

108TH CONGRESS  
1ST SESSION

# H. R. 2870

To protect day laborers from unfair labor practices.

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## 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

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## 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.

1           (2) Employers increasingly rely on contingent  
2 workers rather than permanent workers. Employers  
3 benefit from the reduced costs and increased flexi-  
4 bility of utilizing a contingent workforce. This reli-  
5 ance has resulted in a significant decrease in the  
6 number of workers with health insurance coverage,  
7 included in retirement and pension plans, and receiv-  
8 ing other employment benefits such as long-term dis-  
9 ability coverage. Contingent workers have lower fam-  
10 ily incomes than those in full-time permanent em-  
11 ployment. Many contingent workers live below the  
12 Federal poverty line.

13           (3) The General Accounting Office has found  
14 that the day labor workforce is particularly vulner-  
15 able to workplace abuses. Day laborers are subject  
16 to a wide range of abuses of their civil rights, em-  
17 ployment and labor rights, and health and safety  
18 rights. Although day laborers and contingent work-  
19 ers face higher incidences of workplace abuse, the  
20 General Accounting Office has found current prac-  
21 tices and laws make it difficult to detect violations  
22 affecting contingent workers and day laborers.

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 vio-  
2 lations 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.

1           (2) ANNUAL STATEMENT.—A day labor service  
2       agency shall provide each worker an annual earnings  
3       summary within a reasonable time after the pre-  
4       ceding calendar year, but in no case later than Feb-  
5       ruary 1. A day labor service agency shall, at the  
6       time of each wage payment, give notice to day labor-  
7       ers of the availability of the annual earnings sum-  
8       mary or post such a notice in a conspicuous place  
9       in the public reception area.

10          (3) PAYMENT SCHEDULES.— At the request of  
11       a day laborer, a day labor service agency or day  
12       labor employer shall hold the daily wages of the day  
13       laborer and make either weekly or semimonthly pay-  
14       ments. The wages shall be paid in a single check  
15       representing the wages earned during the period for  
16       which wage payments are to be made, as designated  
17       by the day laborer. A day labor service agency or  
18       day labor employer that makes daily wage payments  
19       shall provide written notification to all day laborers  
20       of the right to request weekly or semimonthly  
21       checks. The day laborer service agency may provide  
22       such notice by conspicuously posting the notice at  
23       the location where the wages are received by the day  
24       laborers.

1           (4) DAILY WAGES.—If day labor employment  
2 lasts less than 1 week wages shall be paid at the end  
3 of each workday.

4           (5) CHECK CASHING.—A day labor service  
5 agency, day labor employer, or third party employer  
6 may not directly or indirectly charge any day laborer  
7 for cashing a check issued by the day labor service  
8 agency, day labor employer, or third party employer  
9 for wages earned by a day laborer who performed  
10 work through that day labor service agency, day  
11 labor employer or third party employer.

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

15           (7) NEGOTIABLE TENDER.—All noncash wage  
16 payments shall be in the form of immediately nego-  
17 tiable tender payable in cash, on demand at a finan-  
18 cial institution, and without discount.

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), inclu-  
17 sive, 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           (2) HEALTH CARE EXPENSES.—If a day laborer  
2       is injured while working, the day labor employer  
3       shall be responsible to pay for the health care costs  
4       associated with the injury and all compensable dam-  
5       ages flowing from that injury unless coverage for the  
6       accident is available under the applicable State  
7       worker’s compensation law. The statute of limita-  
8       tions shall be otherwise tolled during the period in  
9       which the day laborer seeks coverage under the ap-  
10      plicable State workers’ compensation law.

11          (3) HEALTH AND SAFETY EQUIPMENT.—The  
12      day labor service agency or day laborer employer  
13      shall provide at no cost to each day laborer any spe-  
14      cial attire, accessories, tools, safety equipment or  
15      other items required by law or custom to perform  
16      the work assignment.

17          (4) WORKERS’ COMPENSATION.—All day labor  
18      service agencies and day laborer employers are re-  
19      quired to provide workers’ compensation benefits to  
20      their day labor day laborers, regardless of immigra-  
21      tion status, for injuries arising out of and in the  
22      course of employment.

23          (5) NOTIFICATION OF WORKERS’ COMPENSA-  
24      TION BENEFITS.—Day labor service agencies and  
25      day laborer employers shall provide all day laborers

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;

1 (ii) be equipped with seats securely  
2 fastened to the vehicle;

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

8 (iv) equipped with steps, stirrups, or  
9 other equivalent devices so placed and ar-  
10 ranged that the vehicle may be safely  
11 mounted and dismounted.

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.

1 (D) If transportation is available, whether  
2 the worksite is accessible by public or personal  
3 transportation, and the approximate commute  
4 time to the worksite.

5 (2) DESCRIPTION.—A day labor service agency  
6 shall, for each job opportunity posted, provide a de-  
7 tailed description of the work which shall include the  
8 following:

9 (A) A detailed description of the work to  
10 be performed by the day laborer, including any  
11 requirements for special attire, accessories, or  
12 safety equipment.

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

1           (3) the purchase of a meal is a condition of em-  
2       ployment.

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.—

7           (1) GENERAL RULE.—The day labor service  
8       agency or day laborer employer shall provide at no  
9       cost to each day laborer any special attire, acces-  
10      sories, tools, safety equipment, or other items re-  
11      quired by law or custom to perform the work assign-  
12      ment. For any other equipment, clothing, acces-  
13      sories, or any other items the day labor service agen-  
14      cy or day laborer employer makes available for pur-  
15      chase, the day laborer shall not be charged more  
16      than the actual market value for the item.

17          (2) EXCEPTION.—A day labor service agency or  
18      day laborer employer is not precluded from charging  
19      the day laborer the market value of items tempo-  
20      rarily provided to the day laborer, in the event that  
21      the day laborer willfully fails to return such items.

22      (d) HOUSING.—

23          (1) IN GENERAL.—An employer shall comply  
24      with applicable State requirements and Federal law



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—

1           (1) making a complaint to the day laborer's em-  
2           ployer, or a State agency, or federal agency, or com-  
3           munity organization that rights guaranteed a day la-  
4           borer under this Act have been violated;

5           (2) making a complaint to an employer, a co-  
6           worker, or before a public hearing or the press that  
7           rights guaranteed a day laborer under this Act have  
8           been violated;

9           (3) causing to be instituted any proceeding  
10          under or related to this Act; or

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 grievd 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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