SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 1136 (Ortega)
Version: June 30, 2025
Hearing Date: July 15, 2025
Fiscal: Yes
Urgency: No
ME

SUBJECT

Employment: immigration and work authorization

DIGEST

This bill, in response to the federal administration's ramped up immigrant detention, provides job protections to workers who are detained or need to take time off of work to resolve immigration matters.

EXECUTIVE SUMMARY

The federal administration has increased efforts to detain and deport immigrants. News reports note that Californians with lawful immigration status and even United States Citizens have been detained by immigration authorities. This has led to workers missing shifts and needing to spend more time fighting to verify and maintain their lawful immigration status.

This bill provides protections for workers who are caught up in the federal immigration drag net. The bill requires employers to provide up to five unpaid days off to workers who need to attend appointments concerning immigration-related matters. The bill also requires unpaid leaves of absence for detained workers and reinstatement of specified workers when they produce proper work authorization.

The bill is supported by immigrant and worker rights organizations, including the United Farm Workers, the California State Council of Laborers, and the California Immigrant Policy Center. It is opposed by the California Chamber of Commerce and other employer organizations.

AB 1136 passed the Senate Labor, Public and Retirement Committee with a 4 to 1 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Requires an employer to verify, through examination of specified documents, whether or not an individual is authorized to work in the United States. It specifies that if the document is presented and reasonably appears on its face to be genuine, then the employer has complied with this requirement and is not required to solicit or demand any other document. (8 U.S.C. § 1324a(b).)

2) Makes it an unfair immigration-related employment practice for any person or entity to do any of the following: (a) discriminate against any individual, except as provided, with respect to the hiring, recruitment, or referral of the individual for employment or the discharging of the individual from employment; or (b) request, with the intent of discriminating against an individual, more or different documents than are required under law or refuse to honor documents tendered which, on their face, reasonably appear to be genuine. (8 U.S.C. § 1342a(a)(1)-(6).)

3) Prohibits an employer or any other person or entity from engaging in, or directing another person or entity to engage in, an unfair immigration-related practice against any person for the purpose of retaliating against that person for exercising their rights under state or local labor law. These protected rights include the following: (a) filing a complaint or informing any person of an employer's or other party's alleged violation of a state or local labor law, so long as the complaint or disclosure is made in good faith; (b) seeking information regarding whether an employer or other party is in compliance with state or local labor law; and (c) informing a person of his or her potential rights and remedies under state or local labor law, or them in asserting those rights. (Lab. Code § 1019(a).)

4) Defines "unfair immigration-related practice," for purposes of state law, to mean any of the following practices when undertaken for retaliatory purposes, and not at the direction or request of the federal government: (a) requesting more or different documents than are required by federal law or refusing to honor required documents that on their face appear to be genuine; (b) using the federal E-Verify system to check the employment authorization status of a person at a time or in a manner not required or authorized by federal law; (c) threatening to file or filing of a false police report, threatening to file or filing a false report or complaint with any state or federal agency, or threatening to contact or contacting immigration authorities. (Lab. Code § 1019(b).)

5) Specifies that engaging in an unfair immigration-related practice against a person within 90 days of the person's exercise of a protected right shall raise a rebuttable presumption of having done so in retaliation for the exercise of those rights. (Lab. Code § 1019(c).)

6) Permits an employee or any other person who is subject to an unfair immigration-related practice, where the unfair practice is retaliatory in nature, to bring a civil action for equitable relief and any applicable damages or penalties, and specifies that an employee or other person who prevails shall recover his or her reasonable attorney's fees. (Lab. Code § 1019(d)(1).)

7) Prohibits an employer, in the course of satisfying federal immigration law, from requesting more or different documents than are required under federal immigration law; refusing to honor valid documents, as specified; or attempting to reinvestigate or re-verify an incumbent employee's authorization to work using an unfair immigration-related practice. (Lab. Code § 1019.1.)

8) Provides that except as otherwise required by federal law, a public or private employer, or a person acting on behalf of a public or private employer, shall not reverify the employment eligibility of a current employee at a time or in a manner not required by Section 1324a(b) of Title 8 of the United States Code. An employer who violates this provision is subject to a civil penalty up to $10,000, recoverable by the Labor Commissioner, except as specified. (Lab. Code § 1019.2.)

9) Provides that an employer is not prohibited from reverifying an employees' employment authorization, as specified; taking any lawful action to review the employment authorization of an employee upon knowing that the employee is, or has become, unauthorized to be employed in the United States, as specified; reminding an employee, at least 90 days before the date reverification is required, that the employee will be required to present specified documents, as required by the I-9 Employment Eligibility Verification Form; and taking any lawful action to correct errors or omissions in a missing or incomplete I-9 Employment Eligibility Verification Form. (Lab. Code § 1019.2.)

10) Specifies, in accordance with state and federal law, nothing above shall be interpreted, construed, or applied to restrict or limit an employer's compliance with a memorandum of understanding governing the use of the federal E-Verify system. (Lab. Code § 1019.2.)

11) Provides that for purposes of 8) through 10), above, the term "knowing" is defined as set forth in Section 274a.1(l) of Title 8 of the Code of Federal Regulations and as interpreted by applicable federal rules, regulations, and controlling federal case law, and the term "knowing" includes not only actual knowledge, but also knowledge that may fairly be inferred through notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know about a certain condition. Provides that constructive knowledge may be found under the circumstances described in Section 274a.1(l)(2) of Title 8 of the Code of Federal Regulations and may not be inferred from an employee's foreign appearance or accent. (Lab. Code § 1019.2.)

12) Defines "reverify" or "reverifying" as the actions described in Section 274a.2(b)(1)(vii) of Title 8 of the Code of Federal Regulations and provides that these terms shall be interpreted consistently with any applicable federal rules, regulations, and controlling federal case law. (Lab. Code § 1019.4.)

This bill:

1) Specifies that upon request, each employee shall be released by their employer for up to five unpaid working days in order to attend appointments, interviews, adjudications, legal proceedings, detainment, or any other meeting at which the employee's presence is required concerning the employee's immigration status, work authorization, visa status, or any other immigration-related matter. The five unpaid working days may be either consecutive or nonconsecutive working days.

2) Specifies that the employer may request verification of the absence.

3) Provides that a postintroductory employee, as defined, whose employment has been terminated due to an inability to provide documentation of proper work authorization shall be immediately reinstated to their former classification without loss of prior seniority provided the employee produces proper work authorization within 12 months of the date of termination.

4) Requires the employee to be reinstated to their former classification displacing the least senior employee in that job classification.

5) Specifies that an employee shall not accrue vacation or other benefits based upon particular employment plan policies during those absences.

6) Provides that if the employee needs additional time, the employer shall rehire the employee into the next available opening in the employee's former classification, as a new hire without retaining seniority, upon the former employee providing proper work authorization within a maximum of 12 additional months from the date the employee notifies the employer that they need additional time. If this occurs, the employee shall be subject to an introductory period upon rehire.

7) Specifies that the provisions of this bill apply to a private or public employer, except that it shall not apply to a public or private employer with 25 or fewer employees.

8) Provides that each public or private employer shall not discipline, discharge, or discriminate against any employee because of national origin or immigration status, or because the employee is subject to immigration or deportation proceedings, except as required to comply with the law.

9) Provides that an employee subject to immigration or deportation proceedings shall not be discharged solely because of pending immigration or deportation proceedings, so long as the employee is authorized to work in the United States.

10) Provides that if the employer is notified that an employee has been detained or incarcerated as a result of pending immigration or deportation proceedings, the employer shall place the employee on an unpaid leave of absence for a period of 12 months.

11) Provides that if the employee is released and provides appropriate work authorization documentation within the 12-month period, the employee shall be returned to work without loss of seniority to their former job classification, displacing the least senior employee in that job classification.

12) Specifies that employees on a leave of absence shall not accrue vacation or other benefits during the leave of absence.

13) Provides that provisions of this bill shall not invalidate a collective bargaining agreement or memorandum of understanding that provides additional protections to employees than what is included in the bill.

14) Specifies that the Labor Commissioner shall enforce the provisions of the bill.

15) Defines "postintroductory employee" as an employee who has successfully completed their probation period of employment.

16) Defines "Public employer" as the state, political subdivisions of the state, counties, municipalities, and the Regents of the University of California.

17) Contains a severability clause.

COMMENTS

1. Stated need for the bill

According to the author:

> AB 1136 is a vital piece in California's response to federal overreach via racially-targeted reckless acts of "immigration enforcement." Over the past few weeks, increasing numbers of innocent long-time, law-abiding, taxpaying working Californians, including immigrants with legal status and U.S. citizens, are being swept up by federal agents, detained, and deported without due process. AB 1136 focuses on the innocent California workers caught up in these raids, ensuring that they can return to their jobs and support their families. Using decades-long collective bargaining agreement language used around the

> country – including in the Trump Las Vegas Casino – AB 1136 provides reasonable protections and remedies that are above the noise. This bill allows Californians who are mistakenly caught up in overzealous immigration enforcement a necessary and humane grace period to organize their affairs and return to their jobs, without putting employers at either legal or financial risk.

In support, the United Farm Workers write:

> The United Farm Workers (UFW) supports AB 1136, which would protect California workers caught up in mass deportation immigration sweeps from losing their jobs.
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> Mass deportation sweeps have become increasingly common, with federal agents detaining immigrants with no warrant and no actual knowledge of detainees' immigration status.
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> As mass deportations continue, AB 1136 creates reasonable protections and remedies for working Californians caught up in immigration enforcement and offers workers the opportunity to prove their immigration status and return to their jobs.

In further support, the California Immigrant Policy Center writes:

> Mass deportation sweeps have become increasingly common across California, with federal agents indiscriminately detaining immigrants by the dozens with no warrant and no actual knowledge of detainees' immigration status. As mass deportation sweeps increase and escalate, so will the number of individuals detained, including Californians who may have a provisional immigration status, who are otherwise in the United States legally, and in some cases who are not even immigrants themselves.
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> AB 1136 takes a series of reasonable steps to guarantee that workers who need to tend to their immigration status or who are caught up in the inevitable erroneous deportation proceedings can get their job back without losing job seniority:
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> 1. A worker whose employment has been terminated due to a loss of work authorization must be reinstated to their former position if they provide proof of work authorization within 12 months.
> 2. Workers who have been detained due to pending immigration proceedings must be granted an unpaid leave of absence for up to 12 months. Further, they must be granted their former position upon their return.
> 3. Workers must be granted five unpaid working days of leave to attend to immigration-related matters.

> 4. Workers may not be fired, disciplined, or discriminated against solely because they are the subject of pending immigration proceedings.

2. The federal government is arresting and detaining immigrants with legal status and U.S. citizens

It has been widely reported that federal immigration authorities are terrorizing immigrant communities in California.[1] For example, the United Farm Workers and Kern County residents sued the Department of Homeland Security, Customs and Border Protection, and the U.S. Border Patrol in February 2025 after Border Patrol agent arrested people in Kern County and transported them to El Centro.[2] A preliminary injunction was obtained in the lawsuit whereby Border Patrol agents are prohibited from "stopping people without reasonable suspicion that they are noncitizens and in the U.S. in violation of federal immigration law; and arresting people without a warrant if agents don't have probable cause to believe the person is likely to flee."[3] The ruling applies to Border Patrol operations in the eastern District of California.[4] It has even been reported that ICE has detained United States citizens.[5] As detailed in a news report[6]:

> Immigrant advocates and civil rights lawyers say evidence is mounting that immigration agents carrying out the Trump administration's deportation crackdown in southern California are engaging in widespread racial profiling.
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> They've raided known hubs for Latino workers almost daily – hardware store parking lots, car washes, and street vendor corners. Videos of many of those operations, filmed by bystanders and posted to social media, have

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2 *Court Bars Border Patrol's Unlawful Stop-and Arrest Practices* (April 29, 2025) ACLU Southern California, available at: https://www.aclusocal.org/en/press-releases/court-bars-border-patrols-unlawful-stop-and-arrest-practices [as of July 6, 2025].

3 *Id.*; Court order available at: https://www.aclunc.org/sites/default/files/UFW%20v%20Noem%20PI%20CLASS%20CERT%20RULING_04.29.pdf [as of July 6, 2025].

4 *Id.*

5 Gabriel San Román, *'Shock and disbelief': U.S. citizen says ICE arrested her during Santa Ana park raid* (July 2, 2025) Los Angeles Times, available at: https://www.latimes.com/socal/daily-pilot/entertainment/story/2025-07-02/centennial-park-ice-raid-santa-ana [as of July 6, 2025]; Patrick Smith, *ICE detains a U.S. citizen in L.A. and charges her with obstructing an arrest* (June 27, 2025) NBC News, available at: https://www.nbcnews.com/news/us-news/ice-detained-us-citizen-l-charged-obstructing-arrest-rcna215481 [as of July 6, 2025]; Adrian Florido, *'Antagonized for being Hispanic': Growing claims of racial profiling in LA raids* (July 4, 2025) NPR All Things Considered, available at: https://www.npr.org/2025/07/04/nx-s1-5438396/antagonized-for-being-hispanic-growing-claims-of-racial-profiling-in-la-raids [as of July 6, 2025].

6 Adrian Florido, *'Antagonized for being Hispanic': Growing claims of racial profiling in LA raids* (July 4, 2025) NPR All Things Considered, available at: https://www.npr.org/2025/07/04/nx-s1-5438396/antagonized-for-being-hispanic-growing-claims-of-racial-profiling-in-la-raids [as of July 6, 2025]

> shown agents arresting people who appear to be Latino as they stand on sidewalks or wait at bus stops.
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> On Wednesday, the American Civil Liberties Union and other legal groups filed a federal class action lawsuit alleging that immigration agents roving the streets are targeting people based on the color of their skin or their apparent occupation. They want a judge to declare the raids unconstitutional.
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> "There is a real sense that it is open season on anyone who appears to be an immigrant," said Eva Bitran, director of immigrants' rights at the ACLU of Southern California. "They are arriving, corralling people before asking one single question, just based on their location and their appearance. Often they are handcuffing people even before they have asked for their papers, or even after a person has said 'I am a US citizen, I have a green card, I have every right to be here.' "

Given what is reported as the indiscriminate detention of Californians by ICE, it is more important than ever to ensure that workers who are detained by immigration authorities are provided with job protections. Workers who are detained on and off work hours may be unable to attend work as they try to be released from incarceration and also may need time off of work in order to get their immigration situation settled.

3. Employment eligibility verification and reverification: the I-9 process

In broad strokes, the law behind establishing eligibility to work operates as follows.[7] All employers are required to verify that new hires are authorized to work in the United States. To do so, they must have the employee fill out Section 1 of an I-9 form, providing basic information about their identity and attested to their citizenship or immigration status in the United States. This step is supposed to happen after a job offer has been accepted, but before the employee completes the employee's first day of work.

Within three business days of starting work, the new hire must present evidence, in the form of one or a combination of specified documents, that the new hire is eligible to work in the United States. As the employer is not expected to be a forensic expert or to act as an immigration authority, the employer must simply confirm that the documents presented appear, on their face, reasonably genuine and relate to the person who is presenting them. The employer makes notes about the documents reviewed in Section 2 of the I-9 form, may take copies of the documents if the employer chooses to do so, and

[7] The information contained in this Comment is based on the U.S. Customs and Immigration Services' *Handbook for Employers – Guidance on Completing Form I-9* (Jan. 22, 2017), available at https://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/E-Verify%20Manuals%20and%20Guides/M-274-Handbook-for-Employers.pdf [as of July 6, 2025].

then the process is done. Employers must keep I-9 forms on file for three years after the person is hired or one year after the person is terminated, whichever is later.

As a default matter, once an employer has verified an employee's eligibility to work at the time of hire, there is no need to re-verify that eligibility ever. Re-verification is only necessary in certain specific circumstances, such as when the employee initially establishes eligibility using a document that only confers temporary eligibility to work, such as an H1-B visa, for example. In that case, the employer should re-verify the employee's eligibility to work prior to the expiration of the temporary document by going through the I-9 process again.

Federal and state law prohibit the improper use of the I-9 work eligibility process. Among the abuses forbidden are discriminatory application of the process (demanding more, or particular, documentation of people from certain countries, for instance) and retaliatory use of the I-9 process (suddenly re-verifying the eligibility of an employee who has expressed concern about safety at the worksite, for example). State law prohibits employers from using the eligibility verification process in a discriminatory or retaliatory fashion.

4. Expressed concerns with the bill

In opposition to the bill, the California Chamber of Commerce writes:

> [. . .] We respect the efforts of this bill to ensure that those who are authorized to work in the United States remain able to do so without fear of losing their job, however we have several concerns about implementation as well as the ability for smaller employers to adhere to these requirements. We respectfully request amendments to address the following:
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> • Proposed subdivision (a) of Section 1019.6: Some of our members have extensive paid or unpaid time off benefits for employees, which can be used for a variety of different reasons. We would request that employers who offer leave that is above and beyond the minimum required by current law be allowed to require employees to first use those days before using the time provided for in subdivision (a), especially considering the breadth of the types of activities for which this leave could be used.
> • Proposed subdivisions (b) and (c) of Section 1019.6: Collectively, these subdivisions would require employers to hold positions open for up to two years 1 for any employee who has been terminated for not having documentation of proper work authorization. While we encourage our members to hold positions open for a reasonable period of time where an employee is trying to renew an expired work authorization, two years is a significant period of time to hold a position open, by far surpassing other available leaves. Further,

pursuant to (b), if the documentation is presented at any point within the first year, the employer would be required to "displace" another employee. Again, while we appreciate the intent of the bill, the unintended consequence of it is either that another employee would need to be laid off or demoted to bring back the first employee or the employer would be forced to employ more people than it can possibly afford.

• Proposed Section 1019.7: This section provides that the employer cannot discharge an employee "solely" because of pending immigration or deportation proceedings. We would ask for language clarifying that this does not impact the ability of an employer to enforce its attendance policies if, for example, an employee has exhausted their leave as allowed for by proposed subdivision (a) of Section 1019.6. For example, a small restaurant or other business will at some point need to backfill that position. This section also provides that an employer must provide up to one year of unpaid leave for any employee that is detained or incarcerated as a result of pending immigration or deportation proceedings. Similar to the above comment on Section 1019.6, we are concerned that twelve months is a significant period of time and the similar "displace" language would require terminating or demoting another employee.

Another issue worth considering is whether compliance with these provisions would constitute "constructive knowledge" for an employer that an employee may not be authorized to work in the United States. Employers are not permitted to employ someone where they have constructive knowledge that the person is not authorized to work in the United States. That has been interpreted broadly by courts, including where the employer has information "cast[ing] doubt" about whether employee is authorized to work. See Foothill Packing, Inc., 11 OCAHO 1240, 2015 WL 329579 at *8; Split Rail Fence Company, Inc. v. United States, 852 F.3d. 1228, 1243 (10th Cir. 2017); Mester Mfg. Co. v. INS, 879 F.2d 561 (9th Cir.1989); New El Rey Sausage Co. v. INS, 925 F.2d 1153 (9th Cir.1991). If an employee utilizes this leave, it may be deemed sufficient to constitute constructive knowledge that they are not authorized to work in the U.S. We do not unintentionally want to create scenarios where employers are either violating federal law or are considered to have constructive knowledge of someone's immigration status.

5. Amendments

The Senate Labor, Public Employment and Retirement Committee passed the bill out on a vote of 4 to 1 with amendments to be taken in this Committee. The Senate Labor, Public Employment and Retirement Committee explains the amendments they approved as follows:

1. After a termination or detainment and placement on unpaid leave due to an immigration related matter, when a worker is able to return to work with proper authorization, requires the employer to reinstate the individual to their previous job.

2. Strikes the provisions regarding the displacement of the least senior employee in order to accommodate the return, and instead specifies that if there is no position available, an employer shall offer the employee job positions that become available, with priority for hiring given based on length of service, before new employees can be hired. These provisions are consistent with "Right of Recall" provisions of existing law.

3. Once rehired by the employer, requires the employee to receive the prior pay rate and maintain seniority.

The author has additionally agreed to amend the bill to remove the following sentence:

"The employer may request verification of the absence."

SUPPORT

AFSCME 3299
California Federation of Labor Unions, AFL-CIO
California Immigrant Policy Center
California State Council of Laborers
CFT-A Union of Educators & Classified Professionals, AFT, AFL-CIO
Los Angeles Worker Center Network
Pilipino Workers Center
SEIU California
United Farm Workers

OPPOSITION

Acclamation Insurance Management Services
Agricultural Council of California
Allied Managed Care
Associated Equipment Distributors
California Alliance of Family-Owned Businesses
California Association of Winegrape Growers
California Chamber of Commerce
California Farm Bureau
California Farm Labor Contractor Association
California State Council of SHRM
Coalition of Small and Disabled Veteran Businesses
Flasher Barricade Association

Housing Contractors of California
LeadingAge California
National Federation of Independent Business
Western Growers Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 112 (Committee on Budget and Fiscal Review, Ch. 364, Stats. 2019) clarified existing state law related to employment verification processes administered by employers that are consistent with federal law.

SB 1001 (Mitchell, Ch. 782, Stats. 2016) prohibited, among other things, any attempt to reinvestigate or re-verify an incumbent employee's authorization to work using an unfair immigration-related practice.

SB 666 (Steinberg, Ch. 577, Stats. 2013) prohibited employers from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, as provided, and extended those prohibitions to preventing an employee from, or retaliating against an employee for, providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry.

AB 622 (Hernández, Ch. 696, Stats. 2015) prohibited an employer or any other person or entity from using the E-Verify system at a time or in a manner not required by a specified federal law or not authorized by a federal agency memorandum of understanding to check the employment authorization status of an existing employee or an applicant who has not received an offer of employment, except as required by federal law or as a condition of receiving federal funds.

AB 1236 (Fong, Ch. 691, Stats. 2011) set forth a series limitations on the use of electronic employment eligibility verification systems.

PRIOR VOTES:

Assembly Floor (Ayes 68, Noes 2)
Assembly Appropriations Committee (Ayes 12, Noes 0)
Assembly Labor and Employment Committee (Ayes 6, Noes 0)
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