



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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Anons Avoka Jeneral la:

Tout Travayè Gen Dwa a Pwoteksyon Travay Kèlkeswa Sitiyasyon Imigrasyon yo

Biwo Avoka Jeneral Massachusetts la reyafime pozisyon li depi lontan ke tout travayè yo, kèlkeswa sitiyasyon imigrasyon yo, yo pwoteje pa lwa travay ak law travay nan Commonwealth la. Pwoteksyon sa yo genyen ladan yo:

- Dwa pou yo peye ou selon tarif travay ki legal, tout montan an ak san reta, ikonpri::
 - Salè minimòm
 - Ovètaym
 - Salè ki aksepte anjeneral pou pwojè travo piblik
- Dwa pou yo pa asèlman seksyèl ak lòt fòm diskriminasyon nan travay la, ki gen ladan diskriminasyon akòz:
 - Ras
 - koulè
 - Orijin nasyonal
- Dwa pou lye travay la san danje epi pa gen risk pou lasante, enkli minè
- Dwa pou jwenn pwoteksyon anba lwa Travay pou Timoun yo, enkli:
 - Lè maksimòm
 - Travay twò bonè nan maten oswa twò ta nan mitan lannwit
 - Travay san sipèvizyon oswa ak machin danjere
- Dwa pou òganize
- Dwa pou yo byen klase kòm yon anplwaye

Nan pratik, sa vle di ke nan Biwo Avoka Massachusetts la:

- Nou sèvi tout travayè, kèlkeswa sitiyasyon imigrasyon yo
- Nou pa poze kesyon sou sitiyasyon imigrasyon yon moun
- Nou pa bay enfòmasyon pèsonel travayè yo bay US Imigrasyon (U.S. Immigration Customs Enforcement) (ICE)
- Nou pa tolere vanjans kont travayè ki pote plent nan Biwo Avoka Jeneral la oswa ki fè reklamasyon dwa legal yo
- Nou ede travayè elijib ki gen dwa yo te vyole nan chèche pwoteksyon kont ranfòsman imigrasyon nan sipòte demann travayè yo pou diskresyon lajistis, ak/oswa sètifikasyon viza U oswa T

Travayè ki pa gen otorizasyon travay federal gen anpil chans pou yo viktim pratik anbochaj ki eksplwate yo. Divizyon Travay Ekitab la (Fair Labor Division) pral kontinye pran tout mezi ki apwopriye pou mete anplas pwoteksyon pou tout travayè nan Massachusetts. Si w gen nenpòt kesyon oswa ou bezwen plis asistans, ou ka kontakte liy dirèk Divizyon Travay Ekitab la nan (617) 727-3465 oswa vizite: www.mass.gov/ago/fairlabor.

For Legal Discussion, see next page.

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”).¹

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).² 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 for³. U Visas provide legal status to victims of certain qualifying criminal activities⁴ 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.⁵ DHS decides whether to grant these requests. Finding legal help: <https://www.mass.gov/service-details/finding-legal-help>.

¹ 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).

² 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).

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

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

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