

National Employment Law Project

**MORE HARM THAN GOOD: RESPONDING TO
STATES' MISGUIDED EFFORTS TO REGULATE
IMMIGRATION**

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Employment Law
Project

About the National Employment Law Project

The National Employment Law Project (NELP) is a national not-for-profit organization that has advocated on behalf of low-wage workers, the poor, the unemployed and other groups that face significant barriers to employment and government systems of support since 1969. To learn more, visit NELP's website at <http://www.nelp.org>.

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Introduction

This year's state legislative sessions have seen a large number of anti-immigrant worker legislative proposals, ranging from state-level employer sanctions bills, legislation requiring employers of immigrants to register and pay fees, taxes for employers of "aliens," proposals to deny workers' compensation to certain immigrants, and proposals requiring state agencies to act as arms of ICE.

These proposals are misguided, are likely to result in increased discrimination against workers who are perceived to be "foreign," will drive already vulnerable workers further underground and will divert scarce state and local resources away from activities that benefit local communities.

There is a need for more effective enforcement of labor and employment rights to eliminate exploitation of immigrant workers and unfair competition against good employers. Unfair competition happens when the costs of cutting corners on labor and employment protections are low. Employers cut costs when they are able to violate the labor and employment rights of immigrant workers without consequences. That is the problem that needs to be addressed.

Unfortunately, many of the proposals being introduced in the states will make the situation worse, not better. Employer sanctions at the federal level have a track record of having led to increased discrimination and having pushed vulnerable workers further underground. States would do well not to adopt their own versions of this disastrous program. Moreover, federal law pre-empts them from doing so.

Similarly, local law enforcement of immigration law will make it harder for law enforcement agencies to perform essential functions needed to keep communities safe and secure. Immigration law is extraordinarily complex – in addition to the statuses of citizen, legal permanent resident, asylee and other permanent or temporary statuses, agents would be required to unravel the complexities of an entire alphabet of visas from A to V. Already-stretched law enforcement agents should not be required to also act as immigration agents. Moreover, experience shows that it will be nearly impossible for law enforcement to develop the community trust needed to do their job if it is known that they are also enforcing immigration law.

Finally, proposals that leave immigrant workers less protected than other workers will create perverse incentives for unscrupulous employers. A state has a strong interest in ensuring that its labor and employment laws are followed. It is of critical importance that the measures taken to accomplish this do not have the opposite effect of furthering discrimination or fostering an unregulated underground.

This guide describes some of the anti-immigrant worker provisions currently pending in state legislatures and talking points explaining why these provisions will be bad for workers, bad for communities and bad for states. Finally, this guide provides some affirmative proposals of steps states can take to ensure that workers are not being exploited and that employers are complying with state labor and employment laws.

Financial Contributions of Immigrants: Talking Points and Sources

Talking Points

- **Immigrants provide benefits to society, in terms of labor and cultural contributions, and also in terms of taxes.** Even those who do not have Social Security numbers can and do pay taxes on their income as well as sales tax and property tax.
- **In Chicago, it has been reported that 70% of undocumented workers paid payroll taxes in 2001.** Chirag Mehta, Nik Theodore, Iliana Mora & Jennifer Wade, *Chicago's Undocumented Immigrants: An Analysis of Wages, Working Conditions, and Economic Contributions*. Chicago, IL: Center for Urban Economic Development, University of Illinois at Chicago, February 2002.
- **In New York, it was reported that undocumented immigrants paid more than \$1 billion in total taxes in 1995.** Jeffrey S. Passel & Rebecca L. Clark, *Immigrants in New York: Their Legal Status, Incomes, and Taxes*. Washington, DC: Urban Institute, April 1998.

Note: Some groups have recently issued state-specific reports on the economic contributions of immigrants. A report focused on Georgia is useful because it articulates the methodology which can be applied to other states. Sarah Beth Coffey, *Undocumented Immigrants in Georgia: Tax Contribution and Fiscal Concerns*, Georgia Budget and Policy Institute, 2006.

- **A 1997 report by the National Academy of Sciences reported that the average immigrant pays \$1,800 more in taxes than he or she receives in government benefits.** James P. Smith & Barry Edmonston, Editors, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*. Washington, DC: National Research Council, National Academy of Sciences Press, 1997. See also, Amy M. Traub, *Principles for an Immigration Policy to Strengthen and Expand the American Middle Class: A Primer for Policymakers and Advocates*, Drum Major Institute, 2006.
- **The contributions of immigrant workers are responsible for keeping the Social Security trust funds afloat. This is of critical importance as the U.S. born population ages**
- **The Social Security Administration (SSA) has concluded that undocumented immigrants “account for a major portion” of the billions of dollars paid into the Social Security system under names or social security numbers that don’t match SSA records and which payees therefore can never draw upon.** Office of the Inspector General, Social Security Administration, *Obstacles to Reducing Social Security Number Misuse in the Agriculture Industry* (Report No. A-08-99-41004), January 22, 2001.
- **As of July 2002, these payments totaled \$374 billion.** Office of the Inspector General, Social Security Administration, *Follow-Up Review of Employers with the Most Suspended Wage Items* (Report No. A-03-03-13026), October 30, 2003.

State Employer Sanctions Provisions: States Should Not Duplicate Failed Federal Law

State employer sanctions provisions providing for fines or penalties for employers who employ undocumented immigrant workers have been introduced in a number of states. For example, employer sanctions-type proposals have been introduced in: AL, AZ, CA, CO, GA, IA, KY, MD, MO, NH, NY, TN and VA in 2006. There are many reasons why this is a bad idea.

Talking Points

- **State employer sanctions laws are pre-empted by federal law.** Immigration is largely a matter of federal law, which expressly prohibits states from imposing civil or criminal penalties on employers who violate immigration laws.
- **There is no need to create an unfunded mandate to duplicate immigration enforcement on the state level.** Although state revenue growth has bounced back somewhat since the recession, a number of states still face large budget shortfalls. This means that states can ill afford to supplement federal immigration enforcement efforts.
- **Federal employer sanctions have resulted in more harm than good. The law has resulted in discrimination.** Since 1986, the US has imposed employer sanctions on employers who violate immigration laws. Both the General Accounting Office and the U.S. Commission on Civil Rights have found that employer sanctions contribute to discrimination against citizens and legal residents who look or sound “foreign.”
- The Commission on Civil Rights stated in its report that “we find clear and disturbing indications that IRCA has caused at least a “pattern of discrimination,” if not widespread discrimination.” *The Immigration Reform and Control Act: Assessing the Evaluation Process* (1989), <http://www.law.umaryland.edu/marshall/usccr/documents/cr12r25z.pdf>.
- The GAO found that 10% of employers in its survey had engaged in unlawful discrimination, and that “widespread discrimination” had occurred. Charles A. Bowscher, Comptroller General of the United States, *IMMIGRATION REFORM: Employer Sanctions and the Question of Discrimination*, Testimony, Committee on the Judiciary, United States Senate, (March 1990), <http://161.203.16.4/d48t13/141005.pdf>.
- **The law has also contributed to expansion of an “underground economy”** where workers are afraid to report abuse because employers intimidate them and rely on their fear of being reported to the immigration authorities.
- **The law is used to exploit workers.** Increasingly employers use the prohibition against hiring undocumented workers as a tool to excuse mistreatment of workers: the employers seek out and hire undocumented workers, and the workers’ immigration status only becomes important to the employer when the worker files a claim for unpaid wages or suffers a work-related injury. Employers performing cost-benefit analysis may decide that it is cheaper to violate the law than to comply with it.

- **The law is ineffective and easily evaded.** Employer sanctions have never been effective as a deterrent to employers hiring of undocumented workers. The current undocumented population totals millions more people than were present in the US when the employer sanctions provisions were originally adopted in 1986. Employers who would abuse undocumented workers have found ways to undercut the law.

What's the alternative?

- If the goal is to reduce illegal employer behavior, there are better ways at getting at the problem. Workers themselves are in the best position to report employer abuse – but only if they are not afraid of immigration consequences.
- **Increase enforcement of state labor laws.** Economic incentives that an employer might gain from hiring undocumented workers should be eliminated by targeted enforcement of labor laws in favor of all workers, especially those in low-wage industries.
- States should ensure that their workers' compensation, health and safety, wage and hour and discrimination laws protect all workers no matter what their immigration status, that they target investigations to the industries known for violation of labor laws, and that their agency procedures ensure access to state enforcement mechanisms for all workers.
- States should ensure that they provide access to bilingual employees, that they do not interrogate workers about their immigration status, and that they do not create other artificial barriers to enforcement of immigrant workers' rights.

Legislation Requiring State Agencies to Assist in Enforcement of Immigration Law: A Bad Idea For Workers and A Bad Idea For States. Legislation has been introduced in a number of states that either requires local agencies to assist in enforcing immigration law or that prohibits municipalities from enacting or maintaining ordinances preventing local agencies from engaging in enforcement of immigration law. If enacted, this legislation would be bad for workers and for states: it will drive already vulnerable workers further underground; it will make it harder for agencies to enforce workplace laws; and it will create additional (unfunded) burdens on state agencies.

Talking Points

- **These laws will drive already vulnerable workers further underground:** Unscrupulous employers take advantage of undocumented immigrant workers because they think they can get away with it. They count on the workers' fear of immigration consequences to keep them silent: to prevent them from organizing, from speaking out about bad conditions, from cooperating with government agencies to enforce their rights.
- **Examples of use of immigration enforcement to retaliate against workers who speak up about on the job abuse:**
 - ⇒ In Minnesota, a worker who was injured on the job was turned in to the Immigration and Naturalization Service by his employer who then argued that he was not entitled to wage loss benefits in worker's compensation because of his undocumented status. *Correa v. Waymouth Farms, Inc.*, 664 N.W.2d 324 (2003).
 - ⇒ In California, a worker was turned in to the INS by her employer for filing a claim for unpaid wages and overtime under the FLSA. *Contreras v. Corinthian Vigor Ins. Brokerage Inc.*, 25 F.Supp.2d 1053 (N.D. Cal. 1998).
 - ⇒ *Sure-Tan v. NLRB* is the best-known example of use of immigration status to gain an advantage in a workplace dispute. There, five of seven eligible voters in a successful union election were undocumented. Two hours after the workers voted in favor of union representation, and cursing the workers for having voted for the union, the employer questioned them about their immigration status. He then turned the workers over to the INS. *Sure-Tan*, 467 U.S. 884, 886-87 (1984).
- **When low-road employers take advantage of workers fear of immigration consequences, it has a negative impact on all workers.**
 - ⇒ **Congress recognized this** when it enacted the law providing for sanctions against employers who hire undocumented workers. It specifically highlighted the importance of ensuring that the labor and employment laws protect all workers, regardless of immigration status. H.R. Rep. No. 99-682, pt. 2, at 8-9, *reprinted* in 1986 U.S.C.C.A.N. 5662 (1986).
 - ⇒ **Immigration and Customs Enforcement (ICE) also recognizes this.** ICE itself says it will not respond when there is an existing labor dispute, in recognition that unscrupulous employers may

use ICE to retaliate against workers.

⇒ See, OI 287.3a <http://uscis.gov/lpBin/lpext.dll/inserts/slb/slb-1/slb-44781/slb-52283?f=templates&fn=document-frame.htm#slb-oi2873a>.

⇒ **State agencies have also recognized this.** In July 2005, following an immigration raid in which ICE agents had posed as OSHA agents, Allen Mc Neely, the head of the North Carolina Labor Department's Occupational Safety and Health division was strongly critical of that choice, saying that "the ruse eroded trust between the Labor Department and the workers it is trying to keep safe," and further: "We are dealing with a population of workers who need to know about safety," McNeely said. "Now they're going to identify us as entrappers." AP, *State labor officials complain about immigrant arrests* (July 8, 2005).

- **Outside of the labor context, smart law enforcement officials understand that they need the cooperation of witnesses and victims in order to fight crime.** If witnesses and victims are afraid that law enforcement agents will turn them in to immigration, they will not come forward and law enforcement cannot do its job.

⇒ **Both INS and the Montgomery County police department understood this when they were trying to track down the Beltway area "sniper" in 2002. This was also the approach taken in the investigations of the September 11 World Trade Center attack.**

What we're doing is joining with Chief Moose in encouraging the immigrant community to come forward with information. What we will not do is seek information from the local authorities or use that information in any proceedings against an illegal immigrant.

So what we're doing is very similar to what we did in New York in the World Trade Center matter, where families of illegal immigrants who were in there were given this same assurance that if they identified the fact that they had family member in there, that that information would not be sought from the authorities or used against them. And it was a very successful approach.

JAMES ZIGLAR, INS COMMISSIONER, CNN Inside Politics 16:00, October 23, 2002, Transcript # 102300CN.V15

- **It would be unfairly burdensome to ask state agents to navigate the complex web of immigration law.** Laypeople often talk in terms of citizen/noncitizen or documented/undocumented. However, often there is not such a bright line. In addition to citizenship and legal permanent residence (green card holder), is an alphabet of visa categories from A to V as well as status as an asylee, temporary resident, or temporary protected status. A person can transition from one status to another over time. It would be unfairly burdensome to ask state and local agents to take on the additional responsibility of acting as immigration agents.

Workers Compensation: States Should Not Provide Financial Incentives to Ignore Safety and Health. Legislation has been introduced in states (AZ, CO, MD, NJ, SC) that would exclude injured undocumented workers from coverage under worker's compensation. If passed, such laws would be out of step with what the vast majority of states have determined to be the best policy for dealing with the costs of workplace injuries. They would provide perverse incentives for unscrupulous employers to seek out undocumented workers and cut corners of health and safety measures.

Talking Points:

- **A state that excluded undocumented workers from worker's compensation coverage would be out of step with the vast majority of states.** Almost all states either explicitly or implicitly include undocumented workers in their statutes.
- **Worker's compensation is a system that works best if all workers are covered.** Workers' compensation schemes represent a compromise way of ensuring that workers have access to relief from the costs of industrial accidents, that employers are protected from the costs associated with liability in tort and that states are not left bearing the burden of caring for indigent injured workers.
- **When the costs of industrial accidents are disproportionately left to the low-wage workers who suffer injuries, the system does not work.** Employers who cut corners on safety and rely on workers' fear of retaliation to avoid liability see a financial advantage to breaking the law.
- **Relieving employers of undocumented immigrants from all liability under the labor and employment laws could actually create an incentive for some employers to seek out and exploit undocumented immigrants.**
- **These laws would provide an unfair competitive advantage to bad employers.** If unscrupulous employers are permitted to seek out undocumented workers and then use their immigration status as a shield to escape full responsibility for on-the-job injuries, they will have an unfair advantage over other employers. States should not create financial incentive to ignore health and safety laws
- **Immigrant workers suffer fatal workplace injuries at an alarmingly higher rate than other workers in the U.S. workforce.** Some immigrant groups are experiencing this as a devastating epidemic: an Associated Press investigation concluded that that "[t]he jobs that lure Mexican workers to the United States are killing them in a worsening epidemic that is now claiming a victim a day." Justin Pritchard, Mexican Worker Dies Each Day, AP Finds, NEWSDAY (March 14, 2004).

What are the alternatives? Pro-worker policies for enforcing labor and employment laws.

State outreach programs and community partnerships with interfaith, day labor, legal services, consulates and other groups to educate and refer workers.

A highly successful partnership between USDOL and the National Interfaith Committee for Worker Justice performs outreach in immigrant communities, trainings in workers' centers and churches, and negotiates wage payments. When NICWJ cannot resolve a dispute, USDOL takes over. <http://www.nicwj.org/pages/outreach.DOL.html>

A partnership between the Washington State Department of Labor and Industries, CASA Latina Day Labor Center, and the King County Bar Association recruits and trains lawyers and law students who volunteer their time to collect wages owed to day laborers, relying on the state agency when negotiations fail.

Enforcement strategies that focus on misclassification of workers. Misclassification of workers as "independent contractors" is a large and growing problem that denies low-wage workers the protection of labor laws. In the past year alone, state audits of unemployment insurance systems found an increase of 42% in the number of workers misclassified as independent contractors.

California was the first state to create a "Joint Enforcement Strike Force" to focus on misclassification of workers as "independent contractors." Through this, tax and labor agencies created an "Employment Enforcement Task Force to perform onsite inspections and audits of suspect small companies based on reasonable belief of violations of tax and employment laws. In 2002, the Task Force collected \$74 million in unpaid wages and \$10 million in payroll tax assessments. <http://www.edd.ca.gov/taxrep/txueoindtx.htm#EETF>

Labor agency investigators are in a position to refer important "joint employer" cases to state Attorneys General and to the private bar. Establishment of "joint employer" liability is a powerful tool to protect low-wage workers. The New York Attorney General's office has aggressively pursued wage claims against joint employers, participating in the first modern use of the joint employment theory under New York law against large supermarket and drugstore chains for unpaid wages due to delivery workers misclassified as independent contractors. <http://www.oag.state.ny.us/2000AnnualReport.pdf>

State enforcement policies that are targeted to low-wage work and abusive industries, and that emphasize recovery for the entire workforce (rather than just the complainant). Some state agencies view themselves as the first line of defense against wage abuses for low-wage workers who cannot afford attorneys. Some have targeted industries known for low-wages and high levels of wage violations, such as janitorial, garment, day labor, temporary agencies.

The New York State Attorney General's Office targeted greengrocers for violations of the labor law and ultimately developed an industry code of conduct http://www.oag.state.ny.us/press/2002/sep/sep17a_02.html.

The California Targeted Industries Partnership Program focuses on the apparel, agriculture, restaurant and janitorial services industries. The Construction Enforcement Project focuses on the construction industry. The Janitorial Enforcement Project focuses on the janitorial and building maintenance industry. <http://www.dir.ca.gov/dlse/tipp4.htm>

State or local legislation that authorizes complaints “on behalf of others.

San Francisco’s city minimum wage ordinance, authorizes community groups and unions to file complaints, without having to show that the workers not being paid are their members. http://www.ci.sf.ca.us/site/uploadedfiles/oca/living_wage/nw/ordinance.pdf.

State living wage or minimum wage laws that earmark fines recovered from violators to fund new enforcement.

The San Francisco minimum wage ordinance provides for employer fines to be provided to the city in order to offset the costs of investigating and remedying the violation. http://www.ci.sf.ca.us/site/uploadedfiles/oca/living_wage/nw/ordinance.pdf

Policies affirming a commitment to performing its duties without regard to the immigration status of workers who come before it. State agencies in California and Washington have delivered such statements.

In September, 2002, a California law was enacted amending the Civil, Government, Health and Safety and Labor Codes and made declarations of existing law. The new law reaffirms that “[a]ll protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment who are or who have been employed, in this state.” http://info.sen.ca.gov/pub/01-02/bill/sen/sb_1801-1850/sb_1818_bill_20020929_chaptered.html

The Director of the *Washington State Department of Labor and Industries* has issued a statement that undocumented immigrants continue to be entitled to both time loss and wage replacement after the *Hoffman* decision:

The 1972 law that revamped Washington’s workers’ compensation system is explicit: All workers must have coverage. Both employers and workers contribute to the insurance fund. The Department of Labor and Industries is responsible for ... providing workers with medical care and wage replacement when an injury or an occupation disease prevents them from doing their job. The agency has and will continue to do all that without regard to the worker’s immigration status. Statement dated May 21, 2002 by Gary Moore, Director, available at <<http://www.nelp.org/iwp/reform/state/appendixwadol.cfm>>

The *New York State Attorney General* issued a formal opinion stating that *Hoffman* “does not preclude enforcement of State wage payment laws on behalf of undocumented immigrants.” http://www.oag.state.ny.us/lawyers/opinions/2003/formal/2003_f3.html

Appendix: Model Language

Recommended Alternative: Model State Labor Agency Policies Regarding Immigration Status

Anti-discrimination laws: State agencies responsible for enforcing anti-discrimination laws may adopt the following policy:

All workers, regardless of immigration status, are covered by state anti-discrimination employment laws, and are eligible for all remedies under the law unless explicitly prohibited by federal law.

1. The [Agency Name] will:
 - a. Investigate complaints of violations of the anti-discrimination in employment laws and file court actions to seek and collect back pay, compensatory and punitive damages, and all other appropriate remedies, including equitable relief. This shall be done without regard to the worker's immigration status, unless explicitly prohibited by federal law.
 - b. Investigate retaliation complaints and file court actions to collect back pay owed to any worker who was the victim of retaliation for having complained about unlawful discrimination, without regard to the worker's immigration status, unless explicitly prohibited by federal law.
2. The [Agency Name] will not ask a complainant or witness for their social security number (SSN) or other information that might lead to disclosing an individual's immigration status, will not ask workers about their immigration status and will not maintain information regarding workers' immigration status in their files.
3. During the course of court proceedings, the [Agency Name] will oppose efforts of any party to discover a complainant's or witnesses' immigration status by seeking a protective order or other similar relief.
4. In the rare occasion that [Agency Name] must know the complainant's immigration status, it will keep that status confidential, and will have a policy of nondisclosure to third parties (including to other state or federal agencies), unless otherwise required by federal law.
5. If a party raises the issue of an employee's immigration status in the course of proceedings, the party must show that the evidence is more probative than prejudicial, and that it obtained such evidence in compliance to 8 CFR § 274a.2(b)(1)(vii).
6. [Agency Name] will train its staff (including intake officers, investigators, attorneys, and other relevant staff) on this policy and will work closely with community-based organizations to conduct this training.
7. [Agency Name] will make reasonable efforts to work closely with community-based organizations to conduct outreach and education to the immigrant community on this policy.

Wage and hour laws: State agencies responsible for enforcing wage and hour laws may adopt the same policy, except the first paragraph should read:

All workers, regardless of immigration status, are covered by state wage and hour laws, and are eligible for all remedies under the law unless explicitly prohibited by federal law.

1. The [Agency Name] will:
 - a. Investigate complaints of violations of the wage and hour laws and file court actions to seek and collect unpaid wages and all other remedies authorized under state law without regard to the worker's immigration status, unless explicitly prohibited by federal law.
 - b. Investigate retaliation complaints and file court actions to collect back pay owed to any worker who was the victim of retaliation for having complained about unpaid wages, without regard to the worker's immigration status unless explicitly prohibited by federal law.

Occupational safety and health laws: State agencies responsible for enforcing occupational safety and health laws may also adopt the same policy, except the first paragraph should read:

All workers, regardless of immigration status, are covered by state occupational safety and health, and are eligible for all remedies under the law unless explicitly prohibited by federal law.

1. The [Agency Name] will:
 - a. Investigate complaints of violations of the occupational safety and health laws and file court actions to enforce the law without regard to the worker's immigration status unless explicitly prohibited by federal law.
 - b. Investigate retaliation complaints [if state law includes an anti-retaliation provision] and file court actions to collect back pay owed to any worker who was the victim of retaliation for having complained about unpaid wages without regard to the worker's immigration status unless explicitly prohibited by federal law.

Workers' compensation: State agencies responsible for enforcing workers' compensation laws should adopt the following policy:

The [Agency Name] is responsible for providing workers with medical care and wage replacement when an injury or an occupational disease prevents them from doing their job. The agency has and will continue to do all that without regard to the worker's immigration status.

1. The [Agency Name] will provide medical expenses, wage replacement and all other benefits and remedies authorized under state law to all workers regardless of immigration status unless explicitly prohibited by federal law.
2. The [Agency Name] will not ask injured workers or their witnesses for their social security number (SSN) or other information that might lead to disclosing an individual's immigration status, and will not ask injured workers or their witnesses about their immigration status and will not maintain information regarding immigration status in their files.
3. Worker's immigration status is not relevant to determine eligibility for medical expenses or wage replacement.
4. During the course of court proceedings, the [Agency Name] will oppose efforts of any party to discover an injured worker's or witnesses' immigration status by seeking a protective order or other similar relief.
5. In the rare occasion that [Agency Name] must know the injured worker's or witnesses' immigration status, it will keep that status confidential, and will have a policy of nondisclosure to third parties (including to other state or federal agencies), unless otherwise required by federal law.
6. If a party raises the issue of an injured worker's or witnesses' immigration status in the course of proceedings, the party must show that the evidence is more probative than prejudicial, and that it obtained such evidence in compliance to 8 CFR § 274a.2(b)(1)(vii).
7. [Agency Name] will train its staff (including intake officers, investigators, attorneys, and other relevant staff) on this policy and will work closely with community-based organizations to conduct this training.
8. [Agency Name] will make reasonable efforts to work closely with community-based organizations to conduct outreach and education to the immigrant community on this policy.

Recommended Alternative: Draft Law or Executive Order Preventing Local Enforcement of Immigration Law

PURPOSE AND POLICY STATEMENT

WHEREAS, immigrants, who live and work in **[insert location]** contribute to our community. Over **X%** of the residents of **[insert location]** were classified as foreign-born in the 2000 census.

WHEREAS, immigrants work in some of the lowest-paid and highest risk jobs in the community and are frequently subject to abuse.

WHEREAS, all too often, low-road contractors rely on employees fear about the immigration consequences of dealing with government agents to prevent them from speaking out about abuses on the job.

WHEREAS, the cooperation of all members of the community, regardless of immigration status, is essential to law enforcement.

WHEREAS there is a need for a clear statement of policy to provide guidance to county employees and to promote the safety and health of all community members.

WHEREAS preserving the confidentiality of certain information is integral to the operation of County government.

This order/ ordinance supercedes all conflicting policies, ordinances, rules, procedures and practices.

DEFINITIONS

“Citizenship, immigration, or residency status”: All matters regarding questions of citizenship of the United States or any other country, questions of authority from the Department of Homeland Security to reside or otherwise be present in the United States, and the time or manner of a person’s entry into the United States. The use in this order of the term “residency” shall not mean street address or location of residence in county or elsewhere.

“[geographic unit] agency”: Any and each entity directly controlled by the **[geographic unit]**.

“[geographic unit] agents”: Any and each employee, including those who work in public safety, employed directly by the **[geographic unit]**.

“Confidential information”: Any information obtained and maintained by a **[geographic unit]** agency relating to an individual’s sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, or immigration status, and shall include all information contained in any individual’s income tax records.

“General [geographic unit] services”: All services except those specifically listed as public safety services.

“Illegal activity”: Unlawful, criminal activity but shall not include mere status as an undocumented immigrant.

“Immigrant”: Any person who is not a citizen or a national of the United States.

“Law enforcement entities”: Police, probation, sheriff’s office, **OTHER?**

“Public safety services”: Police and fire departments, Emergency Medical Service (EMS) authorities, **[geographic unit]** Attorney’s office.

“Undocumented immigrant”: A noncitizen who does not have lawful immigration status, in violation of federal civil immigration laws.

Section 1. [geographic unit] SERVICES

(A) [geographic unit] agents shall not inquire into the immigration status of any individual, nor shall [geographic unit] agents enforce federal civil immigration laws.

(B) [geographic unit] agents shall follow general county, state, and federal guidelines to assess eligibility for services. A [geographic unit] agent shall not inquire about a person's immigration status unless: (1) such person's immigration status is necessary for the determination of program, service or benefit eligibility or the provision of city services; or (2) such agent is required by law to inquire about an individual's immigration status.

(C) The presentation of a photo identity document issued by the person's country of origin, such as a foreign driver's license, passport, or *matricula consular* (consulate-issued document) shall be accepted and shall not subject the individual to a higher level of scrutiny or different treatment than if the person had provided a X State *driver's license*. *This paragraph does not apply to I-9 forms.*

Section 2. LAW ENFORCEMENT

(A) Unless otherwise required by law or court order, [geographic unit] agents shall refrain from the enforcement of federal immigration laws. No county agents, including agents of law enforcement entities, shall use county monies, resources, or personnel solely for the purpose of detecting or apprehending persons whose only violation of law is or may be a civil immigration violation.

(B) Police officers are exempted from the above limitations, with respect to a person whom the officer has reasonable suspicion to believe: (1) has been convicted of a felony criminal law violation; (2) was deported or left the United States after the conviction; and (3) is again present in the United States.

(C) County agents shall not single out individuals for legal scrutiny or enforcement activity based solely on their country of origin, religion, ethnicity or immigration status.

Section 3. VICTIM AND WITNESS PROTECTION

(A) It shall be the policy of public safety services departments not to inquire about the immigration status of crime victims, witnesses, or others who call or approach county agents seeking assistance.

(B) A [geographic unit] agent who provides public safety services shall not request specific documents for the sole purpose of determining an individual's civil immigration status. However, if offered by the individual and not specifically requested by the agent, it is permissible to rely on immigration documents only to establish that individual's identity in response to a general request for identification.

Section 4. CONFIDENTIALITY OF INFORMATION

(A) No [geographic unit] officer or employee shall disclose confidential information, unless:

- (1) Such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian; or
- (2) Such disclosure is required by law; or
- (3) Such disclosure is to another city officer or employee and is necessary to fulfill the purpose or achieve the mission of any [geographic unit] agency; or
- (4) In the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any [geographic unit] agency; or
- (5) In the case of information relating to immigration status, (a) the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, or (b) such disclosure is necessary in furtherance of an investigation.