

PROTECTING MASSACHUSETTS WORKERS



ATTORNEY GENERAL MAURA HEALEY'S 2018 LABOR DAY REPORT

SEPTEMBER 03, 2018

On Labor Day 2018, we celebrate the working people of Massachusetts whose hard work improves our lives and our communities. We affirm our commitment, long championed by the labor movement, for a just and equitable society where everyone who works is able to make a living, and every person who leaves home for work comes home safe and sound. On this Labor Day, we praise responsible employers who play by the rules and create good jobs and meaningful careers.

The Attorney General's Fair Labor Division (Fair Labor) is the primary enforcer of wage and hour laws in Massachusetts. Fair Labor vigorously enforces minimum wage, overtime, earned sick time and other related laws so that workers are paid the wages they are due and employers compete on a level playing field. Fair Labor is also responsible for ensuring that public construction projects are fairly bid and awarded, and that employers engaged in public construction pay the prevailing wage to their workers.

This report highlights the Fiscal Year 2018 (FY2018) work of Fair Labor to combat wage theft through enforcement, partnerships, and community outreach and education.



In FY2018, Fair Labor continued its aggressive enforcement (assessing more than \$9.6 million in restitution and penalties) against employers who steal wages, misclassify workers, and exploit young workers. In partnership with other states, Fair Labor addressed the most pressing issues facing working people, including the rights of public sector employees and unions, mandatory arbitration clauses and class action waivers, misclassification as an unfair labor practice, and anti-competitive franchise agreements that limit work opportunities for low wage workers. Through these varied approaches and strong partnerships, Fair Labor maximizes its resources and impact on the recalcitrant problems of wage theft and worker exploitation.

“I will always stand with the working people of Massachusetts.

From firefighters and nurses who keep us safe, to teachers and cooks who nourish our minds and bodies, and construction workers who are building our state, all employees deserve to be treated with dignity and respect. On this Labor Day, I thank our partners for standing with us as we recommit ourselves to ending wage theft in Massachusetts.”

A handwritten signature in black ink, appearing to read "Ma Healey". The signature is stylized and cursive.

MAURA HEALEY
ATTORNEY GENERAL
COMMONWEALTH OF MASSACHUSETTS

By the Numbers

July 1, 2017 - June 30, 2018

\$6,847,929

Assessed restitution

\$2,740,448

Assessed penalties

15,000 +

Number of calls to Fair Labor Hotline

5,720

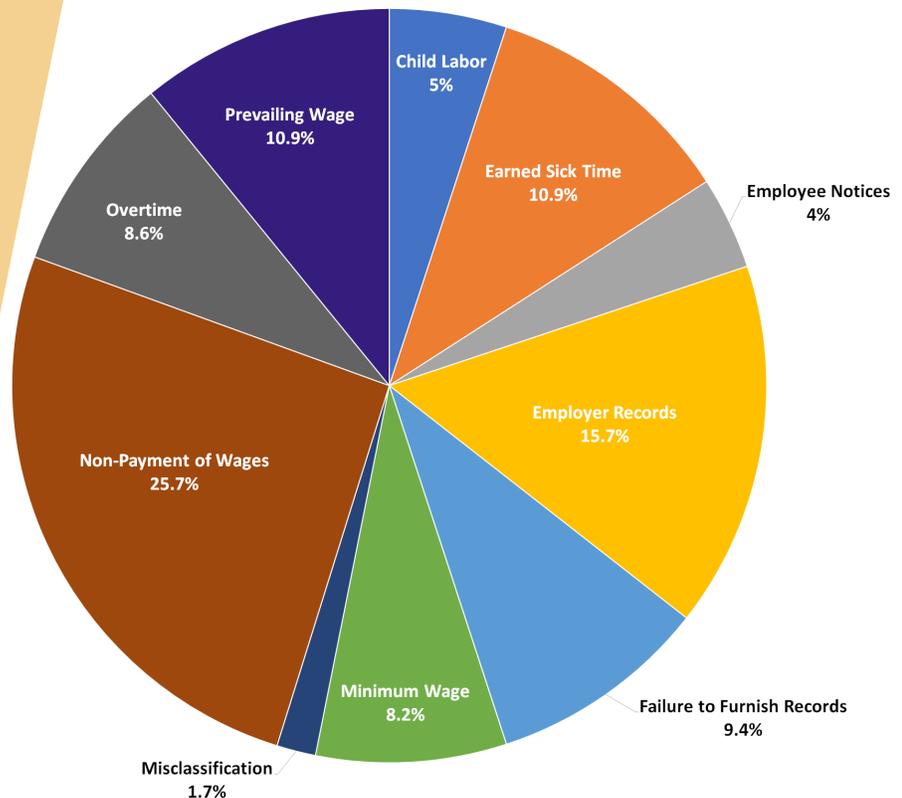
Number of complaints filed

605

Number of citations and assessments



FY2018 CITATIONS ISSUED
PERCENTAGE OF VIOLATIONS CITED



PROTECTING ALL WORKERS

CORPORATE MANSLAUGHTER

This year, the Attorney General joined worker safety advocates to champion a bill to update the penalty for companies found responsible for the death of employees. The fine of \$1,000 had not been updated since 1819. The AG filed the bill and testified in support of increasing the penalty for corporate manslaughter to up to \$250,000 and including the possibility of a 10-year debarment from contracting with the Commonwealth.

The legislation was a priority for the office which recognized that, for years, some corporations responsible for tragedies in Massachusetts have gotten away with a slap on the wrist. The new law sends a strong message to the entire business community: *if you do not protect your workers, you cannot do business in Massachusetts.* This bill was signed into law as part of the Criminal Justice Reform package on April 13, 2018.

“It should never pay to cut corners and cost people their lives. If companies endanger the working people of Massachusetts, they will be held accountable.”

Attorney General Maura Healey

EARNED SICK TIME

Fair Labor assessed more than \$430,000 in restitution and penalties for violations of the Earned Sick Time Law in FY2018. Cases ranged from investigations of individual absences for which employees were denied paid leave to larger scale reviews of an employer’s sick leave policies and practices. When employers fail to provide paid sick leave as required, we continue to seek 3.7 days of sick time pay for workers based upon a report by the Centers for Disease Control (CDC).

Restaurants accounted for more than one-third of the citations issued for Earned Sick Time violations. Fair Labor enforcement also impacted child care and health care centers – workplaces where employees’ access to job-protected sick leave is crucial to protecting public health.

NOTABLE CASE

Estée Lauder Companies, Inc., which employs hundreds of cosmetic workers in its own Aveda, M.A.C., and Origins stores and in other retail outlets in Massachusetts, agreed to pay \$90,000 in restitution and penalties for its failure to offer paid sick leave to part-time employees. More than 500 employees received restitution as a result of this settlement.

The Attorney General's Office (AGO) has prioritized wage theft in the construction industry. In FY2018, Fair Labor issued citations and other assessments against 61 employers in the industry, with penalties and restitution assessed at nearly \$1.5 million.

NOTABLE CASES:

E.J. PAVING COMPANY, INC.

Fair Labor cited E.J. Paving Company, Inc. and its president, Thomas Evangelista, a total of \$172,554.42 for failure to pay proper overtime. The Methuen-based paving company failed to pay overtime to its employees until they had worked more than 45 hours in any given work week. In addition, when employees worked on both private and public works projects during the same week, E.J. Paving failed to account for the different hourly rates of pay when overtime was calculated. As a result of this enforcement action, 47 employees will each receive more than \$3,000 on average.

"The Attorney General and her Fair Labor Division fight for the hard-working people of Massachusetts every day.

Their advocacy and enforcement help ensure workers receive fair pay for a hard day's work. We value our partnership with her office and look forward to continuing to fight together against wage theft on behalf of all Massachusetts workers."

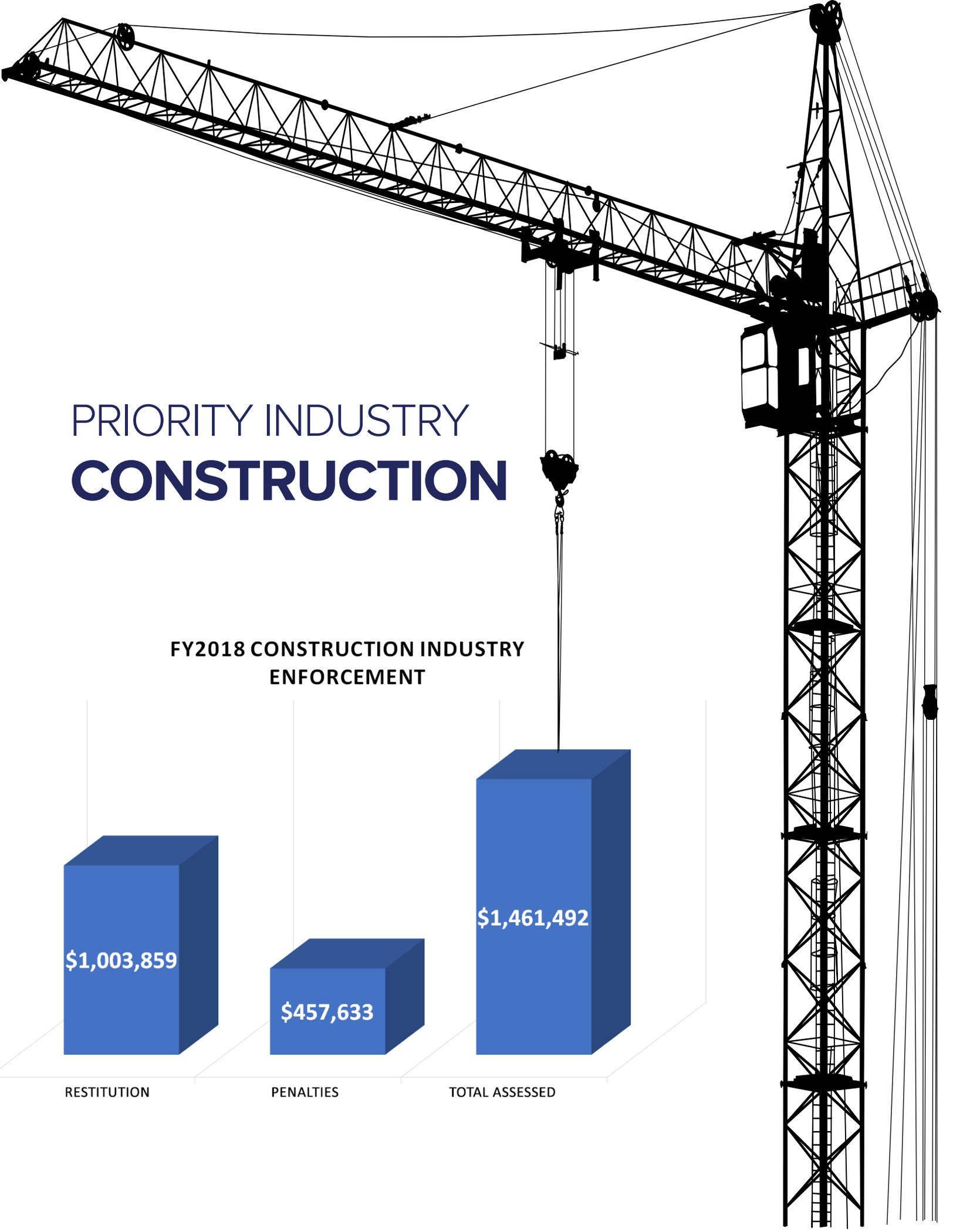
Brian Doherty, Secretary Treasurer
Building & Construction Trades Council of
the Metropolitan District (MetroBTC)

SOUTHERN ROAD & BRIDGE, LLC

Fair Labor issued two citations totaling \$213,407.38 in restitution and penalties against Florida-based Southern Road & Bridge, LLC. Fair Labor opened an investigation after receiving a referral from the Foundation for Fair Contracting and the International Union of Painters and Allied Trades, District Council 35, alleging that the company was not paying its employees the prescribed prevailing wage rate for work performed on several MassDOT public works projects. A review of payroll records revealed that the company was classifying employees as Laborers for tasks that, according to the Department of Labor Standards (DLS), fall under the Painters (Bridges/Tanks) classification. The investigation also revealed that cash fringe benefits were not included in overtime calculations. The company entered into a settlement agreement to pay wages owed to 33 workers.

J. DONLON & SONS, INC.

J. Donlon and Sons, Inc., Joseph M. Donlon, Sr., and his two sons, Joseph M. Donlon, Jr. and Sean Donlon, were cited for intentionally failing to pay prevailing wages, failing to submit true and accurate certified payroll records, failing to pay the minimum wage and failing to maintain true and accurate general payroll records. The citations require the company to pay more than \$56,000 in wages to eight employees and \$65,000 in penalties for violating the Massachusetts prevailing wage and minimum wage laws on a Medford public works project. In addition, the company and its owners are barred for ten years from working on any public construction project in Massachusetts.



PRIORITY INDUSTRY CONSTRUCTION

FY2018 CONSTRUCTION INDUSTRY ENFORCEMENT



RESTITUTION



PENALTIES



TOTAL ASSESSED

NATIONAL ADVOCACY

Maura Healey and other state attorneys general are working together to challenge the Trump Administration's rollback of labor protections and to oppose practices that depress wages and working conditions.



The New York Times
*'No Poach' Deals for Fast-Food
Workers Face Scrutiny by States*

No Poach Agreements

AG Healey is leading a multistate investigation of “no poach” clauses included in many franchise agreements. These clauses restrict franchise employers’ ability to recruit or hire employees who worked for other stores or restaurants in the same chain. As a result, they also restrict workers’ ability to find better jobs and negotiate higher wages. Often, workers have no idea these restrictions exist.

A study by Princeton University economists found that 80% of fast food franchise agreements reviewed included no poach clauses, raising concerns that these agreements could have a significant negative impact on wages and working conditions among most low-wage employees in the industry. In response to recent action by several state attorneys general, many chains have agreed to stop using these no-poach agreements nationwide.

“We are grateful to have Attorney General Maura Healey, the People’s Attorney, advocating for working people, fighting wage theft, strengthening labor standards for those who are most vulnerable, and protecting our civil rights. Her staunch stands for the people and the public good are critical to protecting the future of our community.”

Karen Chen, Executive Director
Chinese Progressive Association

Supreme Court Advocacy

During the last year, we made our voices heard in two matters before the Supreme Court, filing amicus briefs opposing arbitration agreements that prevent employees from pursuing work-related claims on a collective basis in *NLRB v. Murphy Oil USA, Inc.*, and supporting the ability of public sector unions to collect agency fees from employees who are members of the bargaining unit and benefit from union representation. Following the Court's anti-worker decisions in *Janus v. AFSCME Council 31*, AG Healey issued a first-in-the-nation advisory, affirming the rights of public sector employees to organize, join a union, and engage in concerted activities for mutual aid or protection.

Unfair Labor Practices

In April, Fair Labor led a multistate coalition to support workers' right to organize in order to combat misclassification of employees as independent contractors. In a brief submitted to the National Labor Relations Board, we drew on our experience with misclassification and wage theft to show how some employers use misclassification to evade myriad workplace protections, including those under the National Labor Relations Act, at great cost to workers, responsible employers, and states generally.

Federal Policies

Fair Labor also raised concerns about USDOL's pilot Payroll Audit Independent Determination (PAID) Program, under which employers may require employees to waive their right to seek additional wages and remedies under state and federal law in exchange for partial restitution. Although agreements between employers and employees under the PAID Program would not affect our ability to take enforcement action, they could mislead workers about available recourse after signing such an agreement.

We also opposed any changes to federal regulations that would have allowed employers to keep tips that workers earn, so long as the employer paid at least the federal minimum wage of \$7.25 per hour. Fortunately, this change was partially blocked by legislation clarifying that employers may not keep their employees' tips. In Massachusetts, tip pools may only be shared by wait staff, service bartenders, and service employees.

AG Supports Lynn Workers

"The North Shore Labor Council was pleased to be able to work with the Lynn Workers Center and multiple union and community partners to pass a terrific anti-wage theft ordinance in Lynn this year. The work of the Attorney General's office in support of stopping wage theft, both the ongoing prosecutions and the testimony about the objective scale of the problem, were critical to our success. Our thanks to you all!"

Jeff Crosby, President
North Shore Labor Council

LABOR TRAFFICKING

According to the National Human Trafficking Resource Center, more than 15% of the human trafficking cases in Massachusetts in 2017 involved labor trafficking. However, the dynamics of labor trafficking make it far more difficult to identify than sex trafficking. To identify more labor trafficking cases, Fair Labor established a working group with the Office's Human Trafficking Division (HTD) this past year. Both Fair Labor and HTD investigators were trained to identify common indicators of labor trafficking.

In addition to staff training, Fair Labor and HTD presented the first-ever labor trafficking training for law enforcement at the National Cyber Crime Conference, an annual training hosted by the Attorney General. Attendees were provided an overview of the crime as defined by Massachusetts law, the scope of the problem, challenges to identifying cases, indicators to help spot cases, pointers for dealing with victims during an investigation, and ideas for collaboration to help bring these cases to light in attendees' own jurisdictions.

The Office also launched a Labor Trafficking webpage at www.mass.gov/ago/lt with resources for businesses and government, including the compilation of common signs of labor trafficking into a one-page reference sheet for ready access by front-line responders. In June, AG Healey mailed educational materials to each of the Commonwealth's 351 cities and towns, inviting municipal leaders to partner with the Office in raising awareness among key municipal officials about forced services.

U and T Visas

Immigrant workers who are victims of trafficking and other serious crimes may be eligible for a U Visa or a T Visa. In November 2017, the Office convened the first Massachusetts U and T Visa Roundtable, bringing together representatives from federal, state, and local law enforcement agencies, and immigration advocates from throughout Massachusetts. Forty-five representatives from 25 agencies explored challenges and best practices to protecting immigrant victims of crime.

LEARN THE SIGNS OF LABOR TRAFFICKING

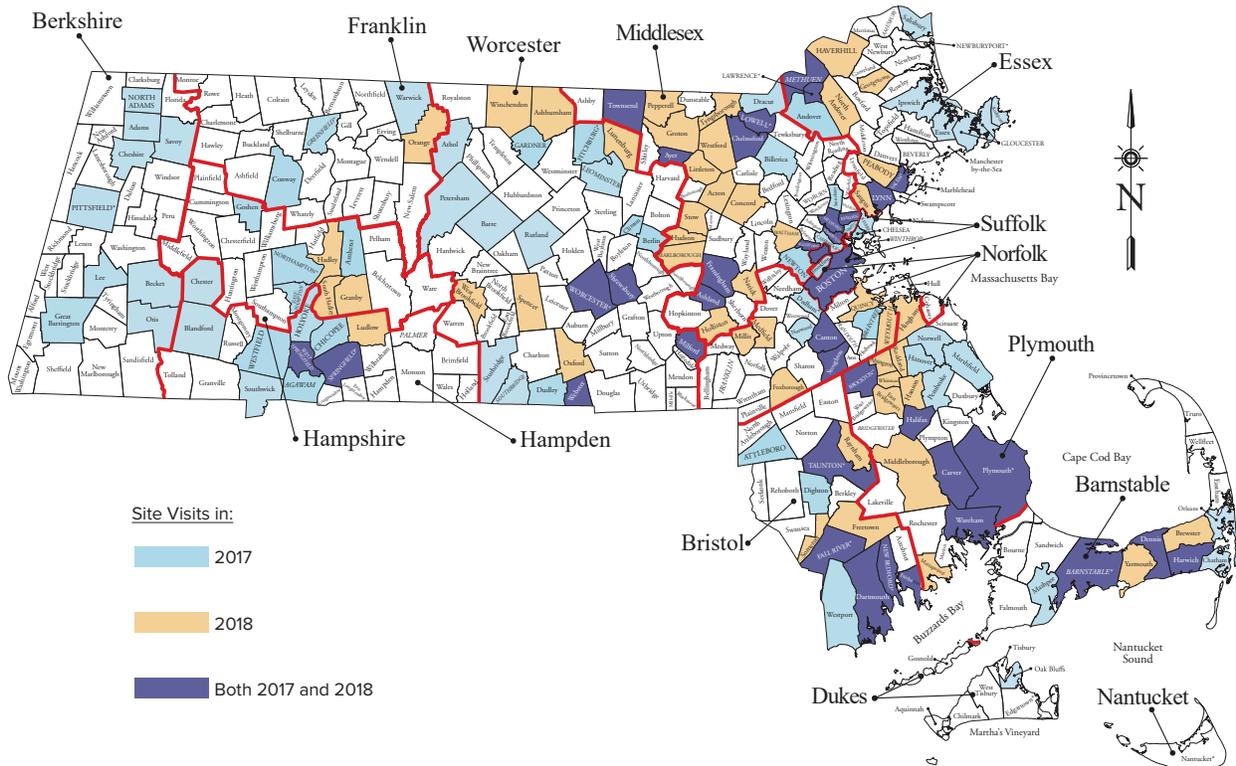
Working Conditions



- Unpaid or paid very little
- Excessive wage deductions
- Works excessively long hours
- Not allowed breaks
- Unable to identify the employer
- High security measures (e.g. boarded up windows, barbed wire, security cameras)
- Recruited through false promises
- Inadequate protective clothing or gear
- Poor or non-existent health and safety standards
- Experiences threats or intimidation by employer

INITIATIVES

SITE VISITS IN FY 2017 AND FY 2018



Fair Labor conducted 247 field visits in FY2018. In the last two years, investigators have visited businesses in 146 cities and towns, representing 42% of the Commonwealth's municipalities.

NAIL SALON COMPLIANCE

Fair Labor investigators visited 90 nail salons across the state during Spring 2018, to engage employers and workers about basic wage and hour law obligations and protections. Fair Labor approached the businesses in a non-enforcement capacity, and showcased the Division as a resource for compliance assistance while underscoring the importance of adherence to the state's wage and hour laws. Owners or managers were provided with a packet of materials including required posters, and invited to have a brief discussion about the laws covering minimum wage, overtime, tips, earned sick time, and meal breaks. Investigators also engaged with workers and provided them with workers' rights brochures.

Fair Labor's nail salon compliance initiative followed-up last year's compliance initiative covering 80 temporary staffing agencies. Over the past two years, FLD has focused on a greater field presence by its investigators, who have visited workplaces in almost half of the state's cities and towns.

WAGE THEFT CLINIC

The Attorney General’s Wage Theft Clinic is a partnership with legal aid providers, law schools, worker centers, and the private bar. Launched in 2016 as a monthly clinic in Boston, the Wage Theft Clinic has branched out into southeastern and western Massachusetts this year. More than 250 workers attended clinics in Boston, Dartmouth, and Springfield, where they were able to discuss their cases with attorneys and other advocates free of charge. Workers also received concrete assistance at the clinic, such as with writing demand letters or filling out a court complaint, and some found attorneys to represent them. With assistance from clinic partners, workers recovered more than \$166,000 in FY 2018 through the clinic this year, and reported recoveries since the first clinic in October 2016 exceed \$220,000.

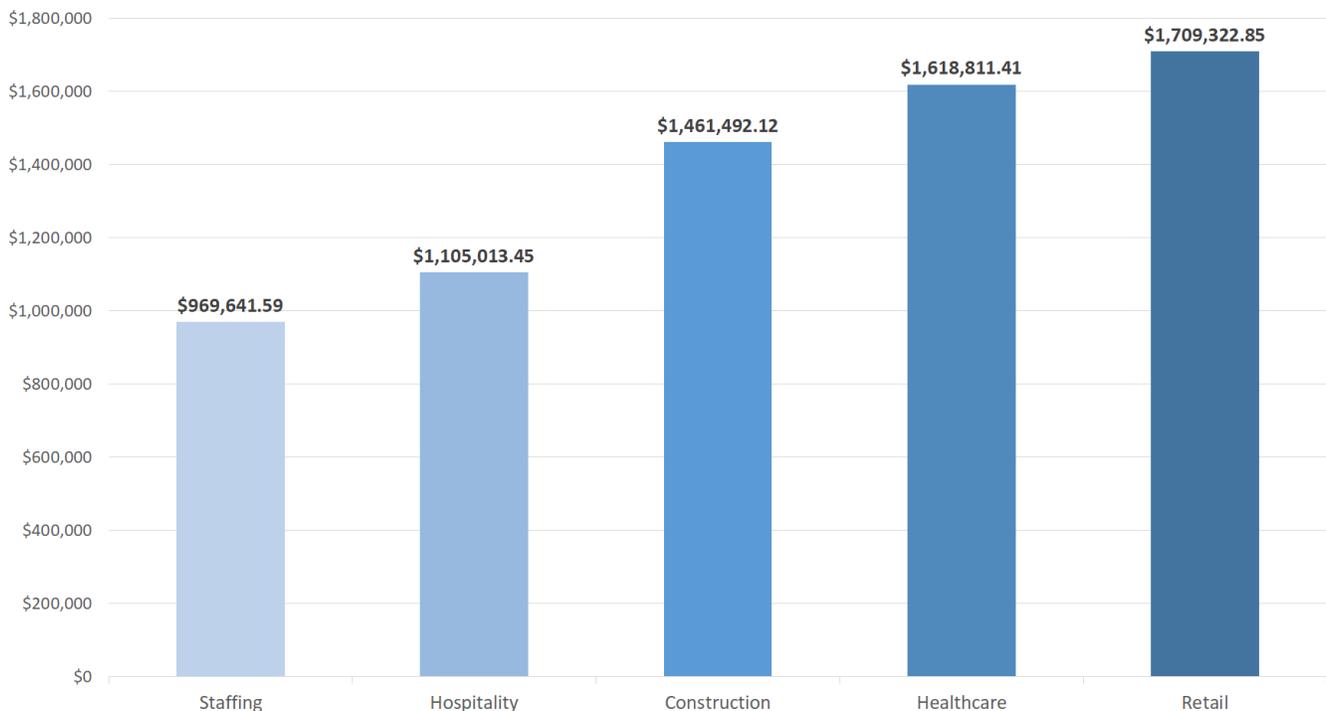
After a successful pilot clinic year, the AGO worked with the Volunteer Lawyers Project (VLP) to secure funding from the Legal Services Corporation to support VLP’s collaboration. The funding has enabled VLP to recruit and support more volunteer attorneys to assist workers at wage theft clinics.

Ian, a chef at a Dorchester restaurant, was owed thousands in wages by the time he attended a wage theft clinic. There, he met with staff from clinic partner Justice at Work and later retained them to help him pursue his wages in court. With Justice at Work’s assistance, Ian settled with his employer for more than he was owed.

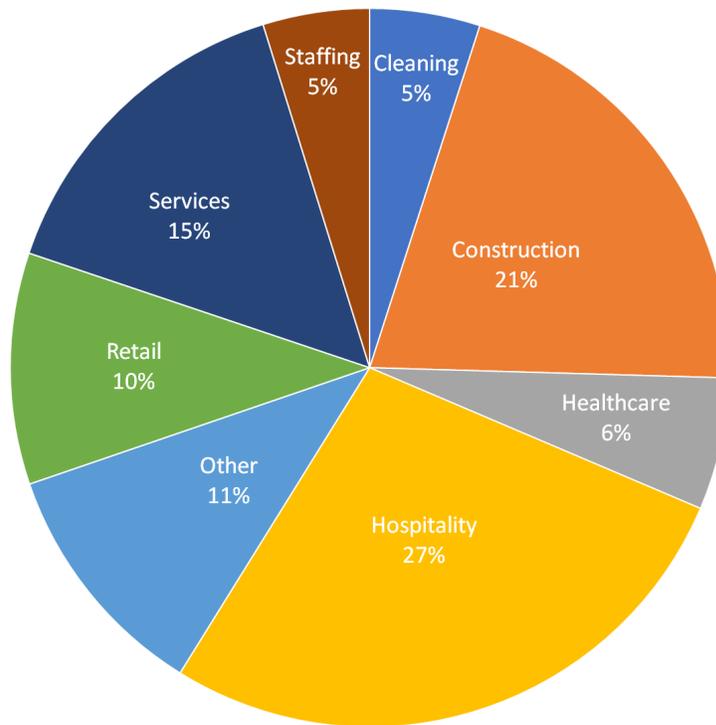
“The AG’s clinic helps workers who are fighting wage theft connect with critical community and legal resources. At Justice at Work, we know those connections make the difference in workers’ ability to hold employers accountable. We’re proud to help staff the clinic with our worker center and legal aid partners.”

Maggie Gribben, Justice at Work

**FY2018
TOP 5 INDUSTRY ASSESSMENTS**



FY2018 PERCENT OF TOTAL ASSESSMENTS BY INDUSTRY



YOUNG WORKERS

Child labor has continued to be a focus for both enforcement and education in FY2018. Fair Labor assessed \$373,900 in penalties for violations of the state's child labor laws.

In December 2017, Fair Labor reached a settlement agreement with Burger King franchisee Northeast Foods, LLC, headquartered in Sugarland, Texas, and its owner Shoukat Dhanani. An investigation by Fair Labor revealed more than 800 child labor violations at Northeast's 40 locations across Massachusetts. Among the violations uncovered were minors working shifts that exceeded the total maximum daily hours allowed or shifts that ended later than allowed under state law, in some instances past 3 a.m. Many of the minor employees also did not have the proper work permits. As part of the agreement, the company and its owner agreed to pay \$250,000 in penalties and come into compliance with state law.

In another child labor case, a West Springfield father and daughter and their companies

were cited \$77,578 for failing to pay employees properly and for violating the state's child labor laws. Fair Labor issued four intentional civil citations against Shruti B. Oza, her father, Bharat V. Oza, and their company Shreeji Group of Longmeadow LLC, which operates a Subway restaurant in Longmeadow. The employers were cited for child labor violations, failure to pay minimum wage, non-payment of wages, and failure to furnish records for inspection.

According to the investigation, the victim, who was employed at the Subway restaurant, routinely received late pay checks beginning in 2015 and was paid below the state's minimum wage for several months in 2016. The investigation also found that the Ozas employed the victim's 14-year-old daughter to work at the Subway without securing a permit, and that neither she nor her daughter were paid for any work in 2017. According to the investigation, the victim's daughter also frequently worked unsupervised and beyond the latest permissible hour and maximum daily hours that minors can work.

ENFORCEMENT HIGHLIGHTS

CIVIL

NEW ENGLAND MARKET, LLC AND FOODLAND DISTRIBUTION, LLC

An investigation into a food warehouse and related transportation company found intentional violations of minimum wage, overtime, and record keeping laws. Fair Labor issued citations totaling over \$460,000 in restitution and penalties to New England Market and Foodland Distribution. Fifty employees each received restitution as a result of these citations.

AVIATION PORT SERVICES (APS)

A California company providing gate, luggage, and other services at Logan Airport was ordered to pay more than \$380,000 in restitution and penalties for intentional violations of the minimum wage, timely payment, earned sick leave, and record keeping laws.

Fair Labor received multiple complaints from APS employees. The investigation confirmed that APS issued paychecks with insufficient funds, failed to pay employees for time worked during missed meal breaks, and denied employees access to paid sick leave. The investigation also revealed that APS paid less than the minimum wage to employees it classified as “trainees,” made unlawful deductions from paychecks for uniforms, and frequently underreported and underpaid the time worked by employees.

SHIELD PACKAGING / SMS

As a result of a joint enforcement action between the AGO and the United States Department of Labor’s (USDOL) Wage and Hour Division, a Dudley aerosol factory and two of its executives paid nearly \$1 million to resolve intentional overtime and minimum wage violations and for hindering the AG’s investigation. Shield Packaging, Inc. and its owners and managers, through two temporary staffing agencies, Central Eastern Staffing and Southern Mass Staffing (SMS), employed and failed to pay minimum wage and overtime to approximately 480 workers over a two-year period, resulting in more than \$330,000 in unpaid wages. The AGO determined that Shield Packaging was a joint employer and that it used SMS in an attempt to evade wage and hour laws.

In addition, SMS, a Worcester-based staffing agency, paid \$95,000 in restitution and penalties for its role in the labor scheme that deprived hundreds of workers of minimum wage, overtime, and earned sick time pay. More than 270 workers will receive restitution for earned sick time not made available to them.



CRIMINAL

JOSEPH B. KERRISSEY, III, J KERRISSEY LLC AND SUNRISE EQUIPMENT AND EXCAVATION

In June 2018, Joseph B. Kerrissey, III of Plymouth and his two corporations, J Kerrissey LLC and Sunrise Equipment and Excavation, pled guilty to 107 charges including willful wage and hour violations, larceny, and failure to pay prevailing wages which occurred from 2011 through 2017. The judge sentenced Kerrissey to three years of probation and ordered him to pay \$91,743 in restitution to 37 former employees. Kerrissey must comply with the signed court order regarding the amount of restitution, allocation to named victims and payment plan. In addition, Fair Labor imposed the maximum five-year debarment which prevents Kerrissey and his companies from working on public construction projects in Massachusetts.

The defendants were indicted by a Statewide Grand Jury in October 2016 after an investigation by the AGO. The investigation revealed that Kerrissey, despite receiving payment for his companies' work on construction projects, consistently bounced payroll checks to employees, failed to issue checks, shaved hours from employees' paychecks, and paid workers below agreed-upon hourly rates. When workers complained about non-payment of wages, Kerrissey used various excuses to avoid payment, including telling employees the money should be in the account, saying they did not earn the wages, and threatening to take out criminal complaints against them if they attempted to use the legal system to obtain their wages.

DONNY SOUZA AND DMS CLEANING SERVICE

In a joint investigation, Fair Labor and the Human Trafficking Division brought charges against Donny Souza, alleging he recruited victims from Brazil to work for his cleaning company. Upon arrival, Sousa forced the victims to work 12 to 15 hour shifts, seven days a week, cleaning commercial properties overnight. Sousa failed to pay the victims minimum wage and made illegal deductions from their pay. When the victims requested their pay, Sousa threatened them with a handgun.

On June 27, 2018, Souza pled guilty and was sentenced in Bristol County Superior Court to six months in the House of Corrections, suspended for three years, for minimum wage violations. Sousa was also sentenced to three years of probation for failure to make timely payment of wages and three years of probation for pay stub violations. The defendant was also ordered to pay restitution to the victims and pled to other related charges, including assault with a dangerous weapon, possession of a firearm, larceny over \$250, and motor vehicle insurance fraud.

“Working people deserve the wages and benefits they’ve earned and nothing less.”

Attorney General Maura Healey

**OFFICE OF ATTORNEY GENERAL
MAURA HEALEY**

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