



THE COMMONWEALTH OF MASSACHUSETTS
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Anons Avoka Jeneral la:
Tout Travayè Gen Dwa pou Resevwa Pwoteksyon nan Anplwa
Kèlkeswa Sityasyon Imigrasyon yo

Biwo Avoka Jeneral Massachusetts la re-konfime pozisyon li te adopted epi lontan an kòm kwa tout travayè, kèlkeswa sityasyon imigrasyon yo, ap jwenn pwoteksyon lwa sou travay ak anplwa. Pwoteksyon travay yo se:

- Dwa pou yo peye ou selon tarif travay ki legal, tout montan an ak san reta, ikonpri:
 - Salè minimòm
 - Ovètaym
 - Salè ki aksepte anjeneral pou pwojè travo piblik
- Dwa pou pa viktim pèsekisyon seksyèl ak lòt fòm diskriminasyon nan travay la
- Dwa pou lye travay la san danje epi pa gen risk pou lasante
- Dwa pou antre nan yon sendika
- Dwa pou yo mete w nan kategori anplwaye kòrèkteman

Nan pratik, sa vle di ke nan Biwo Avoka Massachusetts:

- Nou sèvi tout travayè, kèlkeswa sityasyon imigrasyon yo
- Nou pa poze kesyon sou sityasyon imigrasyon yon moun
- Nou pa bay enfòmasyon pèsonèl travayè yo bay Sèvis Imigrasyon ak Dwan Etazini (U.S. Immigration and Customs Enforcement, ICE) (eksepte si yo prezante yon asiyasyon oswa yon manda jidisyèl)
- Nou pa tolere reprezay kont travayè ki pote plent opre Biwo Avoka Jeneral la oswa ki revandike dwa lwa a ba yo

Travayè ki pa gen otorizasyon travay federal gen anpil chans pou yo viktim pratik anbochaj ki eksplwate yo. Divizyon Travay Ekitab (Fair Labor Division) la pral kontinye pran tout mezi ki apwopriye pou mete anplas pwoteksyon pou tout travayè nan Massachusetts. Si ou gen kesyon oswa ou bezwen plis asistans, ou gendwa kontakte Divizyon Travay Ekitab la nan (617) 727-3465 oswa al gade nan: www.mass.gov/ago/fairlabor. Al gade pwochen paj la pou jwenn diskisyon konsènan lwa ak règlemantasyon yo.

DAT: 1ye me 2017

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).

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).