

Immigrants' Participation in Protests

What Every Worker Should Know

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On May Day 2017, thousands of immigrants across the country will participate in historic rallies and protests against efforts to criminalize immigrants and the extreme anti-immigrant rhetoric of the Trump administration. Immigrants' rights groups are asking immigrants to consider not working, shopping, or attending school on May 1st as part of these actions. In addition, immigrant workers may want to participate in the civic and nonviolent rallies that are being planned for that day.

However, advocates around the country have reported that, in the past, some immigrant workers who participated in protests were fired because they participated. So before they decide whether to participate in such actions, workers need to know that if they do participate, they could suffer adverse employment-related consequences. *It is important for every worker to know their rights and understand the possible consequences of participating in these demonstrations.*

What rights do workers have to engage in protest actions?

- **Right to free speech.** The First Amendment to the U.S. Constitution prohibits the government from restricting your right to free speech. This 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.
- **Right to protest during nonwork hours.** You have the right to engage in political protests during nonwork hours—for example, on your day off or on a day you are not scheduled to work. In most cases, your employer may not discipline you, fire you, or otherwise retaliate against you for engaging in political activity during your free time.
- **Right to protest to improve collective working conditions.** 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, depending on the form that action takes. Actions taken during work hours may be subject to restrictions imposed by lawful work rules that are applied equally by the employer to all employees.
- **Your state's laws may provide greater protections.** 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 immigrants' 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.
- **Pros and cons of union contracts.** Collective bargaining agreements that cover unionized workers *may* provide them better protection for engaging in political activity than

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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.

- **Employer may not ask you to reverify your authorization to work.** If you take time off from work, that does not give your employer the right to ask that you reverify your employment eligibility by showing them your documents again. Nor may your employer single you out for reverification because you appear to be an immigrant or have participated with other immigrants in protests.

May workers be disciplined or fired for engaging in protests?

- **Workplace rules apply.** While the First Amendment protects workers’ right to free speech, employees are also subject to workplace rules. Missing work in violation of a workplace rule, or having an unexcused absence, is generally a legitimate reason for your employer to fire you.
- **At-will employment may apply.** In addition, most workers are subject to “at-will” employment policies that give employers the right to fire employees without reason, subject to very limited exceptions.
- **Pros and cons of union contracts.** Workers who are covered by union collective bargaining agreements have greater protections, in that employers can fire them only for “just cause” (a good reason). However, the tradeoff for most union employees who have such protection is that they are prohibited from striking during the term of their contract. Unionized workers who have questions about this should consult with their union representative(s) *before* deciding whether to participate in a protest.

What are best practices for protecting immigrant workers who participate in protests?

- **Talk to your union representative first.** If you are covered by a union collective bargaining agreement, talk to your union representative *before* you participate in a protest.
- **Talk to local labor lawyers first.** Before engaging in protests, meet with local labor lawyers and do an analysis of your worksite and the demands or claims you could potentially allege.
- **Consult employee handbook or other written policy.** Get a copy of your employer’s employee handbook or any written company policies about taking time off, then read them carefully. Ask your employer to show you a written policy. If, instead, your employer tells you the policy verbally, write down what your employer tells you (document it).
- **Advocate with a group of coworkers.** As early as you can, you and any coworkers who want to participate in the protest should meet with your supervisor to ask in advance for time off. Always go in a group of two or more coworkers to talk with your employer about labor rights issues. This may provide you protection under the National Labor Relations Act.
- **Be honest.** Be honest with your employer about the reason you want to take time off from work. If you and your coworkers have a workplace-specific request related to immigration policies to make of your employer, it may be appropriate to make that request during the meeting when you ask for time off. In general, try to use the meeting as an opportunity to educate your employer about the need for humane immigration policies.
- **Check whether policies are applied equally.** Check to see if your employer’s time-off policy is applied equally to all workers regardless of their race, national origin, religion, or

gender. For example, if a group of employees takes the same day off but your employer disciplines only the Latino employees in the group for taking the day off, you may have a discrimination claim under Title VII of the Civil Rights Act.

- **Do not disclose your or others' immigration status.** Whether you're undocumented or are authorized to live and work in the U.S., do *not* disclose your immigration status or the immigration status of your coworkers to your employer, or to anyone.
- **Advocate for better conditions for all.** Consider telling your employer that you want to take the day off to support better rights and working conditions for *all* workers, including a path to work authorization for all immigrant workers. Whether or not it's true, don't tell your employer that you or your family members need to legalize your immigration status.
- **Submit a written petition and present it as a group.** Draft a petition requesting time off from work, gather signatures for it from your coworkers, and present the petition to your employer in a group of two or more coworkers. The petition should state that you support better wages, working conditions, and rights for all workers, including a way by which immigrant workers can legalize their immigration status.
- **Know the possible consequences.** If your employer denies your request for time off, *be aware* that if you miss work or call in sick to participate in the protest, your boss could fire you because you missed work or were dishonest.
- **Write an explanation for wanting to take time off.** If your employer denies your request for time off, and you decide to take the time off anyway, write a memo to your employer stating the reasons your employer gave for denying your request for time off and explain that you still hope to take the time off. Remember, though: You risk being fired or disciplined if you decide to take the day off work without first getting permission from your employer.

Following these “best practices” may help protect workers who want to participate in workers’ rights 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 coworkers are fired or otherwise retaliated against for participating in protests. Or if your boss prohibits only Latino workers from taking time off to participate in demonstrations on May 1, you may be able to file a discrimination charge with the U.S. Equal Employment Opportunity Commission (EEOC) or the appropriate state agency. However, even if you follow these best practices, workers who participate in demonstrations still may risk being fired or disciplined.

Who may be contacted if workers are fired or retaliated against for participating in protests?

If you or your coworkers are fired, demoted, disciplined, or retaliated against because of your participation in protests, contact your local immigrants’ rights advocacy group.

For more information, contact Jessie Hahn, NILC’s labor and employment policy attorney, at hahn@nilc.org. You can obtain additional information from the ACLU at www.aclu.org/know-your-rights/what-do-if-your-rights-are-violated-demonstration-or-protest.



FOR MORE INFORMATION, CONTACT

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