

# POLICIES AND PROCEDURES FOR WAGE CLAIM PROCESSING

## INTRODUCTION

This is to provide a basic overview of the Division of Labor Standards Enforcement's (DLSE) wage claim process and to outline the basic filing, conference, hearing and appeal procedures. Since this guide is not meant to be a definitive statement regarding the processing of wage claims, parties are strongly urged to *read all forms* received by them throughout the process. *Failure to comply with each requirement of the process may result in the loss of important rights.*

## SUMMARY OF THE PROCEDURES

Any employee who has a claim against his or her employer or former employer for unpaid wages or other compensation, which falls under the jurisdiction of the Labor Commissioner, may file a claim with DLSE which is under the direction of the State Labor Commissioner. The Labor Commissioner has no jurisdiction over those persons determined to be bona fide independent contractors and only limited jurisdiction over employees of public agencies (for example, federal, state, county or municipal employees). In addition, based on California law and court decisions, the Labor Commissioner, in some cases, does not have jurisdiction over the wage claims of union members working under collective bargaining agreements.

The Labor Commissioner, pursuant to the provisions of Labor Code Sections 98 and 98.3, has established procedures for investigating wage complaints, which may include either a conference pursuant to Section 98.3 or a hearing pursuant to Section 98(a), or both.

Sometimes claims are filed which are very complex and involve a large number of employees and records. Such claims will usually be investigated by DLSE's Bureau of Field Enforcement and not through the procedures described in this pamphlet. If this occurs, the parties will be so informed by the deputy handling the case. However, the majority of claims filed with DLSE are resolved through Section 98.3 conferences and/or Section 98(a) hearings that are explained in this pamphlet.

## FILING THE COMPLAINT

An employee (plaintiff) alleging the non-payment of wages or other compensation by his or her employer (defendant), must file a claim (the **DLSE Form 1, "Initial Report or Claim"** form) with a local office of DLSE to initiate investigation of the claim by the Labor Commissioner. When filing a claim, the plaintiff should provide as much information as possible on the "Initial Report or Claim" form, including the legal name, location, and status (method of doing business, i.e. sole proprietorship, partnership, corporation) of the defendant.

Along with the completed "Initial Report or Claim" Form, plaintiffs should also submit these additional DLSE Forms **if any of the following situations apply**:

- **[DLSE Form 55](#)** (if the plaintiff's work hours or days of work varied per week or were irregular and the plaintiff is seeking unpaid wages or premium pay for meal or rest period violations)
- **[DLSE Form 155](#)** (if the claim involves commission pay)
- **[DLSE "Vacation Pay Schedule"](#)** (if the claim involves vacation wages)

In addition, along with the completed [Initial Report or Claim](#) form, the plaintiff should submit **ONE COPY** of the following documents in support of the claim, if the plaintiff has these documents (**DO NOT submit original documents**):

- Time records the plaintiff kept of the hours and dates worked that support the claim.
- Paychecks and pay stubs showing the wages paid during the claim period.
- Dishonored (or "bounced") paycheck(s) during the claim period.
- Notice of employment information (pursuant to Labor Code Section 2810.5, a notice from the employer that

employees may have received after January 1, 2012, which indicates the employee's basic employment information including rate of pay, any overtime rate of pay, whether the employee was paid by the hour, shift, day, week, salary, piece, commission, or otherwise, and the regular payday).

***NOTE: It is the employer's legal responsibility to keep accurate employee time and payroll records, and to provide employees with itemized wage statements each time they are paid (or at least semimonthly). In order to file a claim, employees are not required to keep their own time records or to have the documents above. These documents are being requested only if employees have them because they may help DLSE better understand the claim.***

- Collective Bargaining Agreement (if the plaintiff's employment was covered by a union contract).

After the claim is assigned to a Deputy Labor Commissioner (deputy), he or she will determine, based on the circumstances of the claim, how best to proceed. Within thirty (30) days of the filing of the complaint, the deputy shall notify the parties as to the specific action which will initially be taken regarding the claim:

- referral to a conference
- referral to a hearing
- dismissal of the claim

Not all cases will go to a conference before going to a hearing. Moreover, many cases will be resolved informally before either a conference or a hearing is scheduled.

## **THE CONFERENCE**

- If the decision has been made by the deputy to hold a conference, a Notice of Claim Filed and Conference will be sent to both parties which will describe the claim, provide the date, time and place of the conference, and direct the parties that they are expected to attend.
- The conference will be conducted informally and the parties will not be under oath. The purpose of the conference is to determine if the claim can be resolved without a hearing. Plaintiffs are not required to prove their case at the conference. The parties should be prepared to talk with the deputy about the claim, including whether there are any witnesses. However, the parties do not need to bring witnesses to the conference. Plaintiffs should bring a copy (not the original) of any document that supports the claim, but should not bring documents that have already been submitted with the claim form. Defendants should also bring any documents that support their position.
- If the defendant fails to appear at the conference, in most cases, the claim will be scheduled for a hearing. If the plaintiff fails to appear, except for good cause shown, the claim will be dismissed.
- If the case is not resolved at the conference, the deputy will determine the appropriate action with regard to the claim, usually referral to a hearing or dismissal (if there is not a legal basis to proceed).
- If the defendant makes payment of the claim, or any part of the claim, directly to the plaintiff, the plaintiff must notify the deputy. If the payment satisfies the claim in full, the case will be closed.
- The plaintiff may withdraw the claim, by written request to the deputy, at any time during the process.

## **THE HEARING**

- If a hearing is scheduled (either after the claim is filed or after a conference), the parties will receive, either by mail or by personal service, a Notice of Hearing which will set the date, time and place of the hearing.
- Although hearings are conducted in an informal setting, they are formal proceedings, as opposed to the conference. At the hearing the parties and witnesses testify under oath, and the proceedings are recorded.

- Each party has the following basic rights at the hearing:
  1. To be represented by an attorney or other party of his or her choosing.
  2. To present evidence.
  3. To testify in his or her own behalf.
  4. To have his or her own witnesses testify.
  5. To cross-examine the opposing party and witnesses.
  6. To explain evidence offered in support of his or her position and to rebut evidence offered in opposition.
  7. To have a translator present, if necessary.
- The hearing officer has sole authority and discretion for the conduct of the hearing and may:
  1. Explain the issues and the meaning of terms not understood by the parties.
  2. Set forth the order in which persons will testify, cross-examine and give rebuttal.
  3. Assist parties in the cross-examination of the opposing party and witnesses.
  4. Question parties and witnesses to obtain necessary facts.
  5. Accept and consider testimony and documents offered by the parties or witnesses.
  6. Take official notice of well-established matters of common knowledge and/or public records.
  7. Ascertain whether there are stipulations by the parties that may be entered into the record.>
- You should bring all documents that will support your position. An employer who intends to introduce business records into evidence should also bring a person to the hearing who can explain how such records were prepared. **If available, the originals of all documents should be brought to the hearing plus two sets of copies.**
- If you wish witnesses to testify, you may arrange for the witnesses to attend voluntarily or you may request issuance of a personal subpoena to compel their attendance.
- Subpoenas for documents, records or witnesses must be issued by the Labor Commissioner. Applications to the Labor Commissioner for issuance of subpoenas should be made at least fifteen (15) business days prior to the date of the hearing. Submit a written request, using Information for Subpoena (DLSE 564) stating the reasons you feel the documents, records or witnesses are relevant or necessary. Costs incurred in the service of a subpoena, witness fees and mileage will be borne by the party requesting the subpoena.
- Changes in the date, time or place of the hearing will not be granted except upon the showing of extraordinary circumstances. The decision to grant such a request is within the sole discretion of the hearing officer and senior deputy, and will be rare.
- If the plaintiff fails to attend the hearing, the case will be dismissed.
- If the defendant is served with a notice of hearing and fails to attend the hearing, the hearing officer will decide the matter on the evidence he or she receives from the plaintiff.
- The hearing officer is not bound by formal rules of evidence and therefore, has wide discretion in accepting evidence. He or she also has discretion in deciding whether the assessment of penalties is appropriate in a particular case.
- Within fifteen (15) days after the hearing, the Order, Decision or Award (ODA) of the Labor Commissioner will be filed in the DLSE office and served on the parties shortly thereafter. The ODA will set forth the decision and the amount awarded, if any, by the hearing officer.

## APPEAL TO CIVIL COURT

Either party, or both, pursuant to Labor Code Section 98.2, may appeal the Labor Commissioner's ODA to the appropriate court, in accordance with the applicable rules of jurisdiction. The party appealing may obtain a Notice of Appeal ([DLSE 537](#)) from the DLSE office. The appeal must be filed in court within the time period set forth on the

ODA, and a copy of the Notice of Appeal must be served on the Labor Commissioner and the opposing party. Whenever the defendant files an appeal, a bond in the amount of the ODA must be posted with the reviewing court. The court clerk will then set the matter for de novo hearing, which means that a judge will hear the case again with each party having the opportunity to present evidence and witnesses.

In the case of an appeal by a defendant, DLSE may represent a plaintiff who is financially unable to afford counsel in the appeal proceedings. The decision to represent the plaintiff is within the sound discretion of DLSE legal staff. The plaintiff must meet the financial criteria set forth by DLSE. The assigned deputy will send to the plaintiff a Request for Attorney Representation (DLSE 553) along with a Statement of Financial Status (DLSE 554) that must be completed and returned to the DLSE office. If the plaintiff does not meet the requirements for representation, he or she will be notified by the legal staff of the reasons that DLSE will not be providing legal representation.

State Labor Commissioner

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