

107TH CONGRESS  
1ST SESSION

# H. R. 2755

To protect day laborers from unfair labor practices.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

Mr. GUTIERREZ (for himself, Mr. OWENS, Mr. DAVIS of Illinois, Mr. LIPINSKI, Ms. MCKINNEY, Ms. LEE, Ms. KAPTUR, Mr. TOWNS, Mr. STARK, Mr. MCGOVERN, Mr. RUSH, Mr. CUMMINGS, Mr. FRANK, Mr. FILNER, Ms. CARSON of Indiana, Ms. SOLIS, Mr. KUCINICH, Mr. JACKSON of Illinois, Mr. BLAGOJEVICH, Mr. COSTELLO, Mr. CONYERS, and Mr. THOMPSON of Mississippi) 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. DEFINITIONS.**

7 In this Act the following definitions apply:

1           (1) DAY LABORER.—The term “day laborer”  
2 means an individual who contracts for employment  
3 with a day labor service agency.

4           (2) DAY LABOR.—The term “day labor” means  
5 labor or employment that is occasional or irregular  
6 for which an individual is employed for not longer  
7 than the time period required to complete the as-  
8 signment for which the individual was hired and in  
9 which wage payments are made directly or indirectly  
10 by the day labor service agency or the third party  
11 employer for work undertaken by a day laborer pur-  
12 suant to a contract between the day labor service  
13 agency with the third party employer. Day labor  
14 does not include labor or employment of a profes-  
15 sional or clerical nature.

16           (3) DAY LABOR SERVICE AGENCY.—The term  
17 “day labor service agency” means any person or en-  
18 tity engaged in the business of employing day labor-  
19 ers to provide services to or for any third party em-  
20 ployer pursuant to a contract with the day labor  
21 service agency and the third party employer.

22           (4) DEPARTMENT.—The term “Department”  
23 means the Department of Labor.

24           (5) SECRETARY.—The term “Secretary” means  
25 the Secretary of Labor.

1           (6) **THIRD PARTY EMPLOYER.**—The term  
2           “third party employer” means any person or entity  
3           that contracts with a day labor service agency for  
4           the employment of day laborers.

5 **SEC. 3. EQUAL WAGES.**

6           (a) **EQUAL RATE.**—A day labor service agency shall  
7           provide notice of the wage rate expected to be paid by each  
8           third party employer using the services of the agency. For  
9           a third party employer, such wage rate shall be the rate  
10          that is equal to the rate paid to permanent employees of  
11          such third party employer who are performing substan-  
12          tially equivalent work, with due consideration given to se-  
13          niority, experience, skills and qualifications. A day laborer  
14          shall be paid by a third party employer not less than the  
15          wage rate stated in the notice of the agency for all work  
16          performed for the third party employer, including the work  
17          contained in the description issued under section 6.

18          (b) **WAGE REDUCTION.**— An employer who is paying  
19          a wage rate differential in violation of subsection (a) shall  
20          not, in order to comply with subsection (a), reduce the  
21          wage rate of any employee.

22          (c) **AGENCY PROCESSING DELAY.**—

23                  (1) **IN GENERAL.**—If a day labor service agency  
24                  expends more than 30 minutes in processing a day  
25                  laborer’s work assignment, the day labor service

1 agency shall pay the day laborer for any additional  
2 waiting time at a rate that is not less than the rate  
3 in effect under section 6(a)(1) of the Fair Labor  
4 Standards Act of 1938 (20 U.S.C. 206) or the appli-  
5 cable State minimum wage law whichever is higher.

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

10 (d) UNPAID WAGES.—For purposes of administra-  
11 tion and enforcement of this Act, any amounts owing to  
12 any employee that have been withheld in violation of sub-  
13 section (a) shall be deemed to be unpaid minimum wages  
14 or unpaid overtime compensation.

15 (e) ENFORCEMENT.—Any employer who violates sub-  
16 section (a) shall be liable to any eligible employee affected  
17 for damages equal to—

18 (1) the amount of any wages, salary, employ-  
19 ment benefits, or other compensation denied or lost  
20 to such employee by reason of the violation;

21 (2) the interest on the amount described in  
22 paragraph (1) calculated at the prevailing rate.

23 (f) CRIMINAL PROVISION.—

24 (1) IN GENERAL.—Any employer or any agent  
25 of an employer, who, being able to pay wages, final

1 compensation, or wage supplements and being under  
2 a duty to pay, willfully refuses to pay as provided in  
3 subsection (a), or falsely denies the amount or valid-  
4 ity thereof or that the same is due, with intent to  
5 secure for such employer or other person any under-  
6 payment of such indebtedness with intent to annoy,  
7 harass, oppress, hinder, delay, or defraud the person  
8 to whom such indebtedness is due, shall be fined  
9 under title 18, United States Code.

10 (2) CONTINUED VIOLATION.—Each day during  
11 which any violation of subsection (a) continues shall  
12 constitute a separate and distinct offense.

13 (g) EMPLOYER FAILURE TO PAY.—Any employer  
14 who has been ordered by the Secretary or the court to  
15 pay wages due an employee and who fails to do so within  
16 15 days after such order is entered shall be liable to pay  
17 a penalty of 10 percent per calendar day to the day laborer  
18 for each day of delay in paying such wages to the day  
19 laborer up to an amount equal to twice the sum of unpaid  
20 wages due the day laborer.

21 (h) OTHER WAGE ISSUES.—

22 (1) IN GENERAL.—At the time of the payment  
23 of wages, a day labor service agency shall provide  
24 each day laborer with an itemized statement showing  
25 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 a  
11 day laborer, a day labor service agency shall hold the  
12 daily wages of the day laborer and make either  
13 weekly or semi-monthly payments. The wages shall  
14 be paid in a single check representing the wages  
15 earned during the period for which wage payments  
16 are to be made, as designated by the day laborer. A  
17 day labor service agency that make daily wage pay-  
18 ments shall provide written notification to all day la-  
19 borers of the right to request weekly or semi-month-  
20 ly checks. The day laborer service agency may pro-  
21 vide such notice by conspicuously posting the notice  
22 at the location where the wages are received by the  
23 day laborers.

24           (4) CHECK CASHING.—A day labor service  
25 agency may not charge any day laborer for cashing

1 a check issued by the agency for wages earned by a  
2 day laborer who performed work through that agen-  
3 cy.

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

7 **SEC. 4. RIGHTS OF DAY LABORERS.**

8 (a) GENERAL RIGHTS.—Any employer, or any agent  
9 of an employer, who knowingly discharges or in any other  
10 manner knowingly discriminates against any day laborer  
11 because that day laborer has—

12 (1) made a complaint to the day laborer’s em-  
13 ployer, or to the Secretary or the Secretary’s author-  
14 ized representative, that the day laborer has not  
15 been paid in accordance with section 3(a),

16 (2) caused to be instituted any proceeding  
17 under or related to this Act, or

18 (3) testified or is about to testify in an inves-  
19 tigation or proceeding under this Act,  
20 shall be fined under title 18, United States Code.

21 (b) PUBLIC ACCESS AREA.—Each day labor service  
22 agency shall provide adequate seating in the public access  
23 area of the offices of the agency. The public access area  
24 shall be the location for the employment and wage notices

1 required by this Act. The public access area shall allow  
2 for access to restrooms and water.

3 (c) WORK RESTRICTION.—No day labor service agen-  
4 cy shall restrict the right of a day laborer to accept a per-  
5 manent position with a third party employer to whom the  
6 day laborer has been referred for temporary work or re-  
7 strict the right of such third party employer to offer such  
8 employment to a day laborer. Nothing in this subsection  
9 shall restrict a day labor service agency from receiving a  
10 placement fee from the third party employer for employing  
11 a day laborer for whom a contract for temporary work  
12 has been effected by the day labor service agency.

13 **SEC. 5. INJURIES.**

14 (a) HEALTH CARE EXPENSES.—If a day laborer is  
15 injured while working, the employer who has requested the  
16 services of such day laborer shall be responsible to pay  
17 for the health care costs associated with the injury unless  
18 compensation is available under the applicable State work-  
19 mens' compensation law.

20 (b) TRANSPORTATION LIABILITY.—A day labor serv-  
21 ice agency or a third party employer that transports a day  
22 laborer to or from a designated work site is liable for any  
23 injury to a day laborer arising from any accident that oc-  
24 curs while the day laborer is being transported to or from  
25 the work site.

1 **SEC. 6. NOTIFICATION REQUIREMENTS.**

2 A day labor service agency shall, in the public recep-  
3 tion area, post a list of all employers that are seeking day  
4 laborers which shall include the following:

5 (1) The name and address of the employer and  
6 the address of the work site if different from that  
7 of the employer.

8 (2) The type of job opportunity for day labor-  
9 ers.

10 (3) The amount of wages to be paid per hour  
11 for the work.

12 (4) Whether transportation is available, the cost  
13 of transportation, if any, whether the work site is  
14 accessible by public or personal transportation, and  
15 the approximate commute time to the work site. A  
16 day labor service agency shall, for each job oppor-  
17 tunity posted, provide a detailed description of the  
18 work which shall include the following:

19 (A) A detailed description of the work to  
20 be performed by the day laborer, including any  
21 requirements for special attire, accessories, or  
22 safety equipment.

23 (B) Whether the day laborer will be  
24 charged for using special attire, accessories, or  
25 safety equipment.

1           (C) The exact address of the work site and  
2           a telephone number at which a day laborer can  
3           be reached for emergency purposes. If the loca-  
4           tion is in a rural area, the notice must also con-  
5           tain directions to the work site.

6           (D) The time of day the work will begin,  
7           the time of day the work will end, and the over-  
8           time rate of pay.

9           (E) Whether a meal is provided, either by  
10          the day labor service agency or the third party  
11          employer, and the cost of the meal, if any. The  
12          notices required to be posted under this section  
13          shall be written in English and any other lan-  
14          guage that is generally used in the locale of the  
15          day labor service agency.

16 **SEC. 7. EQUITABLE EXPENSES.**

17          (a) MEALS.—A day labor service agency or a third  
18          party employer shall not charge a day laborer more than  
19          the actual cost of providing a meal. In no case shall the  
20          purchase of a meal be a condition of employment for a  
21          day laborer.

22          (b) TRANSPORTATION.—A day labor service agency  
23          or a third party employer shall charge no more than the  
24          actual cost to transport a day laborer to or from the des-  
25          ignated work site; except that, the total cost to each day

1 laborer shall not exceed 3 percent of the day laborer's  
2 daily wages. Any motor vehicle that is owned or operated  
3 by the day labor service agency or a third party employer,  
4 or a contractor of either, which is used for the transpor-  
5 tation of day laborers shall have proof of financial respon-  
6 sibility as provided for in applicable State insurance laws  
7 of the area.

8 (c) DAY LABORER EQUIPMENT.—For any safety  
9 equipment, clothing, accessories, or any other items re-  
10 quired by the nature of the work, either by law, custom  
11 or as a requirement of the third party employer, the day  
12 labor service agency or the third party employer may  
13 charge the day laborer the market value of the item tem-  
14 porarily provided to the day laborer by the third party em-  
15 ployer if the day laborer fails to return such items to the  
16 third party employer or the day labor service agency. For  
17 any other equipment, clothing, accessories, or any other  
18 items the day labor service agency makes available for pur-  
19 chase, the day laborer shall not be charged more than the  
20 actual market value for the item.

21 **SEC. 8. AGENCY REGISTRATION.**

22 (a) IN GENERAL.—A day labor service agency shall  
23 register with the Secretary in accordance with rules adopt-  
24 ed by the Secretary for day labor service agencies and with

1 State departments of labor which require such registra-  
2 tion.

3 (b) FEES.—The Secretary may assess each day labor  
4 agency a registration fee not exceeding \$250.

5 **SEC. 9. DEPARTMENT REQUIREMENTS AND RESPONSIBIL-**  
6 **ITIES.**

7 (a) IN GENERAL.—The Secretary shall adopt rules  
8 and regulations necessary to implement the provisions of  
9 this Act, including provisions for hearings and imposition  
10 of penalties for violations of this Act.

11 (b) POSTING REQUIREMENT.—The Secretary shall  
12 cause to be posted in each day labor service agency a no-  
13 tice which informs the public of a toll-free telephone num-  
14 ber for day laborers and the public to file wage dispute  
15 complaints and other alleged violations by day labor serv-  
16 ice agencies.

17 (c) FINES.—The Secretary shall have the authority  
18 to fine a day labor service agency that fails to register  
19 with the Department of Labor in accordance with this Act  
20 \$1,000 for the first offense and \$5,000 for the second of-  
21 fense.

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

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

4 **SEC. 10. PREVENTION OF DISCRIMINATION DURING AND**  
5 **AT THE CONCLUSION OF LABOR DISPUTES.**

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

8 (1) by striking the period at the end of para-  
9 graph (5) and inserting “; or”, and

10 (2) by adding at the end thereof the following  
11 new paragraph:

12 “(6)(i) to offer, or to grant, the status of a per-  
13 manent replacement employee to an individual for  
14 performing bargaining unit work for the employer  
15 during a labor dispute, or

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

21 “(A) was an employee of the employer at  
22 the commencement of the dispute;

23 “(B) has exercised the right to join, to as-  
24 sist, or to engage in other concerted activities  
25 for the purpose of collective bargaining or other

1 mutual aid or protection through the labor or-  
2 ganization involved in the dispute; and

3 “(C) is working for, or has unconditionally  
4 offered to return to work for, the employer.”.

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