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总检察长公告：
所有劳工都有权获得就业保障
不论其移民身份

马萨诸塞州总检察长办公室重申我们长期以来的立场，即所有劳工，不论其移民身份如何，都受到劳动和就业法的保障。工作场所的保障包括：

- 有权获得按时并全额支付的合法薪资，包括：
  - 最低工资
  - 加班费
  - 公共建设项目的现行工资
- 在工作中免于遭受性骚扰和其他形式歧视的权利
- 享有安全、健康的工作环境的权利
- 组织权

在实践中，这意味着在马萨诸塞州总检察长办公室：

- 我们为所有劳工服务，不论其移民身份如何
- 我们不询问个人的移民身份
- 我们不向美国移民与海关执法局(ICE)提供劳工的个人信息(有传票或司法手令要求的除外)
- 我们不容忍对向总检察长办公室提出申诉或以其他方式坚持主张其合法权益的劳工进行报复

没有联邦工作许可证的劳工特别容易受到剥削性的雇佣关系的影响。公平劳工部（Fair Labor Division）将会代表马萨诸塞州的全体劳工继续采取适当的执法行动。如果您有任何问题，或需要进一步的协助，可以联系公平劳工部热线：(617) 727-3465，或访问：www.mass.gov/ago/fairlabor。

请看下一页 的法律讨论。

日期：2017 年 5 月 1 日

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).

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[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).

DATED: May 1, 2017