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Attorney General Advisory: **All Workers Are Entitled to Employment Protections Irrespective of Immigration Status**

The Massachusetts Attorney General's Office reaffirms its longstanding position that all workers, irrespective of immigration status, are protected by the Commonwealth's labor and employment laws. These protections include:

- The right to be paid a legal rate of pay, in full and on time, including:
 - Minimum wage
 - Overtime
 - Prevailing wage on public work projects
- The right to be free from sexual harassment and other forms of discrimination on the job, including discrimination because of:
 - Race
 - Color
 - National origin
- The right to a safe and healthy workplace for all workers, including minors
- The right to protections under the Child Labor laws, including:
 - Maximum hours
 - Working too early in the morning or too late at night
 - Working unsupervised or with dangerous machinery
- The right to organize
- The right to be classified properly as an employee

In practice, this means that at the Massachusetts Attorney General's Office:

- We serve all workers, irrespective of immigration status
- We do not ask about a worker's immigration status
- We do not voluntarily provide personal information of workers to U.S. Immigration Customs Enforcement (ICE)
- We do not tolerate retaliation against workers who lodge complaints with the Attorney General's Office or otherwise assert their legal rights
- We assist eligible workers whose rights have been violated in seeking protection from immigration enforcement by supporting workers requests for prosecutorial discretion, and/or U or T visa certification

Workers who do not have federal work authorization are particularly susceptible to exploitive employment practices. The Fair Labor Division will continue to take appropriate enforcement action on behalf of all workers in Massachusetts. If you have any questions or need further assistance, you may contact the Fair Labor Division's hotline at (617) 727-3465 or visit: www.mass.gov/ago/fairlabor.

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 for.³ 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>