



# THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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## **总检察长公告： 所有工人都享有就业保护，不论其移民身份**

马萨诸塞州总检察长办公室重申其长期以来的立场，即所有工人，无论其移民身份如何，都受到联邦劳动和就业法的保护。这些保护包括：

- 按时获得全额的法定薪资的权利，包括：
  - 最低工资
  - 加班费
  - 公共建设项目的现行工资
- 在工作中免受性骚扰和其他形式歧视的权利，包括由于以下原因而受到的歧视：
  - 种族
  - 肤色
  - 国籍
- 包括未成年人在内的所有工人享有安全健康的工作场所的权利
- 根据童工法获得保护的權利，包括：
  - 最长工作时间
  - 早上工作得太早或晚上工作得太晚
  - 无人监督或使用危险机械工作
- 组织权
- 被正确归类为雇员的权利

在实际工作中，这意味着在马萨诸塞州总检察长办公室：

- 我们为所有工人提供服务，不论其移民身份如何
- 我们不询问工人的移民身份
- 我们不会自愿向美国移民海关执法局 (ICE) 提供工人的个人信息
- 我们不容忍对向总检察长办公室提出投诉或以其他方式维护其合法权利的工人进行报复
- 我们协助权利受到侵犯的符合条件的工人寻求移民执法保护，支持工人申请检察酌情权，和/或 U 或 T 签证认证

没有联邦工作许可证的工人特别容易受到剥削性雇佣行为的影响。公平劳工部将继续代表马萨诸塞州的所有工人采取适当的执法行动。如果您有任何疑问或需要进一步的帮助，可以拨打公平劳工部的热线电话 (617) 727-3465 或访问: [www.mass.gov/ago/fairlabor](http://www.mass.gov/ago/fairlabor)。

有关法律讨论，请参阅下一页。

## Legal Discussion

**All workers are entitled to wages for work performed:** Once “an employee has completed the labor, service, or performance required of him,” he has “earned” his wage. *Awuah v. Coverall N. Am., Inc.*, 460 Mass. 484, 492 (2011). After wages have been earned, an employee must receive full and timely payment. *Wiedmann v. The Bradford Grp., Inc.*, 444 Mass. 698, 703 (2005); *Boston Police Patrolmen’s Ass’n, Inc. v. Boston*, 435 Mass. 718, 720 (2002). The right to be paid earned wages is unconditional and cannot be surrendered under any circumstances. *Newton v. Comm’r of the Dep’t of Youth Serv.*, 62 Mass. App. Ct. 343, 346-47 (2004) (Wage Act creates personal and independent statutory right to wages); *Dobin v. CIOview Corp.*, 2003 WL 22454602, 5 (Mass. Super. Ct. Oct. 29, 2003) (Wage Act “sets forth no circumstances in which such a waiver would be lawful”).<sup>1</sup>

**The right to be paid extends regardless of immigration status:** Immigration status is not a factor in determining a worker’s right to be paid earned wages. *Jin-Ming Lin v. Chinatown Restaurant Corp.*, 771 F. Supp. 2d 185, 190 (D. Mass. 2011) (employees’ immigration status irrelevant to their claims under the Federal Fair Labor Standards Act (“FLSA”) for unpaid minimum wage and overtime).<sup>2</sup> See also *Lamonica v. Safe Hurricane Shutters, Inc.*, 711 F.3d 1299, 1306-07 (11th Cir. 2013) (FLSA applies to undocumented workers seeking recovery of overtime); *Lucas v. Jerusalem Café, LLC*, 721 F.3d 927, 933-35 (8th Cir. 2013) (FLSA applies to undocumented workers because “employers who unlawfully hire unauthorized aliens must otherwise comply with federal employment laws.”); *Colon v. Major Perry Street Corp.*, 987 F. Supp. 2d 451, 459 (S.D.N.Y. 2013) (FLSA mandates relief, statutory language forecloses possibility for court discretion).

**A worker’s immigration status is not relevant to Wage and Hour cases:** Because immigration status is not relevant to whether a worker is entitled to earned wages, questions related to the worker’s immigration status are properly excluded from cases concerning Wage and Hour claims. *Lin*, 771 F. Supp. 2d at 190 (court barred discovery into workers’ immigration status because it is irrelevant to their claims for unpaid wages). Indeed, immigration status has no bearing on victim or witness credibility and “[t]he victim of a crime need not be a citizen or a legal resident of the United States in order to testify in our courts.” *Commonwealth v. Buzzell*, 79 Mass. App. Ct. 460, 462-63 (2011) (defendant prohibited from cross-examining victims about their status as undocumented immigrants, as irrelevant, or that they allegedly provided false information to obtain Social Security numbers).

**All workers are protected from retaliation by their employers for asserting their rights:** Massachusetts law prohibits employers from discharging or penalizing in any other way employees who assert their rights under the state Wage and Hour Laws or participate in an investigation by the Attorney General. G.L. c. 149, § 148A; G.L. c. 151, § 19(1) and (5).

**Some workers may be eligible for additional immigration relief:** The Victims of Trafficking and Violence Protection Act of 2000 created two types of visas that immigrant workers may be eligible for.<sup>3</sup> U Visas provide legal status to victims of certain qualifying criminal activities<sup>4</sup> who have suffered substantial physical or mental abuse, and possess information concerning that crime, and who have been, are being, or are likely to be helpful to law enforcement. T Visas provide legal status to certain victims of human trafficking who assist law enforcement authorities in the investigation or prosecution of trafficking crimes. The U.S. Citizenship and Immigration Service (USCIS) decides whether to grant a request for a U or T visa. The U.S. Department of Homeland Security (DHS) may also consider a request from an immigrant worker for deferred action. The Attorney General’s Office can draft letters of support related to ongoing investigations as part of this process.<sup>5</sup> DHS decides whether to grant these requests. Finding legal help: <https://www.mass.gov/service-details/finding-legal-help>.

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<sup>1</sup> The law significantly limits an employer’s defenses to a wage claim. *Somers v. Converged Access, Inc.*, 454 Mass. 582, 592 (2009). In particular, G.L. c. 149, § 150, specifies that at trial “no defence for failure to pay as required, other than the attachment of such wages by trustee process or a valid assignment thereof or a valid set-off against same... shall be valid.” Any late payment of wages is a violation of the statute, even if the wages are subsequently paid. *Reuter v. City of Methuen*, 489 Mass. 465, 471 (2022).

<sup>2</sup> When interpreting state Wage and Hour Laws, Massachusetts courts regularly look to analogous provisions in the federal law and its interpretative regulations for guidance. See *Mullally v. Waste Mgmt. of Mass., Inc.*, 452 Mass. 526, 532 (2008); *Goodrow v. Lane Bryant, Inc.*, 432 Mass. 165, 170-73 (2000).

<sup>3</sup> <https://www.dol.gov/agencies/whd/immigration/u-t-visa>

<sup>4</sup> Qualifying crimes for a U visa include involuntary servitude, peonage trafficking, obstruction of justice, witness tampering, extortion, fraud in foreign labor contracting, forced labor.

<sup>5</sup> <https://www.dhs.gov/enforcement-labor-and-employment-laws>