

108TH CONGRESS
1ST SESSION

H. R. 2870

To protect day laborers from unfair labor practices.

IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2003

Mr. GUTIERREZ introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To protect day laborers from unfair labor practices.

1 *Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Day Laborer Fairness
5 and Protection Act”.

6 SEC. 2. FINDINGS.

7 Congress finds the following:

8 (1) According to the General Accounting Office,
9 contingent workers comprise approximately 30 per-
10 cent of the workforce and research indicates that the
11 size of the day labor workforce may be greater than
12 nationally available data suggests.

23 (4) Wage and hour abuses are of particular
24 concern to day laborers. Despite current legal wage
25 and hour protections afforded to day laborers, such

1 laborers are subject to pervasive wage and hour vi-
2 olations committed by day labor employers and tem-
3 porary labor agencies. The short nature of the em-
4 ployment relationship, multiple barriers to enforce-
5 ment resources and the lack of strong protective
6 wage and hour laws render day laborers particularly
7 vulnerable to nonpayment of wages. Wage and hour
8 problems confronting day laborers take many forms
9 and include: complete nonpayment of wages; pay-
10 ment of less than the agreed upon rate; payment by
11 checks with insufficient funds and late payment of
12 wages. Day labor employers often delay payments of
13 promised wages until the completion of a job. Upon
14 completion, day laborers are commonly left with less
15 than promised or a void check. Lack of access to so-
16 cial and legal services that could assist them in en-
17 forcing their workplace rights leave few options for
18 day laborers seeking to recover unpaid wages.

19 (5) Occupational injury and fatality rates for
20 day laborers are disproportionately higher than such
21 rates for other workers. Desperate for work and
22 fearing retaliation, day laborers often risk life and
23 limb without ever reporting work hazards. Day la-
24 borers are often assigned to the dangerous tasks
25 shunned by workers with more options. Employers

1 often neglect their duties to provide safe employment
2 that is free from hazards to a day laborers' health.
3 Employers regularly fail to provide necessary health
4 and safety equipment and training to day laborers.
5 Due to the lack of notice requirements, most day la-
6 borers have no advance warning about possible expo-
7 sure to hazardous materials or dangerous tasks.

8 (6) Day laborers and contingent workers seek-
9 ing to enforce the employment and labor laws are
10 frequently subject to intimidating retaliatory acts by
11 the employer. Absent stronger antiretaliation protec-
12 tions, day laborers will continue to endure dangerous
13 and unjust working conditions without recourse.

14 (7) Day laborers and contingent workers pro-
15 vide employers with a flexible workforce and con-
16 tribute significantly to interstate commerce. Despite
17 these contributions, day laborers are routinely sub-
18 jected to workplace abuse with little or no recourse.
19 The growing numbers of day laborers and other con-
20 tingent workers in the workforce calls for legislative
21 reforms that expand and protect the rights of day
22 laborers.

23 **SEC. 3. PURPOSE.**

24 The purpose of this Act is to ensure that individuals
25 working as day laborers, or temporary workers, are af-

1 forded full protection of and access to employment and
2 labor laws that ensure workplace dignity and to reduce
3 unfair competitive advantage for firms that abuse day la-
4 borers.

5 SEC. 4. DEFINITIONS.

6 In this Act the following definitions apply:

7 (1) DAY LABORER.—The term “day laborer”
8 means an individual who is engaged in or waiting to
9 be engaged in day labor.

10 (2) DAY LABOR.—The term “day labor” means
11 labor or employment that is occasional or irregular
12 for which an individual is employed for not longer
13 than the time period required to complete the as-
14 signment for which the individual was hired and in
15 which wage payments are made directly to the day
16 laborer or indirectly by the day labor service agency
17 or the third party employer for work undertaken by
18 a day laborer. Day labor does not include labor or
19 employment of a professional or clerical nature.

20 (3) DAY LABOR EMPLOYER.—For purposes of
21 this Act, the term “day laborer employer” refers to
22 any person or entity that directly or indirectly,
23 through an agent, day labor service agency or any
24 other entity acting in the employer’s interest, en-
25 gages, suffers or permits a day laborer to work or

1 otherwise has the right to exercise control over the
2 wages, hours or working conditions of a day laborer.
3 The term includes day labor service agencies and
4 third party employers as defined in this Act.

5 (4) DAY LABORER SHAPE-UP SITE.—The term
6 “day laborer shape-up site” means any public area
7 or street corner, residential or commercial, where
8 day laborers assemble to seek employment.

9 (5) DAY LABORER HIRING SITE.—The term
10 “day laborer hiring site” refers to any program
11 sponsored by a public entity or nonprofit organiza-
12 tion that provides a space for day laborers to assem-
13 ble for work and participate in skills development
14 workshops and classes. For the purposes of this Act,
15 day laborer hiring sites are not day labor employers.

16 (6) DEPARTMENT.—The term “Department”
17 means the Department of Labor.

18 (7) SECRETARY.—The term “Secretary” means
19 the Secretary of Labor.

20 (8) REGULAR RATE OF PAY.—The term “reg-
21 ular rate of pay” means an hourly wage rate agreed
22 to by the day labor employer and day laborer. If a
23 daily rate is negotiated, the regular rate of pay shall
24 be calculated by dividing the total remuneration
25 agreed upon for 1 week by 40. On jobs that require

1 prevailing wage rates, the regular rate of pay shall
2 be the prevailing wage or wage agreed to by the day
3 laborer employer and day laborer, whichever is high-
4 er. In no circumstances shall the regular rate of pay
5 be less than that required by law.

6 (9) DAY LABOR SERVICE AGENCY.—The term
7 “day labor service agency” means any person or en-
8 tity that recruits, dispatches, or otherwise facilitates
9 the employment of day laborers by a third party em-
10 ployer. A day labor service agency is a day labor em-
11 ployer and shares all legal obligations placed on a
12 day labor employer by this Act. A not-for-profit or-
13 ganization is not a day labor service agency.

14 (10) WORKDAY AND DAY.—The terms “work-
15 day” and “day” mean any consecutive 24 hours pe-
16 riod beginning at the same time each calendar day.

17 (11) THIRD PARTY EMPLOYER.—The term
18 “third party employer” refers to a person or entity
19 that suffers or permits a day laborer to work by con-
20 tracting with a day labor service agency. Third party
21 employers are day labor employers and share all
22 legal obligations placed on day labor employers.

23 **SEC. 5. SUSTAINABLE WAGES.**

24 (a) SUSTAINABLE WAGE.—A day laborer shall be
25 paid not less than the equivalent of the prevailing wage

1 rate paid to permanent employees who are performing
2 substantially equivalent work, with due consideration
3 given to seniority, experience, and skills.

4 (b) NOTICE OF WAGE RATE.—Day labor employers
5 shall provide notice of the wage rate expected to be paid
6 to each day laborer. A day labor service agency shall pro-
7 vide notice of the wage rate expected to be paid by each
8 third party employer using the services of the agency. A
9 day laborer shall be paid by a third party employer not
10 less than the wage rate stated in the notice of the agency
11 for all work performed for the third party employer, in-
12 cluding work contained in the description issued under
13 section 8.

14 (c) WAGE REDUCTION.—Day labor employers are
15 prohibited from reducing the wage rate of any permanent
16 full time employee in order to comply with subsection (a)
17 or (b).

18 (d) OVERTIME.—A day laborer shall be compensated
19 at a rate of 1 and one-half times the regular rate of pay
20 for each hour worked beyond 8 hours up to and including
21 12 hours in a workday, and for the first 8 hours worked
22 on the seventh consecutive day of work in a work week.

23 (e) DAILY OVERTIME.—Day laborers are entitled to
24 double the regular rate of pay for all hours worked in ex-
25 cess of 12 hours in any workday and for all hours worked

1 in excess of 8 hours on the seventh consecutive day of
2 work in a work week.

3 (f) MINIMUM DAILY RATE.—A day laborer per-
4 forming day labor shall be compensated for not less than
5 4 hours of work for each day worked.

6 (g) CALL IN PAY.—If the day labor employer fails
7 to appear after requesting a day laborer's services at a
8 designated time and location, the day laborer shall be com-
9 pensated for not less than 4 hours at the regular rate of
10 pay.

11 (h) WAIT TIME.—If a day laborer arrives for employ-
12 ment at the request of a day labor employer, time spent
13 waiting for the employer is wait time compensable at the
14 regular rate of pay.

15 (i) REDUCTION OF SALARY.—If a day labor employer
16 has offered and a day laborer has accepted a wage rate,
17 the day labor employer cannot reduce that negotiated sal-
18 ary during that day of employment.

19 (j) TRAVEL TIME.—Day laborers are to be com-
20 pensated for travel time if such activity is an integral and
21 indispensable part of the principal activities that the work-
22 ers are employed to perform. For the purposes of this Act,
23 time spent traveling from a day labor shape-up site, day
24 labor hiring site, or day labor service agency to the work-
25 site shall be compensable at the regular rate of pay.

1 (k) AGENCY PROCESSING DELAY.—

2 (1) IN GENERAL.—If a day labor service agency
3 expends more than 30 minutes in processing a day
4 laborer's work assignment, the day labor service
5 agency shall pay the day laborer for any additional
6 waiting time at the regular rate of pay.

7 (2) LIMITATION.—The time spent in transit to
8 or from the designated worksite or to or from the
9 day labor service agency shall not be included in
10 computing processing time.

11 **SEC. 6. OTHER RIGHTS OF DAY LABORERS.**

12 (a) PUBLIC ACCESS AREA.—Each day labor service
13 agency shall provide adequate seating in the public access
14 area of the offices of the agency. Employment and wage
15 notices required by this Act shall be posted in the public
16 access area. The public access area shall allow for access
17 to restrooms and water.

18 (b) WORK RESTRICTION.—No day labor service agen-
19 cy shall restrict the right of a day laborer to accept a per-
20 manent position with a third party employer to whom the
21 day laborer has been referred for temporary work or re-
22 strict the right of such third party employer to offer such
23 employment to a day laborer. This subsection shall be un-
24 derstood to outlaw the charging of fines or additional
25 amounts for making or accepting an offer of employment.

1 (c) BREAKS AND MEALS.—For each 4-hour period of
2 uninterrupted day labor, a 15-minute compensated break
3 shall be provided. For periods of uninterrupted day labor
4 lasting longer than 6 hours, a 30-minute compensated
5 lunch period shall be provided.

6 (d) DISCLOSURE OF EMPLOYER INFORMATION.—At
7 the time of hire, a day labor employer must provide a day
8 laborer with the day labor employers' phone number and
9 business address.

10 (e) TRANSPORTATION BACK TO POINT OF HIRE.—
11 Unless the day laborer requests otherwise, the day labor
12 employer shall provide transportation back to the point of
13 hire at the end of each work day.

14 (f) TRANSPORTATION FEES.—Day labor service
15 agencies, third party employers and day laborer employers
16 shall not charge a day laborer for the costs of transpor-
17 tation to and from the premises of the day labor agency,
18 day laborer shape-up site, or day laborer hiring site to the
19 worksite.

20 (g) PAYMENTS.—

21 (1) IN GENERAL.—At the time of the payment
22 of wages, a day labor service agency shall provide
23 each day laborer with an itemized statement showing
24 in detail each deduction made from the wages.

(3) PAYMENT SCHEDULES.— At the request of a day laborer, a day labor service agency or day labor employer shall hold the daily wages of the day laborer and make either weekly or semimonthly payments. The wages shall be paid in a single check representing the wages earned during the period for which wage payments are to be made, as designated by the day laborer. A day labor service agency or day labor employer that makes daily wage payments shall provide written notification to all day laborers of the right to request weekly or semimonthly checks. The day laborer service agency may provide such notice by conspicuously posting the notice at the location where the wages are received by the day laborers.

(6) OVERPAYMENT.—A day laborer shall not be charged fees for overpayment by the day labor agency.

19 (8) PAYMENT BY CHECK.—If a day labor serv-
20 ice agency or day labor employer pays by check, that
21 check shall be immediately redeemable.

22 (9) PAYMENT ON TERMINATION.—All wages
23 must be paid within 72 hours of termination.

24 (10) PLACE OF PAYMENT ON TERMINATION.—
25 Upon termination, a day laborer may choose to be

1 paid either at the worksite, the day labor site, or the
2 day labor service agency. A day laborer may also re-
3 quest that the check be sent by first class mail. Un-
4 less the day laborer requests otherwise, a day labor
5 employer shall pay a discharged day laborer at the
6 worksite.

7 (h) OTHER RIGHTS GUARANTEED BY LAW.—Day la-
8 borers shall be afforded all other rights guaranteed work-
9 ers under the law.

10 (i) SPECIFIC RIGHTS.—Day laborers shall be free of
11 any restriction on their ability to solicit day labor or to
12 express their availability for lawful day labor employment
13 in any public area unless such restriction is applied to all
14 speech or expression of any content, including political, ar-
15 tistic, religious, or commercial speech and to speech re-
16 gardless of whether the speaker is physically present or
17 speaks through unattended signs or banners—

18 (1) this right shall be enforceable by day labor-
19 ers through a private action under section 1979 of
20 the Revised Statutes (17 Stat. 13; 42 U.S.C. 1983);
21 and

22 (2) any local or State ordinance or law that vio-
23 lates this provision shall be enjoined as invalid.

1 **SEC. 7. HEALTH AND SAFETY.**

2 (a) IN GENERAL.—Every day labor service agency
3 and day labor employer shall furnish employment and a
4 place of employment that is safe and healthful for day la-
5 borers. Such employment shall be free of recognized haz-
6 ards that are likely to cause death or serious physical
7 harm to day laborers.

8 (b) LIFE, SAFETY, AND HEALTH REQUIREMENTS.—
9 No day labor service agency or day laborer employer shall
10 fail or neglect to do any of the following:

11 (1) To provide and use safety devices and safe-
12 guards reasonably adequate to render the employ-
13 ment and place of employment safe at no cost to the
14 day laborer.

15 (2) To adopt and use methods and processes
16 reasonably adequate to render the employment and
17 place of employment safe.

18 (3) To do every other thing reasonably nec-
19 essary to protect the life, safety, and health of day
20 laborers.

21 (c) CITATIONS FOR FAILURE TO COMPLY.—On
22 multi-employer worksites, both construction and non-
23 construction, citations may be issued to the following cat-
24 egories of employers when the Occupational Safety and
25 Health Administration, referred to in this Act as
26 “OSHA”, has evidence that a day laborer was exposed to

1 a hazard in violation of any requirement enforceable by
2 OSHA:

3 (1) The employer whose day laborers were ex-
4 posed to the hazard (the exposing employer).

5 (2) The employer who actually created the haz-
6 ard (the creating employer).

7 (3) The employer who was responsible, by con-
8 tract or through actual practice, for safety and
9 health conditions on the worksite, which is the em-
10 ployer who had the authority for ensuring that the
11 hazardous condition is corrected (the controlling em-
12 ployer).

13 (4) The employer who had the responsibility for
14 actually correcting the hazard (the correcting em-
15 ployer).

16 The employers listed in paragraphs (2) through (4), includ-
17 ing, of this subsection may be cited regardless of whether
18 their own day laborers were exposed to a hazard.

19 (d) APPLICATION OF FEDERAL LAW.—

20 (1) IN GENERAL.—Employers and day laborers
21 as defined by this Act shall be covered under the Oc-
22 cupational Health and Safety Act (OSHA). In addi-
23 tion to coverage under OSHA, employers and day la-
24 borers shall adhere to the following requirements:

1 written notice on the first day of employment that
2 contains a statement of the day laborer's right to
3 workers' compensation benefits and the day labor
4 service agency and day laborer employer's workers'
5 compensation insurance carrier name and number.
6 This notice shall be provided in English and any
7 other language that is generally used by the work-
8 force serviced by the day labor service agency or em-
9 ployed by the employer.

10 (6) NOTIFICATION, CONSENT, AND DISCLO-
11 SURE.—

12 (A) IN GENERAL.—The day labor service
13 agency or any employer or agent of the em-
14 ployer must disclose the risk of exposure to haz-
15 ardous chemicals or any other unsafe materials
16 or working condition that require the use of
17 safety and protective equipment.

18 (B) WRITTEN CONSENT.—Day labor serv-
19 ice agencies and day laborer employers are re-
20 quired to obtain the informed written consent of
21 any day laborer who will be exposed to haz-
22 ardous materials. Written consent shall include:
23 a description of the hazardous materials the
24 day laborer will be exposed to, the possible
25 health and safety consequences of exposure to

1 the hazardous materials and any specialized
2 certification or training required to safely han-
3 dle the hazardous materials.

4 (C) NO RETALITION.—A day labor service
5 agency or day laborer employer shall not take
6 any retaliatory action against a day laborer who
7 refuses to perform hazardous work due to
8 health or safety concerns.

9 (7) TRANSPORTATION LIABILITY.—A day labor
10 service agency, day labor employer or any other em-
11 ployer or agent of the employer that transports a
12 day laborer to or from a designated worksite is liable
13 for any injury to a day laborer arising from any ac-
14 cident that occurs while the day laborer is being
15 transported to or from the worksite.

16 (8) MOTOR VEHICLE SAFETY.—

17 (A) IN GENERAL.—Any motor vehicle that
18 is owned or operated by the day labor service
19 agency or any other employer, or a contractor
20 of either, which is used for the transportation
21 of day laborers shall—

22 (i) have proof of financial responsi-
23 bility as provided for in applicable State
24 insurance laws of the area;

3 (iii) be equipped, if a motortruck, with
4 a railing or other suitable enclosure on the
5 sides and end of the vehicle not less than
6 46 inches above the floor of the vehicle;
7 and

12 (B) UNSAFE VEHICLE.—A day labor serv-
13 ice agency or day labor employer who knows or
14 should know that a motor vehicle used pri-
15 marily or regularly for the transportation of
16 day laborers is unsafe, or not equipped as re-
17 quired by this Act, or any regulations adopted
18 pursuant to this Act, shall not use the motor
19 vehicle for transporting day laborers.

20 (C) INSPECTION.—The Secretary or an ap-
21 pointed designee shall inspect motor vehicles
22 used primarily or regularly for the transport of
23 day laborers at least once annually to determine
24 whether its construction, design, and equipment
25 comply with all provisions of Federal and State

1 law. No person shall drive any motor vehicle
2 used primarily or regularly for the transport of
3 day laborers without displaying a certificate
4 issued from the Secretary or an appointed des-
5 ignee confirming timely inspection and compli-
6 ance with all laws and regulations relating to
7 construction, design, and equipment.

8 (D) RENTER REQUIREMENTS.—An owner
9 or person who rents any motor vehicle used pri-
10 marily or regularly for the transport of day la-
11 borers is responsible for compliance with the
12 motor vehicle requirements of this Act.

13 **SEC. 8. NOTIFICATION REQUIREMENTS.**

14 (a) IN GENERAL.—

15 (1) NOTICE.—A day labor service agency shall,
16 in the public reception area, post a list of all employ-
17 ers that are seeking day laborers which includes the
18 following:

19 (A) The name and address of the employer
20 and the address of the worksite if different
21 from that of the employer.

22 (B) The type of job opportunities for day
23 laborers.

24 (C) The amount of wages to be paid per
25 hour for the work.

13 (B) The exact address of the worksite and
14 a telephone number at which a day laborer can
15 be reached for emergency purposes. If the loca-
16 tion is in a rural area, the notice must also con-
17 tain directions to the worksite.

18 (C) The time of day the work will begin,
19 the time of day the work will end, and the over-
20 time rate of pay.

21 (D) Whether a meal is provided, either by
22 the day labor service agency, day labor em-
23 ployer, or the third party employer, and the
24 cost of the meal, if any.

1 (E) A phone number and business address
2 for the third party employer requesting the day
3 laborer through the day labor service agency.

4 (b) POSTING.—The notices required to be posted
5 under this section shall be written in English and any
6 other language that is generally used in the locale of the
7 day labor service agency.

8 (c) OFFER AND ACCEPTANCE.—Upon offer and ac-
9 ceptance of a job, the information referred to in this sub-
10 section shall be provided to each day laborer in writing
11 in English and any other language that is generally used
12 in the locale of the day labor service agency, day labor
13 site, or by the day laborer or at the time of acceptance.

14 SEC. 9. DEDUCTIONS.

15 (a) MEALS.—A day labor service agency or any other
16 employer shall not charge a day laborer more than the
17 actual cost of providing a meal. In no case shall a deduc-
18 tion for a meal be permitted against the wage require-
19 ments of this Act if—

20 (1) the day laborer does not consume the meal;
21 (2) the day laborer has no realistic opportunity
22 to obtain meals by other means due to the location
23 of the job site and the time permitted for the meal;
24 or

3 (b) TRANSPORTATION.—A day labor service agency
4 or any other employer shall not charge to transport a day
5 laborer to or from the designated worksite.

6 (c) SAFETY AND PROTECTIVE EQUIPMENT.—

22 (d) HOUSING.—

1 requirements when crediting lodging towards an em-
2 ployer's wage obligation under this Act only if—

3 (A) lodging is received and used;
4 (B) lodging is furnished as part of the day
5 laborer's compensation; and
6 (C) the day laborer enters a voluntary
7 written agreement to credit lodging toward the
8 employer's wage obligation.

9 (2) LODGING REQUIREMENTS.—The amount
10 credited for lodging shall not exceed an amount that
11 would result in the day laborer earning less than the
12 wage required by this Act. In order for lodging to
13 be creditable towards the wage obligation, it shall be
14 available to the day laborer for full-time occupancy
15 and be adequate, decent, and sanitary according to
16 usual and customary standards.

17 **SEC. 10. RETALIATION**

18 (a) PROHIBITION.—Any employer, or any agent of an
19 employer, who knowingly retaliates through discharge or
20 in any other manner against any day laborer shall be fined
21 under title 18, United States Code or subject to a private
22 cause of action.

23 (b) PROTECTED ACTS FROM RETALIATION IN-
24 CLUDE.—The Secretary shall ensure that a day laborer
25 is protected from retaliation for—

11 (4) testifying or preparing to testify in an in-
12 vestigation or proceeding under this Act.

13 SEC. 11. DAY LABOR SERVICE AGENCY AND DAY LABOR EM-
14 PLOYER REGISTRATION.

15 (a) IN GENERAL.—A day labor service agency and
16 day labor employer shall register with the Secretary in ac-
17 cordance with rules adopted by the Secretary for day labor
18 service agencies and with State departments of labor
19 which require such registration.

20 (b) FEES.—The Secretary may assess each day labor
21 agency and day labor employer a registration fee not to
22 exceed \$250.

1 **SEC. 12. DEPARTMENT REQUIREMENTS AND RESPONSIBIL-**2 **ITIES.**

3 (a) IN GENERAL.—The Secretary shall adopt rules
4 and regulations necessary to implement the provisions of
5 this Act, including provisions for hearings and imposition
6 of penalties for violations of this Act.

7 (b) POSTING REQUIREMENT.—The Secretary shall
8 cause to be posted in each day labor service agency a no-
9 tice in English and any other language generally spoken
10 in the locale of the day labor service agency which informs
11 the public of a toll-free telephone number for day laborers
12 and the public to file wage dispute complaints and other
13 alleged violations by day labor service agencies and other
14 day labor employers.

15 (c) FINES.—The Secretary shall have the authority
16 to fine a day labor service agency or day labor employer
17 that fails to register with the Department of Labor in ac-
18 cordance with this Act \$1,000 for the first offense and
19 \$5,000 for each subsequent offense.

20 (d) SUSPENSIONS AND REVOCATIONS.—The Sec-
21 retary shall have the authority to suspend or revoke the
22 registration of a day labor service agency or day labor em-
23 ployer if warranted by public health and safety concerns
24 or violations of this Act.

1 (e) INVESTIGATIONS.—The Secretary shall promptly
2 investigate complaints concerning alleged violations of this
3 Act.

4 **SEC. 13. CRIMINAL SANCTIONS.**

5 (a) CRIMINAL PROVISION.—

6 (1) IN GENERAL.—Any employer or any agent
7 of an employer, who, willfully and knowingly violates
8 this Act, shall be fined under title 18, United States
9 Code.

10 (2) CONTINUED VIOLATION.—Each day during
11 which any violation of this Act subsection (a) or (b)
12 continues shall constitute a separate and distinct of-
13 fense.

14 **SEC. 14. JUDICIAL ENFORCEMENT.**

15 (a) INJUNCTIVE RELIEF.—The Secretary may peti-
16 tion any appropriate district court of the United States
17 for temporary or permanent injunctive relief if the Sec-
18 retary determines that this Act, or any regulation under
19 this Act, has been violated.

20 (b) CONTROL OF CIVIL LITIGATION.—The Solicitor
21 of Labor may appear for and represent the Secretary in
22 any civil litigation brought under this Act, but all such
23 litigation shall be subject to the direction and control of
24 the Attorney General.

1 **SEC. 15. ADMINISTRATIVE SANCTIONS.**

2 (a) CIVIL MONEY PENALTIES FOR VIOLATIONS.—
3 Any person who commits a violation of this Act or any
4 regulation under this Act shall be assessed a penalty of
5 \$1000 for each violation.

6 (b) COLLECTION OF AMOUNTS ON BEHALF OF IN-
7 JURED DAY LABORERS.—

8 (1) If an employer willfully violates sections 5
9 or 9 of this Act, the Secretary shall collect, on behalf
10 of each injured day laborer, the amount of wages not
11 paid in violation of the Act and an equal amount for
12 each day for which the wages are not paid.

13 (2) An employer that willfully violates sections
14 6, 7, or 8 of this Act shall be assessed by the Sec-
15 retary an amount up to \$500 per violation of each
16 section, which the Secretary shall collect on behalf of
17 each injured day laborer.

18 **SEC. 16. PRIVATE CAUSE OF ACTION.**

19 (a) MAINTENANCE OF CIVIL ACTION IN DISTRICT
20 COURT BY AGGRIEVED PERSON.—Any person aggrieved
21 by a violation of this Act or any regulation under this Act
22 by an employer may file suit in any district court of the
23 United States or State court of competent jurisdiction
24 without regard to the citizenship of the parties and with-
25 out regard to exhaustion of any alternative administrative
26 remedies provided herein. Actions may be brought by one

1 or more day laborers for and on behalf of himself or them-
2 selves and other day laborers similarly situated.

3 (b) AWARD OF DAMAGES OR OTHER EQUITABLE RE-
4 LIEF.—Any day laborer whose rights have been violated
5 under this Act by his or her employer shall be entitled
6 to collect—

7 (1) in the case of a violation under sections 5
8 or 9 of the Act, the amount of any wages, salary,
9 employment benefits, or other compensation denied
10 or lost to such day laborer by reason of the violation,
11 plus an equal amount for each day for which wages
12 are not paid;

13 (2) in the case of a violation under sections 6,
14 7, or 8 of the Act, compensatory damages and an
15 amount up to \$500 for the violation of each subpart
16 of each section;

17 (3) in the case of a violation under section 10
18 of the Act, all legal or equitable relief as may be ap-
19 propriate to effectuate the purposes of Section 10 of
20 the Act;

21 (4) attorney's fees and costs; or

22 (5) punitive damages in a case in which any
23 employer, or agent of an employer, threatens to call
24 the Immigration and Naturalization Service or the

1 police in retaliation for protected acts described in
2 section 10 of the Act.

3 (c) STATUTE OF LIMITATIONS.—The right of an ag-
4 grieved person to bring a cause of action under this section
5 terminates upon the passing of 3 years from the final date
6 of employment by the employer. This limitations period
7 is tolled if a day labor employer has deterred a day labor-
8 er's exercise of rights under this act by contacting or
9 threatening to contact the Immigration and Naturaliza-
10 tion Service or other law enforcement agencies.

11 (d) WAIVER THROUGH CONTRACT.—Any agreement
12 between a day laborer and a day labor employer to waive
13 rights and responsibilities under this Act are void and un-
14 enforceable as violative of public policy.

15 (e) EVIDENTIARY BURDEN.—If an employer has not
16 met the notifications requirements under this Act or re-
17 quired recordkeeping pursuant to title II of the Labor-
18 Management Reporting and Disclosure Act of 1959 (29
19 U.S.C. section 201 et seq.), there is a presumption that
20 any reasonable factual presentation by the day laborer is
21 accurate. The employer is then required to disprove the
22 day laborer's representation by clear and convincing evi-
23 dence.

1 **SEC. 17. PREVENTION OF DISCRIMINATION DURING AND**
2 **AT THE CONCLUSION OF LABOR DISPUTES.**

3 Section 8(a) of the National Labor Relations Act (29
4 U.S.C. 158(a)) is amended—

5 (1) by striking the period at the end of para-
6 graph (5) and inserting ‘; or’; and

7 (2) by adding at the end thereof the following
8 new paragraph:

9 “(6)(A) to offer, or to grant, the status of a
10 permanent replacement day laborer to an individual
11 for performing bargaining unit work for the em-
12 ployer during a labor dispute, or

13 “(B) to otherwise offer, or grant, an individual
14 any employment preference based on the fact that
15 such individual was employed, or indicated a willing-
16 ness to be employed, during a labor dispute over an
17 individual who—

18 “(i) was an day laborer of the employer at
19 the commencement of the dispute;

20 “(ii) has exercised the right to join, to as-
21 sist, or to engage in other concerted activities
22 for the purpose of collective bargaining or other
23 mutual aid or protection through the labor or-
24 ganization involved in the dispute; and

25 “(iii) is working for, or has unconditionally
26 offered to return to work for, the employer.”.

1 SEC. 18. LABOR DISPUTES.

2 No day labor service agency may send any day la-
3 borer to a workplace where a strike, lockout, or other labor
4 trouble exists.

5 SEC. 19. COMPLIANCE WITH STATE AND LOCAL LAWS.

6 This Act is intended to supplement State and local
7 laws, and compliance with this Act shall not excuse any
8 person from compliance with appropriate State and local
9 laws.

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