

SENATE BILL REPORT

SB 6261

As of January 22, 2020

Title: An act relating to strengthening the farm labor contractor system by removing an exemption for nonprofits, prohibiting retaliation and the use of farm labor contractors in certain circumstances, and establishing liability for related violations.

Brief Description: Strengthening the farm labor contractor system by removing an exemption for nonprofits, prohibiting retaliation and the use of farm labor contractors in certain circumstances, and establishing liability for related violations.

Sponsors: Senators McCoy, Saldaña, Conway, Kuderer, Hasegawa, Wilson, C., Das, Nguyen and Keiser.

Brief History:

Committee Activity: Labor & Commerce: 1/21/20.

Brief Summary of Bill

- Expands the actions prohibited as retaliation by farm labor contractors and agricultural employers against their employees; includes the contractors' and employers' agents; and prohibits these actions against former employees.
- Requires a person utilizing a farm labor contractor to take reasonable steps to determine that the farm labor contractor holds a valid license to avoid being personally, jointly and severably liability with the contractor, including that the person relied on either the Department of Labor and Industries (L&I) issued license or L&I's representation that the contractor is licensed.
- Removes the nonprofit organization exemption from the application of the farm labor contractor laws.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Susan Jones (786-7404)

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

Background: Farm Labor Contractors. L&I licenses and regulates farm labor contractors. To be eligible for a farm labor contractor license, applicants must meet certain surety bond and insurance requirements. A farm labor contractor is any person who, for a fee, performs any farm labor contracting activity. Farm labor contracting activity includes:

- recruiting;
- soliciting;
- employing;
- supplying;
- transporting; and
- hiring of agricultural workers.

Retaliation Prohibited. No farm labor contractor or agricultural employer may discharge or in any other manner discriminate against any employee because the employee has:

- made a claim against the farm labor contractor or agricultural employer for compensation for the employee's personal services;
- caused to be instituted certain proceedings related to the farm labor contractor laws;
- has testified or is about to testify in any such proceedings; or
- discussed or consulted with anyone concerning the employee's rights.

Joint Liability for Unlicensed Farm Labor Contractors. Any person who knowingly uses the services of an unlicensed farm labor contractor is personally, jointly, and severally liable with the person acting as a farm labor contractor to the same extent and in the same manner as provided under the law. Any user may rely upon either the license issued by L&I to the farm labor contractor or L&I's representation that such contractor is licensed as required.

Nonprofit Exemption. The farm labor contractor laws do not apply to a nonprofit corporation or organization which performs certain functions for its members where:

- none of its directors, officers, or employees are deriving any profit beyond a reasonable salary; and
- membership dues and fees are used solely for the maintenance of the association or corporation.

Agricultural employee. Agricultural employee means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

Summary of Bill: Retaliation Prohibited. The retaliation provisions are modified and also apply to any person acting on behalf of a farm labor contractor or agricultural employer (agent). No farm labor contractor, agricultural employer, or their agent, may take adverse action against any employee or former employee who has:

- made a claim against the farm labor contractor or agricultural employer related in any way to the employee or former employee's employment;
- instituted any proceedings under or related to the farm labor contractor laws;
- testified or is about to testify in any such proceedings;
- discussed or consulted with anyone concerning the employee or another person's employment rights or safety and health laws or regulations;
- informed any other person or made a complaint that the employer has violated certain laws or regulations, or the employer believes they have done so;

- refused to participate in an activity that would result in a violation of any state or federal employment or safety and health laws or regulations;
- sought information about certain rights or informed others about their rights;
- exercised employment or safety and health laws rights, or the employer believes they have done so; or
- engaged in, or benefited from, any concerted activity to improve working conditions.

If an employer takes adverse action against an employee or former employee within 90 days of an activity described above, the employer is presumed to have acted in retaliation. In the case of seasonal work, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

Adverse action means discharging, denying a promotion, demoting, failing to rehire after seasonal interruption of work, intimidating, threatening, coercing, blacklisting, penalizing, retaliating against, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to a nonemployee, or otherwise discriminating against an employee. Adverse action may relate to pay, work hours, responsibilities, or other material changes in conditions of employment.

Unfair immigration-related practice includes certain activities related to immigration status and documents, and law enforcement and immigration authorities. Unfair immigration-related practice does not include conduct undertaken at the express and specific direction or request of the federal government.

Joint Liability for Unlicensed Farm Labor Contractors. The joint liability provisions are modified. The person utilizing a farm labor contractor must take reasonable steps to determine that the farm labor contractor possesses a valid license. The only defense to being personally, jointly, and severably liability with the contractor that may be asserted to avoid liability is that the person relied upon either the license issued by L&I to the farm labor contractor or L&I's representation that such contractor is licensed.

Nonprofit Exemption Removed. The nonprofit exemption is removed.

Agricultural employee. The definition of agricultural employee also includes any person who has rendered personal services to agricultural employer in connection with the employer's agricultural activity.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: We worked this bill for the last couple of years. This bill is narrower than previous bills. We still have work to do. The funding is through the H-2A program. The federal funding has not grown with the growth of the number of workers.

The statute at issue was created in the 1950's and not updated since 1985 long before Washington became one of the largest users of the H-2A system. Our laws need to respond to the fact that a lot of our agricultural workforce is being imported using international labor contracting systems that did not exist when the law was formed. The H-2A program has systems that cripple the workers' ability to stand up for themselves. As retaliation, a lot of H-2As that are here are threatened with not rehiring or firing them. They exclude people from preferred hire lists. In a situation in Quincy, a group of workers raised an issue of unsafe working conditions and lack of breaks. Instead of correcting the problem, the employer and farm labor contractor told them to get back to work or to go home to Mexico. They did reach an agreement to get rid of an abusive foreman and not to retaliate but the next year, the advocating workers were excluded from the preferred worker list.

We have seen how farm labor contractors have impacted our people. In one situation, there were over 100 workers who asked for information about a sick colleague. Instead of giving information, the company put them on the street with their bags. They forced them onto buses to the airport. The farm labor contractors were not taking care of their food and safety on the job. There was no process to complain. They bring workers to the U.S. with false promises. They are threatened with deportation.

A lot of workers suffer because of farm labor contractors. Just this summer, some workers harvesting blueberries got fired for asking for their paychecks. We helped them file an L&I claim. It took several weeks to get anything back from the farm labor contractor about the paychecks. If workers complained that there were no bathrooms, they were then told there was no more work. This is not true. There is work.

CON: The bill is labelled as strengthening the system but really makes the rules vague, unworkable and destroys due process for employers. There is a lot of work to be done on the language. We have concern about retaliation and the 90 day presumption. There are a lot of reasons not to rehire a worker. Some relate to the health and safety of all the workers. In the written testimony, they provided examples of abuse and threats, where it was no longer safe. Where there was substance abuse, it is not appropriate for them to operate heavy equipment or be around other employees at that point.

There are other ways to fix these problems. There is problem with farm labor contractors in an underground economy where people are paying laborers under the table. We turned in a contractor suspected of paying under the table. The contractor is no longer listed as a farm labor contractor. One thought is that instead of paying directly, they get paycheck stubs first. Maybe requiring farms to get paychecks stubs would protect workers.

This is not a narrow bill. It is not just an H-2A bill. The retaliation provisions apply to all agricultural employers. This is anti-American and against the system of justice. This is not the right approach for dealing with these matters.

The fiscal note are a misuse of the funds in those accounts. They are dedicated funds.

Persons Testifying: PRO: Senator John McCoy, Prime Sponsor; Andrea Schmitt, Columbia Legal Services; Ramon Torres, Familias Unidas por la Justicia; Marciano Sanchez, Familias Unidas por la Justicia.

CON: Michael Gempler, Washington Growers League; Tom Kwieciak, WAFLA; Bob Battles, Association of Washington Business; Bre Elsey, Washington Farm Bureau; Scott Dilley, Dairy Federation.

Persons Signed In To Testify But Not Testifying: No one.