

# Protecting Massachusetts' Workers

*Massachusetts  
Attorney General's  
Labor Day Report  
Fiscal Year 2017*



SEPTEMBER 04, 2017



On Labor Day 2017, we celebrate the contributions of the labor movement and its vision for a fair and just society that benefits all working people. We honor the working men and women of Massachusetts, whose hard work, ingenuity and passion drive our state's economy forward. We praise responsible employers who create good jobs, and treat their employees with dignity and respect.

The Attorney General's Office (AGO) is the state's primary enforcer of laws relating to wages, public construction, and child labor. The AGO's Fair Labor Division (Fair Labor) protects employees from exploitation and wage theft through robust enforcement, strong partnerships and community education. Threads of these partnerships are woven throughout this year's report - joint enforcement and public awareness campaigns with fellow government agencies; ongoing collaboration with allies in the labor and advocacy community via the Attorney General's Labor Advisory Council and the Fair Wage Campaign; and regular outreach to employers and industry groups.

Through these partnerships, Fair Labor maximizes its resources and impact to address the growing numbers of wage theft complaints. Fair Labor's partners also help it to set informed enforcement priorities, and support workers and responsible employers. Through strategic enforcement, Fair Labor doubled its assessed restitution and tripled penalties from July 1, 2016 to June 30, 2017 (FY2017) compared to FY2016.

Even more important than any numbers, the AGO has stood firmly with working people. Fair Labor led a coalition of eleven states in filing an *amicus* brief in furtherance of the rights of workers to organize and bargain collectively. Its dedicated staff have met with, trained, and served thousands of workers and employers throughout Massachusetts.

Together, we are committed to ending wage theft in Massachusetts.

“My office is committed to supporting working families in Massachusetts. That's why our Fair Labor Division works every day to ensure that workers get paid the wages they are owed and that businesses know the rules.”

- Attorney General  
Maura Healey

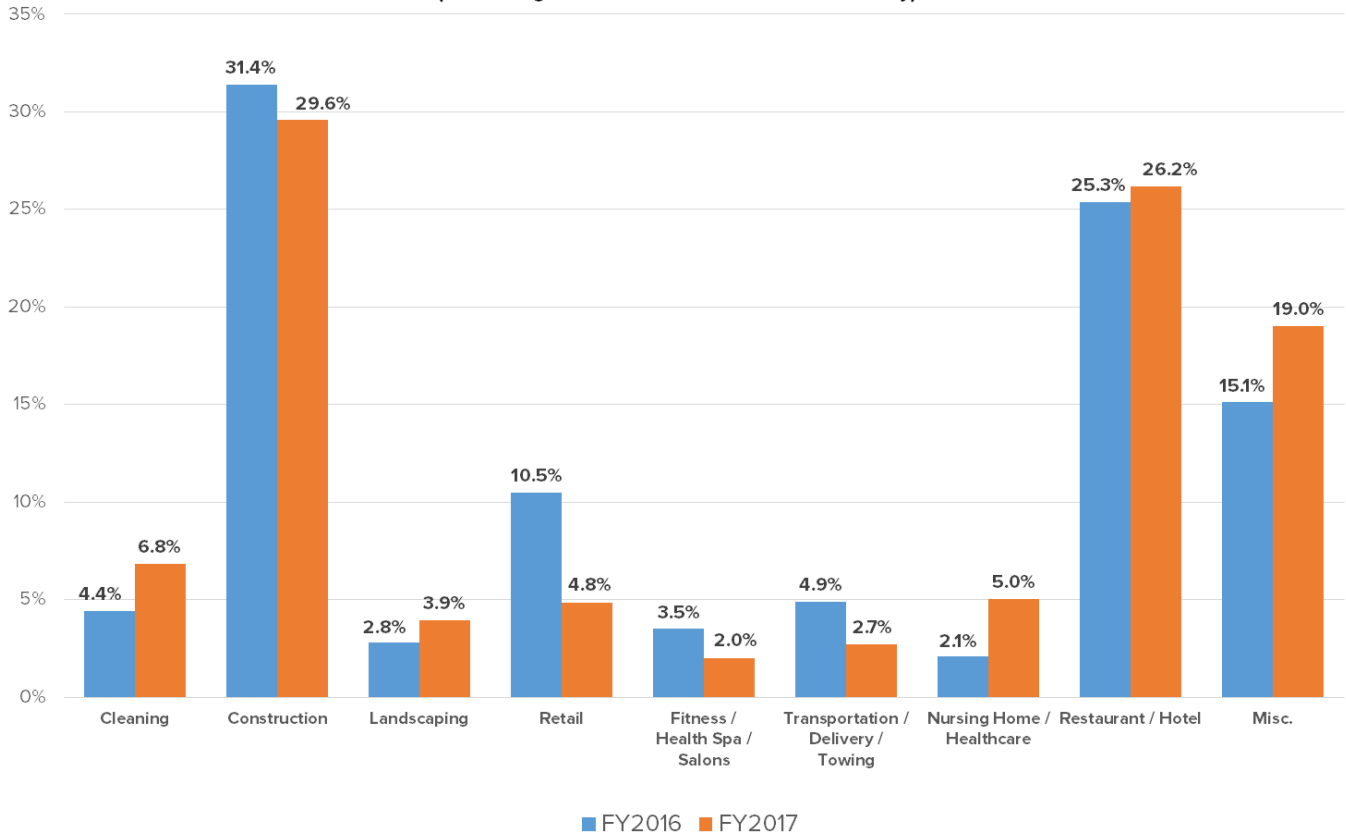
# FISCAL YEAR 2017

**\$6,015,527.06**  
*in restitution*

**\$2,666,150.92**  
*in penalties*

## Citations by Industry

(Percentage of citations issued in each industry)

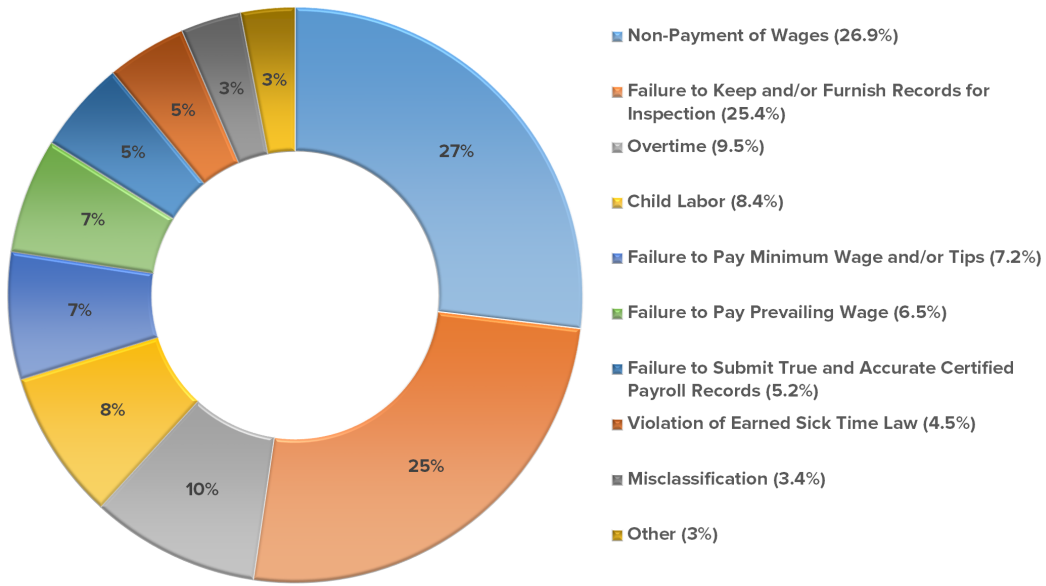


Last year, Fair Labor investigations spanned more than twenty industries and uncovered violations of numerous workplace laws. The construction and restaurant industries continue to have the highest percentage of violations cited. Some of the most common violations include non-payment of wages, failure to keep true and accurate records, failure to furnish records for inspection, failure to pay the proper overtime rate, failure to pay prevailing wage and various child labor violations.

Although casework is a critical part of addressing worker exploitation, we are also

working to expand the resources available to combat wage theft in other ways -- from helping workers connect with advocates and attorneys at our monthly Wage Theft Clinic, to updating our web content and posters to make them more accessible and user friendly, to regular compliance visits that bring visibility to workplace protections. In the past year, we have also increased transparency by making information about [complaints](#) and [enforcement actions](#) available via our online data portals so that contractors, workers, government agencies, consumers, and other members of the public can make informed decisions.

**Most Common Violations in FY2017**  
(percentage of violations cited)

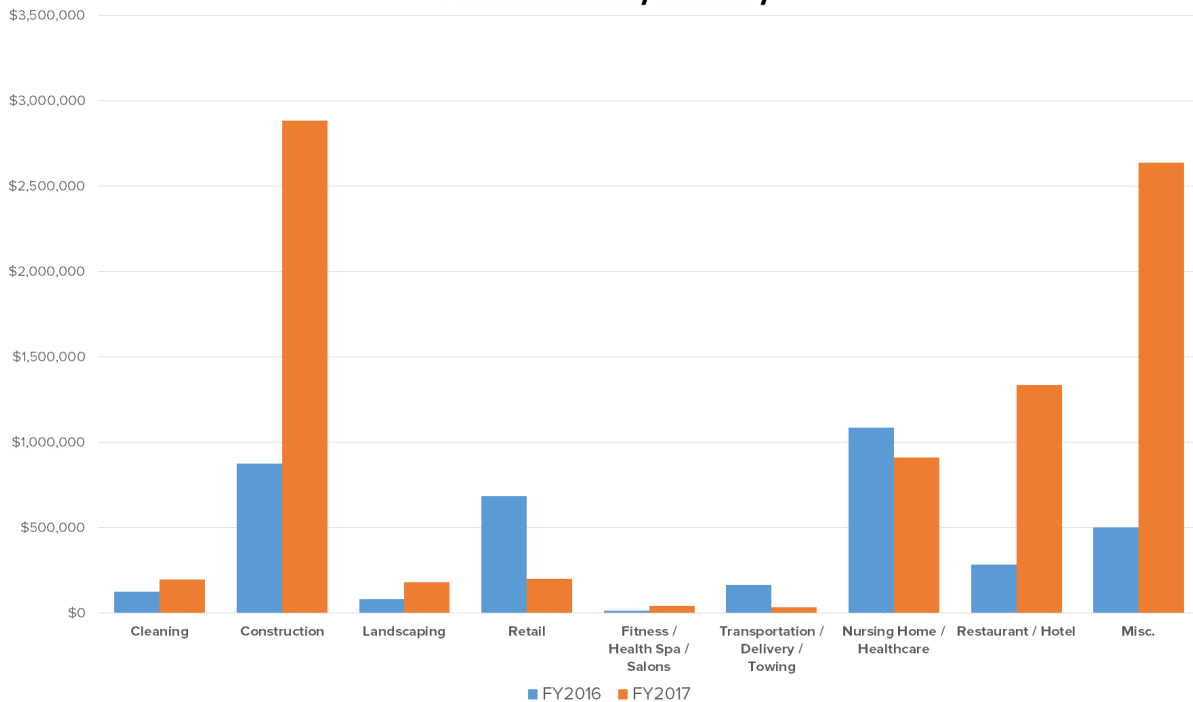


## Total Restitution and Penalties

**\$3,823,392.07**  
FY 2016

**\$8,681,677.98**  
FY 2017

### Assessments by Industry



# DEFENDING THE RIGHTS OF IMMIGRANT WORKERS

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Immigrant workers have always been among the most vulnerable of wage theft victims. Since November 2016, changes in national immigration enforcement priorities and anti-immigrant rhetoric have left workers feeling more and more uneasy engaging with institutions like schools, hospitals, law enforcement and courts. It is not surprising that Fair Labor has also seen a growing reluctance by immigrant workers to report wage violations and assist us in investigations. If left unchecked, this trend not only hurts these workers, but diminishes workplace standards for everyone, while allowing the underground economy to thrive.

To address immigrant worker concerns, the AGO issued an advisory on May 1, International Workers' Day, reaffirming that all workers have legal protections and that our office is here to serve them, irrespective of immigration status. Additionally, Fair Labor has reviewed and adjusted its policies and practices this year to address challenges that limited English proficient workers may have when contacting our office and to ensure that they will be able to obtain information and effective help in their preferred languages. Fair Labor continues to work closely with immigrant worker centers and other community and labor organizations to support all workers.

# INNOVATIVE RESPONSE: WAGE THEFT CLINIC

In October 2016, the AGO launched its free, monthly Wage Theft Clinic in partnership with community based organizations, legal services providers, and members of the private bar. The clinics supplement the AGO's enforcement efforts by connecting workers with attorneys and other advocates who can help them pursue wages on their own. At the clinics, workers receive advice and information in their own language, get help drafting a demand letter or filing suit, or even find a lawyer to take their case. More than 230 workers have received free consultations at Wage Theft Clinics so far, and more than \$65,000 in wages has been recovered through the clinics.

The Clinic is hosted by Suffolk University Law School, and its thirteen partners include immigrant worker centers: the Brazilian Women's Group, Brazilian Workers Center, Casa del Trabajador/Metrowest Workers Center, the Chelsea Collaborative, Chinese Progressive Association, MassCOSH; legal aid providers: Greater Boston Legal Services, Justice At Work, Lawyers for Affordable Justice, MetroWest Legal Services, and Volunteer Lawyers Project; and law schools: Suffolk University Law School and Harvard Legal Aid Bureau. The clinic also relies on members of the private bar, the Boston Bar Association and the U.S. Department of Labor Wage and Hour Division to serve workers who are not eligible for other organizations' services. Workers may retain private bar attorneys to represent them post-clinic in these fee-generating cases.

"The Clinic is an innovative approach to a big problem. We are very happy to work with the AG to ensure that low income communities are served. Our workers are taking advantage of this service to recover their wages, overtime and benefits that they worked hard for."

~Chelsea Collaborative  
Organizer

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"We recently recovered \$200 for a worker that we met at the Clinic. That might not seem like a lot of money, but it was really important for the worker. She was so appreciative! The worker explained, 'I cleaned her house all day for that money.'"

~Brazilian Workers Center  
Organizer



# PROTECTING YOUNG WORKERS

Fair Labor enforces state laws that control when, how much, and in what kinds of work minors may be employed. These laws reflect the particular vulnerability of young workers, who may be relatively inexperienced, hesitant to say “no” to anything that is asked of them, and balancing work with the demands of their education. Minors also tend to be employed in workplaces, like restaurants and health care facilities, with high rates of work-related injuries, and they are injured at higher rates than adults.<sup>1</sup>

Every year in Massachusetts, more than 300 teens visit emergency departments for work-related injuries.<sup>2</sup> As the job market for young workers recovers, Division investigations have led to more citations and penalties in recent years. This year, Fair Labor issued 47 citations to 46 employers and assessed more than \$270,000 in penalties – more than three times the penalties assessed last year.

In addition to enforcement, Fair Labor is committed to community engagement that educates young workers and advocates about their legal rights and how to stay safe on the job. Our outreach activities included addressing the rights of young workers at a presentation for educators and clinicians at the Youth at Risk conference at Salem State University and presenting to nearly 300 young workers employed through the AGO’s Healthy Summer Youth Jobs Grant Program, which funds summer jobs across Massachusetts focused on health and well-being.

The Fair Labor Division took part in a very successful young worker safety social media campaign conducted by the Youth Employment Safety (YES) Team, a group of state and federal agencies dedicated to young worker safety. Timed to coincide with Workers’ Memorial Day and the lead-up to the summer jobs season, the month-long campaign featured targeted Facebook ads and posts to member agencies’ social media accounts with the hashtag #WorkSafe. Campaign images also ran on MBTA vehicles and MassDOT billboards. In all, the Facebook ad campaign reached 410,627 unique targeted users prompting 19,432 link clicks and 13,304 users to visit the YES Team website, which contains important information about youth employment permits and workers’ rights regarding wages, safety and basic labor standards.

- A McDonald’s franchisee was cited **\$50,000** for employing minors too many hours in a day or week and outside of permissible work hours.
- A Five Guys franchisee was cited **\$25,000** for failing to have work permits on file, employing minors outside permissible hours, and having minors work unsupervised after 8 p.m.
- A Taco Bell franchisee was cited **\$25,000** for failing to have work permits on file, employing minors outside permissible hours, and employing minors too many hours in a day.

1 Massachusetts Department of Public Health, Teens At Work: Injury Surveillance System, “Young Workers Project: Work-Related Injuries to Teens in Massachusetts, 2009-2013,” June 2016, available at <http://www.mass.gov/eohhs/docs/dph/occupational-health/18-and-under/teen-work-injury-update-16.pdf> (accessed May 10, 2017).

2 Id.



# SAFEGUARDING DOMESTIC WORKERS' RIGHTS

Massachusetts recognizes that domestic workers face many unique challenges due to the location and dynamics of their workplaces. In 2015, a Domestic Workers' Bill of Rights became effective, and it provides additional workplace protections for the state's housekeepers, cleaners and caretakers working in private homes. During FY2017, Fair Labor cited or settled over \$47,000 in restitution and penalties for domestic workers who had not been paid in accordance with Massachusetts law by their employer families.

The Fair Labor Division works to ensure that domestic workers know they can assert their workplace rights and that they must be paid for their labor, even while working within non-traditional workplaces. When investigating cases involving domestic workers, Division staff are trained to look for indicia of labor trafficking.

Several domestic worker cases have involved information-sharing and referral with federal, state and local law enforcement agencies and community partners when there is a suspicion or evidence of forced services. As a law enforcement agency, the AGO will continue to certify confirmation when a qualifying crime has occurred and a victim is actively assisting in the detection, investigation or prosecution of criminal activity, for U and T visa applications by persons who have been victims of crimes including trafficking.

## EARNED SICK TIME

When the Earned Sick Time Law first went into effect, the Fair Labor Division spent many months focusing on public education and assisting employers who were trying to bring their policies and practices into compliance, in addition to pursuing restitution to workers who had been improperly denied this benefit. Standard investigation and enforcement gradually replaced this compliance-based approach during the early months of 2016.

In FY2017, Fair Labor cited and/or settled 27 earned sick time cases, totaling \$160,000 in restitution and penalties. We continue to give particular attention to earned sick time, as a newer protection, and routinely review employers' earned sick time policies and records to ensure compliance.

In keeping with other jurisdictions, Fair Labor is using the Center for Disease Control's report finding that the average full-time employee uses 3.7 days of sick time per year to calculate restitution owed to employees whose employers failed to provide paid sick time.

In addition to our investigation and enforcement activities, the AGO successfully defended the Earned Sick Time Law in a case challenging its application to unionized construction industry employers.<sup>1</sup>

<sup>1</sup> Labor Rel. Div. of Constr. Indus. of Mass. v. Healey, 844 F.3d 318 (1st Cir. Dec. 16, 2016)

# PRIORITY INDUSTRIES

## STAFFING AGENCIES

### ENFORCEMENT:

As the push toward outsourcing labor continues, Fair Labor is maintaining its focus on abuses in the staffing agency industry and pursuing payments from client companies that ultimately benefit from those abuses. In one case, the AGO collaborated with the U.S. Department of Labor (USDOL) to investigate UnWrapped, Inc., a Lowell manufacturer, after receiving information of questionable payroll practices from the Council on the Underground Economy. The investigation revealed minimum wage, overtime, earned sick time, and child labor violations affecting hundreds of employees paid through staffing agencies. In addition to paying nearly \$1.2 million in restitution and penalties through settlement agreements with the AGO and USDOL, the company agreed to reinstate two workers who had been fired after cooperating with the investigation, with back pay; improve its oversight of the staffing agencies it uses; and post the Massachusetts wage and hour poster in its facility.

Additionally, Fair Labor issued \$87,500 in citations to three staffing agencies operating at the facility for records violations and violations of the Temporary Workers Right to Know and Earned Sick Time Laws.

Fair Labor reached another settlement agreement with a Dorchester commercial laundry facility, doing business as Bay State Linen. This company hired the vast majority of its employees through a staffing agency. Fair Labor's investigation found that on average, employees worked 65-70 hours per week, and that they were paid subminimum wages with no overtime premium. The company has agreed to pay up to \$900,000 in restitution to 177 workers.

### COMPLIANCE:

Division investigators engaged in a concerted effort to check for compliance with the Massachusetts Temporary Workers Right to Know Law among the state's registered staffing agencies. During the winter months of FY2017, Fair Labor visited 68 staffing agencies across the state to document compliance with the Notice of Rights poster and Job Order requirements. These compliance visits ensure that agencies are upholding their unique responsibilities to provide basic job assignment information to temporary workers, many of whom are among the most vulnerable of all workers.

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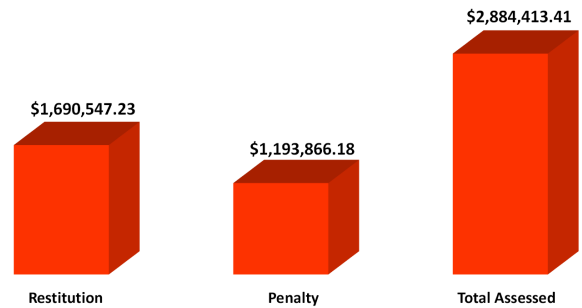
# RESTAURANTS & HOTELS

During this fiscal year, nearly 12 percent of complaints received by the Fair Labor Division related to violations that occurred in restaurants and hotels. The allegations varied widely, ranging from illegal tip pooling, to non-payment of wages and minimum wage, to meal break violations, to earned sick leave. As a result of the high complaint volume, Fair Labor focused enforcement in this area, issuing 136 citations against 82 unique employers resulting in nearly \$900,000 in assessed restitution and \$450,000 in penalties. Fair Labor also visited dozens of restaurants, large and small, as part of our compliance effort. Investigators spoke with hundreds of workers, distributed materials and provided updated and required posters to employers. It is expected that Fair Labor will continue to devote resources to this industry in the coming year.

## NOTABLE CASE: BLOOMIN' BRANDS, INC.

National restaurant company, Bloomin' Brands, Inc., d/b/a Outback Steakhouse, Carrabba's Italian Grill, Bonefish Grill and Fleming's Prime Steakhouse and Wine Bar, agreed to pay \$210,000 in restitution and penalties to resolve allegations that it failed to pay more than 2,500 Massachusetts employees for mandatory online trainings. As part of the settlement, the company agreed to reform its recordkeeping and payroll practices and submit records to the Attorney General to prove compliance with wage laws.

Citations Issued to Employers in the Construction Industry  
FY2017



# CONSTRUCTION

Consistent with prior years, Fair Labor continues to receive a high number of complaints related to work in the construction industry. Nearly 9% of all complaints filed in FY2017 fell into this category. As such, construction enforcement and compliance remains a priority. In FY2017, Fair Labor issued 135 citations against 75 employers in the construction industry.

## NOTABLE CASE: SULLIVAN PAINTING AND DEREK SULLIVAN

Fair Labor secured the conviction of this Lynn painting contractor for intentionally not paying workers their wages, resulting in a sentence of three years of probation, a one-year debarment from public contracts, and a \$2,500 fine. The investigation began with complaints referred by the Chelsea Collaborative and revealed that Sullivan routinely underpaid workers or did not pay them at all for weeks of work.

Sullivan had a history with our office; he had pleaded guilty to wage and hour charges in 2009 and was sentenced to two years of probation.

# PARTNERING WITH AWARDING AUTHORITIES

Fair Labor has also made outreach to awarding authorities (the public entity contracting out the public work) a central piece of prevailing wage enforcement. Last year, Fair Labor trained more than 350 procurement officials through the Inspector General’s Massachusetts Certified Public Purchasing Official (MCPPO) seminars on what the law requires of contractors performing public works.

In addition to trainings, awarding authorities are now notified of prevailing wage citations relating to their public works projects, and Fair Labor offers reminders to the awarding authorities so that they can fulfill their responsibility to ensure that public funds are directed to only responsible employers. During FY2017, Fair Labor sent 293 contractor citation notifications to state and local awarding authorities.

“My office enforces prevailing wage laws to protect good paying jobs and make sure that honest companies can compete. Together with workers and contractors, we’re building a stronger Massachusetts for all our residents.”

Attorney General Maura Healey



# PREVAILING WAGE

## ENFORCEMENT:

The prevailing wage laws require employers to pay workers on public construction and other public works projects a special minimum hourly rate and to keep additional records in order to ensure that public dollars are properly spent. Prevailing wage enforcement has continued to be a priority for Fair Labor, recognizing that employers who receive public funds for public construction projects should be held to the highest standard. This year, Fair Labor formalized a prevailing wage team made up of investigators and attorneys who specialize and focus on this work. This focused approach resulted in 85 citations against 36 employers, totaling \$2,085,607.82 in restitution and penalties.

## NOTABLE CASE: R&A DRYWALL AND ALLEN S. VITALE

Fair Labor issued five citations totaling \$62,359 in restitution and penalties against R&A Drywall and owner Allen S. Vitale for failure to pay the prevailing wage, failure to pay the prevailing wage (subsequent offense), intentional failure to pay overtime, failure to pay overtime and failure to submit true and accurate weekly certified payroll records to the Awarding Authority.

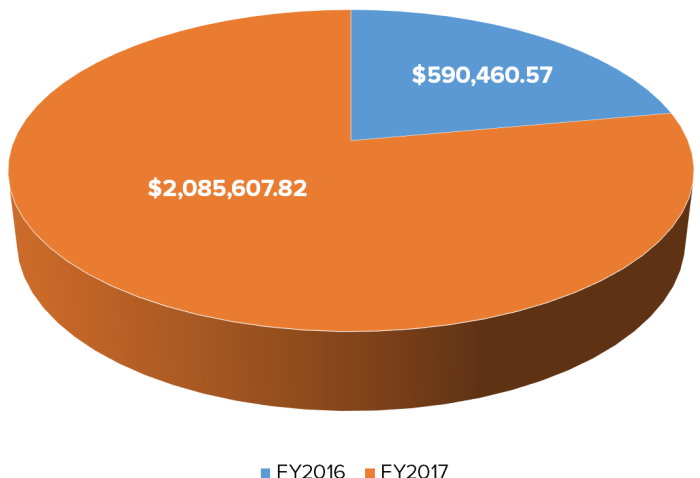
## NOTABLE CASE:

## MJ ENVIRONMENTAL, INC., AND JOSE I. PENA

A Lawrence asbestos company and its president have been cited more than \$300,000 for intentionally failing to pay the proper prevailing wage rate or overtime to its employees for work performed on public projects. The public projects included asbestos removal at elementary schools, public housing authorities and universities.

Fair Labor issued three citations, all with specific intent, against MJ Environmental, Inc. and president Jose I. Pena for failure to pay prevailing wage (subsequent violation), failure to pay overtime, and failure to submit true and accurate weekly certified payroll records to the awarding authorities (subsequent violation).

**Prevailing Wage Enforcement**  
Restitution and penalties ordered in the last two fiscal years.





“If you can’t keep workers safe, you can’t do business in Massachusetts”

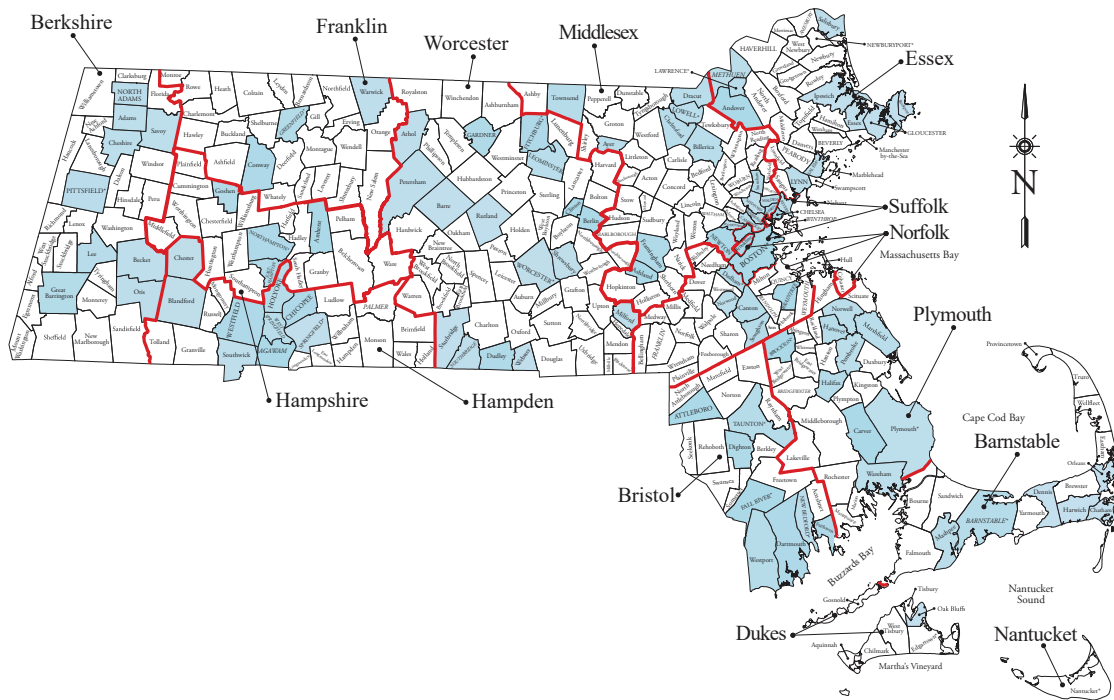
- Attorney General Maura Healey,  
Workers Memorial Day



# FAIR LABOR ACROSS THE COMMONWEALTH

Fair Labor has stepped up proactive enforcement this year by prioritizing compliance visits in select communities and industries. For example, we visited Northampton-area restaurants, Boston Chinatown businesses, large-scale construction projects, and staffing agencies. During compliance visits, we discuss the wage laws with employees and answer questions they may have, distribute the [Massachusetts Wage and Hour poster](#) and other materials to employers, and note any concerns that require follow-up.

Fair Labor investigators have also increased our visibility in communities across the Commonwealth by conducting compliance visits to other businesses in neighborhoods where they are conducting a site visit as part of an open investigation, maximizing the impact of time spent on the road. The result: 283 visits among 102 cities and towns during FY2017, making Fair Labor’s field presence (shaded in blue below) the most active and visible it has been in recent years.





# LOOKING AHEAD

It should go without saying that “an honest day’s work deserves an honest day’s pay,” but wage theft continues to threaten this fundamental principle. Massachusetts working families have lost hundreds of millions of dollars in the last year alone. The Attorney General is committed to vigorously enforcing Massachusetts’ Wage Act and related laws to ensure that workers are fully compensated in a timely manner, and to help to ensure a level playing field for businesses that follow the law. Strong enforcement also protects the Commonwealth from lost revenue in the form of taxes and unemployment insurance contributions.

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**We cannot stop wage theft solely by enforcement, nor can we do it alone.**

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We will continue to build partnerships with labor, community-based organizations and responsible employers, along with other law enforcement agencies. We will work with our partners and the AG’s Labor Advisory Council to develop best practices to addressing wage theft.

Finally, the AGO’s Fair Labor team is up to the challenge of ending wage theft. Its leadership and staff are deeply committed to the right of every working person to be fairly compensated for his/her labor, and the right of every responsible employer not to be undercut by an unscrupulous employer who chooses to exploit its workers. Fair Labor’s staff have decades of enforcement experience and more than a quarter of them speak a language in addition to English. Whether you are a new immigrant working your first job in Massachusetts or your family has been in Massachusetts for generations, you have a right to be paid a fair wage for your labor. The Fair Labor Division is here to help.

**“We need to stop wage theft to raise up working families and to allow communities to thrive.”**

**- Attorney General Maura Healey**

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