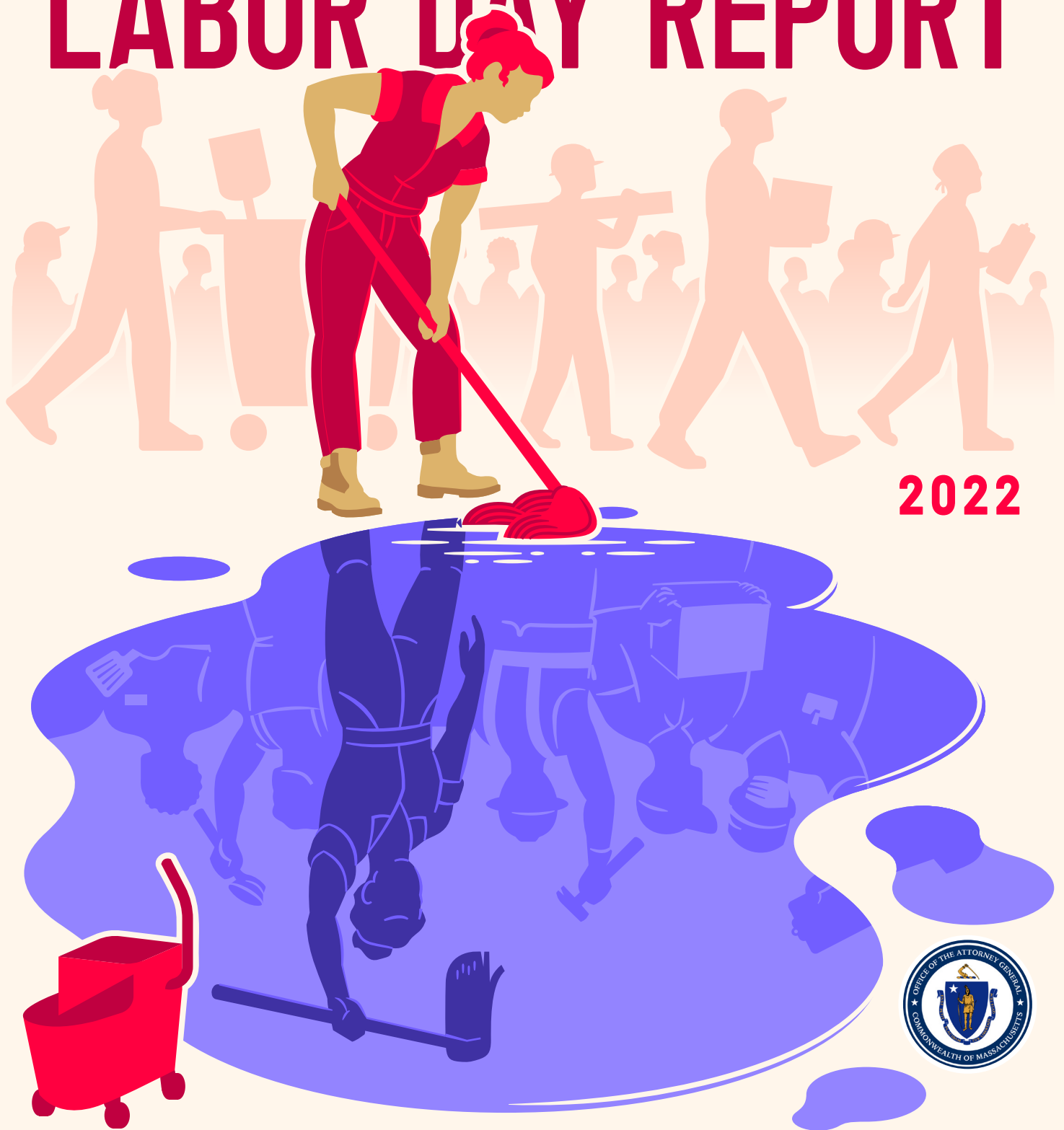


ATTORNEY GENERAL MAURA HEALEY'S LABOR DAY REPORT



2022



PROTECTING MASSACHUSETTS WORKERS

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2022 Labor Day Report
Office of Attorney General Maura Healey
Cover Art by Josh Yoder



This Labor Day, we honor the remarkable resilience of Massachusetts workers, whose perseverance through innumerable disruptions more than two years into the COVID-19 pandemic has kept our communities going. We rededicate ourselves to uplifting their voices, and promise to continue our efforts to preserve and protect their essential rights.

I am proud to present the seventh Labor Day Report from the Attorney General's Office (AGO) highlighting the achievements of our Fair Labor Division over the past year. The Division remained at the forefront of efforts to protect workers at the state and national level through investigations and longstanding collaborations with community partners and state and federal agencies. From major litigation and multistate advocacy to obtaining workers' final paychecks, from re-launching our wage theft clinics to answering hundreds of hotline calls a month, we continued to educate, assist, and protect Massachusetts workers through every avenue available.

For my last Labor Day Report as your Attorney General, I thank you for the privilege to serve in this role. The AGO will continue to prioritize the rights, dignity and safety of workers throughout the Commonwealth and to center equity and justice in and out of the workplace. We reaffirm our commitment to end worker exploitation in every industry in Massachusetts and honor the trust that workers have placed in us. We thank the employers who provide safe and equitable workplaces. Most of all, we thank those whose labor is essential to the well-being of the Commonwealth.

With Gratitude,

MAURA HEALEY
Massachusetts Attorney General



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OUR YEAR BY THE NUMBERS:



19,259

IMPACTED WORKERS



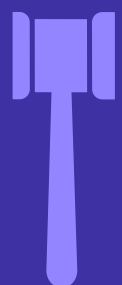
13,064

HOTLINE CALLS



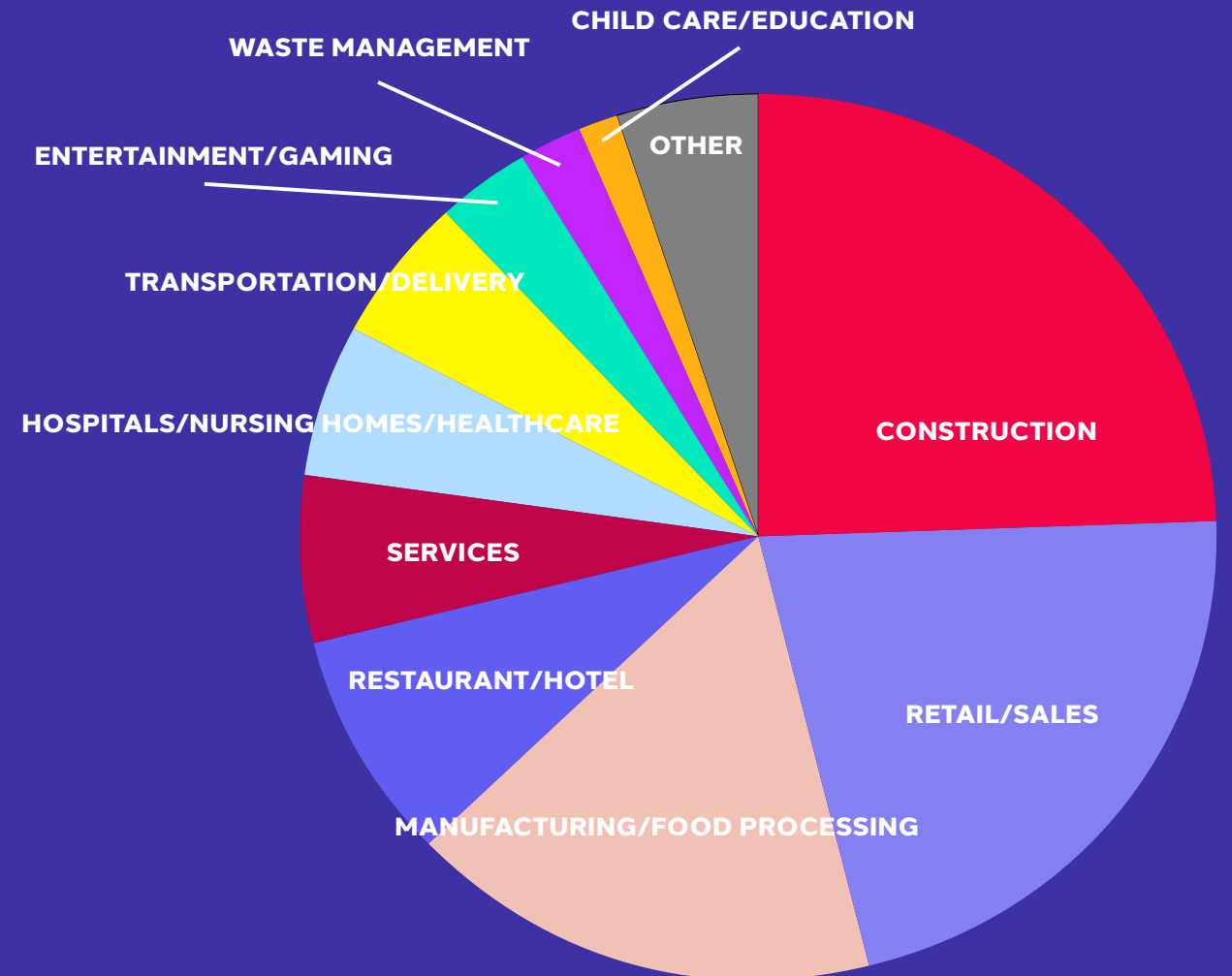
5,644

COMPLAINTS



1,095

ENFORCEMENT ACTIONS



TOTAL AMOUNT ASSESSED: \$11.86M

RESTITUTION: \$7,577,089.50

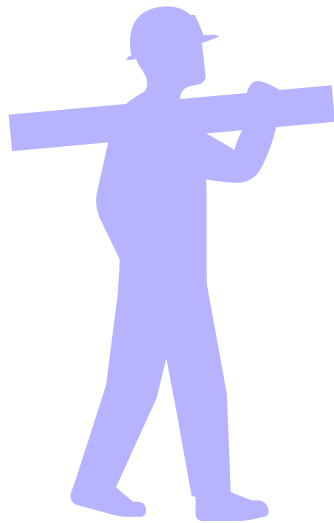
PENALTIES: \$4,254,968.18



CONSTRUCTION

Construction continued to be a high priority for Fair Labor, topping the Division's enforcement in both number of citations issued (217) and dollars assessed (\$2.9 million). In the Spring of 2022, Fair Labor's field team resumed their unannounced visits to construction sites across Massachusetts, engaging workers and employers about compliance with state wage and hours laws. The multilingual, dedicated team of investigators visited project sites spanning four counties, engaged 35 employers and 78 workers. Fair Labor's field presence is an important component to the Division's enforcement program, and their weekly compliance site visits will continue throughout FY23. In addition, Fair Labor referred 73 matters to the Massachusetts Council on the Underground Economy (CUE). The CUE is made up of state and federal agencies and engages in coordinated enforcement actions, investigations, and information sharing with the goal of eliminating misclassification in the Commonwealth.

Construction jobs are fundamental to the success of our economy, and taxpayer-supported public construction jobs, in particular, are an essential tool in building and maintaining our infrastructure and civic spaces while sustaining a strong middle class. In addition to its traditional enforcement efforts, Fair Labor has worked to raise awareness about **workforce participation goal** requirements for women and workers of color on state and state-assisted construction projects. Fair Labor began a collaboration with the University of Massachusetts Building Authority (UMBA) to educate state and local awarding authorities about these legal requirements, and provide technical assistance to help them achieve compliance. UMBA has a robust compliance program, and brings proven results in workforce diversity on their building projects. Fair Labor is grateful to UMBA's compliance staff for their contributions during these trainings, which have reached more than 550 awarding authority representatives, project managers and contractors, and shown that meeting and exceeding workforce diversity goals is achievable and valued.



PREVAILING WAGE

SAFEGUARDING TAXPAYER DOLLARS, FAIR COMPETITION, AND WORKERS' RIGHTS

In FY22, Fair Labor embarked on a project focused on state and municipal compliance with prevailing wage, construction bid, and workforce participation laws when using Operational Service Division (OSD) contracts. These statewide contracts offer state-negotiated pricing and other benefits to state and local awarding authorities. Fair Labor has seen instances of non-compliance with prevailing wage law when these contracts are used, thereby undermining taxpayer transparency, fair competition for vendors, and wages to which workers are legally entitled.

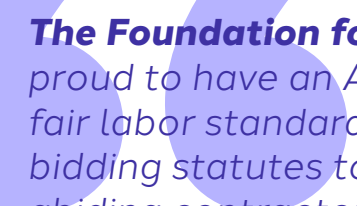
Fair Labor took a multi-tiered approach to this project including education, compliance assistance, investigation and enforcement.

Fair Labor reviewed OSD contract user guides, met with counsel and staff from OSD and recommended updates to reflect prevailing wage and workforce requirements for public construction projects. OSD has incorporated Fair Labor's recommendations in its user guides.

Fair Labor partnered with the Office of the Inspector General (OIG) to update training materials for public procurement officials. The updated guide will remind buyers using statewide contracts to request prevailing wage rate schedules from the Department of Labor Standards for any purchase of a good or service that will require construction, to include prevailing wage rate sheets in vendor solicitations, and, once a vendor is chosen, incorporate the rate schedule as part of the contract.

Updated training materials from the OIG will also remind awarding authorities to collect certified payroll reports, apprentice identification cards, and proof of OSHA-10 training certification. The materials will also reference the different types of "public work" in which the payment of prevailing wage is required, including use of trucks, vehicles, and other equipment, moving office furniture and fixtures, cleaning state office buildings owned or leased by the state, and transportation of students to public schools, including charter schools. These materials are scheduled for release through various OIG channels in the summer and fall of 2022.

OSD supplied Fair Labor with sales data reports showing which awarding authorities contracted with various vendors for work involving construction. Fair Labor is using these records to initiate proactive investigations into proper payment of prevailing wage. The results of these investigations will prompt an enforcement response where warranted.



The Foundation for Fair Contracting of Massachusetts (FFCM) is proud to have an Attorney General's office that strongly enforces fair labor standards, prevailing wage, and public construction bidding statutes to level the playing field for workers and law-abiding contractors. Attorney General Healey and her Fair Labor Division have done an incredible job protecting the construction industry. The FFCM is proud to partner with Attorney General Healey in carrying out our mission to promote fair competition in the public construction industry by monitoring compliance with public bidding laws and the prevailing wage law, assistance to awarding authorities, contractors, and public construction workers in the Commonwealth of Massachusetts."

- KAREN G. COURTNEY, EXECUTIVE DIRECTOR, FOUNDATION FOR FAIR CONTRACTING OF MASSACHUSETTS

ENFORCEMENT

ROCHESTER BITUMINOUS PRODUCTS, INC. was issued 25 citations totaling \$1.2 million in restitution and penalties for prevailing wage violations that impacted 22 employees, and for failure to submit certified payroll records. Fair Labor began investigating whether employees were paid proper prevailing wage for paving work for the City of Boston, and thereafter received additional complaints from past and present workers alleging other prevailing wage violations. Rochester Bituminous repeatedly failed to furnish requested documents, or submitted incomplete records. Although the payroll records were incomplete, they were sufficient to determine that workers were underpaid by approximately \$30 per hour for their work on public works projects.

SUPERIOR CARPENTRY, INC., a Framingham construction company, and its owners were cited more than \$540,000 in restitution and penalties for failure to pay prevailing wages and for submittal of false payroll records to awarding authorities. Fair Labor discovered that Superior Carpentry underpaid its workers by more than \$35 per hour for work on public projects at the Middleborough and Westport police stations. In a separate action filed in Suffolk Superior Court, the AG’s Office alleges that BPI Construction Management, Inc., a higher-level contractor that subcontracted work to Superior Carpentry, violated the Massachusetts False Claims Act when it knowingly facilitated submittal of false records to Middleborough and Westport.

RAILWORKS TRACK SYSTEMS, INC., a New York-based rail system construction and maintenance company, paid more than \$220,000 in restitution and penalties for its failure to pay the proper overtime rate to workers on railroad improvement projects in Hyannis, Falmouth, Framingham, Great Barrington,

Lee, Lenox, Pittsfield, Sheffield, and Stockbridge. Fair Labor cited the company for not including all wages paid to the employees when calculating overtime, and for failing to properly account for different hourly rates of pay earned by employees during the same work week. Railworks Track Systems was also cited for failing to submit true and accurate certified payroll records to the awarding authority on a weekly basis. Fair Labor began investigating Railworks Track Systems in 2020 after receiving a referral from the Foundation for Fair Contracting of Massachusetts.

GONZA CONSTRUCTION INC., a carpentry/framing construction company located in Worcester, was issued five citations totaling more than \$143,000 in restitution and penalties for prevailing wage, record-keeping, earned sick time and paystub violations on six public projects between June 2019 and January 2021. Fair Labor opened an investigation after receipt of a referral from Plumbers Local 12, alleging that Gonza failed to pay its employees the prevailing wage rate for work performed on the Town of Stoughton’s Wilkins Elementary School. Despite producing certified payroll records to Fair Labor, the company later admitted that employees were not actually paid the wages reflected on the records. Instead, workers were paid in cash at rates of pay below the applicable prevailing wage rates.

This was not the first time Fair Labor had cited Gonza Construction. In January 2021, Fair Labor cited the company for failure to furnish records following multiple requests. After Gonza Construction did not pay or appeal these citations, Fair Labor referred the unpaid penalties to the Department of Revenue as tax liens. Gonza Construction was also debarred as a result of the enforcement which prohibits the company from contracting with the state or any municipal entity for any public works projects.



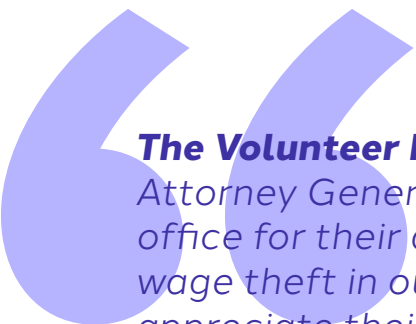
LEVERAGING MUNICIPAL PARTNERSHIPS FOR ENHANCED COMPLIANCE



As part of an ongoing partnership with the City of Boston, Fair Labor, and representatives of the Mayor’s Office of Workforce Development met monthly to discuss trends and wage theft matters affecting Boston and persons who work in the City. Fair Labor staff also met with representatives of the City to discuss updates to the City’s certified weekly payroll report form for the purpose of promoting transparency, aiding compliance and deterring wage theft.

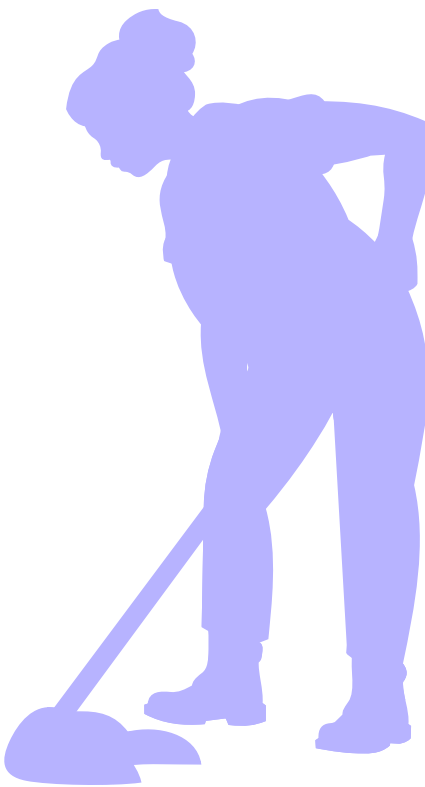
WAGE THEFT CLINICS

The Attorney General’s Wage Theft Clinic, launched in 2016, is a community resource that connects workers with legal services the Office does not provide through its traditional complaint process. Together with a dozen community legal aid partners and private bar attorneys, AGO staff ensure that every worker gets a free legal consultation. Many workers retain legal representation (without paying a retainer fee) through the Clinic to help them exercise their private right of action. The Wage Theft Clinic was on pause due to the COVID-19 pandemic but re-started in April 2022 with a renewed focus and commitment to serving the Commonwealth’s most vulnerable workers.



The Volunteer Lawyers Project commends Attorney General Maura Healey and her office for their diligent work combatting wage theft in our state. We especially appreciate their leadership in organizing the Wage Theft Clinic, providing an efficient platform for our lawyers and those from other legal services agencies to meet with potential clients. We look forward to our continued collaboration in these efforts.”

- JOANNA ALLISON, EXECUTIVE DIRECTOR, VOLUNTEER LAWYERS PROJECT



MEAL BREAKS

Massachusetts’ [Meal Break Law](#) provides workers with a right to at least a 30-minute unpaid meal break for each six hours worked in a calendar day. During this period, workers must be relieved of all their duties and be permitted to leave the workplace. Any requirement to remain on the employer’s premises is considered working time, and such a “meal break” does not comply with the law unless there is a valid waiver and the break is paid. The AG’s Office takes seriously any violations of the state meal break law.

DOLLAR TREE STORES, INC. D/B/A FAMILY DOLLAR was cited \$1.5 million in penalties for more than 3,900 violations. The AG’s Fair Labor Division began investigating Family Dollar after receiving multiple complaints that employees were not given proper meal breaks because of persistent staffing shortages. Investigators determined that from 2018 to 2019 the company routinely cut the necessary payroll hours, leaving stores under-staffed. This resulted in hundreds of employees being unable to leave their stores or take meal breaks.

The AG’s Office entered into a settlement agreement with **LANE BRYANT, INC.** to pay over \$40,000 in restitution and \$10,000 in penalties for failing to provide meal breaks to employees across their 12 Massachusetts stores. On the occasions when an employee was able to punch-out for a meal break, they were often interrupted, resulting in time spent working that went unpaid. The company compensated employees for this time and came into compliance with the meal break law.

DYNAMIC WASTE SYSTEMS, INC., an Essex waste hauling and disposal company, paid more than \$250,000 in restitution and penalties when an investigation revealed that it automatically deducted 30 minutes from drivers’ wages each day for meal breaks, without confirming that employees took such a break.

FIVE BELOW, INC. agreed to pay \$55,640 in damages to 130 employees who were not permitted to take statutorily mandated meal breaks. The company admitted that it violated the law when it did not provide enough staffing coverage to allow for employees to take their meal break. This violation of the law has been addressed and the employees made whole.



U/T VISA CERTIFICATION ADVOCACY

The Attorney General's Office recognizes that a victim's cooperation, assistance, and safety are essential to the effective detection, investigation, and prosecution of all crimes. Language barriers, isolation, inexperience with U.S. laws, and fear of deportation often prevent immigrant victims from cooperating with law enforcement. U and T visas provide temporary immigration benefits to victims of serious crimes and severe forms of human trafficking.

In July 2021, new protections for immigrant victims went into effect. Under the new law, Chapter 258F of the General Laws, state and local certifying entities must establish a policy regarding U and T visa certification and respond to a request for U and T visa certification within 90 days. Certifying entities include state and local law enforcement agencies, prosecutors, and other entities with the authority to detect, investigate, or prosecute severe forms of trafficking in persons or criminal activity.

With the goal of raising awareness about this critical protection and new law, Fair Labor, in partnership with the AG's Human Trafficking Division, created a two-page [guidance](#) document which outlines the responsibilities that certifying agencies have under the law. The Fair Labor and Human Trafficking Divisions also led outreach and awareness efforts on U and T visa certification and the role of law enforcement. The Office distributed guidance to members of the Massachusetts Major City Chiefs of Police and Massachusetts District Attorneys' Offices.

The Fair Labor and Human Trafficking Divisions also co-hosted a convening in April 2022 with Boston University Law School's Immigrants' Rights and Human Trafficking Program. Law enforcement, community partners and legal and victim service organizations gathered and attended workshops. Best practices were exchanged with a focus on educating both traditional and non-traditional certifiers of their critical role in helping protect victims of crimes. Law enforcement training on their role as potential certifiers was also incorporated into curriculum offerings from the Massachusetts Municipal Police Training Committee beginning in June 2022.



We have been delighted to partner with the Massachusetts Office of the Attorney General to spread awareness about how to improve protections for immigrant survivors. We applaud how the AGO has led by example, establishing a clear U and T visa certification policy, and training other offices about how to respond quickly and appropriately to the needs of immigrant survivors.”

**- JULIE A. DAHLSTROM, CLINICAL ASSOCIATE PROFESSOR AT
BOSTON UNIVERSITY SCHOOL OF LAW AND DIRECTOR OF THE BU
LAW IMMIGRANTS' RIGHTS AND HUMAN TRAFFICKING PROGRAM**



RESTAURANTS

Hospitality industry workers have borne a heavy burden during the COVID-19 pandemic. Early on, they faced massive layoffs with little to no notice. If they were able to return to work, they had to balance their own exposure to the virus against the need to support themselves and their families, and interact with customers frustrated with delays due to staffing shortages. During FY2022, Fair Labor continued to prioritize compliance in the hospitality industry, recognizing the particular vulnerabilities of tipped workers. Enforcement actions impacted more than 1,500 workers, resulting in more than \$378,000 in restitution and \$568,500 in penalties.

Fair Labor issued two civil citations to **ETHOS BUSINESS PARTNERS, INC.**, d/b/a **LE'S SUSHI BAR AND RESTAURANT**, for failure to make timely payment of wages to one employee and failure to maintain true and accurate records, amounting to nearly \$30,000 in restitution and \$8,000 in penalties. The employee was continuously underpaid over a one-year period, and Fair Labor's investigation determined that the employer had destroyed records related to the impacted employee. In Massachusetts, even an employer's good faith mistake is not a defense to an unintentional violation of wage and hour laws.

Fair Labor resolved a matter involving **OM SOHAM OM INC.**, which operated a **SUBWAY** restaurant. As a result of Fair Labor's investigation, the employer agreed to pay \$104,000 in restitution and penalties for failing to pay minimum wage, failing to pay timely and violations of the Commonwealth's earned sick time, paystub, record keeping, and child labor laws.

1500
WORKERS IMPACTED BY
ENFORCEMENT ACTIONS

\$951K
ASSESSED IN PENALTIES &
RESTITUTION



MULTISTATE MATTERS

In FY22, Fair Labor continued its partnerships with other state attorneys general, consolidating resources to better advocate and fight for workers throughout the Commonwealth and country.

USDOL'S TIP REGULATION

Over the course of the year, Fair Labor praised the U.S. Department of Labor's new [Tip Regulation](#), which ended a lawsuit that was filed by nine attorneys general, including Massachusetts. The Office had sued to overturn a Trump Administration rule that would have made it easier for employers to assign non-tipped work, such as preparing food, setting tables, and cleaning, to tipped employees while still taking a tip credit. The fight over this harmful rule had gone on for more than two years in the midst of the COVID-19 pandemic – a challenging time for all businesses and workers, and especially restaurants and their employees.

WORKERS' RIGHTS

Fair Labor also supported a proposed [OSHA rule](#) aimed at empowering workers and expanding awareness of on-the-job dangers. The Office joined a coalition of 18 attorneys general in filing an [amicus brief](#) leading the U.S. Supreme Court to affirm a lower court's decision that transportation workers who load and unload interstate cargo are exempt from the Federal Arbitration Act. In the amicus, the attorneys general asserted that those workers should be afforded the right to raise claims against their employer in court, instead of being forced into arbitration. The Office also joined a letter urging Congress to pass the Protecting the Right to Organize Act of 2021 (PRO Act), which would strengthen and modernize the National Labor Relations Act (NLRA).

DHS LETTER

In November 2021, AG Healey co-led a multistate [letter](#) to the Department of Homeland Security (DHS) to encourage greater collaboration between DHS and state and local labor enforcement agencies. Unscrupulous employers sometimes attempt to punish their employees for the exercise of their labor law rights by threatening them with referrals to or visits from immigration authorities. The letter expressed strong backing of DHS' plan to change its worksite enforcement practices to support enforcement of wage protections, workplace safety, labor rights and other employment laws and standards. The coalition highlighted several recommendations to ensure that DHS immigration enforcement policies and practices facilitate the ability of state and local labor enforcement officials to advance fair labor standards. For example, the letter recommends that DHS limit enforcement based on potentially retaliatory tips from employers and inform the public that the DHS hotline should not be used for such purposes. This advocacy enhances workplace protections for all workers, and it levels the playing field for responsible employers.

ANTI-RETALIATION

Since the onset of the global COVID-19 pandemic, more workers have felt empowered to speak up about health and safety issues. In an effort to support workers and hold employers accountable, AG Healey joined a [multistate coalition](#) defending state anti-retaliation protections for workers who speak up about unsafe conditions and other violations. In an amicus brief, the coalition supported New York Attorney General Letitia James' request to reinstate her lawsuit against Amazon for failing to take adequate health and safety precautions at its New York facilities, and for unlawfully retaliating against employees for protesting unsafe conditions during the COVID-19 pandemic. An appellate court had ruled that the NLRA preempted New York's retaliation claims. While there are federal anti-retaliation protections, Massachusetts and other states have more robust protections for workers from termination or other adverse action. It is critical that states' abilities to protect workers is not undermined by federal law.

CANNABIS INDUSTRY

The legal cannabis industry in the US has seen significant growth, and Massachusetts is no exception. Since the legalization of recreational cannabis in 2016, the cannabis industry now employs thousands of Massachusetts residents, more than 165 retailers have been licensed, and there are more than \$2.6 billion in annual retail sales. As expected in any rapidly growing industry, Fair Labor has received an increasing number of complaints alleging cannabis companies' noncompliance with Massachusetts wage and hour laws.

As part of Fair Labor's continued efforts to ensure compliance, it has provided webinars to educate companies and workers in the cannabis industry on their rights and obligations under the wage and hour laws.

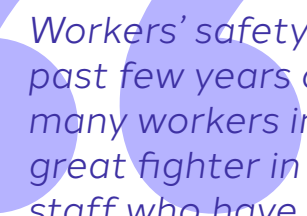
THEORY WELLNESS, INC., a marijuana dispensary with locations in Chicopee, Bridgewater, and Great Barrington, was cited nearly \$300,000 in restitution and penalties for failing to pay hundreds of employees' premium pay, to which employees of certain retail business are entitled for working Sundays and covered holidays. Fair Labor's investigation determined that 282 employees were owed hundreds of thousands of dollars in premium pay. The company agreed to pay its employees in full and has since come into compliance with premium and holiday pay laws.

Fair Labor cited **BUD'S GOODS & PROVISIONS CORP.**, a company operating recreational cannabis dispensaries in Abington and Worcester, nearly \$40,000 in restitution for failing to properly distribute tips and retaining gratuities meant for employees as store revenue. The Massachusetts Tips Act protects tips left by customers for an employee who serves customers directly in an occupation in which employees "customarily receive tips." While tipping policies vary across the retail sector, tipping may be developing into a customary practice in recreational dispensaries – as suggested by Bud's record of almost \$40,000 in tips collected during a six-month period. In addition to paying restitution to 68 impacted employees, Bud's has agreed to disclose any no-tipping policy that it may implement via a written notice to consumers.

RETALIATION

It is against the law for an employer to punish, discriminate against, or harm a worker in any way for trying to assert their wage and hour rights. Examples of unlawful retaliation range from firing an employee to giving the worker undesirable assignments or shifts. Importantly, immigration status is not relevant to receive the protection of the Massachusetts wage and hour laws. Laws such as minimum wage, overtime, and earned sick time cover all employees in Massachusetts, regardless of whether a person is documented to work in the U.S. An employer's threats to report a worker, or the worker's family, to immigration authorities for filing a complaint with the Office or otherwise asserting their wage and hour rights is illegal retaliation under the law.

The impact of holding an employer accountable for retaliation was on view this past year when the Office issued citations against **GOLDEN CANNOLI SHELLS CO., INC.** An investigation determined that the company failed to pay employees for all hours worked, did not provide proper notice of earned sick time, failed to produce true and accurate payroll records, and retaliated against employees for asserting their rights. In a settlement, the company agreed to pay \$105,000 for the violations, with \$80,000 of that going to workers in restitution.



Workers' safety and health rights have taken a spotlight during the past few years of this pandemic and that is especially true for so many workers in our state. We have had the privilege of having a great fighter in Attorney General Maura Healey and her responsive staff who have stepped up on behalf of numerous Black and Brown workers who come to our Immigrant Worker Center and many other centers in the state, where others are also seeking justice for a range of labor abuses and wage violations they face daily. We know we can count on the AGO to do all they can to try and make things right for these workers."

- AL VEGA, DIRECTOR OF POLICY & PROGRAMS, MASSACHUSETTS COALITION FOR OCCUPATIONAL SAFETY AND HEALTH (MASSCOSH)



Nutritious

Vicente's
VICENTE'S BLVD

Vicente's
NORTH MAIN ST

jetBlue

MEAT

NOTES

[illegible]

