PROTECTING ASSETS & CHILD CUSTODY IN THE FACE OF DEPORTATION

A GUIDE FOR PRACTITIONERS ASSISTING IMMIGRANT FAMILIES

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FOREWORD

Dear Friends,

Can you imagine being abruptly ejected from the United States — and leaving behind your home, your children, your job, your bank account, and everything else you’ve spent years to build? Can you imagine what your children would feel when they arrived home and you’re gone?

Deportation can be a cataclysm for families and communities, destroying decades of hard-earned assets and rupturing family development. But with advanced planning, immigrant families can prevent an enormous amount of this damage.

That’s why Appleseed is proud to present an updated version of its 2012 Manual, “Protecting Assets and Child Custody in the Face of Deportation.” This one-of-a-kind resource is designed for immigrants and those who work with them; the host of attorneys, nurses, social workers, religious workers who are stepping up in challenging times.

Appleseed’s Manual will help families develop plans in advance to deal with critical financial and family issues in the event of deportation, arrest, and other family emergencies. It will help immigrant families deal with child custody and related children’s issues, personal finances, assets and personal property, remittance payments, wages and benefits, business issues, and taxes. And it includes special guidance for family and children’s issues, including professional advice for parents to help their families deal with painful psychological issues, and for immigrant survivors of domestic violence and sexual assault.

Make no mistake: for vulnerable immigrant families, advance planning can make all the difference. Once an immigrant is detained or deported from the United States, navigating a legal proceeding or managing assets is much more difficult, or even impossible, especially since immigration laws bar immigrants from reentering the United States after deportation for several years.

We are grateful to our pro bono law firms, volunteer psychologists, translation companies, and more than 20 nonprofit partners across the country who wrote, researched, proofread, and translated this manual into Spanish. We could simply not have done it without you. Thank you so much to Adams and Reese LLP, the Asian Pacific Institute on Gender-based Violence, ASISTA, Ballard Spahr LLP, BGBG Abogados, Cooley LLP, Directum Translations, Hogan Lovells LLP, Mexico Appleseed, the Mexico
City Department of Labor, MomsRising/MamasConPoder, Norton Rose Fulbright, O’Melveny & Myers, The William Alanson White Institute Center for Public Mental Health, and White & Case for your commitment, careful drafting, and counsel during this process. We are also deeply grateful to the Annie E. Casey Foundation and the Ford Foundation for their support of these efforts.

Immigrants come to the United States to build a better future and to unite with family members. Most have lived in the United States for many years, paying taxes and joining the daily life of their communities. Over time, immigrants buy homes, start businesses and build personal assets. When they build better lives, they make our country stronger.

That’s why this Manual is a labor of love for all who worked on it. We are committed to fairness and compassion for the millions of immigrants living in our country. Our hope is that you can use this resource to help them build better lives.

Sincerely,

Annette LoVoi, Director, Financial Access and Asset Building, Appleseed
Disclaimers

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Appleseed recognizes and understands the legal term “alien,” used to describe any person born in another country to parents who are not American and who has not become a naturalized citizen, but is living or staying in the United States. However, throughout this Manual, we will primarily use the term “immigrant” in place of the term “alien” based on AP Stylebook guidance and the recommendations of our partners. The exception will be when citing laws, codes, or regulations that specifically use the term “alien.”
18. Collecting Unpaid Wages

Immigrants in the United States, both with and without work authorization, are legally entitled to overtime pay and the minimum wage. Despite these rights, immigrants working in the United States must often respond to employers’ violations of labor law. In the face of deportation, an immigrant often must also take steps to recover their last paycheck. Often, simply sending an updated address to an employer will resolve this issue, but sometimes an immigrant may need to take further steps to protect their rights to a last paycheck. This section provides concrete advice for recovering a final paycheck during and after deportation. This chapter addresses the following issues:

👀 What Are Your Rights to Wages for Work You Perform? 👀 How Long Does an Employer Have to Pay the Last Paycheck? 👀 How Can You Get Your Last Paycheck if You Are Detained or Deported? 👀 What if the Employer Does Not Pay the Last Paycheck? 👀 What if There are Other Wage Problems Beyond the Last Paycheck? 👀

What Are Your Rights to Wages for Work You Perform?

As an employee in the United States, an immigrant has the right to be paid for the work that they have done. An employer cannot refuse to pay wages for work performed simply because an employee does not have a work permit or a Social Security number.

How Long Does an Employer Have to Pay the Last Paycheck?

The amount of time within which an employer must pay a last paycheck is established by state laws and varies from state to state. The amount of time also depends on whether an employee is discharged (is fired or laid off) or leaves employment for another reason (such as quitting, detention or deportation). If an employee is discharged, most states require the employer to pay the last paycheck immediately or within a few days of discharge. In Texas, for example, an employer must pay a discharged employee by the sixth day after discharge. California requires an employer to pay a
discharged employee immediately upon discharge. New York requires that a discharged employee be paid on the next regular payday.

If an employee leaves employment for another reason, such as detention or deportation, most states, including Texas and New York, require the employer to pay the last paycheck on the next regularly scheduled payday. California requires an employer to pay within 72 hours in this situation unless the employee has given 72 hours’ notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting. New York and California laws also specifically provide that if requested by the employee, such wages shall be paid by mail to the designated address.


How Can You Get Your Last Paycheck If You Are Detained or Deported?

Most often, simply informing an employer of a change of address will be sufficient to receive a last paycheck.

In addition to requesting the last paycheck be sent to the new address, a detained or deported immigrant can ask the employer to send the last paycheck to another person chosen by the immigrant. This designation must be made in writing by the immigrant employee. There is a sample letter at the end of this chapter.

What If the Employer Does Not Pay the Last Paycheck?

If any employer does not pay the last paycheck, an immigrant may decide to send a letter demanding payment. There is a sample letter at the end of this chapter.

In addition to the demand letter, an immigrant may decide to make a complaint with the U.S. Department of Labor if the immigrant’s work affects interstate commerce (most work does). Complaints should be made to the nearest District Office of the U.S. Wage and Hour Division of the Department of Labor. A directory of Wage and Hour District Offices can be found on the Department of Labor website at http://www.dol.gov/dol/location.htm. The Wage and Hour Division’s toll-free help line can be reached at 1-866-487-9243.
An immigrant may also decide to file complaints with their state government. A list of state labor offices is included at the end of this chapter and can be found on the Department of Labor website at https://www.dol.gov/whd/contacts/state_of.htm. There are often long delays in investigations by state labor offices.

The Consulado de Mexico in the area where the work was performed or where the immigrant lived in the United States may also be able to help.

Many nonprofit organizations provide support for immigrant workers. Resources include:

- **National Immigration Law Center**
  - [https://www.nilc.org](https://www.nilc.org)
- **Equal Justice Center**
  - [http://www.equaljusticecenter.org](http://www.equaljusticecenter.org)
- **National Employment Law Project**
  - [http://www.nelp.org](http://www.nelp.org)
- **Texas RioGrande Legal Aid**
  - [http://www.trla.org](http://www.trla.org)

**For Deported Immigrants in Mexico**

Deported Mexican Immigrants can receive support for wage violations from the Centro de los Derechos del Migrante (http://www.cdmigrante.org/ or toll-free from the United States at 1-855-234-9699 or toll free from Mexico at 01-800-590-1773) and the Global Workers Justice Alliance (http://www.globalworkers.org/GWDN.html).

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**What If There Are Other Wage Problems Beyond the Last Paycheck?**

Many immigrants experience violation of their employment rights beyond nonpayment of the last paycheck. A complaint made to the U.S. Department of Labor or state government agencies can also include complaints about other labor law violations, including unpaid overtime, workers' compensation abuses and minimum wage violations.

Many of the groups listed above under “What If the Employer Does Not Pay the Last Paycheck?” can also assist in addressing other labor law violations.

*It is illegal for an employer to retaliate against an immigrant employee for demanding their rights.*
SAMPLE LETTER: DESIGNATING METHOD OF RECEIVING LAST PAYCHECK

[Employer Name]  [Date]
Employer Address
City, State, Zip code]

Dear [Employer],

Please deliver all of the remaining wages that I am owed to the following address:

[Worker’s Name]
Care of [Relative’s or Friend’s Name]
Address
City, State, Zip code]

--OR--

I hereby designate [Name of Relative or Friend] to receive all of the remaining wages that I am owed. Please deliver my wages to [Designee] in person at my regular place of work during working hours, no later than the next regularly scheduled payday.

I would also remind you that if an employee is discharged or leaves employment for another reason, the employee has a right to fair wages for work performed and employer must pay the last paycheck no later than provided by applicable state law.  

Thank you for your assistance.

Sincerely,

[Signature]
Employee Name]

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56 This sample letter conforms to Texas law. Check your state’s laws to determine your employer’s obligations to deliver paychecks to employees in the manners listed in this letter.

SAMPLE LETTER: DEMAND LETTER FOR WAGES OWED

[Employer Name]
Employer Address
City, State, Zip Code

[Date]

Dear [Employer],

My name is [Employee’s name] and I was employed by you from approximately [date] until [date]. I am owed [$ amount] for [type of work, i.e. – gardening, landscaping, hauling] work I performed for you at [location] from [date] until [date]. Due to your failure to pay me for the work that I performed for you, you are in breach of contract, and could be in violation of federal and state minimum wage laws.

I would prefer to resolve this dispute through friendly negotiation. To resolve this matter immediately, please send a check or money order for [$ amount] made payable to [Employee’s Name] to [Employee’s Address]. If you have questions or would like to discuss this matter, please contact me immediately at: [Telephone number: (123) 452-8888].

If the [$ amount] owed for my work is not paid in full before [date], an administrative complaint and/or lawsuit may be filed and you could become liable for additional damages available under law and costs of suit.

I would also remind you that it is against the law to retaliate against me for assertion of my claims and any retaliatory action could result in the assessment of additional damages.

Sincerely,

[Signature]
[Employee Name]