

IMMIGRANT PROTESTS

What Every Worker Should Know

April 2006

Immigrants across the country are participating in historic rallies and protests against efforts to criminalize immigrants and in support of comprehensive immigration reform. Over the next few weeks, immigrant rights groups are encouraging immigrants not to work, shop, or attend school as part of these actions, in addition to participating in civic and nonviolent rallies that are being planned. Advocates around the country have reported firings of immigrant workers who have participated in immigrant protests over the past month.

Before they decide whether to participate in such actions, workers need to know that if they do participate in them, they could suffer adverse employment-related consequences. **IT IS IMPORTANT FOR EVERY WORKER TO KNOW HIS OR HER RIGHTS AND UNDERSTAND THE POSSIBLE CONSEQUENCES OF PARTICIPATING IN THESE DEMONSTRATIONS.**

■ What rights do workers have to engage in protest actions?

- The First Amendment to the U.S. Constitution prohibits the government from restricting your right to free speech, which means that you have a right to participate in political protests, marches, and demonstrations. This right applies to all residents of the U.S. regardless of immigration status.
- You do have the right to engage in political protests during non-work hours — for example, on your day off or a day you are not scheduled to work. In most cases, your employer cannot discipline you, fire you, or otherwise retaliate against you for engaging in political activity during your free time.
- The National Labor Relations Act also provides protections to workers who act together and participate in political activity designed to improve working conditions for all workers.
- Some state laws afford greater protections to workers who engage in political activity. (For example, the California Labor Code protects employees who engage in political protests.) Workers should ask local immigrant rights advocates or their local American Civil Liberties Union (ACLU) office for information about additional protections available under the laws of the state where they reside.
- Collective bargaining agreements that cover unionized workers MAY provide them better protection for engaging in political activity than other workers have. However, many union contracts include “no-strike” provisions that prohibit union members from engaging in strikes such as those that are scheduled for May 1.
- Taking time off from work does not give your employer the right to ask you to re-verify your work authorization documents. Nor can your employer single you out for document re-



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verification because you appear to be an immigrant or have participated in immigrant protests.

■ Can workers be disciplined or fired for engaging in protests?

- While the First Amendment protects workers' right to free speech, employees are also subject to workplace rules.
- Most workers are covered by "at-will" employment policies that give your employer the right to fire you without reason. Missing work or having an unexcused absence is generally a legitimate reason for your employer to fire you.
- Workers that are covered by union collective bargaining agreements have greater protections in that employers can only fire you for "just cause."
- You can be disciplined or fired if you miss work without first seeking permission from your employer to take a day off. Political activity is not protected if it interferes with your work.

■ Best practices to protect workers who engage in the immigrant protests:

- Obtain a copy of your employer's employee handbook or any company policies about taking time off. Ask for a written policy. If your employer gives you the policy verbally, document that policy (write down what your employer tells you).
- When you go to meet with your employer, make sure to go with your co-workers who want to participate in the action and ask for time off in advance. Always go in groups of 2 or more co-workers to talk to your employer. This can provide you more protection under the National Labor Relations Act.
- Check to see if the policy is applied equally to all workers regardless of race, national origin, religion, or gender. For example, if your employer only disciplines Latino employees from taking a day off, you may have a discrimination claim under Title VII of the Civil Rights Act.
- Be honest with your employer about the reason that you want the day off from work. Use this as an opportunity to educate your employer about the need for comprehensive immigration reform.
- If you happen to be undocumented, do NOT disclose your immigration status or the immigration status of your co-workers to your employer, or to anyone.
- Tell your employer that you are taking the day off to support better rights and working conditions for all workers, including legalization for immigrant workers, without specifically saying that you or your family members need to legalize.
- Draft a petition requesting time off from work with signatures from your co-workers and present that petition to your employer in a group (of 2 or more) co-workers. The petition should state that you support better wages, working conditions and rights for all workers, including legalization of immigrant workers. A toolkit for immigrant worker advocates can be found at http://www.democracyinaction.org/dia/organizationsORG/NILC/images/Toolkit_for_Workers_who_are_fired.pdf.
- Should your employer deny your request for time off, BE AWARE that if you miss work or call in sick to participate in the boycott, your boss could fire you for missing work and/or dishonesty.
- If your employer denies your request for time off, and you still decide to take the day off, write a memo stating the reasons your employer gave for denying your request for time off and explain that you still intend on taking the day off. You do run the risk of being fired or disciplined if you decide to take the day off without permission from your employer.

- If you are covered by a union collective bargaining agreement, TALK TO YOUR UNION REPRESENTATIVE before you participate in the action.

Following these “best practices” may help protect workers who want to participate in the demonstrations from suffering adverse employment-related consequences. For example, following these tips can prepare the way for you to file an unfair labor practice charge with the National Labor Relations Board if you and your co-workers are fired or otherwise retaliated against for participating in protests. Or if your boss only prohibits Latino workers from taking the day off on May 1, you may be able to file a discrimination charge with the U.S. Equal Employment Opportunity Commission (EEOC) or applicable state agency. However, even if you follow these best practices, workers who participate in demonstrations still may risk being fired or disciplined.

This document was prepared by the American Civil Liberties Union Immigrant Rights Project (ACLU-IRP), the National Employment Law Project (NELP) and the National Immigration Law Center (NILC).

■ **Whom to contact if workers are fired or retaliated against for participating in actions:**

If you or your co-workers are fired, demoted, disciplined, or retaliated against because of your participation in protests, contact your local immigrant rights advocate group. For more information, contact Monica Guizar, NILC’s employment policy attorney, at guizar@nilc.org. You can also obtain additional information from the ACLU Immigrant Rights Project at www.aclu.org/immigrantmarches.

FOR MORE INFORMATION, CONTACT

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