



RECOVER YOUR
**UNPAID
WAGES**

WITH THE CALIFORNIA LABOR
COMMISSIONER'S OFFICE

The Labor Commissioner's Office,

also called the Division of Labor Standards Enforcement (DLSE), is a part of the California Department of Industrial Relations. The Labor Commissioner's Office is the state agency that decides your claim for unpaid wages. It enforces minimum labor standards to ensure employees are not permitted to work under substandard, unlawful conditions. It also protects employers who comply with the law from having to compete with those who do not.

YOU DO NOT NEED A SOCIAL SECURITY NUMBER OR PHOTO IDENTIFICATION TO FILE A CLAIM.

YOU MAY FILE A CLAIM REGARDLESS OF YOUR IMMIGRATION STATUS.

YOU DO NOT NEED A LAWYER AND THE LABOR COMMISSIONER WILL PROVIDE AN INTERPRETER IN YOUR LANGUAGE.

VIOLATIONS OF BASIC LABOR LAW PROTECTIONS SUCH AS NOT PAYING MINIMUM WAGE AND OVERTIME IS CALLED **WAGE THEFT**. IF YOU HAVE EXPERIENCED WAGE THEFT, FILE A WAGE CLAIM WITH THE LABOR COMMISSIONER.

THE LABOR COMMISSIONER'S OFFICE ENFORCES LABOR LAWS THROUGH THE FOLLOWING UNITS:

THE WAGE CLAIM ADJUDICATION UNIT reviews and decides individual claims for unpaid wages and other labor law violations.

THE GARMENT WAGE CLAIM ADJUDICATION UNIT reviews and decides claims filed by garment workers under the "Garment Worker Protection Act," a law known as "AB 633."

THE BUREAU OF FIELD ENFORCEMENT (BOFE) investigates reports of employers' failure to provide minimum wage, overtime or meal and rest periods to groups of workers. BOFE also investigates complaints against employers for violations of workers' compensation, child labor, recordkeeping, licensing, and registration laws.

THE PUBLIC WORKS UNIT investigates violations of labor laws on public works construction projects. "Prevailing wages" are wages that are higher than the State minimum wage and are required for workers on most public construction projects.

THE RETALIATION COMPLAINT INVESTIGATION UNIT investigates complaints of retaliation. "Retaliation" occurs when an employer takes actions such as firing a worker or reducing hours or pay because the worker took steps to enforce his or her labor rights.

THE JUDGMENT ENFORCEMENT UNIT helps workers to collect their wages after the Labor Commissioner determines that an employer owes unpaid wages.

HOW TO RECOVER YOUR UNPAID WAGES



1

PREPARE TO FILE

CHECK THE DEADLINE

- You must file claims for violations of minimum wage, overtime, illegal deductions from pay or unpaid reimbursements within **three years**.
- You must file claims based on an oral promise to pay more than minimum wage within **two years**.
- You must file claims based on a written contract within **four years**.

RESEARCH

Gather any documents you have to prove your claim, such as paystubs, time sheets, calendars or notes about your work hours. If possible, identify any property your employer owns, such as buildings, equipment, and inventory, in case you win your case but your employer refuses to pay. This information may be used to collect your unpaid wages and the Deputy Labor Commissioner assigned to your claim will ask you to list this property.

IDENTIFY ALL YOUR EMPLOYERS

Many workers have one single employer, but some may have more than one employer. Be aware that any person or business that has control over wages, hours or working conditions may be included as a defendant in your claim and may be responsible for your wages.



“I worked as a janitor at a supermarket. The supermarket manager gave me my schedule and supervised me daily. However, my paychecks came from another cleaning company and my uniform had their name on it. I filed a claim because I was not paid for my overtime hours. The Labor Commissioner decided that both the supermarket and the cleaning company were responsible for my unpaid wages.”



2 FILE A CLAIM

Complete and file the “Initial Report or Claim” with the Labor Commissioner district office that handles wage claims for the city where you worked. This form is available at any of the Labor Commissioner office locations and at the agency’s website (www.dir.ca.gov/dlse). Claim forms are available in English, Spanish, Chinese, Korean, Vietnamese, Tagalog, Thai, and Russian. If you go to the Labor Commissioner to file your claim, there may be interpreters to help you in your language. However, it is still a good idea to bring someone who can interpret for you, if needed. Indicate your primary language on the claim form to receive interpretation assistance in the future.

Submit the form with copies of your supporting documents. Do not submit originals, as they may not be returned to you. After you file your Initial Report or Claim, you and your employer will be notified by mail about the next steps of your claim. Update the Deputy Labor Commissioner assigned to your claim in writing of any change in your address or phone number.

You must attend the settlement conference and hearing or your claim may be dismissed. If you are unable to attend the conference in person, you may be able to participate by phone by making prior arrangements with your assigned Deputy Labor Commissioner.

THE LABOR COMMISSIONER’S OFFICE IS HERE TO PROTECT YOUR RIGHTS, REGARDLESS OF YOUR IMMIGRATION STATUS. WE WILL NOT ASK ABOUT YOUR IMMIGRATION STATUS OR REPORT YOUR IMMIGRATION STATUS TO OTHER GOVERNMENT AGENCIES.



3

ATTEND A SETTLEMENT CONFERENCE

A settlement conference will be scheduled for most claims. During this conference, a Deputy Labor Commissioner will try to help you and your employer reach a settlement agreement for the payment of your claim. At any point during the conference you may ask to speak with the Deputy Labor Commissioner in private. If you do not reach a settlement agreement before or during the conference, then your claim will move to a hearing.



“I filed a claim because I was not paid minimum wage for my restaurant job. My boss made a settlement offer at the conference but I rejected it because it

was much less than the amount of wages I was claiming. To prepare for the hearing, I made notes of all the important dates and activities for my claim to help me remember all the facts. I practiced testifying about the hours that I worked and how much I was paid. I also asked a co-worker to attend the hearing to testify about the hours that I worked. I knew my boss would argue that I was wrong, so I made a list of questions to ask her and her witnesses. The Hearing Officer was patient and fair, and later I received a decision that ordered my employer to pay me the unpaid wages.”

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PROVE YOUR CLAIM AT A HEARING

If your claim does not settle at the conference, a hearing will be scheduled and you will receive a Notice of Hearing with the hearing date and time. During the hearing, you and your employer will testify under oath and submit evidence about the claim. You are responsible for proving that your employer owes you wages. The Hearing Officer will not have any supporting documentation that you previously provided to the Labor Commissioner, so you must submit all of your evidence at the hearing.

TO PREPARE FOR THE HEARING:

- Review your claim information, such as the hours you worked and how much you were paid, and prepare notes and a timeline of events that you can review during the hearing.
- Bring at least three sets of copies to the hearing of any documents that support your claim so that you can refer to them and provide copies to the Hearing Officer and your employer.
- If you have witnesses who can testify to support your claim, make sure they can attend the hearing.
- You have the right to question the defendants and any of their witnesses. Prepare a list of possible questions in advance.

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REVIEW THE DECISION AND **GET HELP** IF YOUR EMPLOYER APPEALS

After the hearing, you will receive a decision called an Order, Decision or Award (“ODA”). The ODA will explain the Labor Commissioner’s decision and the amount that the employer must pay you, if any. An appeal must be filed within 10 days. If neither side appeals within that time, the decision will become final and enforceable as a court judgment. If your employer appeals, the Superior Court will hear the case without reviewing the decision of the Labor Commissioner. You and your employer will have to present your evidence and testimony again. You will receive a “Request for Attorney Representation” and a form called “Claimant’s Financial Status.” Low-income workers may use these forms to request free representation from one of the Labor Commissioner’s attorneys. If you appeal the decision, you may represent yourself or hire an attorney.

SETTLEMENT:

When you enter a **SETTLEMENT AGREEMENT**, you agree to end your claim by accepting an employer’s offer to pay you an amount that may be less than the full value of your claim. You may receive a settlement offer at any point in your claim process. Accepting or rejecting a settlement offer is an important decision. You can consider the following points before you make your decision.

- **WHY ACCEPT A SETTLEMENT OFFER?** Your claim resolves promptly and you may receive payment of your wages sooner. You eliminate the risk of losing at the hearing. If you do not settle and proceed with your claim, there is a possibility that your employer will file for bankruptcy or close before you receive any wages.
- **WHY REJECT A SETTLEMENT OFFER?** You may get far less than the wages and penalties to which you are entitled according to the law. If you receive a settlement offer that is too low, you can demand more and try to negotiate for an acceptable settlement amount.

KNOW YOUR RIGHTS:

Minimum Wage: Almost all employees in California must receive the minimum wage as required by State law, whether they are paid by piece rate, by commission, by the hour, or by salary.

Overtime: Most workers in California must receive overtime pay of:

- 1.5 times the regular rate of pay for all hours worked over 8 hours in a workday or over 40 hours in a week, and
- double the regular rate of pay for all hours worked over 12 hours in a workday.

If a worker works 7 days in a workweek, the worker must be paid:

- 1.5 times the regular rate of pay for the first 8 hours on the 7th day, and
- double the regular rate of pay for all hours worked over 8 hours on the 7th day.

However, overtime laws do not apply to all workers and certain workers, such as domestic workers and farm workers, are covered by different overtime laws.

Hourly Wages Promised: Your employer must pay you the wages promised. The Labor Commissioner enforces all wages an employer owes, not just minimum wage. For example, if your employer promised to pay you \$15 per hour and only paid you \$10 per hour, you may file a wage claim for the unpaid amount of \$5 per hour.

Meal and Rest Breaks: Most workers in California must receive an uninterrupted 30-minute unpaid meal period for every 5 hours worked and a paid 10-minute rest period for every 4 hours worked. You may be entitled to a rest break even if you work less than 4 hours. Certain workers such as domestic workers and farm workers have different meal and rest break laws.

Deductions from Pay: Except for withholdings required by law (such as social security tax), your employer may not withhold or deduct wages from your pay. Common violations include deductions for uniforms or tools.

Reimbursement of Expenses: You must receive reimbursement for all expenses reasonably necessary for your job. For example, your employer must pay for tools and supplies required for the job and must provide mileage reimbursement if you use your personal car for work. However, if you earn at least twice the minimum wage, your employer can require you to provide certain hand tools customarily used in your occupation.

Reporting Time Pay: If you report to work expecting to work your usual schedule, but receive less than half of your usual hours, you must still be paid for at least half of your usual hours (for a minimum of at least 2 hours). For example, a farm worker who reports to work for an 8-hour shift and only works for 1 hour must receive 4 hours of pay—1 for the hour worked, and 3 as reporting time pay, so that the worker receives pay for at least half of the expected 8-hour shift.

Split Shift Premium: If you work 2 or more shifts in a workday with an unpaid break of more than an hour, your employer may be required to pay a “split shift premium” which is calculated based on your rate of pay.

Final Paychecks at Termination: If your employer fires you, you must receive your final paycheck on your last day. If you are not paid when your job ends, you may be entitled to receive an additional payment of a day’s wages for each day your employer withholds your final paycheck, for up to 30 days.

Penalties for Bounced Checks: If your employer writes you a check that is returned for insufficient funds, you have a right to receive penalties of up to 30 days’ wages in addition to the amount of the check.

FAQs

1. Who can file?

California labor laws protect all workers regardless of immigration status. The Labor Commissioner accepts complaints from any employee who performed work in California, and in some cases from public employees.

2. Where can I get help?

You may go to your local office of the Labor Commissioner to ask for help with your claim. Many non-profit organizations, including Legal Service Providers, help workers fill out and file claims with the Labor Commissioner.

3. When will I receive my unpaid wages?

It depends. Many claims settle and you receive your settlement either when you sign the settlement agreement or based on the agreed date of payment. If your case does not settle, the hearing and decision process may take several months. If you win and your employer does not pay, you have a number of collection methods available, such as requesting that the Sheriff seize your employer’s assets (such as bank accounts, equipment, or inventory).

4. How does my claim affect other people in my workplace who experienced the same violations?

Your individual claim should not affect your co-workers. Co-workers who experienced the same wage violations will not recover their unpaid wages unless they file their own wage claims. You may also consider filing a Report of Labor Law Violation with the Labor Commissioner’s Bureau of Field Enforcement (BOFE), the unit that investigates wage theft violations that affect groups of workers. Co-workers may recover wages as a result of a BOFE investigation.

5. What if my boss fires, demotes or punishes me for filing this claim?

California law prohibits employers from retaliating against workers for enforcing workplace rights. If your employer retaliates against you, you can file a complaint for retaliation with the Labor Commissioner’s Retaliation Complaint Unit.



LABOR COMMISSIONER'S OFFICE LOCATIONS

BAKERSFIELD

(661) 587-3060

EL CENTRO

(760) 353-0607

FRESNO

(559) 244-5340

LONG BEACH

(562) 590-5048

LOS ANGELES

(213) 620-6330

OAKLAND

(510) 622-3273

REDDING

(530) 225-2655

SACRAMENTO

(916) 263-1811

SALINAS

(831) 443-3041

SAN BERNARDINO

(909) 383-4334

SAN DIEGO

(619) 220-5451

SAN FRANCISCO

(415) 703-5300

SAN JOSE

(408) 277-1266

SANTA ANA

(714) 558-4910

SANTA BARBARA

(805) 568-1222

SANTA ROSA

(707) 576-2362

STOCKTON

(209) 948-7771

VAN NUYS

(818) 901-5315