

WORKERS' RIGHTS CLINIC

Please complete this side only

*Intake Date: / /	Clinic: HS SF BK FR OC SAC
*Counselor:	Attorney:
Method: In Person or Phone	IOLTA: YES NO

Personal Information

First Name _____ Last Name _____ Email _____
Address _____ Apt/Unit: _____ *City _____ *County _____ Zip: _____
Primary Phone [] _____ Secondary Phone [] _____
How did you hear about us? _____ Specify: (Example: Legal Aid, EEOC, etc) _____
Is it O.K to call for follow up? Y --- N

The following information is used to determine which communities we assist through the Workers' Rights Clinic. This information is used only for statistical purposes (such as fundraising for the Clinic), and is strictly confidential.

* Language *Race/Ethnicity *Gender:
*Sexual Orientation *Age: *Household size
Family Status: Single / Domestic Partner / Married / Divorced / Widowed Military Status:
*Do you have a physical disability? Y / N If yes, specify:
*Do you have a mental disability? Y / N If yes, specify:
Are you experiencing/have you had problems at work because of domestic violence? Y / N

Job in Question (Job you came here to discuss)

*Employer (Business Name): _____ Number of Employees (estimate): _____
City: _____ County: _____ State: _____
Date of Hire _____ If employment ended, how? _____ End Date _____
*Business type/industry Job Title:
Circle One: "Permanent", Temporary, Unknown Rate of Pay: \$ per
Hours per Week _____ Commissions Tips Bonuses
Are you covered by a union contract? Y N Name/Local Number:

Employment Agreements

Did you get: a written employment agreement? Y / N An employee/policy manual/handbook? Y / N
Any spoken promises? Y / N
Describe:

Current Income: \$ per Source of current income:

Employment Status: Employed Unemployed On leave Suspended

Employment Problem

Describe in one or two sentences: _____

Clients: Please stop writing here. DO NOT fill out back side of form.

WORKERS' RIGHTS CLINIC CLIENT SATISFACTION SURVEY

Legal Aid Society - Employment Law Center

180 Montgomery Street, Suite 600, SF, CA 94104 tel. 415-864-8848 fax 415-593-0096

Dear Client:

Thank you for contacting the Workers' Rights Clinic, a service of the Legal Aid Society-Employment Law Center. We ask that you take a few minutes to give us your feedback on your experience with the Clinic. This will help us to improve our services. After you finish the survey, please mail it to us in the postage-paid envelope we have included or leave it at the sign in desk. Thank you!

Name (optional) _____ Date of your appointment: _____

(Check the clinic you used) San Francisco Berkeley San Jose By Telephone
 Santa Ana Fresno Mobile Clinic

Please rate your answers from 10 to 1, with 10 being the highest and 1 being the lowest. Please share your opinions on the following subjects by circling your answer.

1. How easy was it to find out about the Clinic?

10 _____ 9 _____ 8 _____ 7 _____ 6 _____ 5 _____ 4 _____ 3 _____ 2 _____ 1
Very Easy Easy Somewhat Easy Difficult Very Difficult

Comments:

2. Please rate the services you received from the Clinic receptionist:

10 _____ 9 _____ 8 _____ 7 _____ 6 _____ 5 _____ 4 _____ 3 _____ 2 _____ 1
Excellent Very Good Good Not Good Needs Improvement

Comments:

3. Please rate the services you received from the Clinic legal counselor:

10 _____ 9 _____ 8 _____ 7 _____ 6 _____ 5 _____ 4 _____ 3 _____ 2 _____ 1
Excellent Very Good Good Not Good Needs Improvement

Comments:

4. Please rate your overall experience with the Clinic:

10 _____ 9 _____ 8 _____ 7 _____ 6 _____ 5 _____ 4 _____ 3 _____ 2 _____ 1
Excellent Very Good Good Not Good Needs Improvement

Comments:

WORK DONE & NEXT STEP SHEET

[Hoja de Trabajo Hecho y Siguiete Paso]

- Volunteer: (1) Please have litigant fill out EVERY TIME he/she visits AND (2) Have litigant keep sheet with his/her documents
AT ALL TIMES

Date/Fecha	Volunteer Name/Nombre de Voluntario	What Litigant Did Today/Lo Que Hizo el Litigante Hoy	Next Step (if any)/Siguiete Paso (si lo hay)	Backup Review

12 Facts About Employment Law

YOUR LEGAL RIGHTS

1. A termination that is unfair is not necessarily illegal.

In most circumstances, employers can terminate employees “at will,” meaning at any time for any reason. And they are not even required by law to give the reason for a discharge. However, there are exceptions to the “at will” rule. It is illegal for your employer to terminate you:

- because of your race, sex, color, national origin, religion, gender, sexual orientation, gender identity (such as transgender status), age or disability (including pregnancy), medical condition, language (or accent), or marital status;
- in violation of a contract (such as a union agreement). There may be an “implied contract” if you have a reasonable expectation of continued employment (usually based on lengthy employment, promises of job security, continued promotions and positive performance evaluations);
- in retaliation for enforcing your own legal rights (such as filing a claim for unpaid wages);
- because you have reported your employer to a government agency or to the police.

2. You have the right to see and copy your personnel file.

Private employees, including former employees, have the right to inspect and copy their personnel files to know what information their files contain about them and their job performance (California Labor Code Section 1198.5). Your employer must allow you to inspect and copy your file within a “reasonable” amount of time after you ask to see and copy it. You can ask to add your own documents to your personnel file if you disagree with some of the information in the file. Different laws provide similar rights to most government employees.

3. You may be entitled to “waiting time penalties” if your final wages are late.

If you are fired, your employer must pay all wages due to you immediately upon termination (California Labor Code Section 201). If you quit, and gave your employer 72 hours of notice, you are entitled on your last day to all wages due. If you quit with less than 72 hours of notice, your wages are due within 72 hours after you notified your employer that you will be quitting (California Labor Code Section 202). If your employer willfully refuses to pay you within these time limits, it may have to pay you a penalty for each day that your wages are late, for up to 30 days. (Government employees are not covered by this rule.) Claims for late final pay are filed with the “Labor Commissioner” (California Department of Industrial Relations, Division of Labor Standards Enforcement).

4. “Use it or lose it” vacation policies are illegal.

You do not forfeit unused vacation when your employment ends. When you are terminated or you quit a job, you are entitled to your unused vacation pay, just like unpaid wages (California Labor Code Section 227.3). Although your employer might not allow you to actually take vacation until you’ve worked for a certain amount of time, you may be “earning” vacation pay from your first day of work. Your employer, however, may impose a “reasonable” *cap* on the total amount of vacation that you can accrue over time.

5. A former employer can say *bad*, but not *false*, things about you when giving a reference.

If you apply for a job and your former employer is contacted for a reference, that employer is legally able to say bad things about you or your work performance as long as the employer's comments are truthful. On the other hand, your former employer cannot knowingly give false information about your work performance to try to prevent you from getting a new job. (California Labor Code Section 1050). Also, your former employer can give his *opinion* about your work performance (such as "he was unreliable") but cannot provide false factual statements (such as "he was stealing"). Because there is such a fine line between what is legal and illegal, many employers have adopted a policy not to provide any information other than the dates of employment for former employees. Although these policies are widespread, they are not actually required by law.

6. Many workers can get 12 weeks of unpaid medical leave, with the right to return to work.

Under family/medical leave laws, you are entitled to 12 weeks (used consecutively or intermittently) of unpaid leave from work to "bond" with a newborn baby *or* if you, your children, your parents, your spouse or your registered domestic partner have a "serious health condition" (including a serious health condition caused by domestic violence). During your leave, your employer must maintain your health benefits and must reinstate you to the same or equivalent position when you return. To qualify, you must meet the following criteria:

- Your employer must have 50 employees within a 75-mile radius of your worksite;
- You have worked at your job for at least one year;
- You have worked at least 1,250 hours during the previous 12 months;
- If the leave is for a "serious health condition," the condition must last for more than three days and involve continuing treatment by a health care provider.

Regardless of whether they meet the above employer-size or employment-length rules, workers who participate in the State Disability Insurance (SDI) Program are entitled to a maximum of **six weeks of partial pay each year** while taking time off from work to bond with a newborn baby, newly adopted foster child, or to care for a seriously ill parent, child, spouse or registered domestic partner.

7. Your employer cannot deduct money from your pay if you make a reasonable mistake.

It is illegal for an employer to deduct money from an employee's paycheck to offset an inadvertent error, cash shortage, or breakage (in other words, a loss caused by a simple mistake or accident). To legally make a deduction, the employer must show the error, cash shortage, or breakage was caused by the employee's dishonesty, willful misconduct or gross negligence. It is also illegal, in most occupations, for an employer to deduct the cost of a uniform or tools (exceptions include tools or equipment used in certain trades or crafts, and implements used by barbers, hair stylists and manicurists).

8. You may be an "employee" even if you are called a "contractor."

Your designation as an "employee" or as an "independent contractor" is determined by how you do your work, not by your job title. If you are an employee, you are eligible for unemployment insurance, workers' compensation, health/safety protection by Cal/OSHA, and protection against discrimination. You do not have these protections if you are an independent contractor.

What is the difference between an employee and an independent contractor? There is no one simple test; it is necessary to weigh a number of factors. Answers of "yes" to the following questions make it more likely you should be an independent contractor; "no" answers make it more likely you should be designated as an employee:

- Do you supply the materials, tools, and/or place of work?
- Does your occupation require a lot of skill? Is it usually done without supervision?
- Are you employed for a short amount of time?
- Are you paid by the job? (as opposed to payment by the hour, week, or year)
- Is your work outside the regular business that is paying you? (For example, a painter at a school is more likely to be an independent contractor than a teacher.)
- Is there an opportunity for profit or loss depending on your managerial skill?
- Do you believe you are creating an independent contractor relationship?

9. Whether you should receive overtime pay depends on what you do, not on your job title.

As “exempt” employees do not receive overtime pay, it may be in an employer’s interest to classify a worker as exempt. To be legally exempt from overtime pay, however, employees must earn at least twice the minimum wage per month *and* fit in one of the following categories:

- *Executive* or *Administrative* employees are exempt from overtime pay only if, at least 50% of the time, they perform intellectual, managerial, or creative work which requires independent judgment on matters of significance.
- *Professional* employees are exempt from overtime pay only if they are state licensed or certified in a profession (such as law, accounting, teaching) or are in what is commonly recognized as a “learned” or “artistic” profession (such as editor or musician).
- *Executive* employees are exempt from overtime pay only if, at least 50% of the time, they are involved in managerial activities outside the activities of regular employees; they usually direct the work of 2 or more full time employees; they can hire or fire workers; and regularly use your discretion on significant matters.

If your title is “Executive File Administrator,” but your duties involve primarily filing and copying, you should not be classified as “exempt,” even though your title has the word “executive” in it. If you do not fit in one of the categories above, you should not be exempt from overtime pay, even if you are paid a flat salary for your regular work (overtime pay is then based on your hourly pay, which is your salary divided by the number of hours in the pay period.)

10. You may be eligible for unemployment insurance if you are fired or quit your job for “good cause.”

Being fired from a job does not disqualify you from receiving unemployment insurance unless you are terminated for “misconduct;” showing serious or intentional disregard for your employer’s interests. Repeated tardiness or unexcused absences from work may qualify as misconduct; “poor performance” is not misconduct and should not disqualify you from unemployment benefits.

If you quit a job for a good reason, you can still collect unemployment insurance. The “good cause” standard for quitting a job can be difficult to meet. The following circumstances are considered to be “good cause” to quit a job:

- Domestic reasons (leaving your job in order to maintain a marriage or family situation);
- You are offered a better job (if you are offered another job with better wages, benefits and potential, and then the job falls through);

- Health reasons (before quitting, you must inform your employer of the health problem and ask for a leave of absence or a less demanding job);
- Intolerable working conditions (such as safety, harassment, significant demotions or pay cuts).

To avoid being disqualified for unemployment insurance if you quit the job, you must also make all reasonable attempts to notify your employer and attempt to solve the problem before you quit.

11. You can “pre-choose” your workers’ compensation doctor.

If your employer offers a group health plan, you can pre-designate your primary care physician to treat you if you become injured on the job. The advantage to selecting your own physician ahead of time is that he/she, rather than the employer’s choice of doctor, will be primarily responsible for examining and treating you if you suffer an on-the-job injury. Pre-selecting your physician is easy: just make sure your doctor agrees to be your pre-designated physician and then notify your employer in writing of your selection. (See

<http://www.dir.ca.gov/InjuredWorkerGuidebook/InjuredWorkerGuidebook.html> - for more information.)

12. You can reasonably refuse to do unsafe work.

The California Labor Code (Section 6311) allows you to refuse to perform unsafe work as long as it is hazardous enough that any reasonable person would think his/her health or safety would be in danger by doing the work. Before you refuse to perform unsafe work, however, make sure you inform your supervisor about the unsafe condition, and give the company a chance to correct it. If the company does not correct the unsafe condition, and you decide to refuse the work, make sure that you inform your supervisor, preferably in writing or in front of others, exactly why you are refusing to do the work, and that you will return to work as soon as the condition is fixed. Finally, you should contact Cal/OSHA (<http://www.dir.ca.gov/DOSH>) to file a complaint against your employer.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers’ Rights Clinic

415-864-8208 (SF Bay Area) or 866-864-8208 (Toll Free in CA)

The Workers’ Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

IN CALIFORNIA WORKERS HAVE RIGHTS

Your rights as a worker are enforced and protected by the California Labor Commissioner (also known as the Division of Labor Standards Enforcement or DLSE). DLSE investigates and resolves complaints about retaliation, wages, child labor, hours of work and working conditions.

Whether you are a documented or undocumented worker in California, you have rights protected by state laws that guarantee payment of wages for work performed. It is the policy of the DLSE not to question your immigration status.

Here are some rights that protect your working conditions:



1 **The right to be paid minimum wage.**
You are to be paid no less than minimum wage of \$9.00 per hour (effective 7/1/2014), whether your pay is measured in time, piece rate, commission or other method of calculation. This includes the right to 1.5 times the minimum wage for any overtime hours worked. With few exceptions, all wages earned are due and payable at a minimum of twice during each calendar month on your regular payday.

2 **The right to a net 10-minute rest period.**
You must be permitted to take a net 10-minute rest period for every four hours worked or major fraction thereof which to the extent possibly shall be in the middle of each work period. If your employer does not provide you a rest period, your employer must pay you one additional hour of pay at your regular rate of pay for each workday the rest period is not allowed.

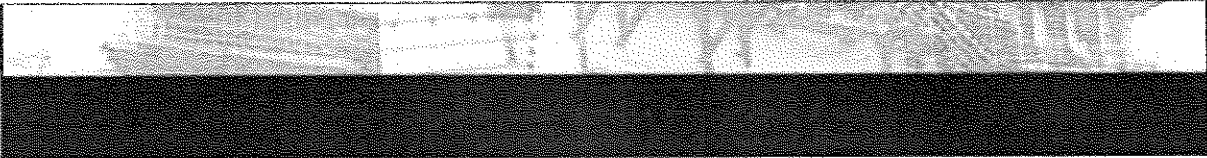
3 **Your right to a meal period.**
You are entitled to a meal period of at least 30 minutes if you work more than five hours. You must be relieved of all work duty during your meal period. Each workday you are not provided a meal period, or you perform work during your meal period, your employer must pay you one additional hour of pay at your regular rate of pay. You have the right to a clean meal and rest area.

4 **The right to file a worker's compensation claim if you are injured on the job.**
If you are injured on the job, your employer must provide you with medical care. Depending on the extent of your injury you may have the right to medical treatment, rehabilitation and job training at no cost to you. For fact sheets, information and assistance in filing a workers' compensation claim, call toll free: **1-800-736-7401** or visit www.dir.ca.gov and click on the Division of Workers' Compensation. You have the right to process your workers' compensation claim and are protected from termination.

5 **The right to be provided all the tools necessary to do your work**
Tools should be provided and maintained by the employer at no cost to you. However, if you earn two times the minimum wage, you may be asked to provide and maintain the hands tools required for that trade or craft.

6 **The right to a pay stub or wage statement every time you are paid your wages.**
Whether you are paid by check, in cash, or otherwise, you must receive a pay stub or a written wage statement, showing among other things: your employer's name, address and telephone number; your name; either your employee ID number or the last 4 digits of your social security number; gross wages earned; all deductions; and the dates for the period you are being paid. If you are paid by piece rate, the wage statements must show the number of piece rate units earned and the piece rate per unit. You have the right to a regularly scheduled payday and your employer must comply with the established payday.

Continued on reverse



7

The right to be paid every time your employer asks you to report to work.

Each workday you are required to report for work and you do report, but you are not put to work or you are furnished less than half of your usual or scheduled day's work, you shall be paid for half the usual or scheduled day's work, but in no event for less than two hours nor more than four hours, at your regular rate of pay.

8

The right to be paid all wages by your employer the same day you are terminated or within 72 hours of a voluntary quit.

Where terminated, your employer must pay you all wages due immediately. If you voluntarily quit without giving 72 hours prior notice, your employer must pay you within 72 hours. You can provide an address and request that the employer mail you your payment or you can go to the workplace to get your final pay. If your employer fails to pay you, they may be penalized and required to pay you the equivalent of one-day's wages for each day delayed in paying your wages (up to a maximum of 30 days).

9

The right to file a wage claim, retaliation complaint or speak to the California Labor Commissioner regardless of your immigration status and without retaliation from your employer.

You have the right (free from retaliation) to process your wage claim, attend hearings to recover unpaid wages and investigate retaliation complaints. You may discuss labor issues with the DLSE and/or your employer under protection of the law and your employer may not discharge, demote, suspend or discipline you in any manner for this reason. You may file a complaint with the Labor Commissioner for reinstatement, full back pay, and any other appropriate remedy if you feel you were discharged because you engaged in such activity.

Contact a DLSE local district office for labor law information, assistance and to obtain a claim form to file a complaint:

- Bakersfield (661) 587-3060
7718 Meany Avenue, 93308
- El Centro (760) 353-0607
1550 West Main Street, 92243
- Fresno (559) 244-5340
770 East Shaw Avenue, Suite 222, 93710
- Long Beach (562) 590-5048
300 Oceangate, Suite 302, 90802
- Los Angeles (213) 620-6330
320 West 4th Street, Suite 450, 90013
- Oakland (510) 622-3273
1515 Clay Street, Suite 801, 94612
- Redding (530) 225-2655
250 Hemsted Drive, 2nd Floor, Suite A, 96002
- Sacramento (916) 263-1811
2031 Howe Avenue, Suite 100, 95825
- Salinas (831) 443-3041
1870 North Main Street, Suite 150, 93906
- San Bernardino (909) 383-4334
464 West Fourth Street, Room 348, 92401
- San Diego (619) 220-5451
7575 Metropolitan Drive, Suite 210, 92108
- San Francisco (415) 703-5300
455 Golden Gate Avenue, 8th floor, 94102
- San Jose (408) 277-1266
100 Paseo de San Antonio, Room 120, 95113
- Santa Ana (714) 558-4910
605 West Santa Ana Blvd., Bldg. 28, Rm. 625, 92701
- Santa Barbara (805) 568-1222
411 East Canon Perdido Street, Room 3, 93101
- Santa Rosa (707) 576-2362
50 "D" Street, Suite 360, 95404
- Stockton (209) 948-7770
31 East Channel Street, Room 317, 95202
- Van Nuys (818) 901-5315
6150 Van Nuys Blvd., Room 206, 91401



Photo by Robert G. Myers

Minimum wage:
1-888-275-9243 (ASK WAGE)

Prevailing wage hotline:
(415) 703-4774

Wage claim tip:

Keep your own time records.

Write down every day the time you begin, when you end work, the time you take meal and rest breaks and the total hours you work. Write down your piece rate, or if you are paid by the hour, record your hourly rate.

The simplified information contained in this flyer is provided to you from the California laws and regulations concerning wages, hours and working conditions; they are not legal interpretations of the California labor code, administrative code or the Industrial Welfare Commission wage orders and are not meant to be legal advice in individual cases. California labor laws can be found by contacting the Division of Labor Standards Enforcement (DLSE) offices or by visiting the Web sites:

Labor Commissioner
Division of Labor Standards Enforcement (DLSE)

Contact Information:

770 East Shaw Avenue, Suite 222
Fresno, California 93710
Telephone: (559) 244-5340
General Information: (559) 248-8398
Monday - Friday, 8:00 a.m. to 5:00 p.m.
Spanish speaking assistance available.
<http://www.dir.ca.gov/dlse/>

Excerpt from DLSE website:

The mission of the Division of Labor Standards Enforcement (DLSE) is to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

Adjudicates wage claims on the behalf of workers who file claims for nonpayment of wages, overtime, or vacation pay pursuant to California Labor Code Sections 96 and 98. DLSE deputies hold informal conferences between employers and employees to resolve wage disputes. If a matter cannot be resolved at the informal conference, an administrative hearing is held to make a final determination on the matter.

Investigates complaints alleging discriminatory retaliation in the workplace on the basis of various Labor Code sections.

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING (DFEH)

Contact Information:

1277 East Alluvial Avenue, Suite 101
Fresno, California 93720
Phone: (559) 244-4760
Monday-Friday, 8:00 a.m. to 5:00 p.m.
<http://www.dfeh.ca.gov/>

Excerpt from DFEH website:

The mission of the Department of Fair Employment and Housing is to protect Californians from employment, housing and public accommodation discrimination, and hate violence. The DFEH is the largest state civil rights agency in the country. It was established by the Legislature in 1959 as the Division of Fair Employment Practices and was initially part of the Department of Industrial Relations. In 1980, the DFEH was established as an independent department charged with enforcing California's comprehensive employment, housing, public accommodations, and public service non-discrimination laws, as well as the State's bias-related hate violence law.

The DFEH's statutory mandate is to protect the people of California from employment, housing and public accommodations discrimination and hate violence pursuant to the California Fair Employment and Housing Act (FEHA), Unruh Civil Rights Act, Disabled Persons Act, and Ralph Civil Rights Act. The Department has jurisdiction over both private and public entities operating within the State of California, including corporate entities, private sector contracts granted by the State of California, and all State departments and local governments.

The DFEH receives and investigates discrimination complaints in its six offices throughout California. Three regional/district offices handle employment, public accommodations and hate violence cases, two district offices handle housing cases, and a special investigations unit focuses on systemic discrimination cases statewide. In addition, there are three legal offices which prosecute cases. The DFEH routinely provides technical assistance to employers, business establishments and housing providers regarding their responsibilities under the law. The Department is part of the State and Consumer Services Agency and is administered by a Director appointed by the Governor.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

Contact Information:

2300 Tulare Street, Suite 215

Fresno, California 93721

Phone: (800) 669-4000

Fax: (559)487-5053

Monday - Friday, 8:30 a.m. to 5:00 p.m.

<http://www.eeoc.gov/>

Excerpt from EEOC website:

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.

The laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.

EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)

Contact Information

2555 South Elm Avenue

Fresno, California 93706

Phone: (559) 445-5249

Monday-Friday, 8:00 a.m. to 5:00 p.m.

http://www.edd.ca.gov/About_EDD/

The Employment Development Department (EDD) is one of the largest state departments with employees at hundreds of service locations throughout the state. For more than 70 years, we have connected millions of job seekers and employers in an effort to build the economy of the Golden State.

[The Division of Workers' Compensation]

Contact Informacion:

2550 Mariposa Mall, Suite 4078

Fresno, California 93721

Telephone: (559) 445-5051

General Information: (800) 736-7401

Monday - Friday, 8:00 a.m. to 5:00 p.m.

http://www.dir.ca.gov/dwc/dwc_home_page.htm

Extract the DWC website:

The Division of Workers' Compensation (DWC) monitors the administration of workers' compensation claims, and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits.

DWC's mission is to minimize the negative impact of work-related injuries on California employees and employers.

PUBLIC ASSISTANCE CLINIC

The office of the Labor Commissioner has developed a free clinic to provide assistance to those individuals who need help completing a claim for Unpaid Wages, Retaliation, Public Works Projects, Field Enforcement or Farm Labor Contractor Applications.

When: Every Thursday

Time: 9:00 am to 11:00 am

Where: 770 E. Shaw Avenue, Ste. 222, Fresno

(559) 244-5340

CLINICA DE ASISTENCIA PUBLICA

La Oficina del Comisionado de Labor ha desarrollado una clinica gratuita para prestar asistencia a aquellos individuos que necesitan ayuda para completar una forma de reclamacion por impago de salarios, répresalias, proyectos de obras publicas, aplicacion de enfuerzo el campo de labor, o aplicaciones para contratistas de mano de obra.

Cuándo: Todos los Jueves

Tiempo: 9:00 a 11:00 am

Dónde: 770 E. Shaw Avenue, Ste 222, Fresno

(559) 244-5340

ADVOCATE WAGE CLAIMS CHECKLIST

I. LEGAL RESOURCES

- LAS-ELC Employment Law Manual, Labor Code

II. FACTS

- If there's doubt about whether the worker is an employee or an independent contractor, use the "*am I an employee or independent contractor*" checklist
- Fill out *WAGE CLAIM INTAKE* (make sure you completely fill it out)
- Check manila file (if litigant is returning) and ask litigant for any **DOCUMENTS** they brought with them (check stubs, calendars, legal documents, decisions, letters from employer, etc.) **REVIEW THEM**
- Talk to Supervising Attorney about case – present all relevant facts, explain issue(s) presented, and show all documents
- Have litigant fill out *CALENDAR* with hours worked within statute of limitations period [if litigant needs to fill out calendar for 6 months or more, send litigant home and have litigant return with calendar filled out]
- **DO DEFENDANT RESEARCH:** It is very important that the litigant name the correct employer entity or individual in any claim filed against the employer [see *Defendant Research – A Step-by-Step Guide*]
- **CALCULATE** unpaid wages and penalties (using *clinic's Excel spreadsheet and instructions*). Last page summarizes all claims (wages, rest and meal, etc.)
- Go over calculations with Supervisor before presenting options to litigant

III. REMEDIES

- Explain value of doing **DEMAND LETTER** first but explain it's not legally required [ask litigant if he/she wants to first send a demand letter]
- If litigant wants, draft demand letter. Then review letter with supervisor.

- Explain demand letter to litigant in his/her language
- **IF DEMAND ALREADY MADE or LITIGANT DOESN'T WANT LETTER:**
 - Explain **OPTIONS** of **FILING CLAIM(S)** with labor commissioner OR small claims court (go over the *Small Claims Court v. Labor Commissioner comparison sheet*) (explain reasons why we recommend the labor commissioner: may better handle wage claims but also explain the time it takes) **and** explain the Labor Commissioner timeline (go over the LC Process Sheet)
 - Help litigant fill out the *LC Claim Form*. Recommend that litigant file claim (along with the Excel spreadsheet with wage calculations) in person though litigant can also mail the claim by certified mail with return receipt **OR**
 - Help them fill out small claims form titled "*Plaintiff's Claim*" and *fee waiver forms* (if litigant qualifies for the fee waiver)
 - Make a copy of all forms and any other documents and attachments you help the litigant prepare for their filing
- Show all forms to supervisor before litigant signs forms/documents and before litigant leaves
- When litigant returns with Notice of Settlement Conference, review brochure on how to prepare for the settlement conference with the litigant
- When litigant returns with Notice of Hearing, review with the litigant the booklet on how to prepare for the hearing

IV. WRAP UP

- If litigant is going to file claim, tell litigant he/she should **COME BACK** at least a week before the settlement conference or hearing for an orientation/preparation
- At the end of your session with the litigant, have litigant fill out *evaluation* **AND** assist litigant in filling out the "*next step*" sheet
- Shake their hand and wish them luck
- Fill out the disposition section on the back of litigant's application



Wage Claim Intake Form

Interviewers name: _____ Location: _____ Date: ____/____/____

1. Where did you work? _____
2. Name of Employer? _____
3. Address of Employer? _____
4. About how many other workers work for the same employer? _____
5. Is there more than one location (site, store, etc.) for the same employer? Yes _____ No _____
(If so, where?) _____
6. What was your position? _____
7. How long did you work there? _____
8. What dates did you start and end? ____/____/____ till ____/____/____
9. What hours did you work? _____
10. What was your work schedule?
Mon: _____ Tue: _____ Wed: _____ Thur: _____ Fri: _____ Sat: _____ Sun: _____
11. How many hours per day/week?
12. Do you have any documents from your employer? Yes/No(if you do please list them)

13. If you worked overtime (generally more than 40 hours /week), were you paid for overtime? Yes/No

14. (IF No, what dates/hours did you not get paid?) _____

15. How were you paid?

Salary _____ Hourly Wage _____ Bonus/Commission _____ Piece Rate _____

Amount per hour/week/by the piece? _____

Promised rate of pay: _____ split shift premium owed/paid? _____

By check: Do you have the stubs with you? Yes/No(if yes please give the dates) _____

By cash: Do you have any written records of your pay? Yes/No

16. Did you receive meal breaks? Yes/No(If No, what dates were you not given a meal?)

How often were they? How long were they? _____

If you did not always receive breaks, when did you miss the breaks? (Date) __/__/__

17. Did you receive rest breaks? Yes/ No

How long were they? _____

How long were they? _____

If you did not always receive breaks, when did you miss the breaks? (Date) __/__/__

18. Do you believe there are other workers at your place of employment who have experienced the same problems that you did? _____

19. Do you know any of them are you able to contact them? _____

20. Did you have any other jobs during the same time period Yes/ No (If so please explain)

21. Were you fired or did you quit? _____

22. Have you tried to get your wages from your employer? Yes/No

If so what date? ___/___/___ If so did you contact employer in person, phone, mail? Yes/No What happened? _____

23. Did your employer ever threaten you because you were trying to get your wages?

(For example, did you employer reduce your hours, threaten to fire you, etc.)

24. Any other issues? _____

25. What goals would like to accomplish? _____

CLEAR

PRINT

Initial Report or Claim

FOR OFFICE USE ONLY

Taken by:	Office:	Case #:
Date filed:	SIC #:	
RCI Complaint: <input type="checkbox"/> YES <input type="checkbox"/> NO	Action:	

PLEASE PRINT OR TYPE ALL INFORMATION
Refer to the accompanying Guide to assist you in filling out this form.

PRELIMINARY QUESTIONS

1. Is your claim about a public works project ? [If your answer is "YES," STOP here, DO NOT FILL OUT THIS FORM, and fill out the "PW-1" claim form instead. If your answer is "NO," proceed with this form.]
2. Have you filed a retaliation complaint against your employer with the Labor Commissioner? <input type="checkbox"/> YES, on: ____ / ____ / ____ <input type="checkbox"/> NO [If you have been retaliated against, you may file a retaliation complaint by filling out another form, "DLSE FORM 205."] Month Day Year
3. Is there a union contract covering your employment ? <input type="checkbox"/> YES [If "YES," attach a copy of the Collective Bargaining Agreement.] <input type="checkbox"/> NO
4. Are other employees also filing wage claims against your employer? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> I DON'T KNOW

Part 1: LANGUAGE ASSISTANCE & REPRESENTATION

5a. Do you need an interpreter? <input type="checkbox"/> YES <input type="checkbox"/> NO	5b. If you checked "YES" to Box 5a, enter the language needed		
6a. If you are being assisted with your claim by a lawyer or other advocate, enter your ADVOCATE'S NAME and ORGANIZATION		6b. ADVOCATE'S PHONE ()	
6c. Your ADVOCATE'S MAILING ADDRESS (Number, Street, Floor, Suite)		CITY	STATE ZIP CODE

Part 2: YOUR INFORMATION

7. Your FIRST NAME	8. Your LAST NAME	9. HOME PHONE ()	10. OTHER PHONE ()	11. BIRTH DATE
12. Your MAILING ADDRESS (Street Number, Street Name, Apartment Number)		CITY	STATE	ZIP CODE

Part 3: CLAIM FILED AGAINST (EMPLOYER INFORMATION)

13. EMPLOYER / BUSINESS NAME(S)		14. EMPLOYER'S VEHICLE LICENSE PLATE #	15. EMPLOYER PHONE ()	
16. ADDRESS of EMPLOYER / BUSINESS (Street Number, Street Name, Floor, Suite):		CITY	STATE	ZIP CODE
17. ADDRESS where you worked, if different from Box 16 (Number, Street, Floor, Suite):		CITY	STATE	ZIP CODE
18. NAME of PERSON IN CHARGE (First Name, Last Name)		19. JOB TITLE / POSITION of PERSON IN CHARGE		
20. TYPE OF BUSINESS	21. TYPE OF WORK PERFORMED	22. TOTAL NUMBER OF EMPLOYEES	23. EMPLOYER STILL IN BUSINESS? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> DON'T KNOW	
24. Check which box describes your employer, if you know: <input type="checkbox"/> CORPORATION <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> LLC <input type="checkbox"/> LLP				

Part 6: PAYMENT OF WAGES

32. Were you paid or promised a **FIXED** amount of wages per pay period, no matter how many hours you worked (for example, \$400 per week, regardless of how many hours you worked)?

YES: I was paid \$ _____ per day week every 2 weeks month semi-monthly
 other (specify): _____

I was promised \$ _____ per day week every 2 weeks month semi-monthly
 other (specify): _____

NO

33a. Were you an **HOURLY** employee?

YES: I was paid \$ _____ per hour.
I was promised \$ _____ per hour.

NO

33b. If you were an **HOURLY** employee, were you paid or promised **more than one hourly rate** (based on the hours you worked or different job tasks)?

YES (describe): _____

NO

34. Were you paid by **PIECE RATE**? YES NO

35. Were you paid by **COMMISSION**? YES NO

Part 7: WAGES, COMPENSATION & PENALTIES OWED

36. CLAIMS (Check all boxes below that apply)	CLAIM PERIOD: START DATE (Month/ Day/ Year)	CLAIM PERIOD: END DATE (Month/ Day/ Year)	AMOUNT EARNED / CLAIMED
<input type="checkbox"/> REGULAR WAGES (for non-overtime hours)			\$
<input type="checkbox"/> OVERTIME WAGES (including double time)			\$
<input type="checkbox"/> MEAL PERIOD WAGES			\$
<input type="checkbox"/> REST PERIOD WAGES			\$
<input type="checkbox"/> SPLIT SHIFT PREMIUM			\$
<input type="checkbox"/> REPORTING TIME PAY			\$
<input type="checkbox"/> COMMISSIONS ***			\$
<input type="checkbox"/> VACATION WAGES ***			\$
<input type="checkbox"/> BUSINESS EXPENSES			\$
<input type="checkbox"/> UNLAWFUL DEDUCTIONS			\$
<input type="checkbox"/> OTHER (Specify):			\$
ENTER SUBTOTAL (add all Amounts Earned/Claimed):			\$
ENTER TOTAL AMOUNT PAID:			\$
GRAND TOTAL OWED [Subtotal minus Total Amount Paid]:			\$

*** Additional DLSE form should be submitted if you are making this claim. See "Instructions for Filing a Wage Claim."

37. Check box(es) if you are claiming: Waiting time penalties [Labor Code §203]
 Penalties for "bounced" checks (checks issued with insufficient funds) [Labor Code §203.1]

I hereby certify that the information I have provided is true to the best of my knowledge and/or recollection. The amounts claimed are based on my best estimates at this time and may be adjusted based on further information, or based on assistance with my claim provided by DLSE.

Signed: _____

Date: _____

Print Name: _____

DO NOT WRITE ON THIS SIDE - For Office Use Only

Claimant:	Against:	Interpreter Needed:	Action Number:
Address of Claimant:	Address of Defendant:	Docket Date	Date Closed
Phone No. of Claimant:	Phone No. of Defendant:	DATE(S) CLAIM RECEIVED	
Name & Address of Advocate:			
Phone No. of Advocate:	Address change of Defendant as of:		
Address change of Claimant as of:		DATE BOFE COMPLAINT FILED (if applicable)	DATE RCI COMPLAINT FILED (if applicable)

RECORD OF RECEIPTS				RECORD OF PAYMENTS TO CLAIMANT			
Date Received	Check, Cash, etc.	Receipt Number	Amount	Division Check Number	Date Paid	Balance Due	Signature/Remarks

CONFERENCE: DATES				PEND: DATES			

NOTES:

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.”

LABOR COMMISSIONER, STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS – DIVISION OF LABOR STANDARDS ENFORCEMENT

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.

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DEPARTMENT OF INDUSTRIAL RELATIONS – DIVISION OF LABOR STANDARDS ENFORCEMENT

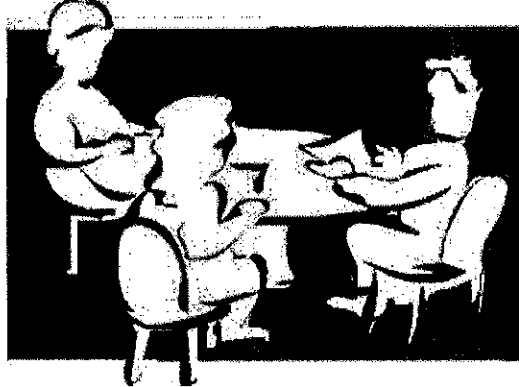
- 33a. **Hourly Pay?** Check "YES" if you were paid by the hour. Then enter how much you were actually paid per hour. If you were promised a different hourly pay than you received, also enter that amount.
- b. **More than One Hourly Rate?** Check "YES" if you were paid or promised various hourly rates, 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.

YOUR SETTLEMENT CONFERENCE WITH THE LABOR COMMISSIONER



Three Possible Outcomes

1. Settlement

- a) You and the employer may agree to settle the dispute for the whole amount owed to you.
- b) You and the employer will agree to negotiate a settlement for less than the whole amount. You do NOT have to accept the amount employer offers if you feel that it is not enough.

2. Commissioner Closes Your Case

You have a right to a hearing on your wage claim unless the commissioner believes that there is no basis for your case.

If the Commissioner is going to close your case, you should **strongly** request that your case not be closed and that your case be set for hearing so you can present all your evidence and prove your case. Remind the Commissioner that it is **not** her role to weigh the evidence.

3. Your case will be set for hearing

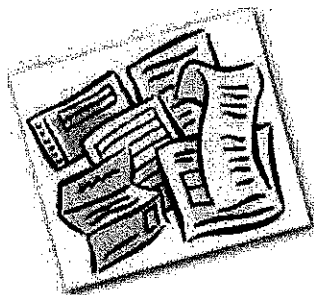
If you don't settle and the Deputy Commissioner agrees your claim should go to hearing, two things will happen:

- a) You will be asked to sign a complaint. Do NOT sign the complaint if you do not agree or do not understand it. Tell the commissioner that you will review it and mail it back. Make sure to mail it back by the deadline the commissioner gives you.
- b) A hearing will be scheduled and you will receive a notice in the mail.

Before the Conference

1. **If you need an interpreter, make sure to ask for one from the Labor Commissioner.**

2. **Get your case ready.**



Get your evidence together: Your calendar, your wage calculations, your time sheets, pay stubs and any other evidence you have to show that your employer owes the money. Make sure that you have three copies of everything: one for you, one for the defendant, and one for the Commissioner.

3. **Think about the amount you are willing to settle for.**

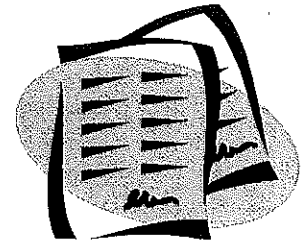
One of the purposes of the conference is to try to reach an agreement with your employer. You may not get all the money you have asked for so think about how much money you will accept. Usually a good amount to start with includes all owed wages and half of the waiting time penalties.

Factors to consider when deciding whether to accept an offer include whether your employer:

- Has money
- Has stronger evidence
- May disappear
- May go bankrupt
- May close their corporation



If you think your employer may disappear or go bankrupt, you want to think hard about negotiating an acceptable settlement NOW.



AT THE CONFERENCE

Explain Your Claim

Tell the Deputy Commissioner why your employer owes you money:

1. I work(ed) for _____ (employer name and business name).
2. From ___/___/___ to ___/___/___ (dates you worked) my job is/was _____.
3. My duties included _____.
4. I work(ed) _____ hours/day. I worked _____ days/week.

SHOW YOUR CALENDAR NOW

5. I am/was paid \$ _____ (per hour, day, or week)

PRESENT YOUR SPREADSHEET

6. Employer didn't pay _____ (minimum wage, overtime, last paycheck, vacation pay, etc.)

SHOW PAY STUBS

7. Employer did not provide meal/rest breaks (only say this if it is true about your case.)
8. I am also owed waiting time penalties at \$ _____ per day.