KNOW YOUR RIGHTS:

A GUIDE FOR WORKERS AND THEIR EMPLOYERS

A HANDBOOK CREATED BY THE BRAZILIAN WORKER CENTER IN COLLABORATION WITH THE NuLawLab NORTHEASTERN UNIVERSITY SCHOOL OF LAW

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BRAZILIAN IMMIGRANT CENTER

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BRAZILIAN WORKER CENTER’S MISSION STATEMENT

Founded in 1995, the Brazilian Immigrant Center (“BIC”; www.braziliancenter.org) is committed to supporting workers and the larger immigrant community in gaining social and economic justice. To do so, BIC provides services such as ESL (English as a Second Language), OSHA safety and health training for the workplace, and workers’ rights workshops to organize and empower immigrant workers, state and nation-wide.

* Special Thanks to Anastasia Butler, researcher and writer for this guide. *

PURPOSE OF THIS GUIDE: UNDERSTANDING YOUR RIGHTS

Labor laws in Massachusetts are constantly changing. The purpose of this guide is to help workers and their employers understand the most current labor protections and requirements in place. It also provides useful resources that workers and their employers can use in setting up new or existing working relationships.
**WHO IS PROTECTING YOUR RIGHTS?**

**DOMESTIC WORKERS BILL OF RIGHTS (DWBoR)**
The DWBoR is the result of a statewide and national campaign to protect domestic workers’ rights. One of the first of its kind, the Massachusetts DWBoR gives the following protections to domestic workers in the state of Massachusetts.¹ Notice of Rights
Your employer has certain duties to perform before you officially begin your job, including:
• Supplying a written contract for you and your employer to sign and understand;
• Providing you with a copy of your work-related rights under the DWBoR;
• Keeping records of every signed document & written notice.

Written Employment Contracts
If you work for 16 or more hours a week, then you have the right to ask your employer for a written employment contract. A written employment contract is an agreement between you and your employer that expresses the terms of your employment.
• How much money the domestic worker makes an hour;
• Job responsibilities;
• Overtime rates for added duties;
• The terms about working hours, rest periods, earned sick days, vacation days, personal days, holidays, transportation, health insurance, severance, yearly raises;
• Any fees for meals and rent;
• How to raise complaints with the employer;
• The right to collect workers’ compensation for job-related injuries;
• How many days either the domestic worker or employer must give to end the working-relationship;
• Any other rights or benefits that domestic worker has.
Please see page 7 for a standard employment contract you and your employer can adapt.

Payment for All Working Time
You must be paid for all working time, which means all time that you have to be at your employer’s house or have to be on duty during a normal scheduled shift, and this may include time for meals, rest, and sleeping.

Guaranteed Days of Rest
A rest period means a time where you do not have to do any work. Rest periods can be taken at or away from the work place. For every 40 hours or more worked per week, your employer must give you at least one day off per week and at least two days off in a row each month. If you work on one of your guaranteed rest days, then you must agree in writing to the extra work and be paid overtime rates. After one full year of service, an employer must give you (if you work 40 hours or more per week) a 5-day paid rest period.

Right to Collect Workers Compensation If Injured

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¹ The following information is based on the 2014 edition of the Massachusetts Domestic Workers Bill of Rights (DWBoR). Please note this is not a full list of all of the rights enumerated in the DWBoR but lists important ones in forming and maintaining the working relationship. See Domestic Workers Bill of Rights, H.3983, 188th Gen. Ct. (Mass. 2014).
You have the right to workers’ compensation. Workers compensation is a type of insurance that all employers in Massachusetts must have to cover the medical cost of any work-place accidents you may have. Your employer should talk to you about workers compensation benefits at the very beginning of the work-relationship.

**Limitations on Deductions for Food and Housing**
If your employer is going to take away money from your salary for either food or housing, then you must still be making at least minimum wage, plus applicable overtime, after the deductions. You must voluntarily accept these deductions in writing, either in the written employment contract or some other written agreement.

**Privacy for All Domestic Workers**
Privacy in the workplace means that your employer cannot restrict, interfere or monitor your private conversations and communications. If you are a live-in, then your employer may not come into your room and/or search your room without your voluntary consent. Additionally, your employer cannot use a camera or any other recording device in your room or in any other area of the house without your written consent.

**Termination of Employment**
Your employer must give you at least 14 days notice or two weeks’ severance pay before terminating you. If you are a live-in, then your employer must give you at least 30 days notice to leave your employer’s home. These rights do not extend to situations where your employer has made a good-faith allegation in writing that you have committed harmful conduct towards your employer, your employer’s family, or any individual in your employer’s home.

**Maternity Leave**
Employers must give you at least eight-weeks off (sixteen-weeks for twins) if you give birth or adopt a child. You are eligible for maternity leave once you have been employed for a three-month period. It is up to your employer to decide whether your maternity leave is paid. It is common for the leave to be unpaid.

**Protection Against Retaliation and Discrimination.**
All domestic workers have access to the Massachusetts Commission Against Discrimination (MCAD) for any discrimination and/or sexual harassment complaints. Claims may be brought against your employer for the following reasons:
- Unwelcomed sexual advances (verbal or physical);
- Harassment based on the sex, race, religion, national origin or disability of the domestic worker;
- Denial of maternity leave;
- Requirement to work on a religious holiday without an advance written agreement;
- Discrimination based on age;
- Any other discriminatory practice that is unlawful under Section 4 of chapter 151B of the Massachusetts General Laws.

**SAMPLE EMPLOYMENT CONTRACT**

On ________________, an agreement is made between: _______(Employer’s full name) and _______________________________(Worker’s full name)

1. Employment shall begin on _____________ and continue until either party terminates employment according to this agreement. The employer must provide at least __14 days__ written notice or severance pay in an amount equivalent to the average earnings during a week of employment.

2. The work will be done at: (address).

3. The hours will be the following:
Monday ___________ Friday ___________
Tuesday ___________ Saturday ___________
Wednesday ___________ Sunday ___________
Thursday ___________ Daily break time: __________

4. The worker’s main responsibilities are (include detailed list):

Changes in the worker’s responsibilities must be noted in writing and signed by the employer and the worker. If responsibilities are added, the worker has the right to ask for an increase in salary.

5. The employer is responsible for paying the worker $_________ per hour / per week (circle one) and the worker will be paid on a ______ weekly / biweekly (circle one) basis.

6. The overtime pay rate will be $______________ per hour.
   *Under Massachusetts law, overtime wages (for hours worked over 40 hours per week) must be at least 1.5 times regular hourly wages.
      a) The employer agrees to provide at minimum ___ days of advanced notice when overtime work is required or will seek the voluntary written consent of the worker.
      b) The employee will be paid overtime wages if she is required to work on the following holidays:

7. The employer offers the worker the following benefits (i.e. paid sick days, paid vacation, etc.):
   a) Paid sick/personal days: YES / NO (circle one) Number:
   b) Paid vacation days: YES / NO (circle one) Number:
   c) Paid holidays: YES / NO (circle one)

The following holidays will be paid holidays:

8. In the event the employer temporarily reduces the workers’ hours (i.e., due to the employer taking a vacation, employer coming home early from work, etc.), the employer guarantees to continue to pay the employee her regular wages: YES / NO (circle one)

9. Either party may terminate the employment agreement with __________ days notice, except in unusual situations such as abuse of the worker’s rights by the employer, or mistreatment of the employer by the worker.

10. This contract will be reviewed every __ months on the following dates: ___________
    During these reviews, both parties will have the opportunity to evaluate the contract and propose changes.

____________________  ________________  __________________  ________________
Employer’s signature     Date             Worker’s signature     Date

Additional Provisions For A Live-In Worker Contract

1. Living Space.
The worker will reside with the employer. The living space for the worker provided by the employer will be as follows:

2. Working At Night
a) The worker will be required to work at night: YES / NO (circle one)
b) If the worker is required to work at night, such night work requirements are:

c) When the employee works during the night, she will be given the uninterrupted rest time on the following day____________ from:____________ to _______________.

3. Food / Meals
a) The following meals will be provided by the employer:
b) The employee is allowed to keep her own food and prepare her own meals if she would like.
c) The employee’s daily meal breaks will be as follows:

MINIMUM WAGE LAWS AND RIGHTS²

Who gets minimum wage? Unless otherwise excluded, every employer in the state of Massachusetts should be paying his or her workers minimum wage. Under current Massachusetts’s law, the minimum wage is $9.00 per hour. Starting January 1, 2016, the minimum wage will be raised to $10.00 per hour. Starting January 1, 2017, the minimum wage will be raised to $11.00 per hour.

In Massachusetts, certain workers are excluded from Massachusetts’ minimum wage laws. The most common exclusions include:

- Workers being trained in charitable, educational or religious workplaces;
- Members of religious orders;
- Agriculture, floricultural and horticultural workers;
- Service professionals; and
- Outside salespeople not going to their offices daily.

Agricultural Workers: Agricultural workers must be paid $8.00 per hour, and may be subject to a higher rate under federal law.

Day Laborers/ Construction Workers: Even if day laborers are paid by day, the total amount paid must be equal to at least the minimum wage per hour under state and federal laws.

Domestic Workers: As previously stated, an employer may deduct from a domestic worker’s wages for food, beverages, and lodging only if the domestic worker agrees to the deduction in her written employment contract. The deduction must not result in the domestic worker making less than minimum wage.

Wait Staff/Service Employees/Service Bartenders: Wait staff workers may be paid three dollars ($3.00) an hour if they get tips of more than twenty dollars ($20.00) a month, and if their average hourly tips, when added to hourly wage, equals or is more than minimum wage.

When/How Must Employers Pay Their Workers? Workers who are paid by the hour must be paid their wages on weekly or bi-weekly basis. It is illegal for an employer to ask the worker to be paid any other way.

² See generally M.G.L Ch. 151 et. al (2014).
Wages are the payments for all hours that the employee works, including tips, earned vacation pay, holiday pay and definite commissions. Employers must pay their workers’ wages within the following time periods:

- If the worker works for five or six days during the week, then the employer must pay the worker within six days of the last day worked;
- If the worker works for seven days during the week then the employer must pay the worker within seven days of the last day worked;
- If the worker works for less than five days, then the employer must pay the worker within seven days of the last day worked.

A pay statement must include the following:

- The name of the employer;
- The name of the worker;
- Date of the check (month/date/year format);
- Number of hours worked during the pay period;
- Hourly rate;
- All deductions or increases during the pay period.

**Minimum Wage Violations**

Under Massachusetts’ law, workers have a right to bring lawsuits against their employers for wage and hour violations, including violations of minimum wage laws. If the worker wins, the worker can earn triple damages, that is three times the back pay owed to the worker), plus, attorneys and litigation fees.

**Record Keeping Requirement**

Under Massachusetts and federal law, employers must keep records of every hour that a worker works. For this reason, workers and employers should use a “time log.” By tracking the hours worked, both the employer and worker can be protected from possible wage and hour disputes.

Below is a sample time log. Although employers do not have to follow this exact format, it is important that employers track the day of the week, dates, times and total hours worked by their workers. Setting up monthly time sheets allows for easy management of records.

**TIME LOG (MONTH/YEAR): ____________________________

<table>
<thead>
<tr>
<th>DAY</th>
<th>DATE</th>
<th>IN</th>
<th>OUT</th>
<th>TOTAL HRS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday</td>
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<td>Tuesday</td>
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<tr>
<td>Sunday</td>
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</tr>
</tbody>
</table>

**FAQS ON EARNED SICK TIME**

Q. *Who can earn sick time?*
A. All employees including domestic workers, janitorial staff and construction workers.

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3 These questions and answers are based on the latest initiative to amend Chapter 148 of the Massachusetts General Laws. See *Earned Sick Time for Employees*, Secretary of the Commonwealth of Massachusetts, http://www.sec.state.ma.us/ele/ele14/pip144.htm
Q. How and when is sick time earned?
A. One sick time hour is earned for every 30 hours worked from the time of the initial hire or starting July 1, 2015 (whichever is later).

Q. How much sick time is the employer required to offer the worker?
A. If the employer has less than 11 workers, then the worker can earn and use up to 40 hours of unpaid sick time per calendar year. If the employer has 11 or more workers, then the worker could earn and use up to 40 hours of paid sick time per calendar year.

Q. When can a worker use their sick time?
A. Workers can take advantage of their earned sick days three months after the time of hiring. Workers may use their earned sick times for physical or mental illness, injury or mental condition, or to attend routine medical appointments for herself or a child, spouse, parent or parent of a spouse.

Q. Does the worker have to notify his or her employer in advance before taking earned sick time?
A. A worker should make a good-faith effort to notify the employer before taking the earned sick time if the worker knows he or she will need to take a sick day in advance.

**Occupational Safety and Health Administration (OSHA) Safety and Health Standards**

Under OSHA law, workers are entitled to working conditions that do not pose a risk for serious harm. To help assure a safe and healthful workplace, the law provides most workers with many workplace rights. For more information on your rights under OSHA please visit: https://www.osha.gov/workers/index.html.

**Cleaning and Janitorial Services**

**Health Risks.** There are many possible side effects that you may experience as a consequence of improperly cleaning with chemical products. If you experience any of these symptoms tell your employer and ask to see a doctor immediately:

- Coughing
- Wheezing
- Red, itchy eyes
- Skin rashes
- Skin and eye burns
- Shortness of breath
- Sore throat
- Headaches or dizziness
- Nose bleeds
- Asthma

**The Dos**

Employers should provide workers with the following:

- Sufficient airflow when using cleaning products
- Protective clothing, gloves and safety goggles, when needed
- Clearly labeled cleaning products
- Training on the hazards of cleaning chemicals and safe work practices; this includes knowing: (1) the hazards of the products BEFORE using them, (2) how to use and store the products, (3) how and when to dilute the products, (4) what to do in the event of an emergency, (5) how to obtain and use hazard information on labels and material safety data sheets, and (6) how and when to use protective gear.

**The Don’ts**

- Don’t mix products with ammonia and bleach – the result may be the release of dangerous toxic gases that can cause severe lung damage
- Don’t forget to wash your hands after using cleaning chemicals and before eating, drinking or smoking

* Safety tip: Employers should consider using “Green Cleaners” at the workplace. Green cleaners are cleaners that are safer to use and less harmful to your health and the environment
RESIDENTIAL CONSTRUCTION

Health Risks. There are many possible health risks associated with being a residential construction worker. The following are some of the most common ones you may face:

- Falls are the leading cause of death in construction – and falls from ladders make up a third of those deaths
- Equipment-related injuries
- Faulty scaffolding and stairways

The Dos
Employers must provide workers with the following:

- Fall Protection devices and training for any worker doing residential construction at six or more feet (i.e. guard rails, safety nets, etc.).
- Ladders must be correctly placed according to the type of ladder it is (e.g. a non-self supporting ladder must be 1 foot away from the wall for every 4 feet of length from the ladder).
- Training on how to use industry-related equipment such as nail guns, saws, drills, sanders and other power-operated tools
- Personal protective equipment (e.g. rubber boots with steel toes, eye protection, hard hats, etc.) Employers cannot require workers to provide their own personal protective equipment.
- Safe scaffolding and stairs for workers to use during the construction process.

DOMESTIC WORKERS
Although OSHA does not currently cover domestic workers, the Massachusetts DWBoR will provide guidance on safety standards for domestic workers during 2015-16. Make sure to check BIC’s website to learn about what progress is being made n this issue.

WORKER’S COMPENSATION & UNEMPLOYMENT BENEFITS

WORKERS’ COMPENSATION
As mentioned earlier, all Massachusetts employers are required to have workers’ compensation insurance for their employees. Workers compensation is a type of insurance that covers the cost of any work-place accidents. The Department of Industrial Accidents is the governmental agency that is in charge of fulfilling workers’ compensation claims.

Types of Benefits:

- **Temporary Total Incapacity Benefits** – to receive this types of benefit, your injury or illness must make you unable to work for 6 or more full or part-time months. These benefits will be 60% of your average weekly wage. You can earn these benefits for up to 35 months.
- **Partial Incapacity Benefits** – to receive this type of benefit, you must be able to still work part time. You can receive up to 75% of the total incapacity benefits you would be eligible for.
- **Permanent and Total Incapacity Benefits** – to receive this type of benefit, your injury or illness must make you unable to work permanently. These benefits will be two-thirds of your average weekly wage. You can earn these benefits for as long as you are disabled.
- **Medical Benefits** – to receive this type of benefit, your injury or illness must require medical attention. These payments can be applied toward prescription costs and travel expenses for medical visits. You can earn these benefits for as long as you need medical attention.
- **Permanent Loss of Function and Disfigurement Benefits** – to receive this type of benefit, your injury or illness must have resulted in the permanent loss of a bodily function (like walking, driving, etc.), scarring (only for scars on your face, neck or hands), and/or disfigurement. You receive a one-time
payment for these types of injuries. This benefit is in addition to other payments for medical bills and lost wages.

- **Survivors’ and Dependents’ Benefits** – the spouse or child of the employee may receive this type of benefit for a loved-one who has died because of a work-related injury or illness. Relatives can receive these survivor benefits for as long as they remain dependent (i.e., until a child turns 18 or a spouse remarries).
  
  - *Note on Burial Costs* – the insurer will pay up to $4,000 for reasonable burial expenses in the event an employee has died from a work-related injury or illness.

**To Receive Your Benefits:** Your workplace injury must have resulted in loss of at least 5 full or part-time days of work. Within 7 days of the 5th affected workday, your employer must file the *Employer’s First Report of Injury or Fatality* (Form 101 is available at [http://www.mass.gov/lwd/docs/dia/forms/f101.pdf](http://www.mass.gov/lwd/docs/dia/forms/f101.pdf)).

In most workers’ compensation cases, you will likely not need an attorney. If you are denied your workers’ compensation benefits, you have the right to appeal the decision. Again, you do not need an attorney to appeal, but depending on the complexity of your case, you may want to consider consulting an attorney or BIC to make sure you receive your benefits.

**Unemployment Benefits**

In Massachusetts, the Department of Unemployment Assistance (DUA) provides temporary income (or unemployment benefits) to workers who are unemployed because they were fired without cause. Importantly, these rights extend to domestic workers, workers in residential construction and janitorial services.

To apply for benefits, please visit the DUA’s website at [https://uionline.detma.org/Claimant/Core/Login.ASPX](https://uionline.detma.org/Claimant/Core/Login.ASPX) (you will need your social security card number). Once you apply for benefits, your employer has to respond to the DUA with information about your wages and the reason for termination. The DUA will then determine whether you qualify for the claim, and if you do it will send the benefits to you. Either you or your employer may request a hearing after receiving this notice of benefit approval or denial.

To qualify for unemployment benefits:

- You must have earned 30 times the amount of unemployment benefits you are able to collect AND made $3,500 during the base period. The base period is the last four completed quarters (usually a year) before you file your claim. For example if you made $240 weekly and are eligible for a benefit rate of $120 a week then you must have made at least $3,600 ($120 x 30) for that base period.
- You must be able to work and be searching for a new job.

Please note that your benefits can be changed or taken away if:

- You quit, are fired or suspended from a new job
- Receive a pension
- Are attending school or college courses without DUA approval
- Receiving Vacation Pay
- Receiving Workers’ Compensation
- Applying to another state or federal unemployment program
- You become self-employed
- You have an overpayment

If your benefits are unjustly taken away from you – you have the right to appeal this decision. For more information about the appeals process, visit [http://www.mass.gov/lwd/unemployment-insur/appeals/](http://www.mass.gov/lwd/unemployment-insur/appeals/). Your appeal must be filed within 10 days after you receive notice your benefits have been taken away.
Where to Go for More Information or Assistance

Brazilian Worker Center Inc.
14 Harvard Ave 2nd Floor
Allston, MA 02134
617-783-8001 - info@braziliancenter.org
www.braziliancenter.org

Tom Smith, Justice at Work

Massachusetts Attorney General’s Office, Fair Labor Division
One Ashburton Place
Boston, MA 02108
Fair Labor Hotline: 617-727-3465

Wage complaint forms can be obtained from the Office of the Attorney General’s website: www.mass.gov/ago.

US Department of Labor, Wage & Hour Division
Phone: 1-866-487-9243
http://www.dol.gov/whd/

Boston District Office
Phone: 617-624-6700
John F. Kennedy Federal Building
Room 525
Boston, MA 02203

Taunton Area Office Phone: 508-821-9106
104 Dean Street Room 201
Taunton, MA 02780

Occupational Safety and Health Administration
OSHA Regional Offices, Region I, Boston Regional Office
JFK Federal Building, Room E340
Boston, MA 02203
617-565-9860
http://www.osha.gov

Massachusetts Commission Against Discrimination
One Ashburton Place Sixth Floor, Room 601
Boston, MA 02108
Phone: 617-994-6000
http://www.mass.gov/mcad/