



YOU HAVE RIGHTS AT YOUR WORKPLACE

**A KNOW-YOUR-RIGHTS GUIDE TO HELP
CALIFORNIA WORKERS UNDERSTAND THEIR
RIGHTS & COMMUNICATE WITH THEIR BOSSES**

**WORKERS' RIGHTS COMMITTEE
NATIONAL LAWYERS GUILD**

INTRODUCTION

All workers—citizens and non-citizens, documented and undocumented—have rights that protect them at work. This booklet provides an overview of California workplace rights in everyday English and is designed to clarify the law and empower workers.

In some situations it will be possible to proceed without an attorney. While this booklet is not a substitute for legal advice, it will help workers to understand their rights and take real steps to protect them. In complex situations or those involving possible lawsuits, it is recommended that you seek legal advice from an attorney.

The advice in this book is not intended for workers who are represented by a union or who work directly for a government agency, such as a city or public school district. Different rules may sometimes apply to such workers.

For a list of resources & contact information, please see the last part of this booklet.

MINIMUM WAGE

All workers—regardless of where you work or what your immigration status is—must be paid at least the minimum wage. In California, the minimum wage at large businesses is \$11 per hour, and at small businesses is \$10.50 per hour. These amounts will go up in 2019, 2020, and 2021.

	LARGE BUSINESS (26 employees or more)	SMALL BUSINESS (25 employees or less)
Current	\$11.00 per hour	\$10.50 per hour
Starting Jan.1, 2019	\$12.00	\$11.00
Starting Jan. 1, 2020	\$13.00	\$12.00
Starting Jan. 1, 2021	\$14.00	\$13.00

The minimum wage in some cities is higher. The minimum wages in the City of Los Angeles, Santa Monica, and Pasadena are shown in the chart below.

<u>City of Los Angeles, Santa Monica & Pasadena Only</u>		
	LARGE BUSINESS	SMALL BUSINESS
Current	\$13.25 per hour	\$12.00 per hour
Starting July 1, 2019	\$14.25	\$13.25
Starting July 1, 2020	\$15.00	\$14.25

For jobs in large hotels in the City of Los Angeles or Santa Monica, the 2018 minimum wage is \$15.66.

Which Hours Count for Minimum Wage?

Employers must pay you no less than the minimum wage for all hours (or parts of hours) you are subject to your employer's control. This includes work trainings, work travel, setup time, and changing into or out of required clothing or safety gear at your worksite.

TIPPING

- If you receive tips at work, this money is in addition to the minimum wage. Your employer cannot count tips as part of the minimum wage.
- Your employer can require you to pool tips with co-workers, but owners or supervisors may not participate in tip pools.
- For tips paid by credit card, your employer must give you those tips to you no later than your next payday.

WHAT IS OVERTIME?

Overtime pay is 50% more than your regular rate of pay. For example, if you are normally paid \$12 per hour, you must be paid \$18 for all overtime hours you work.

California requires your employer to pay you overtime in any of the following three situations:

- 1) You work more than 40 hours in a single week, or
- 2) You work more than 8 hours in a day, or
- 3) You work 7 straight days for your employer.

DOUBLE PAY

California requires your employer pay you double pay if:

- 1) You work more than 12 hours on a single workday, or
- 2) You work more than 8 hours on the 7th straight day of work for your employer.

WHO MAY RECEIVE OVERTIME?

If you are paid by the hour, you are always eligible for overtime.

If you are paid a salary, instead of by the hour, you qualify for overtime if your monthly salary is less than two (2) times the state minimum wage for a 40 hour workweek. If you earn less than the salary listed in this chart, you are eligible for overtime:

	LARGE BUSINESS (26 employees or more)	SMALL BUSINESS (25 employees or less)
Current	\$45,760 per year	\$43,800 per year
Starting Jan. 1, 2019	\$49,920 per year	\$45,760 per year
Starting Jan. 1, 2020	\$54,080 per year	\$49,920 per year

The salaries above are before any taxes are removed. If your salary is calculated weekly, you are eligible for overtime in 2018 if your salary is below \$880 per week at large businesses and \$840 per week at small businesses.

If you earn a salary above these amounts, you may still qualify for overtime if your job duties do not meet certain requirements. In general, work that is primarily intellectual, managerial, or creative, and which requires exercise of discretion and independent judgment, will not qualify for overtime pay if the salary is higher than the amounts listed above.

MEAL BREAKS and REST PERIODS

You have a right to a meal period of at least 30 minutes when you work more than 5 straight hours. You have a right to a 2nd meal period of at least 30 minutes if you work more than 10 straight hours. You are entitled to take your meal break as soon as you work longer than a 5 or 10-hour period. Meal periods can be unpaid, unless you are required to perform any duties during your meal period.

You must also receive a 10-minute paid rest period for every 4 hours worked.

If your employer fails to provide a meal or rest period as required, the employer must pay you one additional hour of pay for each violation.

What Are My Paycheck Rights?

You have the right to be paid your wages at least twice a month on regularly scheduled paydays, except for some salaried positions. Overtime pay must be paid no later than the 2nd payday from when the work was performed.

The paycheck must state the total hours worked, the total wages earned, the hourly rate, the dates of the pay period, and any deductions that have been subtracted from the total wages earned.

Your employer must pay employees the full amount owed in either cash, check, or direct deposit. Checks must be immediately cashable for the full amount owed. Direct deposit payments can only be made with your permission.

What Can My Employer Deduct from My Paycheck?

Your employer may not withhold or deduct money from your paycheck, unless it is required to do so by law or you give permission to a deduction for health insurance, retirement savings, or other reason.

Your employer may not deduct any of the following from your wages: tips, uniforms, tools, equipment, expenses, losses that occurred as a direct part of your work duties.

Reimbursement of Expenses

You must be reimbursed by your employer for all expenses or losses that occur as a direct part of your work duties. This includes equipment, materials, training, work travel, uniforms, cell phone, and expenses related use of a vehicle for work.

Final Paycheck Rights

Your employer must pay you all wages owed immediately upon your termination or layoff. If you resign, your employer must pay you all wages owed at time of quitting if you gave at least 3 days notice, or must pay all wages owed within 3 days if you did not give 3 days notice. If your employer fails to meet any of these time requirements, your employer will owe you a “waiting time penalty” in the amount of 10 additional days’ wages.

Unemployment insurance You are eligible for unemployment payments if you lose your job through no fault of your own. Apply at www.edd.ca.gov/Unemployment

SICK LEAVE & FAMILY LEAVE

Your employer must provide you with paid sick leave for the care of your own health condition or that of a family member. An employer is required to give you one hour of sick leave for every 30 hours you work, or a total of 24 hours per year (three 8-hour days). Paid sick leave can be taken in increments as small as 2 hours and can be used for doctor's appointments. You should try to provide your employer with notice as early as possible. A family member under this law includes children, parents, spouse, grandparents, grandchildren, and siblings.

The City of Los Angeles has its own paid sick leave law. In Los Angeles, employers must provide 48 hours (or 6 days) of paid sick leave.

Unpaid Family and Medical Leave

Your employer must provide up to 12 weeks per year of unpaid leave for the care of your own serious health condition or that of a family member. To be eligible, your employer must have at least 50 workers, you must have worked at your employer for at least 1 year, and you must have worked at least 1,250 hours for your employer during the past 12 months. Your employer may require a doctor's note. You cannot lose your job or employer health benefits for taking this sick leave.

Health insurance Employers are not required to provide health insurance. You may qualify for subsidized or free healthcare through Covered California. Apply at www.coverdca.com

WHAT IF I AM PREGNANT?

California provides paid leave during the final four weeks of pregnancy and during the first six weeks after birth. Your pay during this leave will equal about 60% of your current wages. Apply at www.edd.ca.gov/Disability/SDI_Online.htm

Pregnant mothers have the right to a total of 4 months of leave from work (paid + unpaid) for pregnancy-related medical conditions. You cannot lose your job or employer health benefits for taking pregnancy leave.

NEW PARENTS California also provides six weeks of paid baby bonding leave to parents after the birth, adoption, or fostering of a child, in addition to any paid pregnancy leave. This pay will equal about 60% of your current wages. Your employer must allow you to take baby bonding leave if it has 20 or more employees.

WHAT IF I AM DISABLED?

California provides payments to employees who cannot work because of illness, injury, or family illness. Payments will equal about 60% of your current wages. To receive payments based on your own injury or illness, you must be unable to perform your regular work for at least 8 days and have a note from a doctor. To receive payments based on a family illness, your earnings must have decreased because of time taken off to care for a seriously ill family member.

Your injury or illness does not need to be work-related to qualify for this benefit. Apply at www.edd.ca.gov/Disability/

For a permanent disability, or disabilities lasting more than one year, you may seek assistance through Federal Social Security. Apply at www.ssa.gov/planners/disability

DISCRIMINATION AND HARRASMENT

It is unlawful for your employer to discriminate against you based on these protected categories:

- Race
- National Origin/Ancestry
- Religion
- Age (only if over 40)
- Physical Disability
- Mental Disability
- Medical Condition
- Genetic Information
- Military service
- Sex/Gender (including pregnancy, birth, breastfeeding)
- Sexual Orientation
- Gender Identity
- Gender Expression
- Marital status (such as married, divorced, single)

An employer cannot use any of these protected categories when making employment decisions, such as hiring, firing, promotion, demotion, pay, hours, benefits, job duties, and transfers. Even if other, non-discriminatory reasons exist for the employment decision, it is illegal if the protected category was a substantial motivating factor in the negative employment decision.

It is also illegal discrimination if your employer adopts a practice or policy that has an unusually strong negative impact on a group sharing one of the protected categories.

Harassment is the use of offensive words, conduct, or images that relate to one of the protected categories listed above. Not all insulting conduct is illegal harassment. Harassment becomes illegal when it is severe or widespread enough to create a hostile or abusive work environment.

Sexual Harassment It is always illegal for a supervisor to demand sexual favors for a positive employment action (such as promotions, raises) or to avoid negative actions (termination, denial of advancement).

What should I do if I face discrimination or harassment at work?

If you experience discrimination or harassment at work, you should first report it to your employer's human resources director or your boss. This report should be in writing, if possible. Keep an extra copy of this document. If you do make the report verbally, you may want to follow-up with a thank you note in writing. If your boss is doing the discrimination or harassment, you should report the conduct to human resources or go over your boss's head to the next in charge. If nothing changes, you should consult an attorney or file a complaint.

How do I file a complaint?

You can file a complaint with either the federal Equal Employment Opportunity Commission ("EEOC") or the California Department of Fair Employment and Housing ("DFEH"). You may contact the EEOC by phone at 1-800-669-4000 or in person at one of these locations:
www.eeoc.gov/field/index.cfm You may contact the DFEH by phone 1-800-884-1684 or email contact.center@dfeh.ca.gov

No Retaliation An employer cannot retaliate against you for opposing illegal discrimination or harassment, including reporting it to a supervisor or the government.

Disability Assistance at Work

In California, employers must accommodate individuals with physical or mental disabilities to assist them in performing the essential functions of their jobs, unless it would cause the employer an undue hardship. A disability qualifies for accommodation if it limits a major life activity, including working. Some examples of reasonable accommodations that an employee can request are:

- Changing job duties
- Providing leave for medical care
- Changing work schedules
- Relocating the work area
- Providing mechanical or electrical aids

How Do I Request an Accommodation?

You must request accommodation, although such a request may be made verbally or in writing. If you have any concern that your employer may not treat your request fairly, it is best to make it in writing. Send a written note to your employer's human resources director or to your boss.

The written request should state all of the following: the date, your name, the sentence "I am requesting a reasonable accommodation for my disability," a short description of your disability (such as "I suffer from chronic depression" or "I am unable to carry more than 25 pounds"), the suggested accommodation (If you know what might help), and your signature. You should keep an extra copy of the request.

Interactive Process Your employer is required to communicate with you about your accommodation request. Your employer is not required to provide the best possible accommodation, but must offer a reasonable accommodation if it will allow you to perform the essential functions of your job and does not cause the employer undue hardship.

WHISTLEBLOWING

Reporting an employer's suspected violation of a law to a government authority is called "whistleblowing." If you know or suspect that your employer is violating the law, or your employer is forcing you to violate the law, call the number below.

Your employer cannot retaliate against you because you reported a suspected violation. Retaliation includes discharge; demotion; pay cuts; refusal to promote, hire, or transfer; changes in job duties or shifts; and harassment.

**California Attorney General
Whistleblowers Hotline: 1-800-952-5225**

California law protects employees who:

- Report violations of the law;
- Refuse to participate in illegal activity; or
- Participate in government investigations or judicial proceedings regarding their employer.

HEALTH & SAFETY AT WORK

The Occupational Safety & Health Act (OSHA) requires employers to protect workers from most harms at work, including injury, illness, and workplace violence. To file a complaint or learn more, visit www.dir.ca.gov/dosh/Complaint.htm

What If I Get Injured On the Job?

You may get workers' compensation benefits if you were hurt at work or your job caused you to become sick. It does not matter if the injury or illness was your fault. You may qualify for benefits if your injury is from a single incident such as breaking a bone; and you may qualify if your injury comes from the strain of working rather than a single incident, such as pain caused by always doing the same motion. You also may qualify if things at work, such as chemicals or dust, make you sick. Sometimes emotional injuries make you eligible if they come from a sudden and unusual event.

Benefits Your employer has to pay for your medical treatment to cure your on-the-job injury or make you well again. You may also qualify for disability benefits described on page 9.

You should consider applying for benefits if you need more than first aid treatment or you are out of work for more than a few days. If your employer does not provide you a claim form, or pay for your treatment or your benefits, then contact the California Workers' Compensation office at 1-800-736-7401 or <http://www.dir.ca.gov/dwc/landA.html>

Follow these steps if you are injured on the job:

1. *Notify Your Supervisor* or employer immediately (and no later than 30 days after the injury) if you are injured on the job. If your injury developed over a period of time, notify her as soon as you feel symptoms or realize the injury is job-related. Your notice to your supervisor should include the date of injury, the parts of body injured, and how and where the injury occurred. If your company has an injury form, make sure you fill out this form and check it for accuracy.
2. *Get Medical Treatment.* If you need emergency medical treatment, go immediately to the emergency room. Make sure you tell the doctor that you got hurt at work. If this is not an emergency, you must tell your employer of your injury and give her the chance to send you to a doctor.
3. *Apply for Benefits.* Your employer has to give you a workers' compensation claim form within one working day of learning of your injury. If your employer does not give you the form after you tell her of the injury or illness, then ask for one.

If your employer says she does not participate in worker's compensation, that is illegal. You may still get benefits if you contact the number on the previous page.

No Retaliation Your employer cannot discriminate or retaliate against you because you were injured or asked for benefits

RIGHTS OF IMMIGRANT WORKERS

All workers, regardless of immigration status, must receive the minimum wage and all other workplace rights described in this booklet. It is illegal for an employer to threaten to report any worker to ICE because they voiced their workplace rights.

Every employer must fill out an I-9 form after it hires an employee. You, not the employer, choose which documents to provide to meet the law's requirements. The employer may not ask you for more documentation than the law requires or different documents than those you have provided, so long as they satisfy the minimum requirements for an I-9.

Once You Have Been Hired, your employer can only demand to reverify any of the documents on which it relied in filling out the I-9 in three circumstances:

- if your work authorization has an expiration date, or
- if the employer has "positive information" that you are not authorized to work in the US, or
- if the US Citizenship and Immigration Services provides the employer with "specific, detailed information" establishing the invalidity of the documents you presented to establish identity or work authorization.

An employer cannot demand reverification when you are returning from layoffs or leaves of absence, or when reinstated by an arbitrator, or when moving between jobs within the company.

You have the right to remain silent if you are detained by ICE for questioning. You can preserve that right by handing the ICE officer a card that states:

- I will remain silent and I refuse to answer your questions.
- If I am detained I have the right to contact an attorney immediately.
- I refuse to sign anything without advice from an attorney.

PROTECTED CONCERTED ACTIVITY

As an employee, you have the right to join together with co-workers to address issues at work.

An employer can't retaliate against any employee who participates in a group effort to improve working conditions. Such activity is **protected**.

- Only activity that is **concerted** can be protected. This normally means that at least two employees engage in the activity together. A classic example is passing around a petition that tries to increase wages for all workers in a business.
- Concerted activity must be **related to the terms and conditions of work** to be protected. A petition to get holiday off relates to the terms and conditions of work. A petition to support your child's scout troop does not.

This is important because it gives you a tool to change your working conditions for the better. Even though you can be disciplined by the boss if you act alone, when you join together to push for better working conditions the boss cannot retaliate against any of you. For more information, go to www.nlr.gov

YOU HAVE A RIGHT TO JOIN A UNION

Almost all employees have the right to join a union, and to ask their coworkers to join a union. Your right to support a union includes actions like:

- Wearing union insignia at work.
- Handing out union literature on break time or when you are off duty.
- Circulating union authorization cards during break time or when you are off duty.

Your boss cannot retaliate against you for exercising this right, or try to coerce you into not exercising your right to organize. It is illegal for your boss to do things such as:

- Fire or discipline you or your coworkers for talking about joining a union.
- Follow you around and spy on you while you talk to coworkers about joining a union.
- Threaten to shut down the business if you and your coworkers form a union.
- Interrogate or question you about you and your coworkers' efforts to join a union.
- Promise extra pay, better shifts, or any other benefit to employees who resist forming a union.

However, your employer has a right to control their property, which includes things like office supplies, phones, and (sometimes) their email system. To be safe, you should make flyers and other materials on your own time using your own supplies.

CAN MY EMPLOYER FIRE OR DISCIPLINE ME?

In California, at-will employment is the standard employment relationship for all non-government employees. Unless you have a union at work, you are likely at-will.

At-will employment means that you can be fired for any reason (except reasons that violate specific legal rights, discussed more below). Under at-will employment, a termination may be unfair or unjustified, but that does not necessarily make it illegal. An employer does not even need to provide a justification for a termination.

The most common alternative to at-will employment is a ‘just cause’ employment relationship. Under a ‘just cause’ employment relationship, an employer may only fire you if it can prove that it has a good reason to fire you. Nearly all unions provide their members with ‘just cause’ protection.

EXCEPTIONS TO AT-WILL EMPLOYMENT

Employers cannot lawfully discharge any worker—even an “at will” worker—for reasons that violate a worker’s legal rights, or for reasons that violate fundamental public policies based on state and federal laws and constitutional rights. For example, an employer is not allowed to fire you because of a protected category listed on page 10 or because you used one of your rights listed in this booklet.

PERSONNEL FILES All California employees have the right to request a copy of the personnel files and records related to your performance or to any grievance about you.

Are you an Independent Contractor?

The rights described in this booklet apply to employees, not independent contractors. However, in California, very few workers are actually independent contractors.

If your employer says you are an independent contractor, she is probably just trying to prevent you access to your worker's rights.

To be classified as an Independent Contractor, your work must meet 3 criteria:

- (A) The company or person paying you has no control or direction over how your work is performed, and
- (B) You perform work that is outside the usual business of the company or person paying you, and
- (C) You are regularly engaged in an independently established trade, occupation, or business of the same nature as the work performed.

This test is relatively new, so many employers may still be operating under the old law, which allowed more workers to be labeled independent contractors. If you think your employer has improperly labeled you an independent contractor, you should raise the rights described in this booklet to your boss and contact the government agencies described in this booklet.

RIGHTS DURING HIRING

An employer cannot refuse to hire you based on a protected category, such as race or gender. See full list on page 10.

Disability Questions

An employer cannot ask questions that are likely to reveal a disability before making a job offer. Examples are “Do you take any prescription drugs?” or “Do you have any respiratory issues?” However, if the disability is visible or you disclose it voluntarily, the employer can ask questions to determine your ability to perform job functions with or without an accommodation.

Criminal Background

An employer cannot ask for or consider conviction history prior to making a job offer, whether on an application or in an interview. The employer can ask about prior convictions and do a background check after the job offer, but cannot rescind an offer simply because of the existence of a conviction.

Previous Pay

An employer also cannot ask what your pay was at your previous job.

Non-Compete

Your prior employer cannot prevent you from getting a new job with a competitor, even if you signed an agreement saying that you would not work for a competitor.

The National Lawyers Guild – Los Angeles

www.nlg-la.org

Facebook.com/NLGLosAngeles

@NLG_LosAngeles (Twitter)

(310) 313-3700

Executive Director: kath@nlg-la.org

To get copies of this booklet, email dec@ssdslaw.com

Acknowledgments

Much of the material in this booklet is condensed from the 5th edition of the book *California Workers' Rights*, by David Rosenfeld, Nina Fendel, and Anne Yen. It is published by the Center for Labor Research and Education, University of California, Berkley. <http://laborcenter.berkeley.edu/california-workers-rights/>

RESOURCES FOR WORKERS

Legal Aid Organizations

- Bet Tzedek: www.bettzedek.org or 323-939-0506
- Legal Aid Foundation of L. A.: Lafla.org or 800-399-4529
- Bay Area Legal Aid: www.baylegal.org/get-help
- Statewide list of California legal aid agencies:
Caforjustice.org/about/organizations

File a Claim

- ◆ *Unpaid Wage & Overtime Claims; Meal & Rest Breaks*
www.wagetheftisacrime.com/File-Wage-Claim.html or 213-620-6330
www.wagesLA.lacity.org/submit-complaint or 844-924-3752 (City of Los Angeles Only)
- ◆ *Paid Family Leave & Disability Benefits*
www.edd.ca.gov/Disability/ or 877-238-4373
- ◆ *Workplace Discrimination & Harassment Claims*
www.dfeh.ca.gov or 1-800-884-1684
- ◆ *Workplace Health and Safety Complaints*
www.dir.ca.gov/dosh/Complaint.htm or 213-576-7451
- ◆ *Worker's Compensation Claims (on-the-job injuries)*
www.dir.ca.gov/dwc/FileAClaim.htm or 800-736-7401
- ◆ *Health Insurance*
www.coveredca.com or 800-300-1506

Immigration Legal Assistance

- Coalitions for Humane Immigrant Rights of L. A. (CHIRLA): www.chirla.org or 888-624-4752
San Francisco Immigrant Legal & Education Network:
www.sfilen.org/services or 415-282-6209

The background image shows a boxer in a ring, with a blurred crowd in the background. The boxer is wearing a dark shirt and is in a fighting stance. The entire image has a strong orange-red color cast. The quote is centered in large, bold, yellow capital letters.

**SPEAK
YOUR
MIND.
DON'T
BACK
DOWN.**

-MUHAMMAD ALI