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Consultivo da Procuradoria-Geral:

Todos os trabalhadores têm direito à proteção de emprego, independentemente de seu status de imigração

A Procuradoria-Geral do Estado de Massachusetts reafirma a sua posição de longa data que todos os trabalhadores, independentemente do status de imigração, são protegidos pelas leis trabalhistas que regem o trabalho e o emprego. As proteções ao ambiente de trabalho incluem:

- O direito de receber um ordenado legal, pago de maneira integral e sem atraso, incluindo:
 - salário mínimo;
 - horas extras; e
 - salário predominante em projetos de obras públicas.
- O direito a ser livre de assédio sexual e outras formas de discriminação no local de trabalho
- O direito a um ambiente de trabalho seguro e saudável
- O direito de organização
- O direito de ser classificado corretamente como empregado

Em prática, isso significa que na Procuradoria-Geral do Estado de Massachusetts:

- Prestamos serviços a todos os trabalhadores, seja qual for seu status de imigração
- Não perguntamos sobre o status de imigração de ninguém
- Não fornecemos informações pessoais de trabalhadores para o pessoal do Serviço de Imigração e Controle de Alfândegas (Immigration and Customs Enforcement – ICE) dos EUA (exceto quando exigido por convocação ou mandado judicial)
- Não toleramos retaliações contra trabalhadores que apresentam queixas junto à Procuradoria-Geral ou que de outra forma afirmam seus direitos legais

Os trabalhadores que não têm autorização do governo federal para trabalhar são especialmente suscetíveis a práticas trabalhistas abusivas. A Divisão de Trabalho Justo continuará a tomar as medidas de execução pertinentes em nome de todos os trabalhadores de Massachusetts. Caso tenha qualquer dúvida ou precise de mais ajuda, entre em contato com a linha direta da Divisão de Trabalho Justo no (617) 727-3465 ou acesse: www.mass.gov/ago/fairlabor.

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).