



NEW YORK
CITY BAR

COMMITTEE ON
IMMIGRATION & NATIONALITY LAW

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Hon. Andrew M. Cuomo
State Capitol
Executive Chamber
Albany, New York 12224

Re: A.5501 (AM Crespo) / S.5791 (Sen. Ramos) (Attorney General #5) - Provides for penalties for discrimination or retaliation against immigrant employees; SUPPORT

Dear Governor Cuomo:

The New York City Bar Association's Committee on Immigration and Nationality Law ("the Committee") writes in support of A.5501/S.5791 (the "Bill"), which would explicitly prohibit immigration-related threats against employees in retaliation for protected activity under the Labor Law and explicitly prohibit reporting an employee to federal immigration authorities in retaliation for protected activity under the Labor Law. We urge you to sign the bill into law. The Committee also recommends that your administration commit significant funds for enforcement to address the recent surge in immigration-related retaliation by exploitative employers across New York State.

The City Bar's over 24,000 members include attorneys in private practice, government service, non-profit practice, and academia. The Immigration and Nationality Law Committee is comprised of immigration attorneys, government employees, immigration law scholars, and attorneys specializing in human and civil rights. This letter is based upon committee members' expertise and experience counseling clients.

Currently, New York Labor Law section 215 prohibits discrimination or retaliation against an employee who has made a complaint of a violation of the Labor Law. The provision protects workers who claim that they are not being paid minimum wage, for example, and whose employer then fires them or otherwise takes adverse action against them. An employee who has suffered retaliation in violation of this provision can receive compensation in the form of liquidated damages up to \$20,000. The other remedies allowed are reinstatement, front pay, backpay and other compensatory damages including costs and attorneys' fees. In addition, a violation is a class B misdemeanor. Workers have a private right of action to pursue a retaliation claim under this provision in court; or the New York State Department of Labor ("DOL") can enforce the violation, and in that case, a civil penalty can also be levied.

The Bill proposes to amend this section of the Labor Law to make clear that a threat to report an employee to U.S. immigration authorities or the act of actually reporting that employee to immigration authorities is covered by this provision. The amendment is critical to ensuring the safety of immigrant workers by protecting workers' ability to report labor law violations without fear of deportation. Current law explicitly covers "threats," in addition to other adverse actions, so the amendment does not add, increase or enhance penalties, but instead provides clarity that this particular form of retaliation is prohibited.

A clear statement of the law is needed since abusive employers appear emboldened by recent anti-immigrant rhetoric and have taken the opportunity to exploit workers' fear of federal immigration enforcement to chill protected activity under the labor law. The DOL has seen an increase in reports of New York City employers who have threatened undocumented workers with calling immigration authorities and has investigated 30 such cases in the past three years.¹

The administration must also commit to sufficient funding to follow through with robust enforcement of the retaliation provision of the New York Labor Law. The DOL, advocates from community organizations, and legal services lawyers have been working hard to address retaliation on a case-by-case basis with government and private enforcement actions. However, the current level of enforcement has not stemmed the illegal practices, which continue virtually unabated. In order to actually end this form of retaliation, which erodes labor standards for New York's most vulnerable workers, the DOL must be equipped with adequate staff and overhead to publicly attack the problem with both preventative employer education programs and a corresponding uptick in enforcement actions. This will send a strong message that New York will not tolerate employer exploitation of immigrant workers.

The Committee supports A.5501/S.5791 to help ensure that immigration-related threats and other acts of retaliation against immigrant workers are squarely covered under the New York Labor Law. It is critical that immigrant workers, who often work under the most exploitative working conditions, feel safe reporting labor law violations. Deportation cannot be the cost of asserting one's rights.

Respectfully submitted,



Victoria Neilson, Chair
Immigration and Nationality Law Committee

Cc: Hon. Marcos Crespo
Hon. Letitia James
Hon. Jessica Ramos

¹ Edwin Martinez, *More Employers Threaten Undocumented Workers*, VOICES OF NY, Aug. 29, 2018, <https://voicesofny.org/2018/08/more-employers-threaten-undocumented-workers/>; *New York Bill Targets Workplace Immigration Discrimination*, PIX 11, Feb. 6, 2019, <https://pix11.com/2019/02/06/new-york-bill-targets-workplace-immigration-discrimination/> (last visited July 16, 2019).