

SEPTEMBER 02, 2019



ATTORNEY GENERAL MAURA HEALEY'S 2019 LABOR DAY REPORT



**PROTECTING
MASSACHUSETTS
WORKERS**

Cover design by Josh Yoder.

On this Labor Day, we honor working people throughout Massachusetts who give their time and services to improve the lives of others. We celebrate our community-based partners and the labor movement at large for all they do to achieve a fair and just society that benefits all working people. We applaud responsible employers who play by the rules and treat workers with the dignity they deserve. Today, we recommit ourselves to ending worker exploitation in all forms, including wage theft and labor trafficking, and to supporting the labor movement and working people every day.

The Attorney General's Office (AGO) is the state's primary enforcer of wage and hour laws, which include minimum wage, overtime, child labor and public construction laws. The AGO's Fair Labor Division (Fair Labor) vigorously enforces these laws and engages in community education so that working people are paid the wages they are due, and employers can compete on a level playing field. Through meaningful partnerships with fellow government agencies, allies in the labor and advocacy community, and industry

groups, Fair Labor maximizes its ability to address the growing number of wage theft complaints. These partnerships enable Fair Labor to set informed enforcement priorities and to reach more working people and employers.

Through strategic enforcement, Fair Labor assessed more than \$9.8 million in restitution and penalties in FY2019 against employers who violated the state's wage and hour laws.

Working with other states, Fair Labor has challenged practices and rules that hurt working people such as anti-competitive franchise agreements that limit opportunities for low-wage workers, rollbacks of laws that protect the health and safety of young workers, and new rules that undermine the rights of public sector employees. Fair Labor has also expanded its wage theft clinics to Brockton, New Bedford, and Springfield and increased job site visits throughout the Commonwealth. As shown in this report, Fair Labor remains dedicated to ending wage theft and protecting the economic security of Massachusetts workers and their families through education, outreach, and enforcement actions.



“*On this Labor Day, I thank all of our partners for working with us to support workers in countless ways. Whether you fight fires and save lives, nurse us back to health physically and mentally, educate young minds, cook our food, or build our state one road or building at a time, everyone deserves to be safe on the job, paid what they earn, and treated with dignity and respect. Together, **we will always support working people in this state.**”*

YEAR IN REVIEW

By the Numbers



\$5.8 M
in assessed restitution

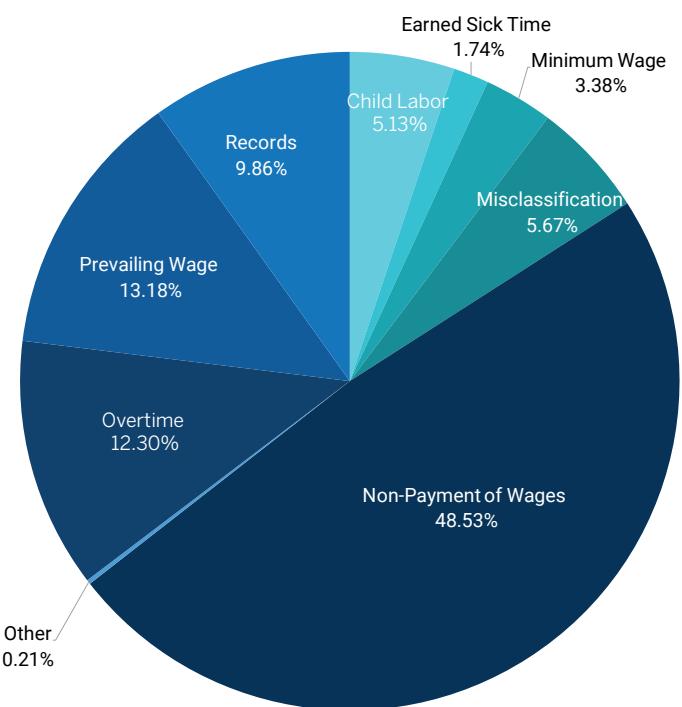


\$4.0 M
in assessed penalties

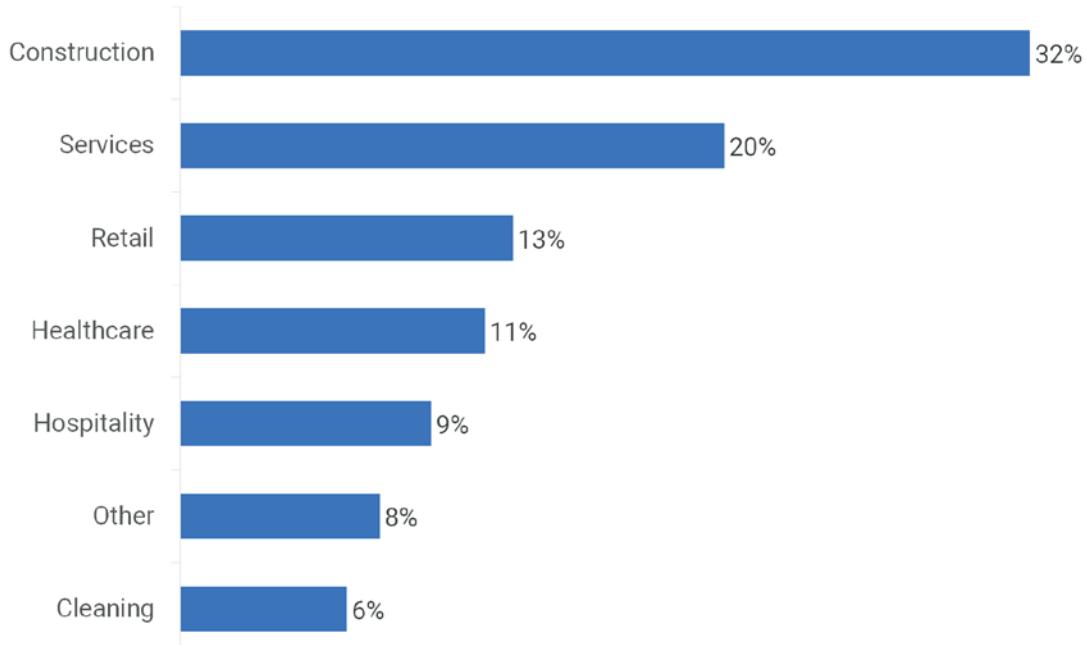


11,118
impacted employees

FY2019 Citations Issued Percentage of Violations Cited



FY2019 Percent of Total Assessments by Industry

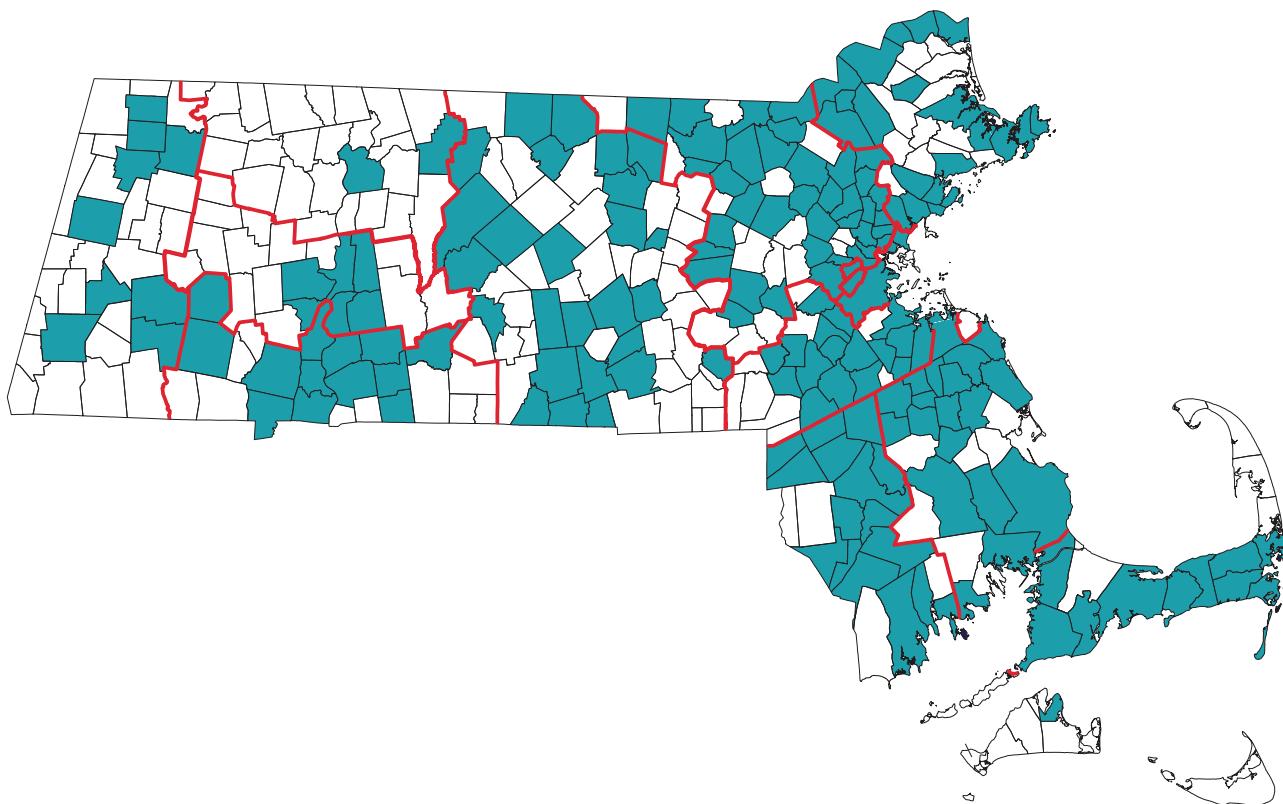


MAINTAINING A PRESENCE

in workplaces across the state

Between July 2018 and June 2019 Fair Labor investigators performed 165 worksite visits, including 106 compliance visits at various worksites, such as multi-unit residential construction sites and seafood processing and manufacturing facilities, in 72 cities and towns. The purpose of Fair Labor's worksite visits is to help employers comply with the wage and hour laws, to remind working people of their rights, and to show that the AGO is vigilant in wage and hour matters. Worksite visits expand Fair Labor's impact across industries and increase the AGO's ability to reach vulnerable workers who may be reluctant to come forward.

In FY2019, Fair Labor, in partnership with the AG's Civil Rights Division, began collecting job applications from employers to ensure compliance with two additional laws that protect workers: CORI reform and Pay Equity. The Civil Rights Division takes appropriate enforcement action, if necessary.



Between FY2017 and FY2019, Fair Labor performed 626 field visits, averaging 209 visits per year. Above is a map of Massachusetts showing the 183 communities, just over half of the Commonwealth's municipalities, visited by Fair Labor investigators over the past three years.

PRIORITY INDUSTRIES

Construction

Construction was by far the most cited industry in FY2019. Fair Labor issued 209 civil citations against 88 construction companies across the state. Restitution exceeded \$1.68M for more than 1,200 employees, and Fair Labor assessed the companies nearly \$1.45M in penalties.

Violations in these cases included the failure to pay all earned wages in a timely manner, failure to pay overtime, retaliation, and failure to furnish records for inspection.

For work performed on public construction projects, violations included failure to pay the prevailing wage, failure to submit true and accurate certified payroll records, and failure to register and pay apprentices appropriately.

*“Attorney General Healey and her Fair Labor Division are strong advocates for the working people of Massachusetts. The Massachusetts Building Trades Council and our members have long been partners in their effort to fight wage theft in the Commonwealth. In the current climate, this work is more important than ever, **playing a vital role in ensuring the economic security and stability of workers, our communities and businesses.**”*

Frank Callahan, Jr., President
Massachusetts Building Trades Council

During FY2019, Fair Labor enhanced its long-standing partnership with the Office of the Inspector General's MA Certified Public Purchasing Officer (MCPPO) certification and training program for public employees and their representatives involved in public construction procurement matters. Fair Labor also added a new advanced topics training course for MCPPO called "Prevailing Wisdom—Confronting Potential Pitfalls and Applying Solutions on Prevailing Wage Projects," which focuses on the practical application of the prevailing wage laws for public procurement and project management professionals. More than 350 public procurement professionals attended these classes last year.

Notable Cases

Fair Labor cited **ERA Equipment**, an Ipswich construction company, and its owners \$580,611 in restitution and penalties for wage theft violations. The company had not paid any of its employees overtime pay, had failed to pay four employees the appropriate prevailing wage rate, and kept inadequate and inconsistent payroll records.

After an investigation, Fair Labor cited **Force Corporation**, a construction company in Leominster, \$837,341 in restitution and penalties for making illegal deductions from employee paychecks and failing to furnish payroll records to the AGO. Fair Labor began its investigation after the New England Regional Council of Carpenters referred complaints from workers. In addition to making illegal deductions from employees' weekly wages for tools, safety equipment, discipline, the company also unlawfully required employees to purchase their construction tools through another company owned by the employer.

Promoting Fairness in Public Projects

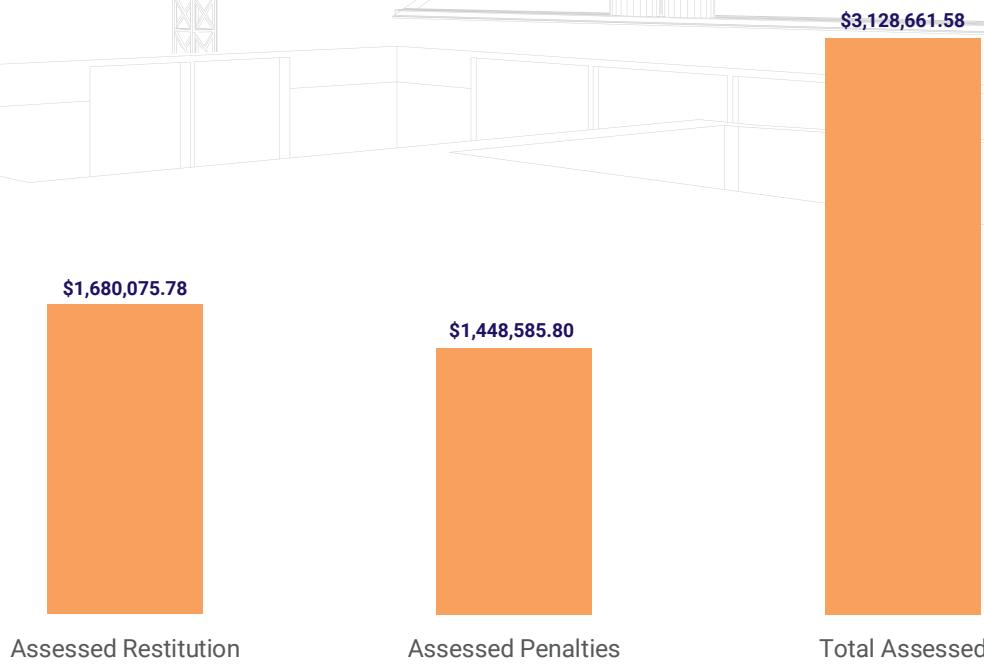
To supplement its ongoing prevailing wage enforcement in the private sector, Fair Labor issued 73 letters to awarding authorities notifying them of prevailing wage violations that occurred on their public construction projects. Fair Labor sent copies of these letters to the Division of Capital Asset Management and Maintenance's Certification Unit which reviews applications for and maintains files of certified contractors in order to help awarding authorities select responsible low bidders. Full transparency in matters involving taxpayer-funded projects is critical to keeping a level playing field for honest and fair competition. The letters went to city and town officials in the following 11 counties: Barnstable, Bristol, Essex, Franklin, Hampden, Hampshire, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester.



“As Massachusetts undergoes a historic construction boom, my office will continue to fight for exploited workers and ensure they are paid the wages they earn.”

Attorney General Healey

FY2019 Construction Industry Enforcement



PRIORITY INDUSTRIES

Cleaning Services

Fair Labor continues to prioritize cases involving janitorial and cleaning workers due to the prevalence of wage and hour violations in this industry. Cleaners frequently work on their own and are paid a flat rate per location, which may be insufficient to satisfy minimum wage and overtime requirements.

Notable Cases

An investigation into **Maidas d/b/a MaidPro**, a franchisee of a national cleaning services company, revealed that the company required employees to report to work at the company's office for daily client lists and cleaning supplies before traveling to job sites but failed to compensate employees for travel time. As a result of the investigation, the employer paid \$63,000 in restitution and penalties.

Fair Labor began investigating **United Services Group Inc. (USG)** after receiving a referral from Greater Boston Legal Services, MetroWest Worker Center - Casa, and the Brazilian Women's Group. The AGO cited USG, which formerly provided janitorial services at all Whole Foods Market locations in Massachusetts, for misclassifying employees as independent contractors and for failing to maintain an earned sick leave policy, furnish a suitable pay stub, and maintain true and accurate records. USG and its president and treasurer were required to pay \$335,000 in restitution and penalties.

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The Chelsea Collaborative is grateful for our strong relationship with Attorney General Healey and her Fair Labor Division. It's critical to our work to have partners who are willing to fight for the rights of all Massachusetts workers. Through their aggressive enforcement of the state's wage and hour laws, outreach, and creation of the AG's Wage Theft Clinic, the AG and her team are true advocates for our community.”

Gladys Vega, Executive Director
Chelsea Collaborative



Health care

Home health care workers and nursing home workers provide essential services to thousands of Massachusetts residents every day, including elders and people with disabilities. Fair Labor continues to ensure that owners and operators of home health companies and nursing homes comply with the state's wage and hour laws and maintain a safe and dignified environment for residents and workers.



Notable Cases

In two notable cases, Fair Labor's investigations revealed employers were not paying home health workers for travel time between appointments. **Petra Health Care LLC**, a privately-held home care company in North Chelmsford, and its managers John and Joanne Wachira, paid \$217,335 in penalties and restitution to 175 employees. **Ace Medical Services Inc.**, a Worcester home health company, and its owners, Michael Chege and Raphael Bibiu, agreed to pay more than \$272,000 in restitution and penalties to compensate 240 current and former employees.

State regulators closed five nursing homes in southeastern Massachusetts in April 2019, after dozens of employees filed non-payment of wage complaints. Fair Labor's investigation into the **owners of Skyline Health Care** revealed that not only more than \$66,000 in wages were owed to 106 employees, but that residents were at risk too, due to the employer's failure to pay its other bills. Fair Labor issued 15 citations against the owners and operators of these facilities for failing to comply with our state's wage and hour laws, including \$82,400 in penalties. Fair Labor and the AGO's Health Care Division worked with the court-appointed receiver to ensure employees were paid all outstanding wages and residents were safely transferred to other nursing homes.



ADVOCATING on behalf of domestic workers

Fair Labor enforces the Domestic Workers' Bill of Rights, which provides additional workplace protections for Massachusetts' workers who perform domestic services in private homes—such as housekeepers and caretakers. The law regulates working and rest time and charges for food and lodging for domestic workers. The Domestic Workers' Bill of Rights also requires employers to keep records of hours worked and provides guidelines for written employment agreements. The protections established by this law apply regardless of immigration status.

Fair Labor continues to conduct outreach and rigorous enforcement of the Domestic Workers' Bill of Rights, and is working alongside community-based partners to ensure that domestic workers do not fall victim to exploitative practices. This last year, Fair Labor issued nine citations totaling \$449,010 to three families living in Massachusetts. These families had failed to pay minimum wage and overtime to four former live-in domestic workers employed to provide childcare, housekeeping, and food preparation services. After issuing the citations, Fair Labor also certified T-Visas and U-Visas for the four domestic workers based on their willingness to assist with the investigations and the underlying crimes. Fair Labor investigated the employers after receiving referrals from Boston University Law School's Human Trafficking Clinic and Greater Boston Legal Services. Fair Labor also works with partners like Matahari, the Dominican Development Center, and the Massachusetts Coalition for Domestic Workers to advocate on behalf of domestic workers and to provide resources to and trainings for both domestic workers and employers.

“

Attorney General Healey and her Fair Labor Division understand that no one can stop wage theft on their own and that collaboration is key to ending the exploitation of working people. The AG's team works closely with community partners, legal service providers, and government agencies to ensure that all workers in the state get the critical resources that they need. We are grateful to be able to work alongside the AG's Office on behalf of the working people of Massachusetts.”

Joey Michalakes, Attorney
Greater Boston Legal Services



To find this notice and other domestic worker resources, visit us at

www.mass.gov/ago/dw

The Commonwealth of Massachusetts

Office of the Attorney General

Notice of Rights of Domestic Workers
Domestic Workers Bill of Rights, M.G.L. Chapter 149, Section 190

Employers: You **must** give a *Notice of Rights* to domestic workers you hire. You may use this Notice for that purpose.

Legal Rights of Domestic Workers

When you first get hired as a domestic worker, your employer **must** give you written information about your legal rights. Read below to learn more about your rights.

This Notice is also available in Spanish and Portuguese at www.mass.gov/ago/dw.

Questions? Contact the Attorney General's Fair Labor Division at (617) 727-3465 or (617) 727-4765 TTY

PROTECTING and empowering young workers

Young workers are an increasingly integral part of the Massachusetts workforce. Fair Labor understands the importance of that first job and has continued its robust enforcement of the child labor laws to ensure that young workers learn early on that they have a right to a safe and healthy workplace, and to be paid their earned wages in full and on time. In FY2019, Fair Labor assessed \$487,000 in penalties and restitution against employers who violated the state's child labor laws—the majority of which were fast food companies—and encouraged employers to adopt practices that protect young workers.

Fair Labor has also prioritized outreach and education efforts to young workers and challenged a national rollback of safety rules that protect young workers from operating power-driven patient lifts—commonly used in nursing homes, residential facilities, and hospitals—without the proper training or supervision.

Healthy Summer Youth Jobs Grant Program

The AGO's Healthy Summer Youth Jobs Grant Program allows teens to hold summer jobs that are focused on promoting nutrition, physical fitness, and healthy living. In July, the AGO awarded nearly \$327,000 in grant funding to 100 organizations across the state to fund summer jobs for young people. In addition to funding, Fair Labor trained young workers in the program on workers' rights and wage and hour laws.

YES Team – Poster Contest

Fair Labor is a member of the Massachusetts Youth Employment Safety Team (YES Team), an interagency working group that brings together eight state and federal agencies to coordinate efforts to protect and promote the health and safety of young workers across the state. This year, the YES Team, in partnership with Massachusetts Coalition for Occupational Safety and Health, held a Workplace Health and Safety Poster Contest open to 14- to 19-year-olds across the state. With over 215 entries submitted, the contest challenged teenagers to think about health and safety at work as both an employability skill and a right for young workers.

“Every day, MassCOSH receives calls from immigrant workers that have had their wages stolen, or young workers who have been taken advantage of by employers that blatantly ignore child labor laws. We could not have a more committed partner in our efforts to support these workers in winning justice than Attorney General Maura Healey and her Fair Labor Division. Their advocacy has been critical to ensuring that bad employers are held accountable and we look forward to our continued collaboration on behalf of the working people of Massachusetts.”

SHAPE UP
focus on your task



LOOK UP
that text can wait



SPEAK UP
at unsafe workplaces



Every 9 minutes, 1 teen is injured on the job.
Don't let yourself become a statistic.

Design by Elizabeth T., Age 17
2019 Safe Jobs for Youth®
Poster Contest Winner

Sponsored by:
The Massachusetts Youth Employment & Safety Team
www.mass.gov/ebsd
The Massachusetts Coalition for
Occupational Safety & Health
www.masscosh.org

Congratulations to Elizabeth T. for winning our 2019 Safe Jobs for Youth poster contest!

Jodi Sugerman-Brozan
Executive Director,
MassCOSH

WAGE THEFT CLINICS

Community Engagement

In FY2019, Fair Labor staff participated in over 175 community engagement events across the state on wage and hour laws, including facilitating trainings for workers and employers, providing resources at job fairs and conferences, and presenting at meetings organized by community-based partners. Through targeted trainings and public awareness campaigns, Fair Labor has been able to maximize its resources and reach more workers and employers.

Wage Theft Clinic Expansion

The AGO's Wage Theft Clinic is a partnership with legal aid providers, law schools, worker centers, federal agencies, bar associations, and the private bar. In FY2019, more than 200 workers attended clinics in Boston, Brockton, New Bedford, and Springfield. At the clinic, working people can meet with lawyers and advocates to learn about their rights, prepare pleadings, or find legal representation. With the assistance of clinic partners, workers recovered more than \$200,000 in FY2019. The Wage Theft Clinic's partners include Greater Boston Legal Services Inc., Volunteer Lawyers Project, Harvard Legal Aid Bureau, Justice at Work, Justice Bridge, MetroWest Legal Services, Suffolk University Law School, Brazilian Worker Center, Brazilian Women's Group, Chelsea Collaborative, Chinese Progressive Association, MassCOSH, MetroWest Worker Center, the Boston Bar Association, the U.S. Department of Labor, Central West Justice Center, Western New England University School of Law, the Hampden County Bar Association, and the private bar.

“*I remember coming home with a lot of pain in my body, especially in my back. It was a very hard job, but since I had to work and had no other options, I would get up every day and go to work. When payday arrived, [my employer] did not pay us, nor did he call us to inform us that he could not pay us on the scheduled date. We continued working for a few more days and no payment was made. I did not know what to do, I had to pay my bills and I did not have any money. I decided to call an immigration center and they referred me to the Attorney General's Wage Theft Clinic. At the clinic, I met Mr. Pablo Carrasco. He listened to me, asked me some questions, and informed me that he would help me receive the wages that I was owed. After a few days, Mr. Carrasco contacted [my employer] and his lawyer and they sent me a check. Thank God and Mr. Carrasco of MetroWest Legal Services, I received my payment and I am very grateful to them for helping me.”*

Mario, Client of MetroWest Legal Services

ENGAGING with advocates and community members



CLASP Conference

In November, Fair Labor hosted the Center for Law and Social Policy's (CLASP) Fourth national convening, Making Sick Days Work. Dozens of municipal, state, and federal enforcement agencies, advocates, and other leaders came together to discuss earned sick time and best practices in wage and hour enforcement.

Labor Trafficking Outreach

Labor trafficking is a global phenomenon that is happening in many communities across our state. In addition to Fair Labor's continued labor trafficking enforcement efforts, resources were devoted this year to increasing outreach efforts related to this issue. Recognizing that local officials are key to identifying these crimes and bringing survivors out of the shadows, the AGO sponsored two webinars for municipal officials and discussed ways that local first responders, health inspectors, and code enforcement officers can help combat labor trafficking. Fair Labor and the AGO's Human Trafficking Division continue to combat trafficking through various initiatives, including certifying U-Visas or T-Visas to victims, when appropriate.

Outreach efforts include labor trafficking awareness and resources presentations to the Brazilian and United Arab Emirates Consulates, the South Shore Homeless Coalition, the Town of Burlington, the National Association of Attorneys General Human Trafficking Summit, and the Massachusetts Major City Chiefs of Police Association. Additionally, the AGO has partnered with the Boston University Migration Innovation Collaborator and BU Law School's Immigrants' Rights and Human Trafficking Program, to develop a multi-functional web-based "app" to identify victims of labor trafficking in the Commonwealth. The app includes training and resources for front-line responders and will be launched in early FY2020.

NATIONAL ADVOCACY

Working people in Massachusetts are currently more vulnerable to exploitation as the federal government rolls back wage and hour regulations, dismantles protections for occupational safety and health, and suppresses the right to organize. AG Healey continues to oppose these federal rollbacks and to stand up for working people. For example, the AGO has challenged national efforts by the United States Department of Labor and the National Labor Relations Board to unreasonably restrict the standard for joint-employer liability. AG Healey is fighting against the narrowing of the joint employment standard because it hurts working people and fails to reflect the changing nature of today's workplace, in which businesses increasingly share employees. The AGO also has stood up for the safety of workers by challenging the reversal of a 2016 Occupational Safety and Health Administration rule that mandated employers report information on workplace injuries and fatalities. Greater transparency on occupational hazards is essential to making workplaces safe and healthy.

The Boston Globe

Fast-food chains agree to end ‘no-poaching’ policies

“No-poach” agreements in franchise contracts restrict a franchisee’s ability to hire employees of another franchisee of the same chain and are anticompetitive in nature. These provisions hurt low-wage workers and limit their ability to seek higher-paying jobs at other franchise locations. Attorney General Healey led a coalition of 14 state attorneys general in reaching a settlement with Arby’s, Dunkin’ Brands, Five Guys Burgers and Fries, Little Caesar, and Panera Bread. Under the terms of the settlements, the franchisors agreed to stop including no-poach provisions in their franchise agreements, to stop enforcing any no-poach agreements already in place, and to post notices to inform employees of the settlement.

Supporting All Workers

In this post-Janus period, the AGO continues to defend against efforts that undermine the rights of working people. In July 2018, the AGO issued the nation's first statewide advisory highlighting existing laws that protect employee rights to organize and to act collectively, free of interference or discrimination by an employer. The AGO also clarified that the decision does not affect existing membership agreements between a union and its members regarding union dues and does not change any laws that protect access to public employee's personal information. At least a dozen states followed Massachusetts' lead and used our advisory as a template.

In further defense of public employees and their unions, the AGO defended the constitutionality of exclusive representation in public-sector collective bargaining. In a unanimous decision in *Branch v. Commonwealth Employment Relations Board*, the Massachusetts Supreme Judicial Court reaffirmed this principle and concluded that exclusive representation was constitutional and a basic building block of labor-law policy in Massachusetts.



In Massachusetts, MassHealth Consumers have a right to hire their own Personal Care Attendants (PCAs), who provide critical home-based services to sick, elderly, and disabled individuals. Massachusetts PCAs—a unionized workforce—may request to pay their voluntary union dues through a payroll deduction. The U.S. Department of Health and Human Services recently issued a new Medicaid rule that threatens the future viability of Massachusetts' PCA program by restricting the payments of union dues and insurance out of Medicaid funds. In May 2019, AG Healey joined a multistate lawsuit to protect the rights of PCAs and MassHealth Consumers from this proposed rule.

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