

How to Represent Yourself in Front of the Labor Board

The following provides a fairly in-depth look at how to represent yourself in front of the labor board. This provides general information about wage claims and the process to recover wages before the California Labor Commissioner. If you need more specific information, you should contact an attorney. This information is up-to-date as of August 1, 2012. The law itself may have changed since then. These changes may affect your claim. For up-to-date information, you should consult a lawyer immediately. Actually, you really should try to find a lawyer to represent you. But, if you can't then the below should help.

I. Figure Out What You're Owed

The Labor Commissioner provides some cool forms to determine what your employer owes you: <http://www.dir.ca.gov/dlse/Forms/Wage/English.pdf>

If you worked irregular hours and are [claiming unpaid wages](#) (for non-overtime or overtime hours worked) or [meal and rest period](#) violations you should use this form: [DLSE-55 \(Rev. 10/03\)](#). Here's a sample [Sample DLSE-55](#). Here are instructions on how to fill it out: [Pdf](#) / [Doc](#). If you have [commission claims](#) then also use this form: [DLSE-155 \(Rev. 12/03\)](#). See [Sample DLSE-155](#). See Instructions: [Pdf](#) / [Doc](#). If you are seeking [vacation wages](#) then fill out this form: ([Doc](#)). See the sample vacation pay schedule ([Pdf](#)). See instructions (Recapitulation of Vacation Pay): [Pdf](#) / [Doc](#).

II. Ask Your Boss For What You're Owed

It never hurts to ask. But, you should ask in writing. The sooner you ask, the better. You want to ask in writing because: 1) it might make filing a claim unnecessary if the employer pays, 2) it establishes that you asked, and the fact that you asked can be proof of [retaliation](#) if the employer then fires you, and, 3) if you're no longer working it can show that you asked for your money and that your employer refused to pay you, triggering "[waiting time penalties](#)."

III. File Your Claim

If you ask the employer for your money and they refuse to provide it to you, then you may want to file a claim with the labor commissioner's office. You can find your nearest office [here](#). The Labor Commissioner's office, which is staffed by people who have expertise in wage claims, may be more likely to understand your claim than say a small claims judge. Although it may be helpful to retain a lawyer to help you at the Labor Commissioner, the Labor Commissioner's process is designed to allow workers to bring claims on their own. The Labor Commissioner handles the following [types](#) of cases:

- Minimum wage
- Hourly wages
- Overtime wages

- Piece rate wages
- Commissions
- Deductions from pay
- Reimbursement of expenses
- Bonuses
- Vacation pay
- Severance pay (in some cases)
- Waiting time penalties
- Penalties for bounced checks
- Pay for not receiving breaks
- Pay for not receiving meal periods
- Liquidated damages (in garment worker cases only)

However, the Labor Commissioner might not handle your case if:

- You're an independent contractor (though employees are often "misclassified" as contractors by employers who illegally try to avoid certain legal obligations, such as the payment of taxes or other benefits to their workers. If your employer generally had the "right to control" your work, you are probably not an independent contractor and you can bring a claim for wages).
- You're a union member and a collective bargaining agreement defines the terms and conditions of your employment.
- You're a government employee.
- You're undocumented.

You only have [so long to claim back wages](#).

- You have three years if your claim is for minimum wage, overtime, meal or rest periods, illegal deductions, or unpaid reimbursements.
- You have two years if your claim is based on an oral promise.
- You have four years if your claim is based on a written contract.
- You have one to four years for waiting time penalties, depending on the basis for those penalties.

Once you know that you can file a claim, you can submit an "Initial Report or Claim" [form](#). The claim form is pretty simple. The important thing is that you fill out all the information as best as you can. You can always ask the Labor Commissioner for help if you don't understand something on the form. You should read the [Labor Commissioner's instructions for filing a wage claim](#) before filing. Also, before you file the wage claim you should make a copy of the form for your records. Then, you should file the wage claim in the district office that is in the county that you worked, not the county that you live in. You should ask the person behind the counter for a date stamped copy of the completed form.

IV. After You File Your Claim

After you file your claim, the Labor Commissioner will probably try to resolve the matter without the need for a formal hearing. The Labor Commissioner normally sends a "Notice of Claim and Conference" to you and your employer. The notice tells your employer that you have filed a claim and sets a Pre-Hearing Conference.

You should mark the date and time of the conference on your calendar and make sure that you attend. If you absolutely cannot attend because of a medical emergency or something like that, then you should call the Deputy Labor Commissioner listed on the Notice of Claim and Conference” form and ask for a “continuance.” A continuance is just a legal word for a postponement. You do not have an automatic right to continue the conference so the Deputy Labor Commissioner will probably require a very, very good reason.

V. Your Pre-Hearing Conference

The Labor Commissioner holds a pre-hearing conference in pretty much every case to try to encourage you and your employer to settle without the need for a formal hearing. The Labor Commissioner also can determine whether the case should continue or be dismissed at that conference. So, you should be prepared with your best case to ensure that your claim will continue.

DO NOT BE LATE. If you’re more than 15 minutes late, the Labor Commissioner can dismiss your case. Your employer is not required to attend the conference, but probably will to challenge the claim, get information on the claim and/or offer you a settlement. The Deputy Labor Commissioner assigned to your case will probably take you and your employer into a conference room. Your employer may have a lawyer present. The Deputy Labor Commissioner will probably sit at the head of the table. The Deputy Labor Commissioner will ask you to sit on one side and your employer to sit on the other side. The Deputy is an employee of the Labor Commissioner’s office and NOT a judge. So the Deputy Labor Commissioner has authority to try to persuade you and your employer to settle, but cannot make a final decision to order your employer to pay.

Before the conference you should make sure that you can recite all the important facts about your claim. Be ready to answer any questions about your job like how much you worked, what kind of work you performed and which hours or days you were not paid for. You should make an outline of the important facts.

You should get any “evidence” you might need like pay stubs, time cards, time records, and/or employee handbooks. If you don’t have copies then send an email or a letter to your employer asking for those records. Make sure to keep a copy for your records. You should also think about who might be witnesses who could testify on your behalf. You should bring a list of those witnesses to the conference.

The Deputy will try to settle your claim. Remember that it’s your decision to settle the claim. You need to consider whether a settlement in hand is better than a six-month process that may or may not lead to full recovery and more money. You also should consider whether you think your employer will ultimately pay the judgment if you win. If you think it will be difficult to collect the money from a judgment, you might want to take a settlement. Ultimately you must consider, 1) how strong is your case, 2) do you have documents to support your case, 3) do you have witnesses who will back your story,

and 4) will the employer have documents that will hurt you or co-workers who will testify against you.

Before the conference you should consider what your “bottom-line” is. But, keep in mind that new facts and evidence might come to light during the conference that may make you decide to change your settlement offers and your bottom line (either up or down).

If your case is not settled at the conference the Labor Commissioner will draft a complaint. You may be able to change things on the complaint by writing the Labor Commissioner a letter describing what changes you want to make and why. You will then receive a “Notice of Hearing” to you and your employer. You should get this notice about 5-6 weeks before the hearing. If you know you’ll be unavailable for a few weeks because you’re going on a trip or something like that, you should notify the Labor Commissioner ahead of time. It’s a lot tougher to get cases continued after the hearing is set. **YOU MUST ATTEND THE HEARING.**

VI. Getting Ready For the Hearing

Make an outline! The outline should include basic information like when you started working for the employer, what you did, how much you were paid and other legal issues. For example, if you are filing an overtime claim, you will probably have to provide answers to the following questions: 1) what was your rate of pay? 2) how many hours did you work in the time covered by your claim? And 3) which hours were paid according to law? I can’t go over all the possible issues in every case, but typically you must prove: 1) you had a wage agreement or the law requires that you be paid in some certain way, 2) you did work according to the agreement and/or the law, 3) you were not paid correctly according to the agreement and/or the law and 4) the employer now owes penalties because they did not pay according to the agreement or the law.

Gather evidence. Get documents like pay stubs, written records of the hours you worked (like time records, your personal calendar, or receipts from when you clocked-in/out), other documents from your employer (like handbooks, letters or written policies about how much you should get paid and why, or how much vacation you’re entitled to, or how much commission you’re entitled to). You should make three copies of all the documents and other evidence that you plan to use at the hearing, one for you, one for the Hearing Officer, and one for your employer.

If your employer has documents that you think will help your case, but you don’t think the employer will bring them, then you can ask the Labor Commissioner to issue a subpoena. You must request the subpoena as far in advance of the hearing as possible. To get a subpoena, you need to go to the Labor Commissioner’s office and fill out a “Request for Subpoena” form.

You’re allowed, but not required to bring witnesses to the hearing. You can have your witnesses provide “declarations” if they cannot attend the hearing. You can subpoena

witnesses too. A subpoena orders the witness to appear at the hearing and testify about what he or she knows. Again, you should subpoena the witnesses as far ahead of the hearing as possible. Once you receive the witness subpoena, you need to find someone else to “serve” the subpoena. The Labor Commissioner should provide you with instructions on how to do that.

You should rehearse on your own what you are going to say and rehearse with witnesses what they are going to say. Think about what you are going to say and how you will present “evidence” of what you are saying.

Finally, you should think about what your employer is going to say. For example, if your employer is going to argue that you are “exempt”, then you should testify about your job duties to show that you are “non-exempt.” You can learn more about specific laws and how the Labor Commissioner in the [Enforcement Manual](#). You should review the issues that you anticipate facing and bring copies of those pages with you.

VII. The Hearing

The hearing is designed so claimants can go through the process without a lawyer. However, you are allowed to bring a representative with you, if you want. Your representative does not have to be a lawyer, but you should seriously consider bringing in a lawyer. The hearing will take place in a small room with a conference table, or in a room that is set up like a court with one table at the front for the hearing office, one table for you and one table for your employer. A Hearing Officer will listen to and decide your case. Hearing Officers aren’t judges, but are employees of the Labor Commissioner, with legal training. However, they don’t even have to be lawyers. The Hearing Officer will be different than the Deputy Labor Commissioner who handled your conference.

You have the burden of proof, which means that you have to prove that you are owed wages. This means that you must show that it is more likely than not that you were not paid correctly. Typically hearings go like this:

First, the Hearing Officer provides opening remarks about the hearing itself, and the process the parties will go through. Then the Hearing Officer will introduce the parties, call the case number, and tell you that the hearing will be tape recorded. Then the hearing officer will ask you, your employer, and any witnesses to raise your right hands and swear to tell the truth. The oath is serious. Lying in a hearing is considered perjury, a criminal offense. Next, the witnesses are told to leave the room. If the Hearing Officer forgets to tell the witnesses to leave the room, and they are the employer’s witnesses, you should ask the Hearing Officer to ask the witnesses to wait outside. Next, the Hearing Officer reads the complaint into the record. Then the Hearing Officer will ask if that is correct or if you want to make any changes. If you want to make any changes to the complaint, this is the last chance. If you make any changes, the Employer may object and ask for a continuance of the hearing so that they can respond to those changes. Next, the Hearing Officer will ask you and the employer some basic questions like when you worked, what your job duties were, how much you were paid, what your schedule was

like, and whether your employer kept records of the hours. If you don't understand, ask the Hearing Officer to explain. The purpose is to see what types of things you and your employer are in agreement about.

Next, the Hearing Officer will ask you some more detailed questions about the agreement you had for wages, the kinds of services you performed, the hours you were not paid for, whether you asked to be paid, how often you asked, and what was your employer's response. For more on specific issues you can check out the [Legal Aid Society's Employment Law Center Fact Sheets](#). You should present your testimony: 1) truthfully, 2) consistently, and 3) with as much detail as possible. These all lend to your credibility. You should submit your documents while you are testifying. For example, you can say that XYZ Company provided you a contract and that you have a copy of that contract that you'd like you submit. Then you can give a copy of the contract to the other side and a copy to your Hearing Officer. Then you can start explaining the contract. After you testify, your employer will have the opportunity to "cross examine" you or ask you questions to try to undermine your case. To prepare for cross examination, think about the worst questions they could ask you for your case and try to think of ways to answer those questions. You should try to answer only the question that they ask. You should not volunteer information unless you are very confident that the information will help you. If you have any witnesses, they will proceed next with the same structure. They will offer their direct testimony and then be subjected to cross examination.

Next, the employer will have their chance to offer direct testimony and evidence. You have the chance to cross examine them. During cross examination, you should ask questions that make it look like your employer is either lying or is presenting evidence that doesn't make any sense. For example, you can ask, "Isn't it true that your company did not keep records of my time when I worked there?"

You have the right to object, but use objections sparingly.

Finally, you have closing arguments. You should make a brief statement (no more than 1-2 minutes) to summarize all the facts that you have presented, all the relevant testimony that was given and any documents that were submitted. Take this straight off your outline. The employer will probably do the same.

Next, the Hearing Officer may or may not ask some additional questions to clarify any confusion. The Hearing Officer will tell you when you should expect a decision.

VIII. The Decision from the Hearing Officer

After the Hearing the Hearing Officer submits and "Order Decision or Award of the State Labor Commissioner." The front page will tell how much you have been awarded if you won your case or whether you lost. The other pages explain why the Hearing Officer made the decision that he or she did. The ODA is supposed to come within 15 days of the hearing, but usually takes longer, especially if the Hearing Officer has a large number of cases to decide. If the decision has not come after a month you should call the Labor

Commissioner's office and ask when you can expect the decision. You should have the case number and name of the hearing officer when you call to help speed things up.

IX. Appealing the Hearing Officer's Decision

Either side has the right to appeal and an ODA does not become final until the time to appeal has expired. You have 10 days from the date you receive the decision or 15 days from the date of mailing, whichever occurs first to file an appeal. If either side appeals the Labor Commissioner will not hear your case again. The case is filed in local state Superior Court and starts over new.

If you win, but your employer appeals, the Labor Commissioner will send you a "Notice of Appeal." You should also receive a "Request for Attorney Representation" form and a form titled "Claimant's Financial Statement Status." If you are eligible, then an attorney from the Labor Commissioner's Office will represent you on appeal without cost.

If you win, but decide to appeal, then carefully consider, how much better you think you can do on appeal. If you decide to appeal, there is a risk that you will have to pay your employer's attorneys if you do not win at least some money at the appeal.

You should be represented by an attorney on any appeal.

X. Collecting Your Judgment

If you win, and the ODA becomes final, you still have to collect on the judgment. Your employer should voluntarily pay, but often they refuse. If they refuse, you can either ask the Labor Commissioner to enforce the judgment, or you can try to enforce it yourself. The Labor Commissioner might take a while. But, you might end up having to file court documents, such as liens on property and bank accounts, and spend a lot of time trying to collect your money. If you have to pay to enforce the judgment you may be able to make your employer pay back the extra expenses you had to spend.

XI. Paying Income Taxes

Any money that you collect through a Labor Commissioner claim is taxable income...even if your employer does not provide a 1099 or a W-2. You should consult with a tax professional about how to report your winnings or settlement.

For more in-depth information, you should look at http://www.las-elc.org/docs/self-help/Recovering_Unpaid_Wages.pdf. That site provides a wealth of information, and was a basis for forming this guide.