

Workplace Protections for Immigrant Workers
TALS Employment and Immigration Task Force Training
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Take-home message: Regardless of their immigration status, non-citizen workers are generally entitled to the same federal and state workplace protections as their citizen worker counterparts. However, in some (not most) instances of workplace violations, unauthorized workers may not be entitled to the same remedies as authorized workers, and there are serious practical and logistical barriers that hinder unauthorized workers' access to the protections and remedies to which they are entitled by law.

HEALTH AND SAFETY PROTECTIONS

- **Tennessee Occupational Safety and Health Act (Tenn. Code Ann. § 50-3-101 through 50-3-919):** Establishes basic health and safety standards that all covered employers must comply with, including, for example, standards regarding mandatory provision of personal protective equipment when necessary to protect employees, standards regarding access to restroom facilities and to potable water. The immigration status of a worker has no bearing on the worker's right to a workplace that complies with applicable health and safety standards.
- **TOSHA Contact Information:** 800-249-8510 (toll free); (615) 741-2793.
- **Tennessee Workers Compensation Act (Tenn. Code Ann. § 50-6-101 through 50-6-921):** Provides for disability benefits, medical benefits, and death benefits for employees of covered employers who are injured at work. The immigration status of a worker may impact a worker's right to receive workers' compensation disability benefits and/or his/her family members' rights to receive death benefits, though it should not affect a worker's right to receive medical benefits.
- **Tennessee Workers' Compensation Commission:** 1-800-332-2667 (toll free); 615-532-4812.

COLLECTIVE ACTION PROTECTIONS

- **National Labor Relations Act (29 U.S.C. § 151–169):** In addition to regulating union-employer relationships and the rights of individual workers to form, join or refuse to join a union, the NLRA protects the rights of covered employees to engage in concerted activity to improve working terms and conditions regardless of whether that concerted activity is related to a union.
- **National Labor Relations Board Contact Information:** (901) 544-0018 (Memphis office, which covers Middle and West Tennessee, or Atlanta office, which covers East Tennessee, 404-331-2896).

ANTI DISCRIMINATION LAWS

- **Title VII (42 U.S.C. § 2000e et seq.):** prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Available remedies may be affected by immigration status.
- **Section 1981 (42 U.S.C. § 1981):** prohibits race and probably alienage discrimination in the making and enforcement of contracts; standard generally parallels Title VII. Available remedies may be affected by immigration status.
- **Tennessee Human Rights Act (Tenn. Code Ann. § 42-21-101 et seq.):** prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Available remedies may be affected by immigration status. 2010 amendment allows English-only policies in the workplace under certain circumstances. *See* Tenn. Code Ann. § 42-21-401(c).
- **Enforcement Agencies:** Tennessee Human Rights Commission- (615)741-5825 or (800)251-3589; Equal Employment Opportunity Commission - 1-800-669-4000 (Memphis) or 1-800-669-4000.

FEDERAL AND STATE WAGE AND HOUR PROTECTIONS

- **Fair Labor Standards Act (29 U.S.C. § 201 et seq.):** provides minimum wage (\$7.25/hr) and overtime protections for all nonexempt employees of covered employers, regardless of immigration status.
- **Tennessee Wage Regulation Act (Tenn. Code Ann. § 50-2-101 et seq.):** no state minimum wage or overtime provisions. Requires employers to inform employees of what their wage will be and makes agreed amount enforceable; prohibits inducing or bringing workers to state through false representations about work or compensation, requires wages to be paid semi-monthly, guarantees many employees 30 minute unpaid break, provides penalties for misrepresenting wages. Should apply regardless of immigration status; some concerns regarding enforcement of Illegal Alien Employment Act, possible W-2 requirement.
- **Enforcement agencies:** U.S. Department of Labor, Wage and Hour Division (www.dol.gov); (615) 781-5344; (865) 545-4619) Tennessee Department of Labor, Labor Standards Division (Nashville Office: 615-741-2858).

FEDERAL AND STATE ANTI-TRAFFICKING LAWS

- **Trafficking Victim Protection Reauthorization Act:** prohibits a number of workplace abuses affecting immigrants including trafficking (18 U.S.C. § 1590), forced labor (18 U.S.C. § 1589), document holding (18 U.S.C. § 1592) and provides private right of action (18 U.S.C. § 1595). Continued Presence and T-nonimmigrant status available to victims of severe form of trafficking (22 U.S.C. § 7105; 8 C.F.R. § 214.11; 28 C.F.R. § 1100.35) and U- nonimmigrant status for victims of trafficking, forced labor, peonage, slave trade, or similar activities (8 U.S.C. § 1101(a)(15)(U)(i); 8 C.F.R. § 214.14).
- **Tennessee Forced Labor and Trafficking Statutes** (Tenn. Code Ann. § 39-13-301; § 39-13-307; § 39-13-308): criminal prohibitions against involuntary labor servitude and trafficking for forced labor or services.

Links to relevant documents:

U.S. Department of Labor- Immigration and Customs Enforcement Memorandum of Understanding (March 31, 2011):

http://www.nelp.org/page/-/Justice/2011/DHS-ICE-DOL_MOU_Final_3-31-2011.pdf?nocdn=1

U.S. Department of Labor, Wage and Hour Division, U-Visa Protocol (Apr. 28, 2011):

http://www.dol.gov/whd/FieldBulletins/fab2011_1.htm

National Labor Relations Board, Office of the General Counsel, Memorandum, Updated Procedures in Addressing Immigration Status Issues that Arise During NLRB Proceedings (June 7, 2011):

<http://mynlrb.nlr.gov/link/document.aspx/09031d458049525b>

Immigration and Customs Enforcement Brochure Explaining Continued Presence

<http://www.doj.state.wi.us/cvs/documents/ICEContinuedPresenceBrochure.pdf>

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