

# HOUSE BILL REPORT

## 2SHB 2105

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### As Passed Legislature

**Title:** An act relating to protecting immigrant workers.

**Brief Description:** Concerning immigrant worker protections.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Ortiz-Self, Mena, Farivar, Cortes, Berry, Ramel, Fosse, Parshley, Ryu, Stearns, Doglio, Simmons, Peterson, Reed, Obras, Santos, Zahn, Fitzgibbon, Street, Wylie, Scott, Thomas, Duerr, Stonier, Gregerson, Ormsby, Callan, Goodman, Reeves, Thai, Macri, Bergquist, Salahuddin, Hill, Davis and Pollet; by request of Attorney General).

### Brief History:

#### Committee Activity:

Labor & Workplace Standards: 1/16/26, 1/23/26 [DPS];  
Appropriations: 2/5/26, 2/7/26 [DP2S(w/o sub LAWS)].

#### Floor Activity:

Passed House: 2/13/26, 56-38.  
Senate Amended.  
Passed Senate: 3/5/26, 27-21.  
House Concurred.  
Passed House: 3/11/26, 58-38.  
Passed Legislature.

### Brief Summary of Second Substitute Bill

- Requires an employer to notify its workers within five days of receiving a federal Notice of Inspection of Employment Eligibility Verification Forms I-9 (Forms I-9).
- Requires an employer to notify affected workers within five days of receiving the results of any inspection of Forms I-9.
- Allows the Attorney General to bring a civil action to enjoin violations and obtain actual damages and statutory damages, and allows injured

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

workers and other persons to bring a private civil action to enjoin violations and obtain actual damages or statutory damages.

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## HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Berry, Chair; Fosse, Vice Chair; Scott, Vice Chair; Bronoske, Obras and Ortiz-Self.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Ybarra, Assistant Ranking Minority Member; McEntire.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Schmidt, Ranking Minority Member.

**Staff:** Kelly Leonard (786-7147).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Labor & Workplace Standards. Signed by 17 members: Representatives Ormsby, Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Bergquist, Callan, Cortes, Doglio, Fitzgibbon, Leavitt, Lekanoff, Peterson, Pollet, Ryu, Stonier, Street and Thai.

**Minority Report:** Do not pass. Signed by 8 members: Representatives Couture, Ranking Minority Member; Connors, Assistant Ranking Minority Member; Penner, Assistant Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Burnett, Dye, Keaton and Marshall.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Corry, Manjarrez and Springer.

**Staff:** Jessica Van Horne (786-7288).

### **Background:**

Federal law, primarily through the Immigration and Nationality Act of 1952, controls which immigrants can enter, stay, and work in the United States. The Immigration Reform and Control Act of 1986 (IRCA) prohibits employers from knowingly hiring immigrants who are not authorized to work in the United States. An employer who violates the IRCA may be subject to civil and criminal penalties. The United States Department of Homeland

Security, which includes Immigration and Customs Enforcement, enforces laws governing border control, customs, trade, and immigration.

The IRCA requires an employer to verify the identity and employment eligibility of every employee by using the Employment Eligibility Verification Form I-9 (Form I-9), and maintain the original Form I-9 for possible inspection for at least three years from the date of hire or for one year after the employee is no longer employed, whichever is later. While federal officials are not required to obtain a subpoena or warrant to inspect Forms I-9, federal regulations require officials to provide an employer with at least three business days' advance notice prior to an inspection, referred to as a Notice of Inspection (NOI). An employer may waive the three-day notice requirement. Following an inspection, officials will issue a relevant results notice to the employer. This could include a Notice of Inspection Results, Notice of Suspect Documents, Notice of Discrepancies, Notice of Technical or Procedural Failures, Warning Notice, or Notice of Intent to Fine. In a case where an employer's workforce includes unauthorized workers, officials may take enforcement action. If officials appear at a worksite to conduct other forms of immigration enforcement, they may enter a public space without permission or a warrant. However, officials must obtain a warrant or an employer's permission to enter a private workspace.

### **Summary of Second Substitute Bill:**

#### Notices.

*Receipt of a Notice of Inspection.* Beginning October 1, 2026, an employer must post and distribute notices to its workers and their representatives within five days of receiving an NOI of Forms I-9 and any related worker records from a federal agency, which includes the United States Department of Homeland Security, United States Department of Justice Immigrant and Employee Rights Section, the United States Department of Labor, and any other agency enforcing civil immigration laws or employment eligibility requirements.

The notice must include certain information in English and the five most commonly used non-English languages in the state, such as the name of the federal agency, the date of the NOI, the types of records sought, and contact information for a statewide organization that provides advocacy related to immigrant and refugee rights. The notice must also include a copy of the NOI. While an employer may use its own notice, the Attorney General (AG) must develop and publish a model notice for employers to use without requiring translation services, subject to certain requirements in the bill. The model notice must be published by September 1, 2026. An employer that uses the model notice is considered to have satisfied the required elements.

The notice of the NOI must be posted in conspicuous places on the premises of the employer where notices to workers are customarily posted. The employer must also transmit the notice directly to workers using the primary method of communication typically used by the employer, which must include at least one of the following: hand delivery to the worker; mail with proof of delivery; email with proof of transmission; or text

message sent telephonically, which may include a link to a notice maintained on a web page, with proof of transmission.

*Inspection Results.* Beginning October 1, 2026, an employer must distribute notices to affected workers and their representatives within five days of receiving the results of any inspection of Forms I-9 and any related worker records. This applies to any worker identified by the federal agency as lacking federal work authorization or any worker whose Form I-9 has been identified as having deficiencies. The notice must include a copy of the written notice from the federal agency, as well as the following information in the language most regularly used to communicate between the employer and the affected worker:

- a description of any deficiencies or other items identified in the results notice related to the affected worker;
- the time period for correcting any potential deficiencies;
- a mutually agreed upon time and date, or options for times and dates, for a meeting with the employer to correct any identified deficiencies; and
- notice that the worker has the right to representation during any meeting scheduled with the employer.

The notice must be transmitted directly to the affected workers using the primary method of communication typically used by the employer, similar to the notice of the NOI.

*Poster.* By September 1, 2026, the AG must develop and publish a poster for employers to inform workers of the notice requirements in English and the five most commonly used non-English languages in the state. The poster must include space for an employer to provide information on where they will post required notices. By October 1, 2026, every employer must post the poster in a conspicuous place on the premises of the employer where notices to workers are customarily posted.

#### Self-Audits.

Employers are not required to perform Form I-9 self-audits. Any Form I-9 self-audit must comply with all applicable federal, state, and local antidiscrimination and anti-retaliation laws and any applicable collective bargaining agreements. An employer may not impose work authorization verification or reverification requirements greater than those required by federal law.

#### Outreach to Employers.

By September 1, 2026, the AG must develop and publish guidance describing employers' rights to restrict a federal agency from accessing nonpublic areas in a place of labor and from accessing or obtaining certain worker records without a subpoena or judicial warrant. Through October 1, 2027, the AG must conduct outreach to businesses, employers, and community members to provide information and guidance on the requirements in the bill.

#### Anti-Retaliation.

An employer may not interfere with, restrain, or deny the exercise of any worker's rights in the bill, including using any such exercise of rights as a negative factor in any employment action. An employer may not take any adverse action against a worker because the worker has exercised their rights in the bill.

Enforcement.

The AG may investigate alleged violations and also resolve alleged violations through conference and conciliation. The AG may also pursue legal action in the name of the state to enjoin violations, and obtain actual damages, statutory damages, and any other appropriate relief at law or equity, plus reasonable attorneys' fees and costs. For each violation of a notice requirements, the court must order the employer to pay statutory damages to the AG in the amount of \$500 for each instance where the employer failed to provide a notice to a worker satisfying the requirements. The court shall double the statutory damages if it finds that the violation was willful. The court may waive or reduce the statutory damages under this section if the employer's violation was inadvertent, the violation did not result in actual harm, and the employer made prompt and good faith efforts to correct the violation.

A worker, former worker, or a person injured by a violation may bring a private cause of action in superior court to enjoin further violations, recover damages, and seek any other equitable relief or appropriate remedy, plus reasonable attorneys' fees and costs. If the court finds that an employer has committed a violation, the court must award damages up to and including an amount equal to actual damages or statutory damages equivalent to 40 times the hourly Washington state minimum wage per plaintiff per violation, whichever is greater. The court must consider certain factors when determining statutory damages.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains multiple effective dates. Please see the bill. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Labor & Workplace Standards):**

(In support) About 15 percent of the state population are immigrants, and they contribute 21 percent to the state GDP. This is over \$145 billion. And yet these are unprecedented times. While the federal government has a right to protect its borders through safe and legal means, there are abuses in the state and across the nation. The immigrant community is scared. In particular, an I-9 audit followed by a workplace raid is not an effective way to find violent criminals. These raids are designed to sow fear, destroy families, and punish individuals who have been working productively for years. The bill is not going to eliminate these abuses, and it is not going to bring due process and justice for many families that have been torn apart. But the bill brings clarity to employers who continue to ask what

their role is in protecting their workforce. It will also bring peace of mind to their workers. The bill requires employers to notify employees of planned I-9 audits by the US Immigration and Customs Enforcement. This is really a matter of due process, so that individuals are not subjected to arbitrary exercises of government power. The advance notice will let workers know what is happening and give them an opportunity to fix any deficient or incorrect information on their records. Workers should have the same opportunity as employers to correct their records. It informs workers of their rights and prepares them to protect their rights. The bill also reminds employers that they are not required to give federal immigration officials access to their nonpublic areas of business unless those officials have a warrant signed by a judge. In addition, the bill reminds employers they are not required to share employees' personal data without a subpoena or judicial warrant. This bill is about operating in a just and cordial way with our neighbors, family, and friends. Immigrants are a vital part of the state workforce and economy.

(Opposed) The bill puts employers in the cross fire between the federal government and the state government. The state should be wary of putting employers in a position where compliance with this bill would result in violating federal law. It is a no-win situation, where employers are trapped between federal immigration enforcement and the Attorney General. Small employers are particularly ill-equipped to navigate the intersection of federal and state laws, especially with only 72 hours to figure it out. The requirement to find and notify former workers is too onerous. The prohibition on consenting to searches is also problematic. Most lawyers advise employers to cooperate with the federal government. The bill also essentially requires every employer to translate every NOI into five different languages in every instance without regard to the needs of their workforce. This is impractical. Most employers do not have legal or human resources departments or access to these translation services. Most payroll and recordkeeping is done in house by an owner or employee. I-9 audits are already complicated and stressful for employers, where federal investigators require employers to produce supporting documentation. The penalties are too severe. A single inadvertent violation would put most employers out of business. Most employers want to do the right thing. Instead of this harsh, one-size-fits-all approach, a more effective strategy would involve outreach and education for employers and employees alike.

(Other) The Attorney General's Office is working on a substitute bill to address some concerns. The underlying policy is laudable. However, the proposed penalties are still too high. There needs to be some rightsizing before the bill advances. There should be reductions and waivers for inadvertent violations. The notice requirements should also be simplified for employers.

### **Staff Summary of Public Testimony (Appropriations):**

(In support) I-9 audits lead to the deportation of individuals who have been part of communities for decades. This legislation will require employers to share information about I-9 audits with employees, which will provide notice to those who will be most

impacted and ensure basic, but vital, protections for immigrant workers. This gives workers time to correct paperwork or let their families know in case they are taken and do not return from work. Providing information will prevent family separations and community disruption. This legislation will also provide clarity to workplaces that they do not need to provide information or access without a judicial warrant. This legislation will level the playing field between workers and employers. The Office of the Attorney General (AGO) will incur costs to conduct enforcement and develop guidance for employers. The AGO is committed to continuing to improve the bill.

(Opposed) While many components of the bill are laudable, the private right of action is very concerning to businesses, as it opens up the possibility of frivolous lawsuits, or lawsuits based on a technical or timing violation due to the 72-hour turnaround even in the absence of any harm. Many small businesses do not have the resources to go to court and would have to settle. The fiscal note does not recognize this cost. While the aggressive anti-immigrant policy is wrong, so is sending lawyers after businesses at this time. Businesses are already bearing a substantial financial and legal burden to comply with the federal government. The AGO also lacks resources to truly enforce and may resort to suing businesses. There is a potential risk of tort liability for the state. Other states have successfully enforced similar legislation without the private right of action.

(Other) Members of the hospitality association have made many requests for guidance in the current situation. The association is attempting to help members lawfully comply with requests while also looking out for their employees. The hospitality association appreciates the training and guidance provided under the bill, but is concerned with the private right of action, as it would pull resources away from those other areas of work.

**Persons Testifying (Labor & Workplace Standards):** (In support) Representative Lillian Ortiz-Self, prime sponsor; Weilson Geng; Jean Hill, Washington State Catholic Conference; Lydia Zepeda, League of Women Voters Washington; Pedro Espinoza; Kristin Ang; Carissa Larsen, Washington State Labor Council, AFL-CIO; Adam Eitmann, Washington State Attorney General's Office; Mark Bowers, Columbia Legal Services; Guillermo Cruz; and Commissioner Carolina Mejia.

(Opposed) Anthony Mixer, Citizen Volunteer Lobbyist; Eric Lundberg, Living Word Lutheran Church; Laurie Layne; Patrick Connor, NFIB; Bob Lycke, KR Inc.; Beth Milito, NFIB Small Business Legal Center; Harry Truitt, Lighthouse Diving Center Inc; Carolyn Logue, Associated Builders and Contractors Inland Pacific Chapter; Rose Gundersen, WA Retail Association; and James Crandall, AWB.

(Other) Paul Jewell, Washington State Association of Counties; Andrea Reay, Washington Hospitality Association; and Michael Gempler, Washington Growers League.

**Persons Testifying (Appropriations):** (In support) Jean Hill, Washington State Catholic Conference; Alexandra Johnson, Duwamish River Community Coalition; Mahmood Alkhazraji, ASCWU Liaison; and Delaney Hewitt, Attorney General's Office of

Washington.

(Opposed) Patrick Connor, NFIB; Carolyn Logue, Associated Builders and Contractors Inland Pacific Chapter; Molly Pfaffenroth, Washington Food Industry Association; James Crandall, AWB; and Rose Gundersen, WA Retail Association.

(Other) Andrea Reay, Washington Hospitality Association.

**Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards):**

Angela Turletti; Madeline Schaller; Eugene Kemper; Alex Scheel; Kyle Shea; Allison Dambrosio; Becky Gamble; Stephanie Wren; Rachel Larowe; Rey Ward; Meg Dambrosio; Patricia Blau; Ericka Baird, Tacoma German Language School; Ying Loyola; Heather Sisson; Stacey Powell; Valerie Middleton; Kathryn Pitroff; Malou Chavez, Northwest Immigrant Rights Project; Jennyfer Mesa, Latinos En Spokane; Guillermo Zazueta, OneAmerica; Mercedes Gonzalez; and Jeremiah Miller, Working WA .

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.