

## **RESOURCE GUIDE FOR ADVOCATES**

This guide was created in collaboration with the following groups:

American Civil Liberties Union of New Jersey  
American Friends Service Committee  
Casa Pueblo  
New Labor  
United Labor Agency of Bergen  
Wind of the Spirit—Viento del Espiritu

Additional Thanks to:

Legal Services of New Jersey—Farmworker Project  
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### Immigrants' Right To Be Paid For Their Work In New Jersey



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New Brunswick, New Jersey 08901  
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United Labor Agency of Bergen?

## RIGHT TO BE PAID

Wage and hour laws protect ALL workers, regardless of immigration status.

### *Minimum Wage*

Workers have a right to earn at least the minimum wage--\$5.15/hr. This wage will go up to \$6.15/hr on October 1, 2005 and up again to \$7.15/hr on October 1, 2006.

### *Tipped employees*

Workers in food service and other jobs where it is usual to get tips may be paid \$2.13/hr as long as the employer can show that they are receiving enough tips to add up to the minimum wage.

### *Overtime*

Workers have the right to earn one and a half their "regular rate", i.e. hourly rate, for every hour over 40 hours/week.

### *Prevailing wage*

Most manual laborers working on city or otherwise government funded projects have the right to earn the "prevailing wage." Put simply, these are union wages. It is not necessary to belong to a union to assert the right to the prevailing wage.

## Protecting your Right to be Paid

One of the most important things to do in protecting and enforcing a workers' right to be paid is to maintain good records.

Keep any business cards or letterhead with your employer's contact information.

If you are working as a day laborer or construction worker, record the license plate number of the contractor.

Keep any payroll stubs or receipts you get from your employer.

Maintain your own records of how many hours you work each day and what you are paid. A pocket calendar can be useful for this.

## Useful Resources

### Groups that can help with wage claims:

American Friends Service Committee  
89 Market Street, 6 Fl.  
Newark, NJ 07102  
Telephone: ??

Legal Services of New Jersey, Inc.  
Farmworker Project  
71 East Commerce Street, 3rd Floor  
Bridgeton, NJ 08302  
(856) 455-0017

### Groups organizing immigrant workers

Wind of the Spirit / Viento del Espiritu  
Morristown, NJ  
(973) 538-2035

Casa Pueblo  
Morristown, NJ

**Appendix B: ICE Operation Instruction, Cont'd**

Generally there is no prohibition for enforcing the Immigration and Nationality Act, even when there may be a labor dispute in progress. However, where it appears that information may have been provided in order to interfere with or to retaliate against employees for exercising their rights, no action should be taken on this information without the review of the District Counsel and approval of the Assistant District Director for Investigations or an Assistant Chief Patrol Agent.

When Service enforcement action is taken and it is then determined that there was a labor dispute in progress, or that the information was provided to the Service to retaliate against employees for exercising their employment rights, the lead immigration officer in charge of the Service enforcement team at the worksite must ensure to the extent possible that any arrested or detained aliens necessary for the prosecution of any violations are not removed from the country without notifying the appropriate law enforcement agency which has jurisdiction over these violations.

Any arrangements for aliens to be held or to be interviewed by investigators or attorneys for the state or federal Department of Labor, the National Labor Relations board or other agencies/entities enforcing labor/employment laws will be determined on a case-by-case basis.

**Sample Work Records**

<b>Employer Information</b>		
Name of Company: _____	Address: _____	City: _____
Zip: _____		
Name of supervisor: _____	Phone number: _____	
	Pager: _____	
Job Description: _____		
License Plate No. and type of vehicle: _____	Address where work was performed: _____	
City: _____	Zip: _____	

Employee name: \_\_\_\_\_

Date	Time In	Time Out	Pay Rate	Actual Payment	Tips

- RECORD KEEPING STRATEGIES!**
- Keep any business cards or letterhead with your employer's contact information.
  - If you are working as a day laborer or construction worker, record the license plate number of the contractor.
  - Keep any payroll stubs or receipts you get from your employer.
  - Share this sample form with friends and co-workers.

Make copies of all of this form for your own records.

## Enforcing the Right to be Paid

There are several strategies to enforce the right to be paid. Each option is different and some can be used together to increase the chances of recovering unpaid wages.

### **Demand Letters**

Demand letters are sent to employers and can be used to open negotiations to recover unpaid wages. A demand letter can be sent from an individual, an organizing group or an attorney. A typical demand letter includes:

- the law(s) violated

- dates and times worked

- request for payment

- proposed payment plan or meeting to negotiate

- follow-up steps including an explanation of the consequences for the employer if they fail to respond

**See Appendix A for a sample demand letter.**

### **Appendix B: ICE Operation Instruction, Cont'd**

In order to protect the Service from unknowingly becoming involved in a labor dispute, persons who provide information to the Service about the employer or employees involved in the dispute should be asked the following: 1) their names; 2) whether there is a labor dispute in progress at the worksite; 3) whether they are or were employed at the worksite in question (or by a union representing workers at the worksite); and 4) if applicable, whether they are or were employed in a supervisory or managerial capacity or related to anyone who is. Information should be obtained concerning how they came to know that the subjects lacked legal authorization to work, as well as the source and reliability of their information concerning the aliens' status.

It is also appropriate to inquire whether the persons who provide the information had or have a dispute with the employer of the subjects of the information. Likewise, the person providing the information about the aliens should be asked if the subjects of the information have raised complaints or grievances about hours or working conditions, discriminatory practices or about union representation or actions, or whether they have filed workers' compensation claims.

## Appendix B: ICE Operation Instruction

OI 287.3a **Questioning persons during labor disputes.**  
(redesignated as 33.14(h) of the SAFM, 4/28/2000)

When information is received concerning the employment of undocumented or unauthorized aliens, consideration should be given to whether the information is being provided to interfere with the rights of employees to form, join or assist labor organizations or to exercise their rights not to do so; to be paid minimum wages and overtime; to have safe work places; to receive compensation for work related injuries; to be free from discrimination based on race, gender, age, national origin, religion, handicap; or to retaliate against employees for seeking to vindicate these rights.

Whenever information received from any source creates a suspicion that an INS enforcement action might involve the Service in a labor dispute, a reasonable attempt should be made by Service enforcement officers to determine whether a labor dispute is in progress. The Information Officer at the Regional Office of the National Labor Relations Board can supply status information on unfair labor practice charges or union election or decertification petitions that are pending involving most private sector, non-agricultural employers. Wage and hour information can be obtained from the United States Department of Labor (Wage and Hour Division) or the state labor department.

### Follow-up Steps to a Demand Letter

Follow-up steps are very important. Carefully consider what resources are available to you or your organization when proposing follow-up. Steps can be as simple as saying someone will call on a given date.

**Follow-up to a demand letter can vary depending on who sends it. Below are examples of different steps:**

#### Organizing groups can:

- Protest at the employer's place of business or home
- Publicize the employer's bad acts in the media
- File a complaint with the New Jersey Department of Labor
- Propose a time, date and place to meet and discuss the claim with the employer
- File a complaint in Small Claims Court

#### Individuals can:

- Propose a time, date and place to meet and discuss the claim with the employer.
- File a complaint with the New Jersey Department of Labor
- File a complaint in Small Claims Court

Whatever steps you choose, it is very important to follow up. A demand letter without follow up is meaningless and can lead the employer to think you are not serious.

## Immigration Status and Your Right to be Paid

You have a right to be paid no matter what your immigration status is.

You do not have to answer questions about your immigration status when trying to enforce your right to be paid. In fact, it is best not to answer those types of questions and to seek assistance from a trusted community group or lawyer if you feel pressured.

It is illegal retaliation for your employer to use your immigration status to intimidate you or punish you for enforcing your right to be paid.

ICE has a policy that discourages getting involved where there is a labor dispute. **See Appendix B.** It is useful to know about this policy in case your employer tries to contact ICE to punish you for trying to enforce your right to be paid. If this happens, you should seek assistance from a trusted community group.

## Appendix A: Sample Demand Letter, Cont'd

If we do not received the wages owed to the above employees withtin (7) days from the date you receive this letter we will be forced to turn this matter over to the labor department.

Please do not hesitate to contact me if you have any further questions. Thank you for your prompt cooperation in this matter.

Sincerely,

Name

Title



## Appendix A: Sample Demand Letter, Cont'd

**NAME OF EMPLOYEE(S)** have the right to bring a formal complaint to the New Jersey Department of Labor or a civil action to the state and federal courts. Employers found in violation of state wage and hour laws by the Labor Commissioner are potentially subject to administrative and criminal penalties.

### 1. Wages owed to (NAME OF EMPLOYEE)

As related in conversations with the employees, (EXAMPLE) **NAME OF EMPLOYEE1** is currently owed \$600.00 for six days of employment **NAME OF EMPLOYEE2** is is currently owed \$300.00 for three days of employment. **NAME OF EMPLOYEE3** is is owed \$100.00 for one day of employment.

### 2. Timeline

You should send 3 checks immediately, 1 in the amount of \$600.00 to **NAME OF EMPLOYEE1**, 1 check in the amount of \$300.00 to **NAME OF EMPLOYEE2**, and 1 check in the amount of \$100 to **NAME OF EMPLOYEE3**. The check can be sent care of **NAME OF ORGANIZATION OR CHURCH WITH ADDRESS**

Employers cannot use Social Security no-match information as an excuse to retaliate against you for enforcing your right to be paid.

An employer who fires or takes action against employees based on a "no-match" letter from Social Security may be violating a number of workplace anti-discrimination laws:

- IRCA Anti-discrimination
- National Origin Discrimination
- Retaliation For Protected Activity—such as enforcing the right to be paid.
- "Just Cause" Provisions In Union Contracts

Employers also may not use concern over the withholding of relevant federal, state, and local taxes because of work authorization problems as an excuse for not paying workers.

Employer are liable under state and federal law for the payment of wages. Employers are also responsible for ensuring that the employment eligibility verification process (the I-9) form procedure is fulfilled at the time of hire. For more information about the I-9 Procedure, see: They cannot later raise concerns about immigration status or social security number as an excuse not to pay a worker for the work she or he has performed.

## Negotiating a Settlement

You may wish to negotiate a settlement in order to resolve the problem without having to take the time and pay the expense of going to court. If you discuss the problem with the employer, you may find that he is willing to pay all or part of the amount of money owed. You can also set up a payment plan, for example \$1000 per month for three months, that may make it easier for the employer to pay.

If you come to a settlement agreement with the employer you should both sign a "settlement agreement," which is a binding contract. That means that if the employer does not pay the amount he promises to pay, you have a contract that can be enforced in court. If the amount promised is for 3000 or less, then the contract can be enforced in small claims court.

## Administrative Complaints to the Department of Labor

The State Department of Labor is the government agency responsible for enforcing the employment laws. The Department of Labor can:

- investigate a claim for unpaid wages
- mediate the collection of unpaid wages
- prosecute a case against an employer

It does not cost anything to file a claim with the State Department of Labor or to have the agency investigate a claim.

## Appendix A: Sample Demand Letter, Cont'd

The Fair Labor Standards Act and the New Jersey Minimum Wage Act generally provide that workers have a right to receive the minimum wage and overtime compensation. See 29 U.S.C § 203 et seq., N.J.S.A.34:11-56 et. seq. Overtime compensation is calculated at one and one-half (1.5) times the regular wage rate for every hour worked over (40) hours in the weekly work period. N.J.S.A 34:11-56a4.

If you have some concern over the withholding of relevant federal, state, and local taxes arising out of work authorization problems, you should know that employers are liable for the payment of wages and for ensuring the employment eligibility verification process (the I-9) form procedure is fulfilled at the time of hire. It is the employer's sole responsibility to ensure that I-9 eligibility requirements are met at the time of hire, which is the actual beginning of employment. See Form I-9 (Rev. 11-21-91)N. Where an employee continues to work, the Department of Labor fully enforces wage and hour laws to ensure that all workers receive their lawfully due wages.

Therefore, you should provide **NAME OF EMPLOYEE** with their wages as soon as possible. New Jersey's Wage Payment Act prohibits the unlawful withholding of wages and requires all wages due no later than the regular payday after an employee is terminated. See N.J.S.A 34:11-4-1 et seq.

## Appendix A: Sample Demand Letter, Cont'd

### A BRIEF DESCRIPTION OF THE ORGANIZATION (OR CHURCH) THAT IS HELPING WITH THIS

#### 1. Federal Fair Labor Standards Act and New Jersey Wage and Hour laws

Your are completely responsible for the immediate payment to **NAME OF EMPLOYEE(S)**, from the work that they provided as employees of you and/or your company. State and federal laws require workplace postings of wage payment protections and provide manuals for small business owners who wish to understand more about their responsibilities as employers. You can obtain the necessary copies of the appropriate posters by either visiting the corresponding Department of Labor websites or by contacting your local district state and federal offices.

The federal Fair Labor Standards Act and New Jersey Wage and Hour laws define "employee" broadly and do not contain any exemption for unauthorized workers. See 29 U.S.C. § 203 (e)(1); N.J.S.A. 34:11-56a1 (h\_ ("employee" includes any individual employed by an employer). Both the United States Department of Labor and the New Jersey States Department of Labor vigorously enforce wage and hour laws on behalf of all workers, regardless of authorization. Courts have maintained a similar stance on the broad wage and hour protections of federal and state laws. See generally, *Patel v. Quality Inn South*, 846 F.2d 170 (5<sup>th</sup> Cir. 1987), cert denied, 487 U.S. 1235 (1988).

## How to file a complaint with the New Jersey Department of Labor

### 1. Fill out the Claim for Unpaid Wages form

You can download a wage claim form at: <http://www.nj.gov/labor/lsse/forms/mw-31a.pdf> or get one by calling (609)292-2305

**\*\*note:** The wage claim form has a space for your name, however you may file anonymously (**Need more information about how that works in practice**)

#### Tips!

Contact information—make sure to give a reliable address and phone number so investigators can reach you.

Social Security number—Workers do **not** need a social security number to file a claim for unpaid wages. If you do not have a social security number, leave this space blank. **\*\*note:** The wage claim form has a space for your social security number, however you are not required to provide a social security number

### 2. Make a copy of the form for your own records

### 3. Mail the Claim for Unpaid Wages form to the Department of Labor:

Department of Labor and Workforce Development  
Division of Wage and Hour Compliance  
PO Box 389  
Trenton, NJ 08625-0389  
Fax: 609-695-1174

## Recovering Unpaid Wages

In filing a claim for unpaid wages, you are asking the Department of Labor to pursue your claim for unpaid wages. This means that the Department of Labor may negotiate an agreement with the employer to recover unpaid wages. Often the amount the Department of Labor recovers in such negotiations is less than the full amount of unpaid wages.

Workers will need either a social security number or individual taxpayer identification number (ITIN) to collect any unpaid wages the Department of Labor recovers on their behalf. **For more information on Individual Taxpayer Identification Numbers, see Basic Information about Individual Taxpayer Identification Numbers for Immigrant Workers (NELP Resource Guide for Advocates).**

## Filing a Complaint in Small Claims Court

If the amount of unpaid wages you are owed is less than \$3000, you can also file a complaint in small claims court. **For more information on filing complaints in small claims court, see:**

## Appendix A: Sample Demand Letter

### DATE

Dear NAME OF EMPLOYER:

I have tried to contact you several times about the payment of wages owed to NAME OF EMPLOYEE. We will have to take a different route if we do not receive an answer as soon as possible.

This letter is to provide you with the following

1. Information that explains The federal Fair Labor Standards Act and New Jersey Wage and Hour laws, protections as well as
2. The corresponding work permit requirements and
3. Confirmation that, Regarding the New Jersey Wage and Hour laws, your company has to pay NAME OF EMPLOYEE(S), their unpaid wages, and,
4. A time limit to solve this case