

## INSTRUCTIONS FOR FILING A WAGE CLAIM

- 1) Fill out and submit the “Initial Report or Claim” Form (DLSE Form 1). If you do not understand how to fill out any part of the Form, please read the “**Guide to Completing Initial Report or Claim Form**” (attached to these Instructions).
  - 2) Along with your completed “Initial Report or Claim” Form, submit these **additional DLSE Forms** if any of the following situations apply to you:
    - o If your **work hours and/or days of work varied or were irregular, and** you are claiming **unpaid wages (for overtime or non-overtime hours worked) or meal and rest period violations**, then also fill out and submit the **DLSE Form 55**. Fill out the DLSE Form 55 as best as you can, based on your best estimate of hours worked or any of your own records that you kept of your hours worked.
    - o If you are claiming **commission pay**, then also fill out and submit the **DLSE Form 155**.
    - o If you are claiming **vacation wages**, then also fill out and submit the **DLSE “Vacation Pay Schedule”** form.
    - o If you are represented by an attorney, you may submit a calculation prepared by your attorney in lieu of the above computation forms.
  - 3) Along with your completed “Initial Report or Claim” Form, submit **one COPY** of the following documents, if you have them (**DO NOT SEND ORIGINAL DOCUMENTS**):
    - o **Time records.** Provide a COPY of any of your own records you kept of the hours and dates you worked that you believe support your claim. This could include, for example, your notes, journals, diaries, or calendars in which you marked your hours worked.
    - o **Paychecks and Pay Stubs.** Provide a COPY of any paychecks and pay stubs you received showing the wages you were paid during your claim period.
    - o **Dishonored (or “Bounced”) Paycheck(s).** If you were paid with a paycheck that could not be cashed by you because your employer has no account with the bank or insufficient funds in the account from which the check was drawn, provide a COPY of any such dishonored check(s) or other documentation from the bank that indicates the check could not be cashed.
    - o **Notice of Employment Information.** Provide a COPY if you received a Notice from your employer after January 1, 2012 that indicates your basic employment information including your rate of pay, any overtime rate of pay, whether you were paid by the hour, shift, day, week, salary, piece, commission, or otherwise, and your regular payday. Your employer may have called this a “Notice to Employee” and may reference the Labor Code Section that applies, Section 2810.5.
- NOTE: It is the employer’s legal responsibility to keep accurate employee time and payroll records, and to provide employees with pay stubs each time they are paid (or at least semimonthly). In order to file a claim, you are not required to keep your own time records or to have the documents above. These documents are being requested only if you have them because they may help DLSE better understand your claim.**
- 4) If your employment was covered by a **union contract**, provide a copy of your Collective Bargaining Agreement.

## WHAT TO EXPECT AFTER YOU FILE YOUR CLAIM

- 1) **Settlement Conference.** In most cases, you will receive a Notice from the Labor Commissioner setting a date and time for a “Conference” in which DLSE will discuss your claim with you and whether your claim has a legal basis to proceed. At the Conference, you and your employer will have an opportunity to discuss settlement of your claim. For the Conference, you do NOT need to bring any witnesses, but be prepared to discuss whether you have any witnesses who can testify for you at a hearing, and generally what they will testify about (if your claim does not settle). Bring a **copy (not the original)** of any document that supports your claim, but do not bring documents you have already submitted with the Initial Report or Claim Form.
- 2) **Hearing.** If your claim does not settle at the Conference and has a legal basis to proceed to a hearing, you will receive a Notice from the Labor Commissioner setting a date and time for a hearing on your claim. You should be prepared to present evidence to prove your claim (for example, your testimony, the testimony of any witnesses if you have any witnesses, and/or documents if you have supporting documents). Therefore, you should be prepared to bring witnesses and documents if you have them. If you have documents that support your claim, bring the **original documents plus two sets of copies** to the hearing. At the end of the hearing, the hearing officer will explain what will happen next.

## Guide to Completing “Initial Report or Claim” Form (DLSE Form 1)

### Preliminary Questions

1. **Public Works.** An employee or former employee can file a complaint for prevailing wages that were not paid on a public works project. “Public works” as defined in Labor Code Sections 1720 to 1720.3 include “construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds.” If you worked on a public works project, you should STOP here. Do not fill out this form but instead, please fill out the **PW-1 claim form (entitled “Public Works – Initial Report”)**. You may ask DLSE staff for a copy of the PW-1 form or download it at: <http://www.dir.ca.gov/dlse/HowToFilePWComplaint.htm>
2. **Retaliation.** It is unlawful for an employer to retaliate or discriminate against you (for example, fire, threaten to fire, demote, suspend or discipline you) because you complain about your working conditions, file a wage claim with DLSE, or provide information to DLSE or any government agency about your working conditions. Check the “YES” box if you have filed a retaliation complaint with the Labor Commissioner, and enter the **date you filed the complaint**. If you have not filed a retaliation complaint but would like to file one, you may ask DLSE staff for a copy of the retaliation complaint form or download it at: <http://www.dir.ca.gov/dlse/HowToFileRetaliationComplaint.htm>
3. **Union Contract?** Check “YES” if your employment was covered by a **union contract**. If you checked “YES,” then attach a copy of the Collective Bargaining Agreement.
4. **Other Employees Filing Wage Claims?** Check “YES” if you know that other employees are filing wage claims against your employer.

### PART 1: Language Assistance & Representation

- 5 a. **Interpreter Needed?** Check “YES” if your primary language is not English and you want an interpreter to assist you.
  - b. **Language.** If you checked “YES” to Box 5a indicating that you need an interpreter, enter the language of the interpreter needed.
- 6 a. **Name of Advocate.** If you are being assisted with your claim by a lawyer or other advocate, enter the **name and organization** of the person who is assisting you.
  - b. **Phone Number of Advocate.** If you are being assisted with your claim by a lawyer or other advocate, enter the **phone number** at which your advocate can be contacted.
  - c. **Mailing Address of Advocate.** If you are being assisted with your claim by a lawyer or other advocate, enter the **mailing address** of your lawyer or other advocate. Include the street name and number, as well as any floor or suite number, city, state, and zip code. DLSE will mail copies of information related to your claim to the address of your advocate that you enter here.

### PART 2: Your Information

7. **Your First Name.** Enter your **first name**.
8. **Your Last Name.** Enter your **last name**.
9. **Your Home Phone Number.** Enter your **home telephone number, with area code**.
10. **Other Phone Number.** Enter the phone number, with area code, of **another phone** at which DLSE can reach you (for example, a **cell phone** that you use).
11. **Your Date of Birth.** Enter your **date of birth**. Include the month, day, and year.
12. **Your Mailing Address.** Enter your mailing address. Include the street name and number, as well as any floor or apartment number, city, state, and zip code. DLSE will mail copies of information related to your claim to your address that you enter here. **You must inform DLSE immediately of any change in your mailing address.**

### PART 3: Claim Filed Against (Employer Information)

13. **Employer/Business Name(s).** Enter the **complete name** of your employer against whom you are filing the claim, to the best of your knowledge. If your employer has more than one business name (including a “doing business as” or DBA name), list all names that you know. **If you are a garment worker or car wash worker, and your employer has closed its business and opened up under a new name, list both the new name (if you know it) and the previous name of your employer.**
14. **Employer License Plate Number.** Enter your employer’s vehicle **license plate number**, if you know this information.
15. **Phone Number of Employer.** Enter the **telephone number** of your employer, **with area code**, if you know this information.
16. **Address of Employer/Business.** Enter the **last known address** of your employer. List the street name; number; floor, suite or room number (if any); city; state; and zip code. This address may be different from the address where you worked (which you should list in Box 17). **If you are a garment worker or car wash worker, and your employer has changed its business address since you worked for the employer, list both the new business address and the previous address, if you know this information.**
17. **Address Where You Worked.** Enter the **address where you performed work**, if different from the address you listed in Box 16. List the street name; number; floor, suite or room number (if any); city; state; and zip code.
18. **Name of Person in Charge.** Enter the **first and last name of the person in charge** at the location where you worked, if you know the name. This could be the owner, your supervisor, a manager, or another person who ran the business or oversaw your work.
19. **Job Title/Position of Person in Charge.** Enter the **job title** of the person in charge, if known. Example: “Floor Manager.”

20. **Type of Business.** Enter the **type of business or industry** in which you worked for your employer.
21. **Type of Work Performed.** Enter **the type of work you did for your employer.**
22. **Total Number of Employees.** Enter the approximate total number of workers employed by your employer, if you know.
23. **Still in Business?** Check “YES” if you know that your employer is still operating its business.
24. **Description of Business Entity.** Check the box indicating whether your employer is a corporation, individually owned, a partnership, a limited liability company (LLC), or limited liability partnership (LLP), if you know this information.

#### **Part 4: Final Wages / Bounced Checks**

25. **Date of Hire.** Enter the **month, day, and year that you were hired** by your employer.
26. **Employment Status.** Indicate whether you **still work** for your employer; whether you **quit** your job (include the date that you quit); whether you were **discharged** (include the date that you were discharged); or whether another situation applies (check the “other” box and briefly specify your situation – for example, “on disability leave”).
- 27 a. **Quit with 72 Hours Notice?** If you quit with 72 hours notice, check “YES.”
  - b. **Date of Final Paycheck.** If you quit, check “YES” if you have received your final paycheck including all wages owed, and then enter the **month, day, and year** that you received your final paycheck. Under the law, if you quit with 72 hours notice (and you do not have a written contract for a definite period of employment), your final paycheck is due at the time of quitting. If you quit **without** giving 72 hours notice (and you do not have a written contract for a definite period of employment), your final paycheck is due no later than 72 hours after quitting.
28. **Discharged?** If you were discharged, check “YES” if you have received your final paycheck including all wages owed, and then enter the **month, day, and year** that you received your final paycheck. Under the law, if you were discharged, your final paycheck is due and payable immediately.
- 29 a. **Method of Payment.** Check the box to indicate if you were paid by: check, cash, both check and cash, or other method.
  - b. **Paycheck Could Not Be Cashed?** Check “YES” if you were paid by check **and** any of your paychecks could not be cashed because your employer has no account with the bank or insufficient funds in the account from which the check was drawn.

#### **Part 5: Hours You Typically Worked**

30. **Usually Worked the Same Hours?** Check the box indicating whether you usually worked the same hours and days per week, or instead whether your work hours and/or days of work varied per week or were irregular. **If your work hours or days of work were irregular and you are claiming unpaid wages (for overtime or non-overtime hours worked) or meal and rest period violations, submit the DLSE Form 55 (filled out as best as you can, based on your best estimate of hours worked or any of your own records that you kept of your hours worked).**
31. **Your Typical Work Hours.** Fill out this table **ONLY** if you generally worked the same number of hours per week. (If your work hours were too irregular to estimate a typical workweek, DO NOT fill out this table, but fill out the DLSE Form 55 instead.) **For each day that you worked in your typical workweek, give your best estimate** of the times that you started and stopped working, and that you took for an uninterrupted meal period of at least 30 minutes in which you were relieved of all duty.
  - **“DAY 1” is the first day of your workweek, “DAY 2” is the second day of your workweek, and so on.** A workweek is any 7 consecutive 24-hour periods, starting with the same calendar day each week, beginning at any hour on any day, so long as it is fixed and regularly recurring. If you do not know what your workweek is and it is not established by your employer, DLSE will use the calendar week starting from 12:01 a.m. on Sunday to midnight on Saturday, with each workday ending at midnight; thus, “DAY 1” of your workweek would be Sunday; “DAY 2” of your workweek would be Monday, and so on.
  - **Time work started and ended.** For each day that you worked in your typical workweek, enter the time you typically began and ended your day of work, and check the corresponding box for either “am” or “pm.”
  - **1st meal period start and end time.** For each day that you worked in your typical workweek, if you took an uninterrupted meal period of at least 30 minutes in which you were relieved of all duty, enter the time you typically began and ended your meal period, and check the corresponding box for either “am” or “pm.”
  - **2nd meal period start and end time.** For each day that you worked in your typical workweek, if you took a second uninterrupted meal period of at least 30 minutes in which you were relieved of all duty, enter the time you typically began and ended your meal period, and check the corresponding box for either “am” or “pm.”
  - **ONLY IF YOU WORKED A SPLIT SHIFT.** For each day that you worked in your typical workweek, enter the **time your 1st shift ended** (under “1st Shift ended at”) and check the box for either “am” or “pm.” Then enter the **time your 2nd shift began** (under “2nd Shift started at”) and check the box for either “am” or “pm.” Example: Your employer scheduled you to work 2 shifts on the same workday, from 8 am to 12 pm, and then from 5 pm to 9 pm. Under “1st Shift ended at” enter “12 pm.” Under “2nd Shift started at” enter “5 pm.” **If you did not work a split shift, do not fill out these boxes.**

#### **Part 6: Payment of Wages**

32. **Fixed Amount (“Salaried” Employee)?** Check “YES” if you were paid or promised a fixed amount of wages regardless of the number of hours you worked. Then enter how much money you were **actually paid**, and how frequently (such as per day or every 2 weeks, etc.). If you were promised a different amount, enter that amount, and how frequently you were to be paid.

- 33a. **Hourly Pay?** Check “YES” if you were paid by the hour. Then enter how much you were actually paid per hour. If you were promised a different hourly pay than you received, also enter that amount.
- b. **More than One Hourly Rate?** Check “YES” if you were paid or promised various hourly rates, based on your hours worked or different job tasks, then briefly describe your situation. Example: “Paid \$10 per hour for 30 hours unloading truck, and \$8 per hour for 15 hours checking inventory.”
34. **Paid by Piece Rate?** Check “YES” if you were paid by piece rate.
35. **Paid by Commission?** Check “YES” if you received commission pay.

### Part 7: Wages, Compensation & Penalties Owed

36. **Claim(s) and Amount(s).** (NOTE: For claims marked by \*\*\*, attach a separate computation form. For vacation pay, fill out the “Vacation Pay Schedule” form; for commission pay, fill out the DLSE Form 155.)
- **Check the box for each claim you are making, and fill in the claim period and amount earned / claimed.**
    - o **NOTE: Meal period wages.** An employer may not require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission (IWC). If an employer fails to provide an employee with a meal period in accordance with an applicable order of the IWC, a non-exempt employee may seek one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided. Under most IWC orders, an employer may not employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, or for a work period of more than ten (10) hours without providing a second meal period of not less than 30 minutes, subject to certain waivers by mutual consent or other exceptions. The employee must be relieved of all duty during the 30-minute meal period. **Check the IWC order that applies to you.** No matter how many meal periods are missed in one workday, only one meal period premium is imposed for that day.
    - o **NOTE: Rest period wages.** In general, the IWC orders require employers to authorize and permit non-exempt employees to take rest periods, which insofar as practicable shall be in the middle of each work period. If an employer does not provide an employee a rest period in accordance with an applicable order of the IWC, a non-exempt employee may seek one additional hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. For example, the total amount of rest period time required is 10 minutes if you work more than two hours and up to six hours; 20 minutes if you work more than six hours and up to 10 hours; 30 minutes if you work more than 10 hours and up to 14 hours. However, a rest period does not need to be authorized for employees whose total daily work time is less than three and one-half (3.5) hours. In addition, certain employees are subject to special rest period rules. **Check the IWC order that applies to you.** Authorized rest period time is counted as hours worked and should not be deducted from wages. No matter how many rest periods are missed in one workday, only one rest period premium is imposed for that day.
  - **Subtotal.** Add together all amounts earned/ claimed, and enter this subtotal.
  - **Total Amount Paid.** If your employer paid you any compensation relating to your claim(s), enter the total amount paid. For any wages paid, enter the gross amount paid to you.
  - **Grand Total Owed.** From the **Subtotal** of amounts earned/ claimed, **subtract the Total Amount Paid.**
37. **Penalties.** Check the box(es) if you are also claiming:
- **Waiting time penalties [Labor Code Section 203].** You may be able to recover waiting time penalties if you were discharged or quit and your employer willfully failed to pay your wages either: at the time you were discharged; at the time of quitting if you gave 72 hours notice; or 72 hours after quitting if you did not give notice. The wages of the employee continue as a penalty from their due date at the same rate until paid or until an action is filed in court. Penalties may continue for up to 30 calendar days and are computed by multiplying the employee’s daily wage rate by the number of days since the payment of wages became due.
  - **Penalties for “bounced” or dishonored checks [Labor Code Section 203.1].** You may be able to recover such penalties if you were paid with a paycheck that could not be cashed by you because your employer has no account with the bank or insufficient funds in the account from which the check was drawn, and you attempted to cash that check within 30 days of receiving it. You may be entitled to recover a penalty of one day’s pay for each day those wages remain unpaid or until an action is commenced, up to 30 calendar days.

### SIGN & DATE THE FORM.