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
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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 actual steps to protect them. You should consult a worker center, community legal clinic, or attorney for the most up-to-date law that applies to your particular circumstance. In complex situations or those involving possible lawsuits, it is recommended that individuals seek legal advice.

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, a county, a public agency, the State of California, a public school district, a community college, or other public college or university. Different rules and laws sometimes apply to such workers. If you work for this type of employer, we advise you to consult your union representative regarding workplace issues, if possible.
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 $14 per hour, and at small businesses is $13 per hour. These amounts will go up on January 1 of 2022 and 2023. After 2023, the minimum wage for all workers will be $15 per hour.

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<th>LARGE BUSINESS (26 employees or more)</th>
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<td>Current</td>
<td>$14 per hour</td>
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The minimum wage in some California cities is higher. The minimum wage in the City of Los Angeles, Santa Monica, and Pasadena is $15.00.

For jobs in large hotels in the City of Los Angeles or Santa Monica, the July 1, 2020–July 1, 2021 minimum wage is $17.13 per hour. The minimum wage for large hotels is tied to inflation and increases each year on July 1 based on the consumer price index.
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 any work training, 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 your 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 no later than your next payday.
WHAT IS OVERTIME?

Overtime pay is 50 percent more than your regular rate of pay. For example, if you are paid $15 per hour, you must be paid $22.50 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 at one employer.

DOUBLE PAY

California requires your employer to 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 at the same 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:
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<tr>
<td>Current</td>
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The salaries above are before any taxes are removed. If your salary is calculated weekly, you are eligible for overtime in 2021 if your salary is below $1,120 per week at large businesses and $1,040 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.

**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 second 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 wages from your paycheck, unless it is required to do so by law or you expressly authorized 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.

FINAL PAYCHECK

Your employer must pay you all wages owed, including any unused vacation, immediately upon 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’ up to a maximum of 30 additional days’ wages.

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.
WHAT IF I CANNOT GO TO WORK?

EMPLOYER-PAID SICK 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). 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.

STATE PAID FAMILY LEAVE

The state of California provides up to 6 weeks of paid family leave if you must:

• Care for a parent, spouse, registered domestic partner, child, grandparent, grandchild, parent-in-law, sibling with serious health condition; OR

• Bond with a new child within one year of its birth or placement for adoption or foster care. (See “New Parents” on page 10)
The amount of weekly benefit will generally be about 60 percent of your normal wages, but cannot exceed statutory limits that change from year to year. (Your base year is the 1-year period commencing approximately 5 calendar quarters before your leave.) Instructions for filing a claim are available at: https://edd.ca.gov/Disability/How_to_File_a_PFL_Claim_in_SDI_Online.htm

**LIMITATIONS.** You cannot receive paid family leave if you are eligible for unemployment benefits, workers’ compensation, other state disability benefits, or another family member is ready, willing, able, and available to provide required care to the family member. Additionally, you must have made sufficient contributions deducted from your paychecks during your base year.

**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 [http://www.coveredca.com](http://www.coveredca.com)

**UNEMPLOYMENT INSURANCE.** You are eligible for unemployment payments if you lose your job through no fault of your own. Apply at [http://www.edd.ca.gov/Unemployment](http://www.edd.ca.gov/Unemployment)

**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 percent of your current wages. Apply at [http://www.edd.ca.gov/Disability/SDI_Online.htm](http://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 6 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 percent 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 percent 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. The benefit can last up to 52 weeks. Apply at
http://www.edd.ca.gov/Disability/

For a permanent disability, or disabilities lasting more than one year, assistance may be available through Federal Social Security. Apply at
http://www.ssa.gov/planners/disability
ACCOMMODATION FOR YOUR DISABILITY

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 supervisor. 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 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.
DISCRIMINATION AND HARASSMENT

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 DO 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 supervisor. 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 supervisor is doing the discrimination or harassment, you should report the conduct to human resources or go over the supervisor’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 FOR DISCRIMINATION OR HARASSMENT?

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 the locations listed at: http://www.eeoc.gov/field/index.cfm

You may contact the DFEH by phone at 1-800-884-1684 or by email at 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.
RIGHTS DURING HIRING

NO DISCRIMINATION. An employer cannot refuse to hire you based on a protected category, such as race or gender. See full list on page 14.

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 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.
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 http://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 14.

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 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 the 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 above.

**NO RETALIATION.** Your employer cannot discriminate or retaliate against you because you were injured or asked for benefits.

**CAN MY EMPLOYER FIRE OR DISCIPLINE ME?**

In California, at-will employment is the standard employment relationship for all private sector 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 13 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 the employee.
RIGHTS OF IMMIGRANT WORKERS

PROTECTIONS
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.

EMPLOYMENT VERIFICATION
Every employer must fill out an I-9 form after it hires an employee. An employer cannot ask you for employment verification BEFORE they hire you. 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, as long as they satisfy the minimum requirements for an I-9.

REVERIFICATION
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 which has passed, 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.
WORKPLACE RAIDS

If ICE comes into your place of employment to question you or your co-workers, remember:

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:

1. I will remain silent and I refuse to answer your questions.

2. If I am detained I have the right to contact an attorney immediately.

3. I refuse to sign anything without advice from an attorney.

Whatever happens do not feel pressure to speak, speak to ICE without an attorney, or sign any documents.

FAMILY PREPAREDNESS PLAN. It is important for you and your family to prepare in the unfortunate event ICE detains you. You should make sure that you have a plan for

1. Childcare.

2. Multiple copies of important documents safely stored.

3. You have an immigration attorney’s number memorized.

4. Your family is familiar with ICE Detainee locator (available at: https://locator.ice.gov/odls/#/index).
**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 in order to be protected. A petition to get Labor Day 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.
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.

**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:

1. **The company or person paying you has no control or direction over how your work is performed, and**
2. **You perform work that is outside the usual business of the company or person paying you, and**
3. **You are regularly engaged in an independently established trade, occupation, or business of the same nature as the work performed.**

However, App-based drivers for companies like Lyft, Uber, and DoorDash are considered independent contractors even if they do not meet each of the three criteria above.
This is because California voters passed Proposition 22 in 2020, which created a special legal exception for these corporations. (As of the time of printing, this law is under review by the courts.)

**APP-BASED WORKERS**

DoorDash, Instacart, Lyft, Uber, and Postmates spent over $200 million to fund Proposition 22 to take basic minimum employment standards away from app-based drivers and replace them with less generous benefits.

Proposition 22 was passed by the electorate and sets a lower standard for app-based employment than other forms of work:

- If you are an app-based driver, you may be classified as independent contractors.
- You must be paid at least 120 percent of the minimum wage, but you are only entitled to compensation during “engaged time” when you are actually engaged in a trip. This 120 percent is based on an average so the company can pay you less than minimum wage for individual trips as long as your wage averages out to 120 percent during engaged time. App-based companies are not required to compensate you for time spent waiting.
- If you average 15 hours or more of engaged time then you are entitled to a health care stipend.
• Companies cannot discriminate against hiring you based on a protected classification 10.
• App-based companies must provide you with minimum insurance to protect against accidents and lost income.
• App-based companies must establish sexual harassment policies to protect drivers and passengers.

App-based companies are not required to pay overtime, provide paid sick leave, provide unemployment insurance, or any other guarantees discussed in this booklet.

Currently, a lawsuit called *Castellanos v. State of California* is making its way through the courts and is challenging the constitutionality of Proposition 22. It is possible that the courts will invalidate Proposition 22 and app-based drivers will be deemed employees. It is also possible that the courts will ultimately uphold Proposition 22.
WHISTLEBLOWING

Reporting an employer’s suspected violation of a law to a government authority is called “whistleblowing.” 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 also protects employees who:

- Refuse to participate in illegal activity, or
- Participate in government investigations or judicial proceedings regarding their employer
RESOURCES FOR WORKERS

LEGAL AID ORGANIZATIONS

- Bet Tzedek:
  www.bettzedek.org or 323-939-0506
- Legal Aid Foundation of L. A.:
  www.lafla.org or 800-399-4529

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
SPEAK YOUR MIND. DON'T BACK DOWN.

—MUHAMMAD ALI