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Notificación de la Fiscal General:
Todos los trabajadores tienen derecho a protecciones laborales
sin importar su estado migratorio

La Fiscal General de Massachusetts reafirma su postura histórica de que todos los trabajadores están amparados por las leyes laborales y de empleo, sin importar su estado migratorio. Las protecciones laborales incluyen:

- El derecho a recibir la tarifa de pago, en su totalidad y en forma puntual, lo que incluye:
 - Salario mínimo.
 - Pago por horas extra.
 - Salario prevaleciente en proyectos de obra pública.
- El derecho a estar libre de acoso sexual y otras formas de discriminación en el trabajo.
- El derecho a un lugar de trabajo seguro y saludable.
- El derecho a organizarse.
- El derecho a ser clasificado adecuadamente como empleado.

En la práctica, esto significa que en la Fiscal General de Massachusetts:

- Protegeremos a todos los trabajadores, sin importar su estado migratorio.
- No preguntamos acerca del estado migratorio de un individuo.
- No brindamos información personal de los trabajadores al Servicio de Inmigración y Control de Aduanas de Estados Unidos (a menos que lo exija una citación u orden judicial).
- No toleramos las represalias contra aquellos trabajadores que presenten quejas ante la Fiscal General, o que de alguna otra manera hacen valer sus derechos legales.

Los trabajadores que no cuentan con autorización laboral federal son especialmente susceptibles a la explotación laboral. La Fair Labor Division (División de Trabajo Justo) seguirá tomando medidas apropiadas para la protección de todos los trabajadores en Massachusetts. Si tiene alguna pregunta o necesita ayuda, puede comunicarse con la línea telefónica directa de la Fair Labor Division al (617) 727-3465 o visitar: www.mass.gov/ago/fairlabor.

En la próxima página encontrará un análisis legal.

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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).

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.”

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).