

GARMENT WORKERS

**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 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 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.

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, and licensing and registration laws.

THE PUBLIC WORKS UNIT investigates violations of labor laws on public works construction projects. Prevailing wages 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 collect their wages after the Labor Commissioner determines that an employer owes unpaid wages.



Garment workers who are not paid for their work may file claims against the **contractor** who hired them, as well as the **manufacturers** whose garments they produced. In some cases, **retailers** may also be responsible for garment workers' unpaid wages. Under California law, these manufacturers and retailers are called "guarantors" and must guarantee that garment workers receive their wages.

VIOLATION OF BASIC LABOR LAW, 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.

HOW TO RECOVER YOUR UNPAID WAGES



1

PREPARE TO FILE

CHECK THE DEADLINE

- You must file claims for violations for unpaid 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 as much of the following as you can to support your claim:

- Name, address, and phone number of your employer
- Car license plate number of your employer
- Records or your best recollection of the days and hours you worked; you can use any of your personal notes or calendars
- Copies of paycheck stubs
- Garment tags, labels, and RN numbers
- Production or shipment order information
- Any design specifications



CALIFORNIA LABOR LAWS PROTECT ALL WORKERS, REGARDLESS OF IMMIGRATION STATUS. THE LABOR COMMISSIONER'S OFFICE WILL NOT ASK ABOUT YOUR IMMIGRATION STATUS OR REPORT YOUR IMMIGRATION STATUS TO OTHER GOVERNMENT AGENCIES.



2

FILE A CLAIM

Complete the “Garment Initial Claim” form available at any of the Labor Commissioner’s offices and at the agency’s website (www.dir.ca.gov/dlse). The Los Angeles office of the Labor Commissioner accepts and decides garment worker claims. For help, call the office at (213) 620-6330 or go to 320 W. 4th Street, Suite 450, Los Angeles, California 90013.

If you go to the Los Angeles office, a Deputy Labor Commissioner (Deputy) will interview you immediately and help you fill out the claim form. If you go to another Labor Commissioner office location, a phone interview will be scheduled with a Deputy in the Los Angeles office to help you fill out the claim form. If an advocate from an organization helps you fill out and mail in the claim form, an interview will be scheduled with a Deputy.

Once you file a claim, the Deputy assigned to your claim will identify any additional defendants, including manufacturers and retailers whose garments you sewed. The Deputy will notify all of the defendants of your claim and require your contractor to submit documents related to your claim. You may request to see these documents by contacting your Deputy. You may also request that the Labor Commissioner require documents from other defendants. Update your Deputy about any change in your address or phone number in writing. You must attend the settlement conference and hearing, or your claim may be dismissed.

3

ATTEND THE SETTLEMENT CONFERENCE

Most claims will go to a settlement conference where a Deputy will help you and your employer discuss the possibility of entering into a settlement agreement. During the conference, you may ask to speak with the Deputy in private. If you do not reach a settlement, your claim will be scheduled for a hearing.

SETTLEMENT:

When you enter into a **SETTLEMENT AGREEMENT**, you agree to resolve your claim by accepting a defendant's offer to pay you an amount that may be less than the full value of your claim. If there are multiple defendants in your claim, then you may be able to reach a settlement with one or more defendants but still continue your claim against the defendants who were not part of the settlement. Accepting or rejecting a settlement offer is an important decision. 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.



4 PROVE YOUR CLAIM AT THE HEARING

If your claim does not settle at the conference, you will receive a “Notice of Hearing” with the date and time. During the hearing, you and the defendants 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 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 that you worked and how much you were paid, and prepare notes and a timeline of events that you can review during the hearing.
- Bring multiple sets of copies of any documents that support your claim for you, the Hearing Officer, and the defendant(s).
- Ask witnesses who can support your claim to attend the hearing.
- You have the right to question the defendant(s) and any of their witnesses. Prepare a list of possible questions in advance.
- You may have an attorney represent you at the hearing. If you win your claim, the defendant(s) must pay your attorney’s fees.

5

REVIEW THE DECISION AND GET HELP IF YOUR EMPLOYER APPEALS

After the hearing, you will receive a decision called the “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. If neither side requests that the decision be changed by filing an appeal within 15 days, the ODA 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. Low-income workers may request an attorney to represent them for free by completing forms provided by the Labor Commissioner. If you appeal the decision, you can represent yourself or hire an attorney.

If you are unable to collect the full amount of your award from the defendants, you may apply to receive payment for the unpaid wages (but not penalties) from the Garment Special Fund. The Deputy assigned to your claim can help you complete the necessary forms to receive payment from this fund.

“I worked at a garment factory for a contractor who did not pay me for one week of work. During this time, I produced dresses with two different labels that were then sold by a department store. When I filed a wage claim with the Labor Commissioner, the Deputy told me that the two labels (manufacturers) and possibly the department store were the guarantors of my claim. This meant that the contractor, manufacturers, and potentially the department store were all defendants in my claim and responsible for paying me my wages.”



GARMENT WORKERS' RIGHTS:

Minimum Wage: You must receive no less than the state minimum wage, whether you are paid by piece rate, by the hour, or by salary.

For example, if a contractor pays workers \$0.12 per piece and a worker finishes 40 pieces in an hour (totaling \$4.80), the contractor must still pay at least the state minimum wage, regardless of the number of pieces finished and the piece rate amount.

Overtime: You 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
- double the regular rate of pay for all hours worked over 12 hours in a workday.

If you work 7 days in a workweek, you must be paid:

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

The Labor Commissioner's Office can assist you with calculating your unpaid wages, including overtime. You are entitled to overtime pay whether you are paid by piece rate or hourly.

Hourly Wages Promised: Your employer must pay you the wages promised. For example, if your employer promised to pay you \$12 per hour and only paid you \$10 per hour, you could file a wage claim for the unpaid amount of \$2 per hour.

Meal or Rest Breaks: You 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.

Pay Stub or Wage Statement: You must receive a pay stub or a wage statement with your employer's name, address, and telephone number; your name and employee ID number or the last 4 digits of your social security number; total wages earned; all deductions; the dates for the period you are being paid; the number of pieces you made and the rate per piece; and the name(s) of any manufacturer(s) whose garments were made during that pay period.

Paydays: You have the right to a regularly scheduled payday, at least twice a month, and your employer must post a notice at your workplace of the regular paydays and the time and place of payment.

Tools, Supplies, and Workplace Standards: Any tools and supplies that you need to perform your job such as needles, scissors, and sewing machines must be provided and maintained by your employer at no cost to you.

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 that 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. If my employer moves or changes its business name, can I name the new company in my claim?

Yes. You can file a claim against the new "successor" company if your employer moves or changes the company name. This means that if a contractor shuts down without paying you wages and re-opens under a different name or owner, then the new business may still be responsible for your unpaid wages.

2. If my employer only paid me cash without an itemized wage statement, what kind of evidence can I submit to support my claim?

You should submit any documents, such as timesheets, logs, or your personal notes or calendar, to prove your hours worked. If you do not have documents to support your claim, you can provide your best estimate.

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, decision, and collection process may take several months.

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

California law prohibits your employer from retaliating against you for exercising your workplace rights. In addition, your employer cannot report or threaten to report your citizenship or immigration status because you have exercised your labor rights. If your employer does take action against you, you can file a retaliation complaint with the Labor Commissioner.

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

Your individual claim should not affect your coworkers. If labor law violations at your work affect several workers, you may file a "Report of Labor Law Violation" with the Labor Commissioner's Bureau of Field Enforcement (BOFE). BOFE reviews all reports and may investigate your employer, issue a citation, and require the employer to pay workers unpaid wages.



CALIFORNIA LABOR COMMISSIONER LOS ANGELES DISTRICT OFFICE

320 W. 4TH STREET, SUITE 450, LOS ANGELES, CA 90013

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www.dir.ca.gov/dlse

