

IMMIGRATION PROTECTION FOR WORKERS DEFENDING LABOR RIGHTS

Are you an immigrant worker experiencing workplace abuse? Are you not being paid correctly? Are you experiencing health and safety violations? Discrimination? Or retaliation for organizing?

This guide is for you.

Immigrant workers too often face labor abuses but fear immigration consequences from reporting. Immigrant workers fought for and won a new type of protection to help workers in this situation: deferred action for labor enforcement (DALE).

DALE provides temporary (four-year) protection from deportation and work authorization for workers who work or worked at a workplace under investigation by a labor agency. This guide walks you through the steps to apply for DALE.

On each page of this guide we will follow the example of workers at Bad Bosses, Inc. in their campaign to defend their labor rights with the support of DALE protections.






STEP 1: Identify a Labor Law Violation

First, you need to identify the specific violations at your workplace and the agency with authority to investigate. This can be a little complicated. Different agencies are authorized to investigate different violations. Agencies can only investigate a violation if it is reported within a certain time after the violation occurs. The chart below includes information for key federal agencies. Your union, worker center, or attorney can help you figure all this out! They can also let you know if your state or local labor agencies have higher standards.



REMEMBER: Be sure to keep your paystubs and other records that identify your employer and show the labor law violation.

|  If you are experiencing: |  Then you can report to: |  And you should file within: |
|---|--|--|
| Retaliation for organizing | National Labor Relations Board (NLRB) | 6 months |
| Pay below the federal minimum wage (\$7.25/hr) | US Department of Labor (US DOL), Wage and Hour Division | 2 years (3 if your employer acted recklessly or knowingly) |
| Working over 40 hrs/week without overtime pay | US DOL, Wage and Hour Division | 2 years (3 if your employer acted recklessly or knowingly) |
| Unsafe conditions or retaliation for reporting unsafe conditions | US DOL, Occupational Safety and Health Administration (OSHA) | 6 months (for unsafe conditions) 30 days (for retaliation) |
| Discrimination based on race, sex, sexual orientation, age, disability or other protected characteristic | Equal Employment Opportunity Commission (EEOC) | 180-300 days, depending on your location |

Example: Workers at Bad Bosses, Inc. experienced wage theft for years. Eventually, they talked to organizers at their local worker center, who explained they could file a complaint with the US DOL Wage and Hour Division for violations of federal minimum wage laws. But some workers were nervous about potential immigration-based retaliation—especially because a supervisor had recently been making comments about their immigration status.

STEP 2: File a Labor Agency Complaint

Once you've identified the labor law violations at your workplace, it's time to file a complaint! All workers have the right to file complaints, regardless of immigration status. Most agencies accept complaints by phone or online. You can find instructions on the agency website.

Your complaint should provide enough detail to show that labor laws are being violated. Work with your union, worker center, or attorney to make your complaint strong. If you are worried about filing in your name, your worker center or union may be able to file the complaint in their name.

If the labor agency accepts your complaint, it will start an investigation. The investigation can last from weeks to years. You may be asked to attend an interview or provide documents. You should not be asked about—or volunteer information about—your immigration status.

If the agency finds your employer violated the law, it will try to recover your wages, get your job back, or get you other relief.

Example: Several workers at Bad Bosses, Inc. overcame their fears and reported their employer for wage theft. The US DOL Wage and Hour Division opened an investigation. Investigators interviewed workers and asked for documents to back up their claim. Some workers were too nervous to be interviewed, but others came forward.



STEP 3: Request a Labor Agency Support Letter

After your complaint is filed, you can ask the labor agency for a support letter. You will need the support letter to apply for DALE protections.

Labor Agency Support Letter

A support letter (also known as a “statement of interest”) is a letter from the labor agency to the immigration agency. It says the labor agency is investigating violations in your worksite and requests immigration protections for workers because they may be victims or witnesses. Support letters usually cover all workers who worked at the worksite during the relevant time—not just the worker(s) who filed the complaint.



WHEN? Request a support letter at the same time as or soon after filing a complaint.



HOW? Each agency has its own process. Instructions are on the agency website. Work with your union, worker center, or attorney on your request. The agency will want to know what agency investigation is underway and why workers are afraid of immigration-based retaliation. Explain without revealing your or your co-workers’ immigration status. In fact, do not name individual workers at all. The request should be on behalf of all workers at the worksite(s) where the violation occurred.

After the labor agency receives your request, it will review and decide whether to give you a support letter. Typically, the NLRB will respond within days or weeks. The DOL and EEOC might take several months.



Example: Shortly after US DOL’s Wage and Hour Division started investigating Bad Bosses, Inc., workers and their worker center asked US DOL for a support letter. They explained that Bad Bosses, Inc. was under investigation for violating federal minimum wage laws. They also shared that some workers were reluctant to be interviewed because of fear of immigration-based retaliation and mentioned the supervisor who had been asking about immigration status. After several months, US DOL provided a support letter requesting immigration protections for all workers who had worked for Bad Bosses, Inc. at any time since the wage theft started.

Caution! A labor agency support letter alone does not grant immigration status or protect you from deportation. To seek immigration protection, you must submit an individual application (including a copy of the support letter) to the immigration agency!

STEP 4: Apply for Deferred Action

With a support letter in hand, you are eligible to apply for DALE protections from the immigration benefits agency, United States Citizenship and Immigration Services (USCIS)!

Before filing an application with USCIS, it is essential to talk to an immigration lawyer. A lawyer will help you understand the benefits of applying as well as any risks and give you advice specific to your case.

If you decide to apply, you will need to gather documents including:



A W-2, pay stub, or other document that shows you worked at the worksite(s) covered by the labor agency support letter. If you don't have a document that shows where you worked, you can work with your attorney to explore how to prove your employment.



Your passport, country-issued identification card, or other proof of identity and nationality.



In some cases, letters describing your good character and contributions to your community.

Everyone covered by the labor agency support letter is eligible to apply for DALE, but remember: USCIS's decision to grant DALE is discretionary. When considering your application, USCIS will weigh positive facts against any more complicated aspects of your history, like a criminal record. The labor agency support letter is a strong positive fact that weighs in favor of granting your application.

If USCIS grants your application, it will send you a letter stating that you have been granted deferred action for a four-year period. It will also send you a four-year work permit.



Example: After workers at Bad Bosses, Inc. received their USDOL support letter, the worker center identified responsible immigration attorneys to assist with individual DALE applications. After consulting with the attorneys, most workers decided to go forward with their applications. USCIS approved most applications within three months. In some cases, USCIS asked for more evidence, and then approved the applications after a short delay. Workers with approved applications received four years of deferred action and work authorization. With their DALE protections in hand, more workers felt comfortable participating in the Wage and Hour investigation. Investigators were able to gather more evidence and decided to file a court case against Bad Bosses, Inc. to recover workers' lost wages.

Caution! Notary publics are not lawyers. Do not seek legal assistance from a notary public. Instead, ask your worker center, union, or other community organization to recommend a competent lawyer.

STEP 5: Keep Organizing!

DALE protections exist to support you and your coworkers to speak up, report abuses, and keep organizing.

Whether you are fighting for unpaid wages, safer working conditions, an end to discrimination, a union, or a contract, DALE protections are designed to help you succeed.

Some key ways to keep up the fight:



Be prepared for a long fight. Sometimes labor agency investigations take years. Stand together with your coworkers, and don't get discouraged if the investigation doesn't end quickly.



Build your committee and campaign. Help your coworkers learn about the fight, how they can be involved, and how they could benefit from DALE protections. Invite trusted coworkers to join you



Sometimes investigations require a worker be named in court motions, testify at a hearing or provide a declaration. Work with your worker center, union, or attorney to prepare yourself or other workers, and stick together to face the employer.



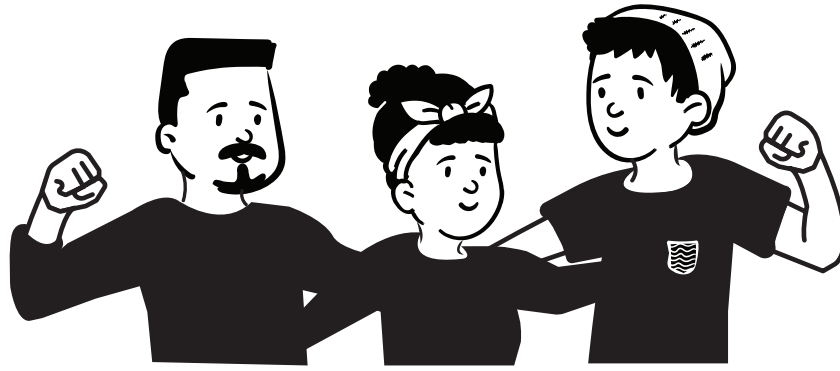
Be vigilant: Watch out for retaliation or new violations and report them to the labor agency or your worker center, union, or attorney.



Consider other organizing strategies to achieve your goal, like press conferences, rallies, pickets, or community meetings to build momentum.



Example: Bad Bosses, Inc. workers kept up the fight for almost four years. The Wage and Hour case dragged on, and some workers started to say that the boss had won and nothing would happen. But after several workers received DALE protections, other workers became interested, and the organizing committee doubled in size. More workers felt safe enough to start participating in the investigation. Several workers agreed the USDOL could use their names publicly for court motions. In the end, the employer was forced to settle. Workers won several million dollars in unpaid wages and penalties, with each receiving twice the pay they were owed. The settlement included a compliance period of several years, during which USDOL would actively monitor Bad Bosses, Inc.'s compliance with labor laws. Workers continue to actively report violations that have occurred since the settlement.



There is strength in unity. Don't fight alone. Contact your local organization!

Organizational contact info. here

Key Reminders After Applying for DALE

- Remember, just because you applied doesn't automatically mean you will be approved. Stay in touch with your attorney and your worker center or union after applying.
- You should be scheduled for a finger print appointment about a month after applying. Don't miss your appointment. If you can't make it, contact your immigration attorney.
- If you receive a request for additional evidence, contact your attorney and answer the request within 30 days.
- You can expect to hear back from the immigration agency around three to four months after applying.

I was granted DALE! Now what?

- If you were granted only a two-year work permit, talk to your attorney or worker center, community organization or union about how you can apply to increase the grant period from two to four years.
- If you have not received your social security number within two weeks, go to your local social security office to request one.
- Consult with your immigration attorney to see if you are eligible for a pathway to permanent immigration status.
- Worried about what happens after your DALE protections expire? Your DALE may be renewable depending on the labor agency investigation. Check back with your attorney and worker center at least 6 months before your work authorization expires.
- Keep up the fight! This protection is intended to help you and your coworkers feel safer participating in the agency investigation.