

Minimum Wage: *MGL ch 151, Section 1*; Overtime: *Section 1A*



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Notice of Rights of Domestic Workers

Domestic Workers Bill of Rights, M.G.L. Chapter 149, Section 190

Employers: You **must** give a *Notice of Rights* to domestic workers you hire. You may use this Notice for that purpose.

Definition of Domestic Worker: *MGL Ch. 140, Section 190*

Legal Rights of Domestic Workers

When you first get hired as a domestic worker, your employer **must** give you written information about your legal rights. Read below to learn more about your rights.

This Notice is also available in Spanish and Portuguese at www.mass.gov/ago/dw.

Questions? Contact the Attorney General’s Fair Labor Division at (617) 727-3465 or (617) 727-4765 TTY

Who must receive this notice?

A notice of state and federal workplace rights must be given to any **worker who provides domestic services in a household**, such as:

- Housekeeping,
- Cleaning,
- Childcare,
- Cooking,
- Home management, or
- **Caring for someone who is old or sick.**

It does **not** need to be given to:

- Babysitters who normally work less than 16 hours per week, or
- Personal care attendants (PCAs).
[A person working under the MassHealth PCA program]
- Employees of staffing, placement, or employment agencies licensed or registered pursuant to *M.G.L. c. 140*.

Who is Your Employer? *This issue to watch for is: MIS Classification*

Your employer is usually the person or business that hired you. For example, if someone hired you to work in his or her home, that person is your employer. If more than one household came together to share your services, such as in a “nanny share,” then both families are your employers.

If you work for a company, like a housecleaning service, doing domestic work in other people’s homes, then that company would be your employer.

Written agreement *MGL ch 149, Section 190(e); 940 CMR 32.04(3)*

If you work 16 or more hours a week, your employer must give you a **written** agreement that includes information about:

Regular and overtime rate of pay	Any other benefits	Notice of termination by you or employer
Raises or increases in pay for added duties or skills	Charges or pay deductions	Why and when the employer will enter your living space (live-in workers)
Work schedule and job duties	Eligibility for workers’ compensation	What is “cause” for termination (live-in workers)
Rest periods, sick leave, holidays, vacation, personal days	Process for raising and resolving concerns	

This agreement must be in written in a language you understand, and it must be signed by you and your employer. You must receive this agreement before you begin work. You may use the Attorney General’s Employee Agreement template. It’s available at: www.mass.gov/ago/dw.

Payroll and Timekeeping Records *MGL Ch. 151 Section 15*

Your employer is required to keep **payroll records** that include how much you worked each day and each week, how much you were paid, and any deductions that were taken. The employers must keep payroll records for 3 years. You have the right to see your own payroll records at a reasonable time and place.

You must receive a **paystub** with your pay that shows the number of hours worked each day, your hourly rate, and any deductions from or additions to your pay. Your paystub can be paper or electronic.

If you work 16 or more hours a week, your employer must give you a **timesheet** at least every two weeks that shows the number of hours worked each day. The timesheet should be signed or acknowledged by both you and your employer.

If you disagree with the hours listed and cannot come to an agreement with your employer, you have the right to make a note of the number of hours you believe you worked. Signing a timesheet does not mean that you cannot later claim any additional wages owed. Your employer cannot withhold your pay if you do not sign the timesheet.

Job Evaluations *MGL Ch. 149, Section 190; and Section 52C*

You have the right to ask your employer for written feedback about your work: **Written Records Required: MGL Ch. 151, Section 15, 19**

- 3 months after you start working, and
- once a year after that.

If you disagree with something your employer writes on the form, you may ask him/her to change it to something that you both agree with.

If you cannot agree, you may write a letter to your employer explaining your view. That letter must be given to anyone who receives a copy of your job evaluation.

Pay *MGL Ch. 149, Section 190; Ch. 151 Section 1A; Ch. 149, Section 148*

You must be paid **at least** the state minimum wage. The minimum wage is \$10 an hour in 2016. Starting January 1, 2017, workers **must** be paid at least **\$11.00** an hour.

You must be paid for all hours you work. This includes all time that you are required to be someplace or doing work for your employer. **Being on Salary does not exempt the worker from overtime**
Employers must pay overtime to workers who work more than 40 hours in any week. Overtime pay is at least 1.5 x the regular rate of pay for each hour over 40 hours. **FLSA 29 USC Section 207(a)(1)**

Your employer must pay you promptly, usually within 6 days of the end of the pay period. If your employment ends, your employer must pay you for all hours worked and any unused vacation time right away – the same day or the next regular pay day.

Rest Periods *during work time: 454 CMR Section 27.02 MGL Ch. 149, Sections 100,*

During a rest period, you must be free of all work duties and be allowed to leave the workplace. Your rest periods may be paid or unpaid. (Breaks of less than 20 minutes generally must be paid.) You and your employer should agree on this when you are hired. You may *choose* to work if you want to. If that happens, you **must** be paid for the rest period. **190**

If you work **6** or more hours in a day you have a right to a **30-minute** meal or rest break every workday.

If you work **40** or more hours a week, you must get at least **1 full day** (24 hours) off each week and **2 full days** (48 hours) off each month. You can give up this rest period through a written agreement with your employer in a language you understand.

If you are **required to be on duty for 24 hours or more**, you and your employer may agree that some meal periods, rest periods, or sleep periods **up to 8 hours** will not be counted as paid working time. **Analogous to: Live In Exemption in Federal FLSA**

If you are on duty for **less than 24 hours**, your employer **must** pay you for all meal, rest, and sleeping periods, unless you have no work duties and are allowed to leave during those times.

Pre-Paid Hours

If your employer pre-pays you, but then does not give you enough hours to work in that pay period, your employer must not make you pay back any part of your wages or deduct wages from a future pay period.

You and your employer may agree that you will “make up” the time in a later week (“banking hours”). This is allowed for up to 24 hours of banked time, but only if you have agreed to it in writing in a language you understand. If you work more than 40 hours in a week, including banked hours that you were making up, then you still must be paid at time-and-a-half for any hours over 40.

Pay Deductions

Employers are not allowed to deduct money from an employee's pay unless the law allows it or the employee asked for the deduction for his/her own benefit.

Examples of required or allowed deductions

- State and federal tax withholding,
- Social Security and Unemployment,
- Wage garnishments, such as for child support, for health insurance

Examples of deductions the employee can agree to

- Contributions to the worker's savings or retirement accounts
- Worker's share of health insurance premiums
- Food and drinks - An employer may only deduct the cost of food and beverages from the worker's pay if the worker chooses it voluntarily, and is allowed to store, prepare, and eat and drink the foods s/he prefers.
The employer must **not** charge more than \$1.50 for breakfast and \$2.25 for lunch or dinner, and the deduction must not be for more than the actual cost.
- Housing - An employer **must not** deduct the cost of your room (housing) if s/he requires you to live in that place. An employer may deduct the cost of your room (housing) only if **you choose to live there and your housing meets the local and state health code standards for heat, water, and light.**
The employer must not charge more than: \$35 a week for a room with 1 person; \$30 a week for a room with 2 people; or \$25 a week for a room with 3 or more people.

No deductions are allowed for food, drinks, or housing without your written permission in a language you understand.

Public Benefits

Social Security & Income Taxes

When employees earn more than \$1,900 a year, the employer must deduct money from your paycheck and send it to the government to fund certain state and federal programs.

These tax deductions count as credits towards retirement and disability benefits.

For questions on how this works, contact the Social Security Administration: **800-772-1213** – www.ssa.gov.

Unemployment Benefits

Employees who lose their job but are able to work and available and looking for work may qualify for unemployment benefits.

To see if you qualify, contact the Department of Unemployment Assistance: 617-626-6800 – www.mass.gov/dua.

Sick Time, Vacation, and Other Leave

MGL Ch. 149, Section 148C (since 2016 all employees in MA can earn sick time)

Sick Leave

You have the right to earn 1 hour of sick time for every 30 hours you work. You may earn and take up to 40 hours of sick leave a year. You must be able to use your sick leave 3 months (90 days) after your first day of work.

You may use your earned sick time if you or your child, spouse, parent or spouse's parent is **sick or injured** or has a **routine medical appointment**. You may also use sick leave for yourself or your child to deal with domestic violence. Find more information at www.mass.gov/ago/earnedsicktime. **Employers with 11+ employees must pay sick time**

Vacation & Personal Days

You and your employer may agree on vacation and personal days, and whether these days will be paid or unpaid.

Important! If your employer agrees to paid vacation time, you must get paid for any *unused* vacation time that you have earned when your job ends. Learn more about vacation time at www.mass.gov/fairlabor.

Parental Leave

You may take up to **8 weeks** of unpaid, job-protected leave for the birth or adoption of a child. You must give the employer at least 2 weeks' notice of the dates the leave starts and ends.

If your employer does not allow you to take this leave or discriminates against you because of pregnancy or a new child, you may contact the Massachusetts Commission Against Discrimination at **617-994-6000** or www.mass.gov/mcad/maternity1.html.

If your employer has **50 or more employees**, you may have the right to other kinds of leave, including:

Kind of Leave	Who and what it covers	Contact
Domestic Violence Leave	You or a family member related to the domestic violence	MA Attorney General's Office, 617-727-3465, www.mass.gov/ago

Small Necessities Leave Act	You, to take care of some family obligations	MA Attorney General's Office, 617-727-3465, www.mass.gov/ago
Family and Medical Leave Act (FMLA)	You, unpaid, job-protected leave for some family or medical reasons	U.S. Dept. of Labor, 617-624-6700, www.dol.gov/whd

Phone and Internet – Live-in Workers *MGL Chapter 149, Section 190; 940 CMR 32.00*

Employers who have phone or Internet service must give you free and reasonable access to those services. If they do not have phone or Internet service, they must allow you reasonable opportunities to access those services elsewhere at your own expense.

Privacy and Freedom to Come and Go *MGL Chapter 149, Section 190; 940 CMR 32.00*

You have the right to privacy, even if you live in the employer's home.

Your employer must not:

- Monitor or record your private living or sleeping space, or your bathroom, dressing or undressing activities
- Limit, interfere with, monitor or record your private communications
- Take, destroy, hide or keep your passport or any of your documents or belongings
- Force you to work by:
 - Hurting you, restraining you, causing you financial harm or threatening to do so, or
 - Abusing the law or legal process, bribing you or by other illegal method.

Injuries at Work

If you get hurt while on the job, you may be eligible for workers' compensation benefits. Even if the employer does not have worker's compensation insurance, workers who miss more than 5 days of work because of work-related injury or illness may be able to get compensated for medical care and lost wages.

For more information, contact the Department of Industrial Accidents: 617-727-4900 – www.mass.gov/dia.

Immigrant Workers Are Protected

State laws that protect workers apply to **all** workers, including undocumented workers.

Warning! An employer who reports a worker to the immigration authorities because the worker complained about a violation of wage and hour law rights or other rights can be charged with a crime. (**M.G.L. c. 149, §§ 27C & 148A; M.G.L. c. 151 § 19(1) & (5)**)

Authorized immigrant workers who work for an employer with at least 3 other employees are protected against discrimination based on their immigration status. For more information, contact the U.S. Department of Justice: 800-255-7688 – www.justice.gov/crt/about/osc/.

Employers Must Not Discriminate

An employer may not discriminate against you based on race, color, religious creed, national origin, sex, gender identity, sexual orientation, genetic information, ancestry, age, or disability, or for certain other reasons. Sex discrimination includes sexual harassment and pregnancy discrimination. You also have protections against harassment based on sexual orientation, gender identity, race, color, age, religion, national origin or disability. It is unlawful for your employer to retaliate against you for complaining of practices that you believe to be discriminatory.

For more information, contact the Attorney General's Civil Rights Division at (617) 963-2917 or the Massachusetts Commission Against Discrimination at 617-994-6000.

MGL Chapter 149, Section 190 (k); 940 CMR 32.00

Termination – Live-in Workers

If you live in your employer's home or at another place your employer requires, you have certain additional rights if you are fired or laid off.

Unless you are fired for cause, your employer **must** give you:

- Written notice; **and**
- At least 30 days of housing where you are now or in similar housing **OR** severance pay equal to average pay for 2 weeks. If the employer chooses to provide housing at another location or severance pay, you must have at least 24 hours to move out.

If the employer fires you for cause, s/he must give you:

- Advance written notice; **and**

- A reasonable opportunity of at least 48 hours to move out.

If the employer makes a written statement in good faith saying you did something that harmed the employer or his/her family or household, the employer can:

- End the your job immediately, and
- Give you no money or time to find new housing.

Important! No matter what the reason for your leaving, the employer **must pay you** all wages owed, including all accrued, unused paid vacation time, when you leave.

Employers Must Not Retaliate

An employer must not punish or discriminate against you for exercising your rights under the Massachusetts wage and hour laws, including the Domestic Workers Bill of Rights.

Those rights apply to all workers, regardless of immigration status. If an employer reports or threatens to report an undocumented worker to immigration authorities for complaining about a violation of those rights, the employer can be prosecuted and/or subject to civil penalties.

Do you have a complaint about your employer?

Employers of domestic workers **must** obey Massachusetts' wage and hour laws and all of the rights on this Notice.

If you have a question or want to file a complaint about a right listed in this notice, you should contact the agency listed in that section. If no agency is listed, you may file a complaint with the Attorney General's Office. Learn more about filing a complaint online at www.mass.gov/fairlabor. Or call us at (617) 727-3465.