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IMMIGRANTS VULNERABLE TO WAGE DISPUTES
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THE PRESS DEMOCRAT
Memo:
KEY PROVISIONS OF STATE WAGE LAWS

* Employers can fire nonunion employees without prior notice and without cause, with a few exceptions. For example, they can't retaliate against workers who complain about employee safety or health matters. Companies ordering mass layoffs -- meaning job loss for at least 50 workers in a company of at least 75 -- must give 60 days' notice.

Penalty: Employee must be ``made whole,'' including reinstatement of employment and payment of back wages.

* Workers must be paid the minimum wage, currently $6.75 an hour.

Penalty: For intentional violations, $50 initially for each underpaid employee for each pay period, $250 for each additional violation.

* Workers must be paid all wages due, including unused vacation, on their last day of work, or within three days if the worker quits without giving a three-day notice.

Penalty: A payment equivalent to the employees' daily wage is due workers for each day an employer "willfully" fails to pay, up to a maximum of 30 days. Interest accrues on the unpaid wage at 10 percent per year. The penalty due the state is $50 for each failure and each employee, initially. For each additional violation, there's a $100 penalty for each employee plus 25 percent of the amount unlawfully withheld.

* Wage laws cover illegal immigrants as well as U.S. citizens.

* Most workers get time-and-a-half for all work beyond 8 hours a day or 40 hours a week. Agriculture workers get time-and-a-half for all work beyond 10 hours a day or 60 hours a week.

Penalty: Initially, $50 for each underpaid employee for each pay period, plus unpaid wages. Each additional violation is $250.

* Managers are not exempt from overtime pay unless more than half of their work is managerial in nature, they supervise two or more people, they make $28,080 a year and they have the authority to hire, fire and make significant decisions.

No penalty, but labor commissioner can require employer to reimburse each misclassified employee.

* Workers must be paid for all hours they are under the control of the employer, including preparation time, clean-up time, waiting time, training and travel time within the workday.

No penalty, but labor commissioner can require employer to reimburse workers.

* If they're required to report for work, workers must be paid for at least a half-day's work.

No penalty, but labor commissioner can require employer to reimburse workers.

* Workers must get a 30-minute meal period every 5 hours and 10-minute rest periods every 4 hours. The rest periods are paid time, the meal period is not.

No penalty, but the labor commissioner can require payment of one hour for each missed break.

* Employers must keep daily records showing when an employee began and ended each work period, meal periods, split shift intervals and total daily hours worked. On each payday -- even if they pay the workers in cash -- they must give employees a statement showing, among other things, dates and hours of work, wages and deductions. Employers must store these records for at least three years. Legal experts recommend five years, for defending against lawsuits.

Penalty for failure to provide an itemized statement: Initially, $250 per employee for each pay period, and $1,000 per employee for each additional violation.

* Employers must supply uniforms, tools and equipment required for the job. Workers earning twice the minimum wage may be required to provide their own hand tools.

No penalty, but labor commissioner can order employer to reimburse workers.

* Employers must reimburse workers for money spent in discharge of their duties.

No penalty, but the labor commissioner will require reimbursement of costs.

* Employers can't require workers to pay for breakage or loss of equipment unless it was done willfully or as a result of gross negligence.

No penalty, but the labor commissioner will require reimbursement of any deductions plus interest.
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LABOR LAW RESOURCES

Where to get information on labor law:

* The Sonoma County Employer Advisory Council holds bimonthly breakfast seminars on labor law and employment issues at the Fountaingrove Inn. Call 576-2021 or www.ceac.org.

* California Rural Legal Assistance has a wage clinic for low-income and immigrant workers Wednesday afternoons at its office in Santa Rosa, to explain to workers their rights and how to secure them. Call 528-9941 or www.crla.org.
Source: Department of Industrial Relations, Division of Labor Standards Enforcement.

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Day laborers, immigrants and low-income workers are especially vulnerable to getting into wage disputes, according to worker advocates and attorneys who represent workers.

Rogelio Narvaez Naranjo, a native of Oaxaca, Mexico, is an example. He claims he has not been paid for time he spent making giant cement planters for The Greenery Nursery in Guerneville soon after he came to the United States two years ago.

Unaware that he could file a wage claim with the state Division of Labor Standards Enforcement, Naranjo took his claim to small claims court. In January 2002, nursery owner Richard Tremeroli was ordered to pay Naranjo $3,142. But the settlement has yet to be paid, and a hearing is set for Sept. 10.

``This has been going on for a year and a half. We have been trying to collect all this time," said Nati Ramirez, a legal assistant who has been helping Naranjo.

Tremeroli said Friday he hasn't paid the $3,142 because Naranjo did not give him a Social Security number, a fact Naranjo disputes.

``That's 100 percent the reason I haven't paid him," Tremeroli said. ``You cannot pay someone unless you take taxes out."

Naranjo said he does yard work during the day and cleans a restaurant at night, saving money for his wife and three children in Oaxaca. He said all the people he now works for have paid him. He said he perseveres in his complaint against The Greenery Nursery because he wants the money and because he wants to protect other workers.

``There are laws, and those laws should be followed," Naranjo said. ``No one gives away their work."

The Greenery Nursery had six other wage judgments against it in 2000, and it was fined $6,000 last year for not having workers compensation insurance, according to state Division of Labor Standards Enforcement records.

Attorneys at California Rural Legal Assistance,a statewide nonprofit that gives legal help to low-income people, said they see a handful of new wage cases nearly every week.

Among the cases are agriculture workers, the attorneys said.

``A farm labor contractor left his employees on Highway 101 without food, without their wages, without any means of getting back to their homes in Modesto," said attorney Robert Lotero.

Two Sonoma County agriculture companies recently settled lawsuits where workers accused them of underpaying wages.

Charles and Tony Spaletta, owners of a dairy near Petaluma, agreed in April to pay $235,000 to conclude a lawsuit filed by eight Latino dairy workers over unpaid and overtime wages and substandard housing. The men said they worked 11 to 12 hours a day, six days a week, for $6.25 to $6.75 an hour, but were not paid for all that time. The Spalettas denied any wrongdoing.

The Spalettas' attorney did not respond to a request for comment last week, but Tiburon attorney Mark Talamantes, who represented the workers, said the Spalettas were cooperative and have changed the working conditions at the dairy.

In another agriculture case, Balletto Ranch in Santa Rosa agreed last year to a $350,000 settlement in a wage case filed by two workers in the company's vegetable fields.

The workers said they weren't paid for preparation and clean-up time and didn't get breaks. Balletto said

he believed he was paying his workers correctly and agreed to settle only to avoid the cost of litigation.

Day laborers can be easy targets for unethical employers, said attorney Nancy Palandati with California Rural Legal Assistance.

``They don't get paid what was promised, the checks bounce, they don't get paid at all -- and the employer is nowhere to be found," Palandati said.

Illegal immigrants are also vulnerable, she said.

``We have found that there are employers who especially want to hire undocumented workers. They are less likely to know their rights and less likely to complain," even though they are protected by state labor laws just like U.S. citizens, Palandati said.

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Photo: 1 by Crista Jeremiason / The Press Democrat

Rogelio Narvaez Naranjo won a small claims judgement against Greenery Nursery in Guerneville in December 2001, but has yet to be paid.

Keywords: EMPLOYMENT LAW LAWSUIT SETTLEMENT STATISTICS LIST

IMMIGRATION