

Labor Day Report

*A Report of Activities by the Fair Labor Division
Fiscal Year 2016*



SEPTEMBER 05, 2016

THE FAIR LABOR DIVISION

The Attorney General's Fair Labor Division is charged with enforcing Massachusetts' wage and hour laws, which require the timely payment of wages, minimum wage, and overtime, as well as some of the newest workplace protections such as earned sick leave and the domestic worker bill of rights. These enforcement efforts ensure that workers are paid the wages they are owed and that businesses which play by the rules do not get undercut by competitors seeking to save costs at the expense of their employees. The Division is also responsible for ensuring that employers pay the prevailing wage to workers engaged in public works, and that public construction bid laws are adhered to; in this way, the Attorney General's Office ensures that tax dollars are spent on responsible employers who provide good jobs in Massachusetts.

To address the rise in wage theft in Massachusetts, the Attorney General's Office is targeting enforcement efforts on problem industries, including commercial cleaning, construction, health care, restaurants, and staffing agencies. The Attorney General has hired new staff to move through cases more efficiently and to better serve the most vulnerable workers in the Commonwealth. Additionally, the Division is strengthening partnerships with other state, city, and federal agencies as well as non-governmental organizations. Through joint and supportive enforcement efforts, the Division is maximizing its ability to combat the abridgement of worker rights and to ensure workers receive the wages they have earned.

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In the Fair Labor Division, our mission is to provide every worker and responsible employer with a fair shot and a level playing field. The working people of Massachusetts are the heart of our economy and our state's innovative spirit. Supporting workers and their families is our most fundamental charge.

Attorney General Healey

FLD BY THE NUMBERS

In Fiscal Year 2016, the Division received more than 6,000 complaints – up 33 percent (or 1,500) from the prior year. It issued 423 citations, and recovered nearly \$3.8 million in restitution and penalties on behalf of working people in Massachusetts. Thousands of workers and their families have been positively impacted by the work of the Division.

The industries cited most frequently were construction (136) and restaurants (101). The sectors with the most impacted employees were temporary staffing agencies (596), health care (393), and construction (374).

Complaints		Liens	
FY2016	6092	FY2016	41

Citations & Settlements		Collected Revenue	
# Issued or Settled	451	Total	\$3,756,597.69
Restitution	\$2,474,640.70	Restitution	\$3,038,691.86
Penalties	\$839,801.09	Penalties	\$716,180.83
		Fees	\$14,946.06

FISCAL YEAR 2016 HIGHLIGHTS

Construction Industry Enforcement

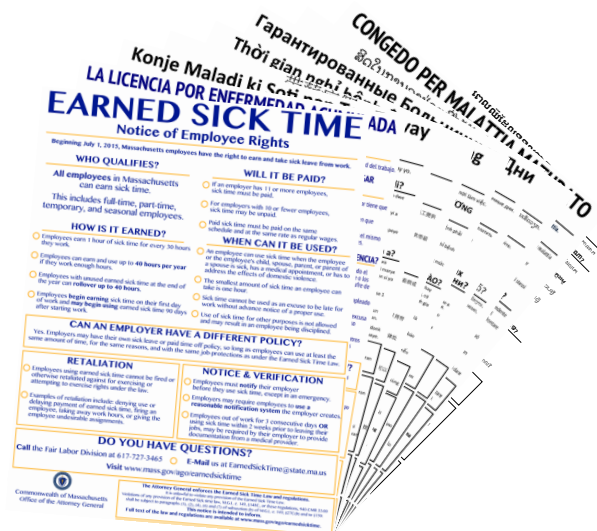
Massachusetts is in the midst of a building boom, with thousands of laborers, carpenters, plumbers and bricklayers heading to work every day. Unfortunately, far too many workers complain of waiting weeks or months for their hard-earned wages, while others are misclassified as independent contractors. Some are never paid at all until the Attorney General's Office intervenes. The Division has prioritized enforcement in the construction industry with one-third of all FLD citations in the last year being issued on behalf of construction workers. In total, the Division issued 136 citations, ordering employers to pay more than \$600,000 in restitution to 374 workers, in addition to \$250,000 in penalties.

One illustration of the impact that FLD's enforcement can have on individual workers is the case of AK Electric, Inc. The Division investigated a complaint referred to it by the Foundation for Fair Contracting, which is a partnership of unions and responsible employers that investigates publicly funded projects to ensure that they are properly bid and workers are paid the applicable prevailing wage. Based on its review of the matter, the Division determined that the employer was classifying – and paying – six employees as apprentices when they should have been paid at the higher journeyman electrician's rate. Three employees of the effected employees each received more than \$15,000 in restitution for violations that occurred over a six-month period.

Earned Sick Time

On July 1, 2015, Massachusetts' earned sick time law went into effect. The law gives all workers the right to earn and use up to 40 hours of sick leave every year. During Fiscal Year 2016, the Division, in collaboration with other parts of the Office, embarked on numerous efforts to ensure smooth and meaningful implementation of the law, which include:

- Holding more than 100 outreach and training sessions relating to the new law;
- Handling approximately 10,000 inquiries from employees and employers about the law;
- Resolving 84 complaints to ensure compliance;
- Defending two separate lawsuits challenging the law against claims of federal preemption.



Domestic Workers

Domestic workers are people who perform services such as housekeeping, cleaning, and childcare, in the home of another person. They are particularly vulnerable to abuses because they frequently rely on their employers for food and shelter, and because many are socially isolated. The Attorney General's Office is responsible for enforcing the Domestic Worker Bill of Rights ("DWBR") which took effect on April 1, 2015. The DWBR provides domestic workers with enhanced employment protections, including a notice of rights, a written agreement, and a right to privacy.

An example of the Fair Labor Division's work on behalf of domestic workers occurred in April 2016. It involved labor trafficking of a Filipina domestic worker by a family visiting from Qatar. Her employers had brought her with them to care for their five children. After working for several weeks without any compensation, she asked for her wages. Her employers responded by immediately confiscating her passport and threatening to punish her upon their return to Qatar. Knowing no one in the area, she called the police. The Division worked closely with the Cambridge Police Department, the U.S. Attorney's Office, and the U.S. Department of Homeland Security Immigration and Customs Enforcement to ensure her safety and to quickly recover \$3,000 of her hard-earned wages.

On-Call Shifts

Working people cannot achieve economic security for themselves and their families without predictable work schedules. That is why Massachusetts joined the New York Attorney General and six other state attorneys general in April 2016 to investigate the on-call policies of 15 national retailers. On-call shifts vary by employer, but they typically require workers to be available for work in the event that their employer needs them. If the employer does not need the employee to work, the employee is not paid. In addition to being unpaid, on-call employees may incur work related expenses (e.g., child care or elder care) in anticipation of being called to work. On-call policies hurt working people because they limit a worker's ability to accept other jobs and to obtain training to improve their skills and earning potential. Together, the eight states challenged these employers to reconsider the business necessity of on-call shifts and encouraged them to adopt practices that give their employees advance notice of their work schedules. As a direct result of the AGs' inquiry, virtually all of the 15 retailers have indicated a willingness to end their use of on-call policies.

Staff Changes

Last year, the Attorney General put a new team in place to lead her Fair Labor Division: Division Chief Cyndi Mark, Deputy Division Chief Lauren Goldman, and Chief of Investigations Heather Rowe. Collectively, they have decades of experience in wage enforcement and have demonstrated the ability to protect the rights of the most vulnerable of workers. Under their leadership, the Division has hired nine new staff members. Two of these recent hires were for expansion positions, made possible by increased funding from the state legislature specifically allocated to hire more staff in the Fair Labor Division. Building on the strength of the existing core of investigators and assistant attorneys general, a quarter of the Fair Labor Division's staff now speaks at least two languages. The Division can now communicate directly with workers in English, Spanish, Portuguese, Chinese, and Vietnamese. Language access is absolutely necessary to reach immigrant workers who are some of the most disenfranchised and vulnerable workers in the workforce.

NOTABLE CASES

Ad Market, Inc. (d/b/a Peabody Market)

A Peabody convenience store was cited more than \$43,000 for failing to properly pay minimum wage and overtime to a former clerk. Based on its review, the Division determined that in place of the legally required minimum wage, the market allowed the homeless employee to reside inside a broken walk-in cooler at the store for the majority of time he worked there. The investigation also revealed that he frequently worked in excess of 100 hours a week, but was only sporadically compensated for this work.

Arbor Home

Arbor Home Care Services, LLC (“Arbor”) paid more than \$870,000 to 376 of its home health aides for failing to pay overtime for all hours worked over 40 hours in a week, in addition to an \$85,000 penalty to the state. Home health aides are among the lowest paid employees in the industry, and they are entitled an overtime rate of pay when they work more than 40 hours per week. The Division’s settlement with Arbor resulted in very meaningful payouts to hundreds of workers. On average, each eligible worker received a payment of \$2,300, and the highest payout was nearly \$25,000.

Baby Nat’s, Inc.

A Roslindale grocery store agreed to pay more than \$300,000 in citations for failing to properly pay its employees and for hindering an investigation. Baby Nat’s agreed to pay nearly \$200,000 in restitution to 23 workers and more than \$100,000 in penalties for not paying proper overtime rates, Sunday premium pay rates, failing to keep accurate payroll records, and failing to issue suitable pay slips to employees. The penalties also included a \$15,000 citation for hindering an investigation by trying to coerce employees to either lie to or refuse to communicate with the AG’s Office in connection with this investigation. On average, each worker received more than \$8,000 in restitution.

Delgado Donuts (d/b/a Dippin Donuts)

A coffee shop chain with locations in Leominster and Littleton was cited approximately \$47,000 for violating Massachusetts child labor and wage and hour laws. A total of four civil citations were issued against Delgado Donut Shops, LLC, and Route 13 Donut Shop, Inc., which do business as Dippin’ Donuts. A review of the labor practices at their four locations revealed numerous violations dating back nearly three years. To protect children in the workforce, Massachusetts laws strictly limit the hours that children can work, and prohibit most work for children younger than 14.

Truong-Thinh Market, Inc.

A Dorchester grocery store agreed to pay \$105,000 for failing to properly pay seven of its employees the minimum wage and overtime premium for all hours worked above 40 in a week. The workers received \$84,000 in restitution and the company paid a \$21,000 penalty to the state. Individual workers received between \$5,000 and \$22,000 from the settlement. The minimum wage is the most basic worker protection that the Division enforces. In Massachusetts, the minimum wage is \$10 per hour, and will increase to \$11 per hour in January 1, 2017.

VHU

A Florida-based delivery company was cited more than \$80,000 in restitution and penalties for failing to timely pay its employees in violation of the state's wage and hour laws. VHU Express, Inc. were hired by Amazon Logistics, Inc. ("Amazon") to provide delivery service for two warehouses in Massachusetts located in Chelsea and Dedham. In January 2016, the Attorney General's office received a referral from the Council on the Underground Economy (CUE) that workers had not received wages for several weeks of pay. The investigation determined that, from December 2015 to February 2016, a total of 52 employees had not been paid for work performed delivering Amazon packages. The law requires employers to pay most employees within six days of the end of the pay period during which the wages were earned.

LOOKING FORWARD

The Attorney General's Office is committed to aggressively enforcing existing laws to protect working people in Massachusetts. The Fair Labor Division will build on community engagement efforts – both in affirmative compliance site inspections and informational workshops – to make sure that workers know what rights they have and to inform employers of their legal obligations. The Fair Labor Division will continue to build partnerships with unions and responsible employers, as well as community groups and government agencies, in order to end wage theft and other forms of worker exploitation.

One example of a future partnership is the AGO's Wage Theft Clinic which will launch on October 3, 2016. The Clinic, hosted by Suffolk University Law School, is a partnership of several community organizations, legal aid offices, and law schools, including the Brazilian Women's Group, Brazilian Workers Center, Casa Del Trabajador/Metrowest Workers Center, Chinese Progressive Association, Greater Boston Legal Services, Harvard Legal Aid Bureau, Justice at Work, Lawyers for Affordable Justice, and Volunteer Lawyers Project. The purpose of the Clinic is to increase the resources available to vulnerable workers and to combat wage theft. The clinic will provide workers who have received a private right of action letter with assistance in pursuing their claims; such assistance may include full legal representation, limited legal consultation, education and outreach related to workers' rights laws, and/or other services which partnering lawyers and organizations deem appropriate. The services provided by the Clinic will supplement and not supplant AGO enforcement efforts. The Clinic will be open to assist workers on October 3, November 14, and December 12. For more information, email MassWageTheftClinic@state.ma.us.

The Clinic is but one example of the Division's new initiatives to address the needs of working people in Massachusetts. The AGO and its Fair Labor Division looks forward to working with all of its partners to explore ways to enhance the economic security for all in Massachusetts.



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