

# IMMIGRATION PROTECTION FOR DOMESTIC WORKERS DEFENDING THEIR LABOR RIGHTS

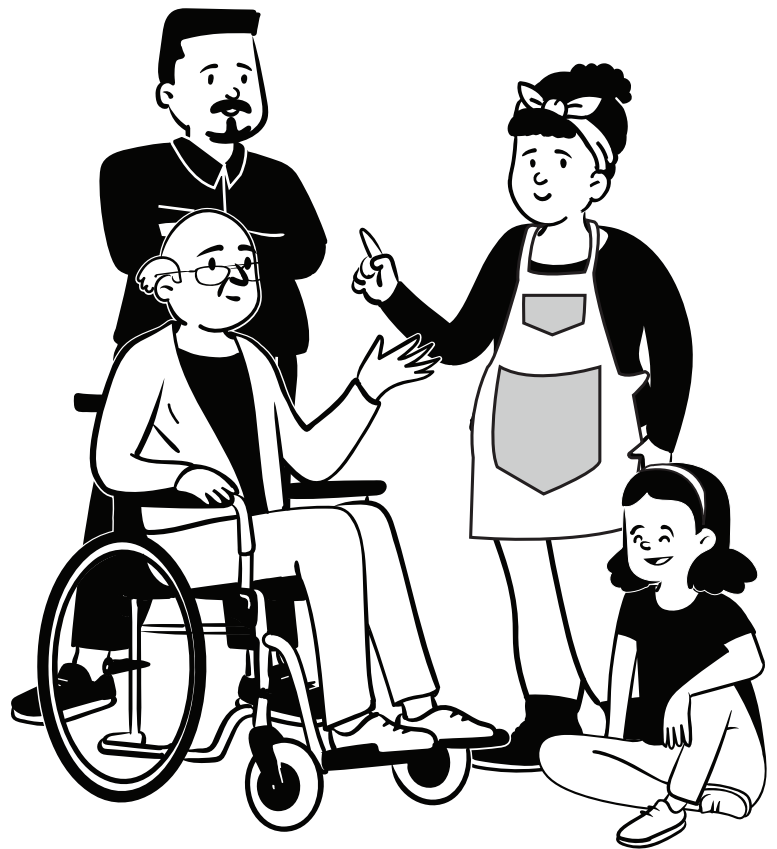
Are you an immigrant domestic worker being mistreated at work? Are you not being paid correctly? Are you worried about your health and safety? Has your boss discriminated against you? Or threatened retaliation because you stood up for your rights?

## **This guide is for you.**

Immigrant workers too often face labor abuses but fear immigration consequences if they speak up. Immigrant workers fought for and won new protections for workers in this situation: deferred action for labor enforcement.

Deferred action is temporary (four-year) protection from deportation and work authorization for workers who experienced or witnessed a workplace violation that is being investigated by a government agency that enforces labor laws. **This guide walks you through the steps to apply for deferred action.**

On each page of this guide we will follow the example of Lola, a domestic worker, in her efforts to defend her labor rights with the support of deferred action protections.



# STEP 1: Identify a Labor Law Violation

First, you need to identify if your labor rights have been violated.

All domestic workers have the right to be paid at least the federal minimum wage (\$7.25 per hour). Most domestic workers must be paid overtime pay (1.5 times your normal hourly rate) if you work more than 40 hours in a week.

Depending on where you live, you might be entitled to a higher minimum wage under state or city minimum wage laws. You might also be covered by other types of labor laws, including laws protecting against harassment and discrimination, health and safety protections, or laws guaranteeing paid sick leave.

*No matter what your immigration status is, all workers have rights. Whether or not you have a contract, or if you are paid in cash, there are many ways to assert your rights on the job.*

If you think your labor rights may have been violated, talk to your local worker center or community organization! They can help you figure out what laws apply to you and where you can file a complaint if your rights have been violated.

You should keep any written records that document the violation. If you don't receive records from your employer, it is a good idea to keep your own written record of all your hours worked and wages received. You should also save any communication with your employer (text messages, emails, notes) about your schedule, hours worked, pay, job responsibilities, etc.



**Example:** While working as a nanny for the Williams family, Lola often worked over 40 hours a week. But she never got overtime pay. While the Williams family never asked Lola directly about her immigration status, she knew they suspected she was undocumented, because she overheard them referring to her as “illegal.” After Lola switched jobs, she talked with another worker at her local worker center who told Lola she should have been paid 1.5 times her regular hourly rate for all the hours she worked past 40 hours in one week. She encouraged Lola to file a complaint about her unpaid overtime. Lola was nervous and afraid she could be deported if she came forward, but the other worker encouraged her to report the wage theft.

**REMEMBER:** There are time limits for reporting labor law violations. They range from 30 days to 3 years or more depending on where you live and the type of violation. So it is important to act quickly if you want to report a violation! You do not have to still be working for the employer who committed the violation to report it, as long as you are within the time limit.

## STEP 2: File a Labor Agency Complaint

Once you've identified a labor law violation, it's time to file a complaint! The complaint will need to include details about how your labor rights were violated. All workers have the right to file complaints with labor enforcement agencies, regardless of immigration status. Most agencies accept complaints by phone or online and many have an option to submit a complaint in Spanish. You can find instructions on the agency website. Talk to a local worker rights organization to get support filing your complaint.

Employers often wrongly classify domestic workers as independent contractors—you may need to show that you are in fact an employee when you submit a complaint. Work with your worker center or attorney to make your complaint strong. They can help you include facts that show you are an employee and not an independent contractor. They can also help you prepare records of your work and pay, and other evidence of the labor violation.

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 be interviewed or provide documents. You should not be asked about your immigration status, and you do not need to give the labor agency any information about your immigration status.

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



**Example:** Lola overcame her fears and filed a complaint against her former employer to the US Department Of Labor (USDOL) Wage and Hour Division for failing to pay her overtime. USDOL investigators interviewed her, and asked if she had any records to back up her claim. Lola was paid in cash and didn't have pay stubs or other records from her employer, but she had always kept her own written records of her hours worked every day in a notebook, plus record of what she was paid, so she shared those with the investigator.

# 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 deferred action.

## 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 your labor violations complaint and requests immigration protections for you as a victim and witness.



**WHEN?** Request a support letter at the same time as, or soon after, filing a complaint with the labor agency.



**HOW?** Each labor agency has its own process. Instructions are sometimes on the agency website. If not, you can ask an official at the agency how to request a statement of interest. Work with your worker center or attorney to request the letter. The immigration agency will want to know what investigation is underway and why there is fear of immigration-based retaliation. Explain without revealing your immigration status.

After the labor agency receives your request, it will review and decide whether to give you a support letter. Agency response times vary from several weeks to several months.



**Example:** At the same time as she filed her complaint against the Williams family, Lola worked with her worker center to ask the USDOL for a support letter. The worker center explained that there was a pending complaint against the Williams family for overtime violations. Without naming Lola, the center explained that a former employee was worried about potential immigration-based retaliation and that the Williams family had referred to her several times as “illegal.” After three months, USDOL provided a support letter.

**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

Once you have a support letter from the labor agency, you are eligible to apply for deferred action 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 for deferred action 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, written employment agreement, or other documentation that shows you worked for the employer under investigation by the labor agency. If you don't have any of these documents, don't worry! You can work with your organizer or attorney to prepare a declaration explaining who you worked for and when.



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



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

USCIS's decision to grant deferred action is up to their discretion. 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 for deferred action.

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 Lola received her support letter from the US DOL, her worker center identified a responsible immigration attorney to advise her about the risks and benefits of applying and assist with her application. Lola consulted with the attorney and decided to apply. USCIS approved her application within three months, granting her four years of deferred action and work authorization. When Lola shared her story with other workers at the worker center, some of them decided to come forward and report labor abuses by their employers as well.

**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!

Deferred action protections exist to support you and other immigrant workers to speak up, report abuses, and keep organizing.

Whether you are fighting for unpaid wages, safer working conditions, an end to discrimination and harassment, or stronger rights at work, deferred action protections exist to help you defend your rights and those of your fellow workers.

## Some key ways to keep up the fight:



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



Build support for your case. Help other workers learn about the fight, how they can be involved, and how they could also benefit from deferred action protections.



Sometimes investigations require a worker be named in court motions, testify at a hearing or provide a declaration. Work with your worker center, community organization or attorney to prepare yourself.

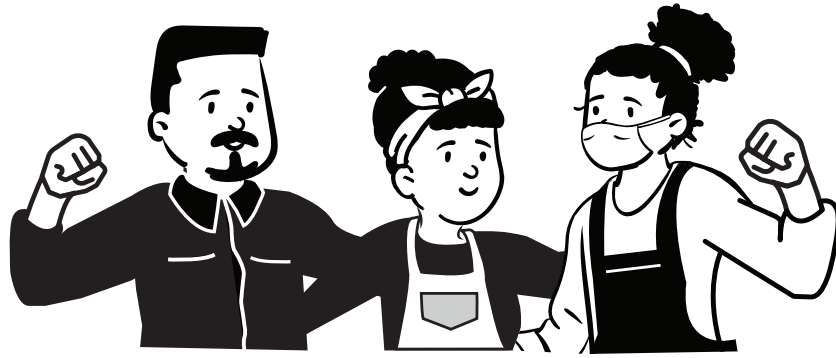


Be vigilant: Watch out for retaliation or new violations and report them to the labor agency or your worker center or attorney.



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





**There is strength in unity. Don't fight alone. Join the movement to fight for dignity and respect for all domestic workers:**

Organizational contact info. here

### **Key Reminders After Applying for Deferred Action for Labor Enforcement**

- Remember, just because you applied doesn't automatically mean you will be approved. Stay in touch with your attorney and your worker center, community organization or union after applying.
- You should be scheduled for a fingerprint 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 deferred action! 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 deferred action protections expire? Your deferred action 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 other workers feel safer speaking up and defending your rights.