor and Workforce Development* (unsigned), <https://www.dol.gov/sites/dolgov/files/WHD/MOU/NJ-2-Unsigned.pdf> (last visited Dec. 6, 2024).

- Create a plan or protocol for responding to workplace raids in your state, county, or city. As part of the planning process:
 - Connect with community rapid response network/s to understand the role your agency could play in that system.
 - Establish relationships and points of contact with the following,
 - Local consulates representing impacted communities;
 - Community rapid response network/s;
 - Community partners that can provide assistance to impacted workers and their families, e.g.: worker centers, churches, non-profit/humanitarian aid groups, legal services organizations, and/or pro bono attorneys;
 - Other state or local agencies that could assist impacted workers and their families, e.g. health and human services, department of education, or relevant housing authorities;
 - Reputable immigration attorneys; and/or
 - Local ICE office.
 - Ensure you and the contacts above have ways to reach each other during and after office hours.
 - Decide on the information you will seek to obtain after a raid, how you will share it, and with whom. Information you may want to obtain includes:
 - Do you have an open investigation at the worksite that was raided?
 - Did you issue a statement of interest (SOI) associated with the worksite or employer that was raided?
 - Did local or state law enforcement participate in the ICE raid and is that consistent with state and local policies?
 - Outline the steps your agency will take after a raid and assign specific staff members to oversee and implement each step.
 - Review and update your agency's U and T Visa certification processes and trainings.¹³
 - Explore establishing a Detention Defense Fund to provide for immigration representation for workers who are or have been subject to immigration enforcement and are victims of employer-related retaliation; or have worked at a worksite where the agency has had a labor standards investigation; or have worked in an industry where the agency has a strategic enforcement initiative.
- 4. Create a communications strategy that promotes immigrant workers' workplace rights.**
- Develop messaging warning employers against retaliation and wage theft, and

¹³ For general information on U Visas, see Nat'l Immigr. L. Ctr., *FAQ: The U Visa and How It Can Protect Immigrant Workers*, <https://www.nilc.org/resources/how-the-u-visa-can-protect-immigrant-workers/> (last visited Dec. 6, 2024). If you have more specific questions, get in touch with WJL!

reminding them that robust enforcement of state and local labor standards will continue under any federal administration.

- Create a communications strategy to respond to a workplace raid.
- Publish affirmative messages and know your rights materials to reassure immigrant workers and communities that your agency respects and serves all residents.

Example: Massachusetts Office of the Attorney General created an [Immigration Resources](#) website to provide information about immigrants' rights under state law and resources available to MA's immigrant communities.

- Gather or develop Know Your Rights materials for workers on workplace raids, sanctuary laws, and workplace rights.¹⁴
 - Translate these materials into languages spoken by communities likely to be targeted for immigration enforcement.
 - Where possible, get feedback from community partners to ensure materials are accessible and culturally relevant.
 - Create and execute a plan to disseminate these materials, including through your partnerships with community organizations.

5. Strengthen co-enforcement partnerships.

- Assess your current community partnerships.
 - Determine if there are gaps—do you need to establish relationships with new partners that have built trust among workers who are most at-risk?
 - Reach out to these organizations to begin to foster relationships.
- Send a written statement in multiple languages to all community partners stating your commitment to continuing to enforce labor standards for all workers regardless of immigration status. (*Exchange sample know-your-rights materials as described above*)
- Request new or additional funding for outreach and co-enforcement programs to support community organizations who can reach immigrant workers and partner on labor standards enforcement in immigrant communities.

¹⁴ Examples of materials on workplace raids: 1) <https://cdn.craft.cloud/5cd1c590-65ba-4ad2-a52c-b55e67f8f04b/assets/wp-content/uploads/2017/07/5-KYR-What-to-Do-if-Immigration-ICE-Shows-Up-at-Your-Workplace-ENGLISH.pdf>; 2) <https://www.nilc.org/resources/a-guide-for-employers-what-to-do-if-immigration-comes-to-your-workplace/>; sanctuary laws: 1) <https://www.seattle.gov/iandraftaffairs/issues-and-policies/seattle-immigration-policy-faq#1.whatdoesbeingasanctuarycitymean>; 2) <https://www.doj.state.or.us/oregon-department-of-justice/civil-rights/sanctuary-promise/>; and workplace rights: <https://www.mass.gov/info-details/immigration-resources#workers'-rights->

Model Programs
Seattle Community Outreach and Education Funding
California Workplace Outreach Project

- Develop or enhance processes for initiating investigations that do not require individual workers to file a complaint. Work with community partners to develop a process that is sensitive and responsive to increased threats and fear. Consider:
 - Initiating proactive strategic enforcement investigations based on agency analysis of likely violators and information from community partners; and
 - Accepting third-party complaints from worker advocacy organizations or other parties so that individual workers do not have to come forward
- If your jurisdiction has a sanctuary policy, review that policy with community partners. Discuss the strengths and limitations of the policy and what it means for labor standards investigations.
- Ensure that your community partners are reviewing their own processes for maintaining records and responding to warrants and subpoenas from federal immigration agencies.

6. Establish a protocol for responding to federal demands for your agency’s records.¹⁵

- Create a protocol and policy to respond to a federal subpoenas requesting labor enforcement records.
 - Clarify agency policies around responding to records requests/subpoenas. For example:
 - Will your agency cooperate with records requests when ICE does not issue a subpoena or will you require a subpoena in order to provide records?
 - Will your agency waive service if ICE calls and asks your agency to or will your agency require ICE to issue a subpoena?
 - Determine who is authorized to receive service on behalf of your agency.
 - Determine what your agency contends is proper service (e.g. do regulations/statutes require service to be in person to a specific address?).
 - Determine who the custodian of records for your agency is and who is authorized to respond to the subpoena.

¹⁵ It is possible that ICE could issue requests for records to state agencies or local enforcement agencies. While WJL is not aware of this happening in the first Trump administration, it is important to have a process in place in the event that the federal government seeks records from state and local labor enforcement agencies.

- Determine who in the legal department is your point of contact for responding to subpoenas on behalf of your agency. When responding to a subpoena the legal department may determine:
 - Whether the subpoena was properly served;
 - Whether the information requested in the subpoena is reasonable and relevant;
 - Whether state or local laws are implicated in the release of certain information; and
 - Whether the agency even has the information requested.
- Create and implement a training on agency policies. Remind employees that they should not create records in response to a subpoena request or request for information
- Determine next steps:
 - Will your agency attempt to negotiate the scope of the records request, the type of records it will agree to produce, and the timeline or will your agency require ICE to file an action in federal district court to enforce the subpoena?
 - What are the risks associated with either approach for your agency?

A Final Thought: If your labor standards incorporate federal laws or regulations by reference, you should consider implementing stand-alone regulations that are more protective than the federal floor. For example, you or your legislature may want to adopt an independent contractor rule that follows the ABC test or an overtime rule with a higher salary threshold than the federal threshold.

WJL thanks our agency partners whose expertise and insights helped to shape this checklist!

****This document was created in December 2024. We plan to update it after Trump takes office, as more information becomes available about his priorities and plans for implementation.***