



Immigrant workers' rights

Understand workers' rights and employers' obligations

Workers in New York state have rights — regardless of their immigration status. State law includes workers' right to be paid the required minimum wage and prohibits employers from punishing their workers for complaining about their employers' illegal actions.

At the Office of the New York State Attorney General (OAG), we take seriously claims of discrimination and retaliation against workers, regardless of their immigration status. Report violations of New York's labor laws to our office.



Report a labor law violation

What legal rights do immigrant workers have?

Whatever a worker's immigration status might be, New York state and local laws provide workers with rights to the following, among others:

- » minimum wage and overtime pay
- » any amount of pay an employer has promised the worker
- » family and medical leave
- » workers' compensation insurance
- » a workplace free from discrimination and harassment
- » protection from retaliation (punishment for complaining)

Can an employer request a worker to verify their work authorization?

Employers are required to request work-authorization documentation when they hire a worker. An employer may request an individual worker re-verify their work authorization in the following situations:

- » when the worker's authorization has expired, or is about to expire
- » if the employer has a believable reason to think that the work authorization the worker originally submitted is inaccurate

Under New York law, employers cannot harass or discriminate against workers based on race, national origin, citizenship, or immigration status.

In addition, an employer can conduct audits of work-authorization documentation for an entire workforce, or part of the workforce. They must, however, use neutral and nondiscriminatory criteria to choose their sample. If they do not, requests for re-verification of work authorization could be discriminatory or harassing. For example, an employer cannot conduct an audit or threaten an audit of workers to retaliate against or punish workers' lawful activity such as organizing efforts or workers' complaints about working conditions.

What is retaliation?

Retaliation is when an employer does something to punish a worker for engaging in a protected activity. This type of protected activity includes:

- » complaining about violations of the New York Labor Law, including not being paid the minimum wage or overtime pay, not being paid the amount that the employer has promised to pay, or not receiving paid sick leave
- » complaining about violations of the New York State Human Rights Law, such as discrimination or harassment based on immigration status, citizenship, race, or national origin
- » pursuing a workers' compensation claim
- » filing a complaint or participating in an investigation about wage theft, discrimination, or workplace safety

What are some examples of employer retaliation against immigrant workers for complaining about unpaid wages, discrimination, harassment, or workplace safety issues?

Employers have illegally retaliated against workers by doing, or threatening to do, the following:

- » calling law enforcement or immigration officials
- » firing employees or withholding their pay
- » reducing work hours or giving workers a worse schedule
- » demoting or transferring employees
- » assigning workers harder duties or demanding that they produce more
- » evicting workers from employer provided housing

Is it illegal retaliation if an employer reports a worker to immigration officials?

Yes – if the employer reported the employee to immigration officials because the employee engaged in protected activity, such as complaining about violations of the wage laws.

What are the penalties if an employer illegally retaliates against a worker?

The employer may have to pay the employee damages, including liquidated damages of up to \$20,000. The employer may also have to pay a penalty up to \$20,000. The employer may also be guilty of a class B misdemeanor.

How does New York's law on hate crimes apply to the workplace?

State hate crimes law protects people from violence, threats, and harassment based on their race, origin, or nationality. In addition, it is a violation of hate crimes law to report a person to the police simply because of their race, national origin, or ancestry.

An employer who commits violence against, threatens, harasses, or reports immigrant workers to the police because of their national origin, without reason to believe they committed a crime, can be subject to criminal and civil penalties. Note: As a general rule, it is not a crime for an undocumented individual to remain present in the United States.

Which New York state and local government agencies address complaints about illegal treatment of immigrant workers?

These government agencies can address the following types of complaints:

Office of the New York State Attorney General (OAG)

<https://ag.ny.gov/file-complaint/employment>

Unpaid wages, failure to provide sick leave, discouraging use of workers' compensation benefits, discrimination, harassment, retaliation, labor trafficking, and other workplace issues; civil violations of the hate-crimes law

New York Department of Labor

<https://dol.ny.gov/contact-dol>

Unpaid wages, illegal deductions, wage supplements, minimum wage, overtime, retaliation, and other workplace issues

New York Department of Labor - Public Employee Safety & Health (PESH)

<https://dol.ny.gov/public-employee-safety-health>

Occupational safety and health protection to all New York State public sector employees

New York State Division of Human Rights

<https://dhr.ny.gov/complaint>

Employment discrimination and retaliation

New York State Office of Temporary and Disability Assistance – Refugee Services

<https://otda.ny.gov/programs/bria/trafficking.asp>

Information regarding assistance for survivors of human trafficking

New York City Commission on Human Rights

<https://www.nyc.gov/site/cchr/about/contact-us.page>

Employment discrimination and retaliation (New York City)

New York City Department of Consumer and Worker Protection

<https://www.nyc.gov/site/dca/about/contact-us.page>

Paid sick leave (New York City)

Are there any free legal services available?

You can search this website for free legal help:

Law Help NY

<https://www.lawhelpny.org>

Information about free legal resources

Note | This guidance is for general information only and is not legal advice. Consult an attorney for legal advice.