



PENNSYLVANIA

Office of Attorney General
Fair Labor Section

2022

LABOR DAY REVIEW

Attorney General Josh Shapiro created the [Fair Labor Section](#) in the Office of Attorney General (OAG) to protect workers' rights, address workplace safety issues and promote a level playing field for law abiding businesses. Workers should get paid a fair wage for a fair day's work; businesses should fairly compete in the marketplace; and, no one should be able to gain a competitive advantage by breaking the law.

This year's Report reflects on a particularly active year in the workers' rights arena across the country, as workers are collectively demanding safer workplaces, better wages and benefits, and better treatment. Outreach by workers, employers and agencies to the Fair Labor Section (FLS) reflects the changing discussions surrounding the workplace and an increase in communications for assistance:

“ *Employers across this Commonwealth, you are on notice: if you steal from your employees, if you misclassify workers, if you violate our labor laws, we are going to find out, we are going to hold you accountable, and we will do all we can so Pennsylvania workers receive the wages and benefits owed to them under the law.*

- Attorney General Josh Shapiro

Public Complaints Processed in 2021:

Wage related:	227
Workplace safety:	137
Wrongful Termination/Discrimination/Retaliation:	52
Unemployment Compensation Issues (COVID-related):	1,977
Total:	2,393

Public Complaints Processed Through Labor Day of 2022:

Wage related:	585
Workplace safety:	18
Wrongful Termination/Discrimination/Retaliation:	189
Claims involving misclassification, organizational rights, Workplace benefits and other matters:	316
Total:	1,108



WORKING TOGETHER TO PROTECT WORKING PEOPLE

FLS works with colleagues throughout the OAG to protect the rights of workers and to maintain a level playing field for law-abiding employers. This collaboration includes investigations into a variety of matters affecting the workplace, such as: staffing and safety issues in the healthcare industry with our Healthcare Section; work scams and other schemes targeting workers and businesses with our Bureau of Consumer

Protection; agreements that deflate wages and competition in the workplace with our Antitrust Section; discrimination, harassment and retaliation with the Civil Rights Enforcement Section; workplace claims involving charitable organizations with our Charitable Trusts & Organizations Section; defending the organizational rights of public employees with our Civil Litigation Section; protecting wage and benefits claims in Bankruptcy with our Financial Enforcement Section; challenging unlawful federal regulatory changes with the Impact Litigation Section; and pursuing criminal prosecutions for wage and benefits crimes with our Criminal Prosecution Section.

FAIR LABOR SECTION HIGHLIGHTS

Misclassification and Wage Theft. The OAG and the Delaware County District Attorney's Office began a joint enforcement pilot program on March 9, 2020 to combat the misclassification of construction workers in Delaware County under The Construction Workplace Misclassification Act (Act 72). This collaboration led to the prosecution and successful resolution of several cases. FLS regularly receives reports of workers that have been misclassified in the workplace, as well as other complaints of missing wages and benefits. The OAG has successfully prosecuted cases involving theft of wages, benefits and other crimes on public projects in Pennsylvania. OAG remains committed to ensuring workers receive all of the wages and benefits to which they are entitled and that law-

abiding employers compete on a level and fair playing field.

Restrictive Covenants. FLS has investigated numerous reports of employers in a variety of industries that require employees to sign employment agreements that illegally restrict their ability to move between jobs, continue working in their chosen profession or otherwise limit their ability to advance themselves in the workplace. Studies show these restrictions tend to deflate wages and otherwise limit advancements in the workplace. The OAG is committed to protecting workers from unlawful agreements that limit their opportunities to earn a living wage, freely make job choices and otherwise pursue career objectives.



Discrimination in the Workplace. Complaints of unfair treatment in the workplace are regularly brought to the attention of FLS. These complaints often involve pay discrepancies, hostile work environments, different treatment based on age, sex, race, disability and other protected categories, and wrongful termination of employment. Employees are protected against discrimination in the workplace under [state](#), [federal](#) and some local laws.

Employers are prohibited from discriminating against employees based on characteristics such as:

Race
Color

National Origin
Sex (including pregnancy,
gender identity, sexual
orientation)

Age (40 and over)
Disability

Religion

- These protections also apply to job applicants
- Workers that make a complaint about or participate in an investigation of employment discrimination are protected from retaliation
- If you have a qualifying disability, your employer may be required to provide you with a reasonable accommodation. Get resources for workers and employers from the [Job Accommodation Network](#)

Breastfeeding workers. In response to a workplace complaint, FLS worked with a national big box employer to make sure it understands its legal obligations to eligible employees. Specifically, federal law requires employers provide eligible employees: reasonable time to express breastmilk, as needed; for at least one year after the birth of a child; in a private place, where they can sit on a chair (not the floor); shielded from view; and free from intrusion (in a location that is not a public restroom).



Defending Organizational Rights. The OAG continues to defend workers' rights to organize. The OAG has successfully defended several lawsuits challenging aspects of the Pennsylvania Public Employee Relations Act, which sets out the rights and obligations of public employees, employers, and labor organizations. The OAG will continue to defend vigorously workers' rights to organize.

Workers have been joining together in increasing numbers to demand higher wages and benefits, and better working conditions. Across the country, workers are forming unions at the highest rate in decades. Fifty-seven percent more union representation petitions were filed with the National Labor Relations Board ("NLRB") between October 2021 and March 2022 than in the same period in the prior year.

It is important for workers to know their rights!

- Section 7 of the National Labor Relations Act ("NLRA") protects your right to engage in protected concerted activity in the workplace **regardless of whether or not you are currently a member of a union**
- That means you have the right to, among other things:
 - Organize or join a union;
 - Discuss your pay with your coworkers;
 - Discuss work-related matters, such as safety concerns; and
 - Speak to your employer on behalf of one or more of your coworkers about improving pay, benefits and/or other workplace conditions
- Your employer may not retaliate against you for exercising your rights under the NLRA or participating in a proceeding involving the National Labor Relations Board, which investigates violations of the Act. Your employer may not surveil or interrogate you for engaging in protected concerted activity. If you believe your Section 7 rights have been violated, you may file an unfair labor practice charge with the NLRB within six months of the date the violation occurred. [NLRB Complaint - Worker.gov](https://www.nlr.gov)
- **Want to file for a union representation election?** You may do so by filing a representation election petition with the nearest NLRB regional office. For more information on this process, visit <https://www.nlr.gov/about-nlr/what-we-do/conduct-elections>
- **Are you a public employee?** Public employees enjoy the same rights under Pennsylvania's Public Employee Relations Act ("PERA"). For more information on PERA, visit <https://www.dli.pa.gov/Individuals/Labor-Management-Relations/plrb/Pages/default.aspx>

NEW PENNSYLVANIA MINIMUM WAGE REGULATIONS



In order to better protect the wages earned by workers and to assure a level playing field for employers in a tight labor market, the Pennsylvania Department of Labor

and Industry updated its Minimum Wage regulations. This is the first update since 1977 and modernizes worker protections in the Commonwealth. It is important that both tipped and salaried workers are aware of these enhanced protections under the [newly implemented regulations](#):

“Tipped workers, like all workers, deserve a fair day’s pay for a fair day’s work. My office will continue to fight for the rights of workers in Pennsylvania.”

- Attorney General Josh Shapiro

You may file a complaint with the Fair Labor Section online by completing the PA Office of Attorney General [Fair Labor Complaint Form](#) – or email us at WageTheft@attorneygeneral.gov.

HAPPY LABOR DAY!

Are you a tipped worker?

- In order for your employer to take a tip credit against the base hourly minimum wage of \$7.25 per hour, you must earn at least \$135 in tips per month. (That means that an employer in Pennsylvania can only pay tipped workers \$2.83 per hour if the employee is able to earn the remaining \$4.42 an hour in tips and earns at least \$135 in tips each month.)
- If your employer takes a tip credit against your base hourly minimum wage, it cannot require you to spend more than 20% of your weekly working hours on job duties that do not generate tips.
- Your employer may not deduct credit card or other non-cash payment processing fees from your tips or pay.
- Employers, managers, and supervisors generally may not participate in a tip pool.
- Employers that take a tip credit may not include non-tipped employees in tip pools.
- Providers of banquets, special functions, or package deals that charge for administrative or service fees must provide customers with a separate line for tips intended to go to the employees who provided service, and must clarify that automatic service charges are not gratuities for tipped employees.

Are you a salaried employee?

- The new regulations also clarify the rules governing overtime pay for salaried, nonexempt employees. Your regular rate of pay must be calculated by dividing your weekly earnings by 40 hours, and any hours you worked in excess of 40 hours must be paid at 1.5 times your regular rate.



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