

Case No. S244630

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

---

OTO, LLC an Arizona Limited Liability Company, dba  
ONE TOYOTA OF OAKLAND, ONE SCION OF OAKLAND,  
Plaintiff and Respondent,

v.

KEN KHO,  
Real Party in Interest,

SUPREME COURT  
FILED

MAR 2 2018

Jorge Navarrete Clerk

---

JULIE A. SU IN HER OFFICIAL CAPACITY AS THE STATE OF  
CALIFORNIA LABOR COMMISSIONER, DIVISION OF LABOR  
STANDARDS ENFORCEMENT, DEPARTMENT OF INDUSTRIAL  
RELATIONS, STATE OF CALIFORNIA  
Intervenor and Appellant

---

Deputy

After a Decision of the Court of Appeal, Case No. A147564,  
First Appellate District, One

Appeal from the Superior Court of Alameda County  
Case No. RG15781961, The Honorable Evelio Grillo, Judge

---

**MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS  
AND AUTHORITIES AND DECLARATION IN SUPPORT;  
PROPOSED ORDER**

---

MILES E. LOCKER (SBN 103510)  
THERESA BICHSEL (SBN 288558)  
Division of Labor Standards Enforcement  
Department of Industrial Relations  
STATE OF CALIFORNIA  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, California 94102  
Telephone No. (415) 703-4863

Attorneys for Intervenor and Appellant, **LABOR COMMISSIONER**

Case No. S244630

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

---

**OTO, LLC an Arizona Limited Liability Company, dba  
ONE TOYOTA OF OAKLAND, ONE SCION OF OAKLAND,**  
Plaintiff and Respondent,

v.

**KEN KHO,**  
Real Party in Interest,

---

**JULIE A. SU IN HER OFFICIAL CAPACITY AS THE STATE OF  
CALIFORNIA LABOR COMMISSIONER, DIVISION OF LABOR  
STANDARDS ENFORCEMENT, DEPARTMENT OF INDUSTRIAL  
RELATIONS, STATE OF CALIFORNIA**  
Intervenor and Appellant

---

After a Decision of the Court of Appeal, Case No. A147564,  
First Appellate District, One

Appeal from the Superior Court of Alameda County  
Case No. RG15781961, The Honorable Evelio Grillo, Judge

---

**MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS  
AND AUTHORITIES AND DECLARATION IN SUPPORT;  
PROPOSED ORDER**

---

MILES E. LOCKER (SBN 103510)  
THERESA BICHSEL (SBN 288558)  
Division of Labor Standards Enforcement  
Department of Industrial Relations  
STATE OF CALIFORNIA  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, California 94102  
Telephone No. (415) 703-4863

Attorneys for Intervenor and Appellant, **LABOR COMMISSIONER**

## **MOTION FOR JUDICIAL NOTICE**

Please take notice that, pursuant to Evidence Code §§ 459, 452 (b), (c) and (d), and California Rules of Court, rules 8.520(g), 8.252(a), the Labor Commissioner hereby moves for an order granting judicial notice of the 22 exhibits attached hereto, all of which are true and correct copies of the documents listed in the Table of Contents. This motion is based on this notice and the memorandum of points and authorities below.<sup>1</sup>

### **MEMORANDUM OF POINTS AND AUTHORITIES**

The Labor Commissioner respectfully requests the Court take judicial notice of 22 exhibits needed to complete the record on appeal.

A. The Court Records in One Toyota of Oakland's De Novo Appeal of the Labor Commissioner's Underlying Order, Decision or Award

Exhibits one through 18 are the documents filed in Alameda County Superior Court case number RG15785832, One Toyota of Oakland's (OTO's) Labor Code § 98.2 de novo appeal of the Labor Commissioner's Order, Decision or Award in *Ken Kho v. OTO, L.L.C. an Arizona limited liability company dba One Toyota of Oakland, One Scion of Oakland*, State Case number 07-80337 CW.

1. The De Novo Appeal Records are Relevant to this Appeal

Exhibits one through 18 are relevant to this appeal. These proceedings demonstrate the protections the Berman process afforded Kho, including

---

<sup>1</sup> CT refers to the Clerk's Transcript, followed by the Bates page number and (if applicable) line numbers.

OTO's obligation to post an undertaking with the superior court as a prerequisite to appealing the Labor Commissioner's Order, Decision or Award (ODA) and the Labor Commissioner's free legal representation of Kho on appeal. Further, the proceedings elucidate the consequences of the trial court's order vacating the Labor Commissioner's ODA, principally the trial court's release of OTO's appeal undertaking and Kho's loss of the Labor Commissioner's representation on appeal. The de novo appeal records are needed to complete the record on appeal.

2. The De Novo Appeal Records Were Not Previously Presented for Judicial Notice

No party presented the de novo appeal records for judicial notice, either to the trial court or to the court of appeal.

3. The De Novo Appeal Court Records are Subject to Judicial Notice Under Evidence Code § 452(d)

Under Evidence Code § 452(d), judicial notice may be taken of records of any court of this state. Exhibits one through 18 are records obtained directly from the Alameda County Superior Court's website. Judicial notice of these records is thus proper.

4. The De Novo Appeal Proceedings Commenced Prior to the Underlying Trial Court Orders On Appeal

On December 11, 2015, the trial court issued its orders 1) denying OTO's petition to compel arbitration and 2) granting OTO's motion to vacate the Labor Commissioner's ODA. (CT 207-204; 249-253.)

OTO filed its de novo appeal on September 15, 2015, before the trial court issued its orders. (See Exhibit 1, attached hereto.) The court dismissed the appeal on February 5, 2016, after the trial court issued its order granting the motion to vacate. (See Exhibit 13.) Later, on December 2, 2016, OTO applied ex parte for an order releasing its Labor Code § 98.2(b) appeal deposit. (See Exhibit 14, attached hereto.) The court granted OTO's application on December 2, 2016. (See Exhibit 17, attached hereto.)

B. The May 2013 Report on the State of the Division of Labor Standards Enforcement

Exhibit 19 is an executive report from the California State Labor Commissioner on the status of the Division of Labor Standards Enforcement.

1. The Report is Relevant to this Appeal

The 2013 report provides details on the Labor Commissioner's wage claim adjudication process, also known as the Berman process, and the Berman process benefits that do not exist in OTO's arbitration forum. Under *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1142 ("*Sonic II*"), in reaching a determination on whether an arbitration agreement is unconscionable where it requires waiver of the Berman process, the Court should weigh the lost benefits of the Labor Commissioner's Berman process against the benefits gained, if any, in the supplanting arbitration forum. The report provides relevant information for the Court's analysis.

//

2. The Report has not Previously Been Presented for Judicial Notice

No party presented the 2013 report for judicial notice, either to the trial court or to the court of appeal.

3. The 2013 Report is Subject to Judicial Notice Under Evidence Code § 452(c)

Under Evidence Code § 452(c), judicial notice may be taken of official acts of the executive department of any state of the United States. The May 2013 report was produced by the California State Labor Commissioner's Office and is therefore subject to judicial notice under Cal. Evid. Code § 452(c).

C. 2014 Materials from the Labor Commissioner's Website on How to File a Wage Claim

Exhibit 20 is materials taken from the Labor Commissioner's 2014 website, <http://dir.ca.gov/dlse/HowToFileWageClaim.htm>, using the internet archive, WAYBACKMACHINE, <http://archive.org/web/>. The materials provide information to wage claimants on how to file a wage claim with the Labor Commissioner's office. Specifically the materials provide detailed instructions in multiple languages on how and where claimants can file a wage claim, what types of claims can be heard in front of the Labor Commissioner, a copy of the claim form, and how claimants should prepare for a hearing. The website also provides a link to a video on the wage claim process and numerous other resources about the wage claim process.

//

1. The Materials Are Relevant to This Appeal

The materials are relevant because they demonstrate the assistance Kho and other employees could receive from the Labor Commissioner's office in filing a wage claim. Under *Sonic II*, in reaching a determination on whether an arbitration agreement is unconscionable where it requires waiver of the Berman process, the Court should weigh the lost benefits of the Labor Commissioner's Berman process against the benefits gained, if any, in the supplanting arbitration forum. The materials provide relevant information for the Court's analysis.

2. The Materials have not Previously Been Presented for Judicial Notice

No party presented the materials in Exhibit 20 for judicial notice, either to the trial court or to the court of appeal.

3. The Materials are Subject to Judicial Notice Under Evidence Code § 452(c)

Under Evidence Code § 452(c), judicial notice may be taken of official acts of the executive department of any state of the United States. The materials posted on the Labor Commissioner's website were produced by the California State Labor Commissioner's Office and are therefore subject to judicial notice under Cal. Evid. Code § 452(c).

//

//

D. 2018 Materials from the Labor Commissioner's Website on How to File a Wage Claim

Exhibit 21 is materials taken directly from the Labor Commissioner's website, <http://dir.ca.gov/dlse/HowToFileWageClaim.htm>. The materials provide information to wage claimants on how to file a wage claim with the Labor Commissioner's office.

1. The Materials Are Relevant to This Appeal

The materials are relevant to show the assistance the Labor Commissioner provides to wage claimants in filing a wage claim. Under *Sonic II*, in reaching a determination on whether an arbitration agreement is unconscionable where it requires waiver of the Berman process, the Court should weigh the lost benefits of the Labor Commissioner's Berman process against the benefits gained, if any, in the supplanting arbitration forum. The materials provide relevant information for the Court's analysis.

2. The Materials have not Previously Been Presented for Judicial Notice

No party presented the materials in Exhibit 21 for judicial notice, either to the trial court or to the court of appeal.

3. The Materials are Subject to Judicial Notice Under Evidence Code § 452(c)

Under Evidence Code § 452(c), judicial notice may be taken of official acts of the executive department of any state of the United States. The materials posted on the Labor Commissioner's website were produced by the



California State Labor Commissioner's Office and are therefore subject to judicial notice under Cal. Evid. Code § 452(c).

E. California Code of Regulations., Title 8, §§ 13500-13520

Exhibit 22 is a copy of California Code of Regulations., Title 8, §§ 13500-13520, which are the regulations governing hearings held by the Labor Commissioner under Labor Code § 98.

1. The Regulations are Relevant to this Appeal

These regulations outline the procedures used by the Labor Commissioner in conducting Labor Code § 98 hearings (Berman hearings). Under *Sonic II*, in reaching a determination on whether an arbitration agreement is unconscionable where it requires waiver of the Berman process, the Court should weigh the lost benefits of the Labor Commissioner's Berman process against the benefits gained, if any, in the supplanting arbitration forum. The Berman process regulations provide relevant information for the Court's analysis.

2. The Materials have not Previously Been Presented for Judicial Notice

No party presented the materials in Exhibit 22 for judicial notice, either to the trial court or to the court of appeal.


3. The Materials are Subject to Judicial Notice Under Evidence Code § 452(b)

Under Evidence Code § 452(b), judicial notice may be taken of Regulations and legislative enactments issued by or under the authority of any

public entity in the United States. Labor Code § 98.8 specifically articulates DLSE hearings will be conducted in accordance with the rules and regulations set forth by the Labor Commissioner, which consist of Cal. Code Regs., tit. 8, §§ 13500-13520. These regulations are therefore subject to judicial notice under Cal. Evid. Code § 452(b).

For the reasons set forth above, the Labor Commissioner respectfully requests the Court to grant this motion for judicial notice.

Dated: March 1, 2018

By:   
Miles E. Locker  
Theresa Bichsel

Attorneys for Intervenor and Appellant,  
LABOR COMMISSIONER

## DECLARATION OF THERESA BICHSEL

I, Theresa Bichsel, declare as follows:

1. I am co-counsel of record for the Labor Commissioner in the above referenced case. I have personal knowledge of the matters stated below and if called upon to testify, would testify competently as to them.

2. Exhibits 1-18 are true and correct copies of the documents available on the Alameda County Superior Court's website in case number RG15785832.

3. Exhibit 19 is a true and correct copy of the May 2013 Report on the State of the Division of Labor Standards Enforcement. The report is available on the internet at,

[http://www.dir.ca.gov/DLSE/Publications/DLSE\\_Report2013.pdf](http://www.dir.ca.gov/DLSE/Publications/DLSE_Report2013.pdf).

4. Exhibit 20 is a true and correct copy of materials available through the WAYBACKMACHINE, <http://archive.org/web/>, using the California State Labor Commissioner's website,

<https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm>. The materials are available at:

<https://web.archive.org/web/20141001154330/https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm>.

5. Exhibit 21 is a true and correct copy of materials available on the California State Labor Commissioner's website,

<https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm>.

6. Exhibit 22 is a true and copy of the regulations posted by the  
California Department of Industrial Relations, available at:

[https://www.dir.ca.gov/t8/ch6sb6\\_5a1.html](https://www.dir.ca.gov/t8/ch6sb6_5a1.html)

I declare under penalty of perjury under the laws of the State of  
California that the foregoing is true and correct and that this declaration was  
executed at San Francisco, California on March 1, 2018.

  
Theresa Bichsel

**PROPOSED ORDER GRANTING LABOR COMMISSIONER'S  
MOTION FOR JUDICIAL NOTICE**

The Motion for Judicial Notice filed by the Labor Commissioner, having been filed, and grounds for judicial notice appearing warranted under Evidence Code §§ 459 and 452,

IT IS ORDERED that the Labor Commissioner's Motion is granted in full and the Court takes judicial notice of all the documents identified in and attached to the motion.

[ alternatively ]

IT IS ORDERED that the Labor Commissioner's Motion is granted, in part, and the Court takes judicial notice of the documents that are located behind the following tabs:

---

---

---

---

---

Date: \_\_\_\_\_

\_\_\_\_\_  
Chief Justice

**PROOF OF SERVICE BY MAIL AND ELECTRONIC  
SERVICE BY E-MAIL**

One Toyota of Oakland v. Kho

Alameda Superior Court Case No.: RG15781961

First District Court of Appeal Case No.: A147564

Supreme Court Case  
No.: S244630

I, Mary Ann Galapon, do hereby declare that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 455 Golden Gate Avenue, 9th Floor, San Francisco, California, 94102.

On March 2, 2018, I served the following document(s):

**MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS  
AND AUTHORITIES AND DECLARATION IN SUPPORT;  
PROPOSED ORDER**

X by placing a true copy thereof in sealed FedEx envelopes for Standard Overnight delivery with all fees prepaid and addressed as follows:

First District Court of Appeal  
350 McAllister Street  
San Francisco, CA 94102

Honorable Evelio Grillo  
Clerk of the Superior Court  
Alameda County Superior Court  
2233 Shoreline Drive  
Department 303, 2<sup>nd</sup> Floor  
Alameda, CA 94501

X by transmitting a PDF version of this document to each of the following using the e-mail addresses indicated below:

WEINBERG, ROGER &  
ROSENFELD  
David A. Rosenfeld, Esq.  
[drosenfeld@unioncounsel.net](mailto:drosenfeld@unioncounsel.net)  
Caroline Cohen  
[ccohen@unioncounsel.net](mailto:ccohen@unioncounsel.net)

FINE, BOGGS & PERKINS, LLP  
[jboggs@employerlawyers.com](mailto:jboggs@employerlawyers.com)  
Roman Zhuk, Esq.  
[rzhuk@employerlawyers.com](mailto:rzhuk@employerlawyers.com)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed this 2nd day of March, 2018, at San Francisco, California.

  
\_\_\_\_\_  
Mary Ann Galapon

## TABLE OF CONTENTS

**Document**

**Tab**

<p>OTO's Appeal of Labor Commissioner's Order, Decision or Award in Alameda County Superior Court Case Number RG15785832, Filed September 15, 2015</p>	<p>1</p>
<p>Notice of Hearing Setting Master Court Trial for October 16, 2015 in Alameda County Superior Court Case Number RG15785832, Dated September 15, 2015</p>	<p>2</p>
<p>Notice of Cash Deposit Pursuant to Labor Code § 98.2(b) in Alameda County Superior Court Case Number RG15785832, Filed September 15, 2015</p>	<p>3</p>
<p>Notice of Representation of Respondent, Ken Kho in Alameda County Superior Court Case Number RG15785832, Filed September 18, 2015</p>	<p>4</p>
<p>Stipulation and Order Re: Continuance of Trial Date in Alameda County Superior Court Case Number RG15785832, Filed September 25, 2015</p>	<p>5</p>
<p>Order Granting Stipulation Re: Continuance of Trial Date in Alameda County Superior Court Case Number RG15785832, Dated October 6, 2015</p>	<p>6</p>
<p>Amended Notice of Hearing Setting Master Court Trial for February 5, 2016 in Alameda County Superior Court Case Number RG15785832, Dated October 6, 2015</p>	<p>7</p>
<p>Notice of Intent to Seek Additional Damages Filed for Ken Kho in Alameda County Superior Court Case Number RG15785832, Filed December 11, 2015</p>	<p>8</p>
<p>Stipulation to Take Trial Date Off Calendar in Alameda County Superior Court Case Number RG15785832, Filed January 22, 2016</p>	<p>9</p>

Proposed Order on Stipulation To Take Trial Date Off Calendar in Alameda County Superior Court Case Number RG15785832, Filed January 25, 2016	10
Proof of Service by Mail, Conformed Stipulation To Take Trial Date Off Calendar in Alameda County Superior Court Case Number RG15785832, Filed January 25, 2016	11
February 5, 2016 Minutes of Master Court Trial in Alameda County Superior Court Case Number RG15785832, Case Called and Completed	12
Order Dismissing Appeal of Labor Commissioner ODA in Alameda County Superior Court Case Number RG15785832, Dated February 5, 2016	13
OTO's Ex Parte Application to Release the Labor Code 98.2(b) Appeal Bond in Alameda County Superior Court Case Number RG15785832, Filed December 2, 2016	14
Declaration in Support of Petitioner's Application to Release the Appeal Bond in Alameda County Superior Court Case Number RG15785832, Filed December 2, 2016	15
December 2, 2016 Hearing Minutes in Civil Ex-Parte Application to Release the Appeal Bond in Alameda County Superior Court Case Number RG15785832	16
Order Granting Ex Parte Application to Release the Appeal Bond in Alameda County Superior Court Case Number RG15785832, Dated December 2, 2016	17
Release of Funds in Alameda County Superior Court Case Number RG15785832, Issued and Filed December 2, 2016	18
May 2013 Report on the State of the Division of Labor Standards Enforcement, Julie A. Su, Labor Commissioner, Department of Industrial Relations, Labor and Workforce Development Agency, State of California, Governor Edmund G. Brown Jr.  <a href="http://www.dir.ca.gov/DLSE/Publications/DLSE_Report2013.pdf">http://www.dir.ca.gov/DLSE/Publications/DLSE_Report2013.pdf</a>	19



<p>Materials on how to file a wage claim obtained through the WAYBACKMACHINE, <a href="http://archive.org/web/">http://archive.org/web/</a>, of the California State Labor Commissioner's 2014 website, <a href="https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm">https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm</a></p> <p><a href="https://web.archive.org/web/20141001154330/https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm">https://web.archive.org/web/20141001154330/https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm</a></p>	20
<p>Materials on how to file a wage claim obtained from the California State Labor Commissioner's website</p> <p><a href="https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm">https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm</a></p>	21
<p>California Code of Regulations., Title 8, §§ 13500-13520, posted by the California Department of Industrial Relations</p> <p><a href="https://www.dir.ca.gov/t8/ch6sb6_5a1.html">https://www.dir.ca.gov/t8/ch6sb6_5a1.html</a></p>	22

**EXHIBIT 1**



\*14059027\*

FOR COURT USE ONLY

- SUPERIOR COURT OF THE STATE OF CALIFORNIA
- MUNICIPAL COURT OF THE STATE OF CALIFORNIA
- JUSTICE COURT OF THE STATE OF CALIFORNIA

**FILED**  
ALAMEDA COUNTY

SEP 15 2015  
*[Signature]*  
Clerk

COUNTY OF Alameda  
Oakland JUDICIAL DISTRICT

PLAINTIFF  
Ken Kho

DEFENDANT  
One Toyota of Oakland

**NOTICE OF APPEAL**

COURT NUMBER  
**RG15785832**

NOTICE OF APPEAL of the Order, Decision or award of the Labor Commissioner in State Case Number 07-80337 CW

Dated August 25, 2015 and served upon the undersigned appellant, One Toyota of Oakland

on August 31, 2015, is given and filed pursuant to Labor Code Section 98.2.

Appellant attached as Exhibit "A" a copy of the Order, Decision or Award appealed and requests that the Clerk of the Court set the cause for hearing before the above-entitled court, where it shall be heard *de novo* in accordance with Labor Code Section 98.2, and that the Clerk of the Court give Notice of time, date and place of the new trial to each of the following parties and the Labor Commissioner's office at the places listed below. Appellant certifies that a copy of this Notice of Appeal has been served upon the Labor Commissioner and a copy has been mailed to the Respondent, as shown below.

APPELLANT (OR ATTORNEY) (NAME, ADDRESS, TELEPHONE NUMBER)  
John P. Boggs/ Ian G. Robertson / Michael K. Perkins  
Fine, Boggs & Perkins LLP (650) 712-8908  
80 Stone Pine Rd., Ste. 210, Half Moon Bay, CA 94019

OFFICE OF THE LABOR COMMISSIONER (ADDRESS AND TELEPHONE NUMBER)  
STATE LABOR COMMISSIONER  
Kerry Lewis (510) 622-3273  
1515 Clay St., Ste. 801, Oakland, CA 94612

RESPONDENT (OR ATTORNEY) (NAME, ADDRESS, TELEPHONE NUMBER)  
Ken Kho (510) 213-5367  
1650 Vida Court  
San Leandro, CA 94579

Dated  
**September 14, 2015**

*[Signature]*  
Signature of Appellant

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL  
(C.C.P. 1013A) OR CERTIFIED MAIL

I, Josefina Barahona, do hereby certify that I am a resident of or employed in the County  
of Alameda, over 18 years of age, not a party to the within action, and that I am  
employed at and my business address is:

LABOR COMMISSIONER, STATE OF CALIFORNIA  
1515 Clay Street, Suite 801  
Oakland, CA 94612-1499  
Tel: (510) 622-3273 Fax: (510) 622-3257

I am readily familiar with the business practice of my place of business for collection and processing  
of correspondence for mailing with the United States Postal Service. Correspondence so collected  
and processed is deposited with the United States Postal Service that same day in the ordinary course  
of business.

On August 31, 2015 at my place of business, a copy of the following document(s):

Order, Decision or Award

was(were) placed for deposit in the United States Postal Service in a sealed envelope, by  
first class mail \_\_\_\_\_, with postage fully prepaid, addressed to:

NOTICE TO: OTO, LLC  
Brad Barnett, agent  
8181 Oakport Street  
Oakland CA 94621

and that envelope was placed for collection and mailing on that date following ordinary  
business practices.


*I certify under penalty of perjury that the foregoing is true and correct.*

Executed on: August 31, 2015 at Oakland, California

STATE CASE NUMBER: 07-80337 CW

Josefina Barahona

Josefina Barahona

<b>LABOR COMMISSIONER, STATE OF CALIFORNIA</b> Department of Industrial Relations Division of Labor Standards Enforcement 1515 Clay Street, Suite 801 Oakland, CA 94612-1499 Tel: (510) 622-3273 Fax: (510) 622-3257		
Plaintiff: Ken Kho		
Defendant: OTO, L.L.C. an Arizona limited liability company dba One Toyota of Oakland, One Scion of Oakland		
State Case Number <b>07 - 80337 CW</b>	<b>NOTICE OF PAYMENT DUE</b>	

You have been served a copy of the Labor Commissioner's Order, Decision or Award.

If the full amount of the sums set forth in the Order, Decision or Award is received by this office within ten (10) days of the date the Order, Decision or Award was served upon you, no judgment will be entered in this matter.

Payment must be made by certified check, cashier's check or money order (no other tender will be accepted) made payable to the Plaintiff named in the Order, Decision or Award, and addressed to the Office of the Labor Commissioner at the address shown above.

DATED: August 25, 2015

*Cecilia Wong*  


---

 Cecilia Wong Deputy Labor Commissioner  
 510-622-3274

<b>LABOR COMMISSIONER, STATE OF CALIFORNIA</b> Department of Industrial Relations Division of Labor Standards Enforcement 1515 Clay Street, Suite 801 Oakland, CA 94612-1499 Tel: (510) 622-3273 Fax: (510) 622-3257		For Court Use Only:
Plaintiff: Ken Kho		Court Number
Defendant: OTO, L.L.C. an Arizona limited liability company dba One Toyota of Oakland, One Scion of Oakland		
State Case Number 07 - 80337 CW	<b>ORDER, DECISION OR AWARD OF THE LABOR COMMISSIONER</b>	

1. The above-entitled matter came on for hearing before the Labor Commissioner of the State of California as follows:

DATE: August 17, 2015  CONTINUED TO:

CITY: 1515 Clay Street, Suite 801, Oakland, CA 94612-1499

2. IT IS ORDERED THAT: Plaintiff recover from Defendant.

- \$ 102,912.00 for wages (with lawful deductions)
- \$ 30,208.00 for liquidated damages pursuant to Labor Code Section 1194.2
- \$ 0.00 Reimbursable business expenses
- \$ 17,506.21 for interest pursuant to Labor Code Section(s) 98.1(c), 1194.2 and/or 2802(b),
- \$ 7,920.00 for additional wages accrued pursuant to Labor Code Section 203 as a penalty and that same shall not be subject to payroll or other deductions.
- \$ 0.00 for penalties pursuant to Labor Code Section 203.1 which shall not be subject to payroll or other deductions.
- \$ 0.00 other (specify):
- \$ 158,546.21 TOTAL AMOUNT OF AWARD

3. The herein Order, Decision or Award is based upon the Findings of Fact, Legal Analysis and Conclusions attached hereto and incorporated herein by reference.

4. The parties herein are notified and advised that this Order, Decision or Award of the Labor Commissioner shall become final and enforceable as a judgment in a court of law unless either or both parties exercise their right to appeal to the appropriate court\* within ten (10) days of service of this document. Service of this document can be accomplished either by first class mail or by personal delivery and is effective upon mailing or at the time of personal delivery. If service on the parties is made by mail, the ten (10) day appeal period shall be extended by five (5) days. For parties served outside of California, the period of extension is longer (See Code of Civil Procedure Section 1013). In case of appeal, the necessary filing fee must be paid by the appellant and appellant must, immediately upon filing an appeal with the appropriate court, serve a copy of the appeal request upon the Labor Commissioner. If an appeal is filed by a corporation, a non-lawyer agent of the corporation may file the Notice of Appeal with the appropriate court, but the corporation must be represented in any subsequent trial by an attorney, licensed to practice in the State of California. Labor Code Section 98.2(c) provides that if the party seeking review by filing an appeal to the court is unsuccessful in such appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other party to the appeal and assess such amount as a cost upon the party filing the appeal. PLEASE TAKE NOTICE: Labor Code Section 98.2(b) requires that as a condition to filing an appeal of an Order, Decision or Award of the Labor Commissioner, the employer shall first post a bond or undertaking with the court in the amount of the ODA; and the employer shall provide written notice to the other parties and the Labor Commissioner of the posting of the undertaking. Labor Code Section 98.2(b) also requires the undertaking contain other specific conditions for distribution under the bond. While this claim is before the Labor Commissioner, you are required to notify the Labor Commissioner *in writing* of any changes in your business or personal address within 10 days after any change occurs.

\* Superior Court of California  
 Rene C. Davidson Courthouse  
 1225 Fallon St., Ste 109  
 Oakland, CA 94612-4254

LABOR COMMISSIONER, STATE OF CALIFORNIA

BY:  HEARING OFFICER

DATED: August 25, 2015

BEFORE THE LABOR COMMISSIONER  
OF THE STATE OF CALIFORNIA

1  
2  
3 KEN KHO )

Plaintiff, )

CASE NO. 07-80337 CW

4  
5 vs. )

ORDER, DECISION OR AWARD  
OF THE LABOR COMMISSIONER

6 OTO LLC, an Arizona limited liability )  
7 Company dba ONE TOYOTA OF OAKLAND )  
8 and ONE SCION OF OAKLAND )

9 Defendant. )  
10

11 BACKGROUND

12 Plaintiff filed an initial claim with the Labor Commissioner's office on October 9,  
13 2014. The Complaint alleges that Plaintiff is owed:

- 14 1. Payment for hours worked for mandatory meetings between February 2011 and  
15 April 29, 2014; estimate 100 hours at \$24.00 per hour. Amount claimed \$2,400.00;  
16 2. Payment for hours worked for mandatory multi-point inspections performed  
17 from February 2012 through April 29, 2014. Estimate 150 hours at \$24.00 per hour.  
18 Amount claimed \$3,600.00;  
19 3. Standby time for 500 hours at \$24.00 per hour during the period February 2011 to  
20 April 29, 2014, claiming \$12,000.00;  
21 4. Liquidated damages pursuant to Labor Code Section 1194.2 in an amount equal to  
22 the amount of unpaid minimum wages, claiming \$800.00; and  
23 5. Penalties pursuant to Labor Code Section 203 for 30 days at the rate of \$192.00 per  
24 day.

25 A hearing was conducted in Oakland, California, on August 17, 2015, before the  
26 undersigned hearing officer designated by the Labor Commissioner to hear this matter.  
27 Plaintiff appeared in pro per. OTO, LLC, an Arizona limited liability company doing

1 business as One Toyota of Oakland and One Scion of Oakland ("Defendant"), was  
2 represented by Michael K. Perkins, Esq.<sup>1</sup>

3 Due consideration having been given to the testimony, documentary evidence, and  
4 arguments presented, the Labor Commissioner hereby adopts the following Order,  
5 Decision or Award.

6 FINDINGS OF FACT

7 Defendant employed Plaintiff under the terms of a written agreement as a Service  
8 Technician in Oakland, California, County of Alameda, from January 27, 2010 through  
9 April 29, 2014. Plaintiff worked ten hours per day, four days per week on an alternative  
10 workweek schedule<sup>2</sup>.

11 Plaintiff was paid a flat rate of \$24.00 per hour for all "flag hours" during which he  
12 was working on repair orders. If Plaintiff was not working on a particular repair order, he  
13 was still required to remain on the premises waiting for the next job to come in. During  
14 this non-productive time, Plaintiff was not performing any flag work and, therefore, not  
15 paid his hourly rate. Plaintiff alleges that non-productive time is to be paid at his flag rate,  
16 according to the Complaint. Defendant did not dispute Plaintiff's assertions. Plaintiff  
17 testified that there were approximately two hours per day wherein he was not provided  
18 with any jobs. Plaintiff was not compensated at all for this standby time.

19 On or about February 2011, management began to implement changes in the  
20 distribution of work that resulted in several hours during which Plaintiff was not assigned  
21 any repair work. Plaintiff testified that he was not given any flag rate jobs to perform for  
22 approximately two hours per day starting in February of 2011

23 \_\_\_\_\_  
24 <sup>1</sup> Defense counsel appeared on behalf of Defendant only for the purpose of serving Plaintiff with a copy of a  
25 Petition to Compel Arbitration and to ensure that the DLSE had received a copy as well. The date of the  
26 hearing on Defendant's petition is October 14, 2015. As such, there is no Order requiring the DLSE to stay its  
27 proceedings. Mr. Perkins was informed that the DLSE is not required to stay its proceeding.  
Notwithstanding, Mr. Perkins did not participate in the hearing and left prior to the commencement of the  
proceedings, as Defendant intends to compel the matter to arbitration.

<sup>2</sup> The DLSE database for valid AWS registration reflects that Defendant has an AWS for "porters in the  
service dept." There is no AWS recorded for service technicians.



1 Beginning in February of 2012, the managers required the technicians to attend a  
2 shop meeting every morning at the start of their shift. The length of the meetings was  
3 approximately 30 minutes per day, four days per week. Plaintiff was not compensated for  
4 these meetings.

5 Defendant also required Plaintiff to perform "multi-point inspections" on every car  
6 that came in for service. These inspections were free of charge to the customers and did  
7 not have a flag rate associated with them. Prior to February 2012, Defendant paid the  
8 technicians a flag rate of 18 minutes for these inspections. Beginning in February of 2012,  
9 Defendant stopped paying Plaintiff for performing the inspections. Plaintiff estimated that  
10 multi-point inspections took approximately 30 minutes per car and he performed an  
11 average of ten inspections per day, four days per week.

12 Plaintiff was discharged on May 2, 2014. He received his conceded wages at that  
13 time.

14 Because Defendant opted not to appear at the hearing or submit a written Answer to  
15 Plaintiff's Complaint, there is no evidence before the Labor Commissioner from Defendant  
16 that would disprove or mitigate Plaintiff's Complaint.

#### 17 LEGAL ANALYSIS

18 Defendant's business is subject to the requirements of Industrial Welfare Commission  
19 Order 7-2001 (the "Order"). Section 4(B) of the Order provides: "Every employer shall pay  
20 to each employee, on the established payday for the period involved, not less than the  
21 applicable minimum wage for all hours worked in the payroll period, whether the  
22 remuneration is measured by time, piece, commission, or otherwise." (Cal. Code Regs., tit.  
23 8, §11070, subd. 4(B).) "Hours worked" is defined as "the time during which an employee  
24 is subject to the control of the employer, and includes all the time the employee is suffered  
25 or permitted to work, whether or not required to do so." (Cal. Code Regs., tit. 8, §11070,  
26 subd. 2(G).)

27 ///

1 Plaintiff argued that he was not compensated for the hours he was not working on a  
2 specific job for which there was a flag rate paid. Additionally, Plaintiff was not paid for  
3 mandatory daily meetings and complimentary multi-point inspections. Plaintiff's  
4 undisputed allegations are that the meetings and inspections, as well as his non-  
5 productive, or idle, time should be paid at his flat rate of \$24.00 per hour.

6 This issue was addressed in *Gonzalez v. Downtown LA Motors, LP* (2013) 215  
7 Cal.App.4th 36, which upheld a trial court's ruling that the employer's method of  
8 compensating its service technicians violated the minimum wage law because California  
9 law does not allow an employer to avoid paying its employees for all hours worked by  
10 averaging total compensation over total hours worked in a given pay period. The  
11 appellate court cited *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, which concluded  
12 that the language of the Order "expresses the intent to ensure that employees be  
13 compensated at the minimum wage for *each* hour worked." (*Id.* at 323, italics added.)  
14 *Gonzalez* extended to piece rate workers the prohibition against averaging total  
15 compensation over total hours worked in a pay period. As in the instant case, the *Gonzalez*  
16 technicians were not paid an hourly rate for their non-flag hours between repair jobs.

17 Where the employer has failed to maintain records, an employee has met his burden  
18 by raising an inference that the amount and extent of his working hours was just and  
19 reasonable. The burden then shifts to the employer to either produce evidence that reflects  
20 the precise amount of work performed or that negates the reasonableness of the inference  
21 drawn from the employee's evidence. If the employer fails to meet his burden, the court  
22 may award damages to the employee, even if the amount is only approximate. (*Hernandez*  
23 *v. Mendoza* (1988) 199 Cal.App.3rd 721, 727, citing *Anderson v. Mt. Clemens Pottery* (1946)  
24 328 U.S. 680.) Prior to the hearing in this matter, Plaintiff served Defendant with a  
25 subpoena requesting "Original work orders, punch in and out time for each job, punch in  
26 and out times for each day from February 2011 to April 29, 2014." Defendant failed to  
27 comply with Plaintiff's subpoena, so he did not have actual time records available to him

1 in order to prove his unpaid hours worked. Accordingly, Defendant failed to produce the  
2 records to negate the reasonableness of Plaintiff's testimony.

### 3 Mandatory Meetings

4 Plaintiff testified that there were approximately 0.5 hours each day that were unpaid,  
5 non-productive time spent in mandatory daily meetings from February 1, 2012 through  
6 April 29, 2014. These meetings were hours worked, as Plaintiff was clearly under  
7 Defendant's control during this time because the meetings were mandatory and occurred  
8 within Plaintiff's regularly scheduled work shift. As such, Plaintiff was required to be paid  
9 for the hours worked.

10 Plaintiff worked four days per week, which results in two unpaid hours per week in  
11 meetings. Plaintiff testified that he took five weeks of vacation during this period,  
12 resulting in a total of 112 weeks worked. Accordingly, Plaintiff was not paid for 224 non-  
13 productive hours spent in meetings. Defendant is hereby ordered to pay Plaintiff \$5,376.00  
14 for mandatory meetings.

### 15 Multi-Point Inspections

16 Plaintiff testified that, beginning in February 2012, he was not paid for performing  
17 multi-point inspections on each car. Again, this time was compensable as hours worked  
18 because Plaintiff was under Defendant's control. Plaintiff estimated that he performed an  
19 average of ten inspections per day, which took 30 minutes per inspection, for a total of five  
20 hours unpaid time per day. Plaintiff worked four days per week for 112 weeks, resulting  
21 in a total of 2,240 hours unpaid. Accordingly, Defendant is ordered to pay Plaintiff  
22 \$53,760.00.

### 23 Standby Time

24 Plaintiff testified that he was not given any flag rate jobs to perform for  
25 approximately two hours per day starting in February of 2011. During the period from  
26 February 2011 to April 29, 2014, Plaintiff worked four days per week for 164 weeks. As a  
27

1 result, he was not paid for a total of 1,312 unpaid hours. Accordingly, Defendant shall pay  
2 Plaintiff \$31,488.00 for unpaid controlled standby hours.

3 Overtime Compensation

4 Defendant's business was subject to the requirements of the Industrial Welfare  
5 Commission Order 7-2001 (the "Order") and Labor Code Section 510, which require the  
6 following:

- 7 • Payment of at least the minimum wage for all hours worked during a  
workday or workweek; and
- 8 • Payment of overtime (one and one-half times the regular hourly rate) for  
9 hours worked in excess of eight hours per day or 40 hours per week; and
- 10 • Payment of double time (double the regular rate hourly rate) for hours  
worked in excess of 12 hours per day.

11 The Order and Labor Code Section 511 permit employers to institute an "Alternative  
12 Workweek Schedule" ("AWS") consisting of a regularly scheduled alternative workweek  
13 schedule of not more than ten (10) hours per day within a 40 hour workweek without the  
14 payment of an overtime rate of compensation. Plaintiff testified that he was scheduled for  
15 a four-day, ten hours per day workweek. However, Defendant's business is not registered  
16 on the DLSE AWS database as having a valid AWS for its service technicians. The only  
17 AWS registered with the DLSE indicates that it is "for Porters in the service dept." As a  
18 result, Plaintiff should have been paid overtime premium compensation for all hours in  
19 excess of eight hours per day. Instead, he was paid his regular rate of \$24.00 per hour,  
20 leaving an underpayment of \$12.00 per hour for two hours per day. During the three-year  
21 statutory period prior to the filing of Plaintiff's claim<sup>3</sup>, he worked a total of eight overtime  
22 hours per week for 128 weeks. Accordingly, Defendant shall pay Plaintiff the overtime  
23 premium rate of \$12.00 per hour for 1,024 hours, for a total of \$12,288.00.

24 ///

25  
26  
27 

---

<sup>3</sup> October 9, 2011 through April 29, 2014.

1        Liquidated Damages

2        Labor Code Section 1194.2(a) states as follows:

3            "In any action under Section 98, 1193.6, or 1194 to recover wages because of  
4            the payment of a wage less than the minimum wage fixed by an order of the  
5            commission or by statute, an employee shall be entitled to recover liquidated  
6            damages in an amount equal to the wages unlawfully unpaid and interest  
7            thereon. Nothing in this subdivision shall be construed to authorize the  
8            recovery of liquidated damages for failure to pay overtime compensation."

9            As set forth above, Plaintiff was entitled to minimum wage for each and every hour  
10          worked. Defendant did not pay Plaintiff for his non-productive time and for performing  
11          multi-point inspections, resulting in Plaintiff not receiving minimum wage for every hour  
12          worked. As set forth above, Plaintiff was not paid for 3,776 hours. Accordingly, Defendant  
13          shall pay Plaintiff liquidated damages at the minimum wage<sup>4</sup> for 3,776 hours, for a total of  
14          \$30,208.00.

15        Interest

16          Labor Code Sections 98.1(c) and 1194.2 provide that all awards granted pursuant to  
17          this hearing shall accrue interest on all due and unpaid wages, from the date that said  
18          wages became due until the wages are paid. Therefore, Plaintiff is entitled to \$17,506.21 in  
19          interest accrued to date on the unpaid wage balance.

20        Waiting Time Penalties

21          Labor Code Section 201 provides that if an employee is discharged, all earned wages  
22          are due immediately at the time of discharge. Plaintiff was discharged on May 2, 2014. He  
23          received his final wages at that time. However, he was not compensated for all hours  
24          worked, as set forth above.

25          Labor Code Section 201 requires that if an employer discharges an employee, the  
26          wages earned and unpaid at the time of discharge are due and payable immediately.  
27          Labor Code Section 203 provides that if an employer willfully fails to pay any earned

---

<sup>4</sup> California minimum wage was \$8.00 per hour during the period of Plaintiff's claim.

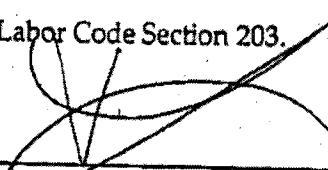
1 wages of an employee in accordance with Labor Code Section 201, the wages of such  
2 employee shall continue as a penalty from the due date thereof at the same rate until paid,  
3 up to 30 days. The settled meaning of willful, as used in Section 203, is that the employer  
4 has intentionally failed or refused to perform an act which was required to be done.  
5 (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) In this case, there was no  
6 dispute or defense presented by Defendant to mitigate the fact that it was required to pay,  
7 and failed to pay, the aforementioned wages. As a result, Plaintiff is entitled to penalties  
8 pursuant to Labor Code Section 203 in the maximum of 30 days' wages at the daily rate of  
9 \$264.00, for a total of \$7,920.00.

10 CONCLUSION

11 For all of the reasons set forth above, IT IS HEREBY ORDERED that Defendant shall  
12 pay Plaintiff a total of \$158,564.21, as follows:

- 13 1. \$102,912.00 for unpaid regular and overtime wages;
- 14 2. \$30,208.00 for liquidated damages pursuant to Labor Code Section 1194.2;
- 15 3. \$17,506.21 in interest pursuant to Labor Code Sections 98.1(c) and 1194.2; and
- 16 4. \$7,920.00 in penalties pursuant to Labor Code Section 203.

17  
18 Dated: August 25, 2015

19   
20 \_\_\_\_\_  
21 Kerry Lewis, Hearing Officer  
22  
23  
24  
25  
26  
27

**EXHIBIT 2**

Ken Kho  
1650 Vida Court  
San Leandro, CA 94579

Fine, Boggs & Perkins LLP  
Attn: Perkins, Michael K.  
80 Stone Pine Rd.  
#210  
Half Moon Bay, CA 94019

**Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse**

Kho

Plaintiff/Petitioner(s)

VS.

One Toyota of Oakland

Defendant/Respondent(s)

(Abbreviated Title)

No. RG15785832

**NOTICE OF HEARING**

To each party or to the attorney(s) of record for each party herein:  
Notice is hereby given that the above entitled action has been set for:  
**Master Court Trial**

You are hereby notified to appear at the following Court location on the date and time noted below:

Master Court Trial:  
DATE: 10/16/2015 TIME: 08:46 AM DEPARTMENT: 1  
LOCATION: Rene C. Davidson Alameda County Courthouse, Second Floor  
1225 Fallon Street, Oakland

Dated: 09/15/2015

Chad Finke Executive Officer / Clerk of the Superior Court

By

*Erin Barber*

Deputy Clerk

**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 09/15/2015.

By

*Erin Barber*

Deputy Clerk

LC00013



**EXHIBIT 3**



1 John P. Boggs – Bar No. 172578  
 2 Ian G. Robertson– Bar No. 283151  
 3 Michael K. Perkins – Bar No. 172560  
 4 FINE, BOGGS & PERKINS LLP  
 5 80 Stone Pine Road, Suite 210  
 6 Half Moon Bay, California 94019  
 7 (650) 712-8908 Tel  
 8 (650) 712-1712 Fax

**FILED**  
 ALAMEDA COUNTY

SEP 15 2015

*Exec. Off. Clerk*  
Shirley Karpis

Attorneys for Defendant  
 ONE TOYOTA OF OAKLAND

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF ALAMEDA

KEN KHO,

Plaintiff,

v.

ONE TOYOTA OF OAKLAND,

Defendant.

Case No.: RG15785832

NOTICE OF CASH DEPOSIT PURSUANT  
 TO LABOR CODE § 98.2(b)

Appeal Filed: September 15, 2015  
 Trial Date: Not set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN THAT on October 15, 2012, Defendant ONE TOYOTA OF OAKLAND posted a cash undertaking with the Court in the amount of \$158,546.21 in accordance with the provisions of Labor Code § 98.2(b) as a condition to filing Defendant's Appeal of the Labor Commissioner's Order, Decision or Award.

Respectfully submitted,

9.14.15

Date

*[Signature]*  
 Michael K. Perkins  
 Fine, Boggs & Perkins LLP

Attorneys for Defendant  
 ONE TOYOTA OF OAKLAND

1  
2  
**PROOF OF SERVICE**  
(C.C.P. §§ 1013(a) and 2015.5)

3 I, the undersigned declare that I am, and was at the time of service of the papers  
4 herein referred to, over the age of 18 years and not a party to the within action or  
5 proceeding. I am currently employed by the law firm of Fine, Boggs & Perkins LLP, and  
6 my business address is 80 Stone Pine Rd, Suite 210, Half Moon Bay, CA 94019.

7 On **September 15, 2015**, I served the following document(s):

8  
9  
10  
11  
12  
**NOTICE OF CASH DEPOSIT PURSUANT TO LABOR CODE §98.2(B)**

13 on the interested party(s) in this action by placing a true copy thereof, enclosed in sealed  
14 envelope, addressed as follows:

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Ken Kho  
1650 Vida Court  
San Leandro, CA 94579

Telephone: (510) 213-5367

State Labor Commissioner  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
1515 Clay Street, Suite 801  
Oakland, CA 94612

Telephone: (510) 622-3273

13  **BY MAIL:** I am readily familiar with the firm's business practice of collection and  
14 processing of correspondence for mailing. Under that practice it will be deposited  
15 with U.S. postal service on that same date with postage thereon fully prepaid at San  
16 Marcos, California in the ordinary course of business. I am aware that on motion of  
17 the party served, service is presumed invalid if postal cancellation date or postage  
18 meter date is more than one day after date of deposit for mailing in affidavit

19  **BY PERSONAL SERVICE:** I caused a copy of said document(s) to be personally  
20 delivered to the party(s) set forth above.

21  **BY OVERNIGHT COURIER:** I sent a copy of said document(s), pre-paid and/or on  
22 account, and in a sealed envelope, via private courier for delivery the next business  
23 day.

24  **BY FEDERAL EXPRESS:** I sent a copy of said document via Federal Express or  
25 other overnight delivery service for delivery the next day to the party or parties set  
26 forth above.

27 I declare under penalty of perjury under the laws of the State of California that the  
28 foregoing is true and correct. Executed on **September 15, 2015** at Half Moon Bay,  
California.

  
\_\_\_\_\_  
Julie Dare

**EXHIBIT 4**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations  
State of California  
BY: FERNANDO FLORES, SBN 256193  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, California 94102  
Telephone: 415-703-4814  
Facsimile: 415-703-4806

Attorney for Plaintiff/Respondent

**FILED**  
ALAMEDA COUNTY

SEP 18 2015

CLERK OF THE SUPERIOR COURT  
By [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA-RENE C. DAVIDSON COURTHOUSE  
UNLIMITED CIVIL CASE

KEN KHO,  
  
Plaintiff/Respondent,  
  
vs.  
  
ONE TOYOTA OF OAKLAND,  
  
Defendant /Appellant.

Case No. RG15785832  
**Exempt from Fees Pursuant to Labor Code §101, et seq.**  
**NOTICE OF REPRESENTATION OF PLAINTIFF/RESPONDENT**

NOTICE IS GIVEN that, upon the request of the plaintiff/respondent named above, the Labor Commissioner will represent such plaintiff/respondent through her attorney in the proceedings herein pursuant to Labor Code § 98.4. The attorney for the Labor Commissioner in this matter, address and telephone number are as shown above.

All notices and papers for the herein proceedings should be addressed to the attorney for the Labor Commissioner, as the statutory attorney for the plaintiff/respondent.

DATED: September 17, 2015

[Signature]  
FERNANDO FLORES  
Attorney for Plaintiff/Respondent

**PROOF OF SERVICE**

1 I, the undersigned, declare that I am and was at the time of service of the papers herein  
2 referred to, over the age of 18 and not a party to the within action or proceeding. My business  
3 address is 1515 Clay Street, Ste. 801, Oakland, California 94612 which is located in the county  
4 in which the within mentioned mailing occurred. I am familiar with the practice at my place of  
5 business for collection and processing of documents for mailing with the United States Post  
6 Office and by facsimile. Such documents will be deposited with the United States Postal  
7 Service with postage prepaid and/or faxed to the addressee and/or facsimile numbers as stated  
8 below on the same day in the ordinary course of business.

6 On September 17, 2015, I served the following documents:

7 NOTICE OF REPRESENTATION OF PLAINTIFF/RESPONDENT

8 X by placing true copies thereof in an envelope(s) and then sealing the envelope with  
9 postage thereon fully prepaid, depositing it in the United States mail in the city and county of  
10 Alameda, addressed as follows:

10 Fine, Boggs & Perkins, LLP  
11 Attn: Michael K. Perkins  
12 80 Stone Pine Road, Suite 210  
13 Half Moon Bay, CA 94019

13 \_\_\_\_\_ by placing true copies thereof in a FED EX envelope for delivery by overnight mail with  
14 all fees prepaid and addressed as follows:

14 \_\_\_\_\_ by personal delivery addressed to the following person(s) at the address stated below at  
15 approximately 7:30 a.m.

15 \_\_\_\_\_ by facsimile at the following facsimile number(s):

16  
17 I declare under penalty of perjury under the laws of the State of California that the  
18 foregoing is true and correct.

18 Executed this 17th day of September 2015, in Oakland, California.

19   
20 Christine Montgomery

**EXHIBIT 5**

1 **STATE OF CALIFORNIA**  
 2 Department of Industrial Relations  
 3 Division of Labor Standards Enforcement  
 4 **FERNANDO FLORES (SBN 256193)**  
 5 455 Golden Gate Avenue, 9<sup>th</sup> Floor  
 6 San Francisco, CA 94102  
 7 Telephone No. (415) 703-4814  
 8 Facsimile No. (415) 703-4807

9 Attorney for Plaintiff and Respondent  
 10 **KEN KHO**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF ALAMEDA**

13 **KEN KHO,**  
 14  
 15 Plaintiff/Respondent,  
 16  
 17 v.  
 18 **OTO, LLC, an Arizona Limited Liability**  
 19 **Company, dba ONE TOYOTA OF OAKLAND,**  
 20 **ONE SCION OF OAKLAND,**  
 21  
 22 Defendant/Appellant.

Case No. RG15785832

**[PROPOSED] ORDER TO CONTINUE TRIAL DATE.**

*[No fee per Labor Code § 101, et seq.]*

23 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**  
 24 **GOOD CAUSE APPEARING THEREFORE, and pursuant to the parties' stipulation to**  
 25 **continue the trial date, the parties' request to continue the trial is hereby GRANTED.**

26 The trial calendar call for this matter shall be continued from October 16, 2015 to February 5,  
 27 2016.

28 **IT IS SO ORDERED.**

Dated: September \_\_\_\_, 2015

\_\_\_\_\_  
**JUDGE OF THE SUPERIOR COURT**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**STATE OF CALIFORNIA**  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
FERNANDO FLORES (SBN 256193)  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, CA 94102  
Telephone No. (415) 703-4814  
Facsimile No. (415) 703-4807  
  
Attorney for Plaintiff and Respondent  
KEN KHO

**FILED BY FAX**  
ALAMEDA COUNTY  
September 25, 2015  
  
CLERK OF  
THE SUPERIOR COURT  
By Lynn Wiley, Deputy  
  
CASE NUMBER:  
RG15785832

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

KEN KHO,  
  
Plaintiff/Respondent,  
  
v.  
  
OTO, LLC, an Arizona Limited Liability  
Company, dba ONE TOYOTA OF OAKLAND,  
ONE SCION OF OAKLAND,  
  
Defendant/Appellant.

Case No. RG15785832

**STIPULATION TO CONTINUE TRIAL  
DATE.**

*[No fee per Labor Code § 101, et seq.]*

IT IS HEREBY STIPULATED by and between the parties to the above entitled action,  
Defendant/Appellant, OTO, LLC, an Arizona Limited Liability Company, dba ONE TOYOTA OF  
OAKLAND, ONE SCION OF OAKLAND ("Defendant") and Plaintiff/Respondent, KEN KHO  
("Plaintiff"), through counsel, that the trial in the above-entitled matter may be continued from  
October 16, 2015 to February 5, 2016. The parties agreed that a continuance is necessary to  
adequately prepare for trial in this matter and after reviewing and conferring on their respective  
schedules, the parties agreed a February 5, 2016 date complied with their respective trial calendars.  
  
The parties also stipulate that all dates related to discovery should be premised on the new

1 trial date rather than the initial October 16, 2015 trial date set by the Court.

2

3

Respectfully Submitted,

4

5

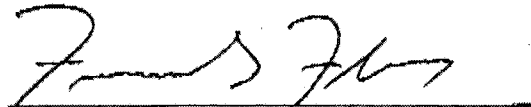
Dated: September 24, 2015

DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations, State of California

6

7

By:



FERNANDO FLORES  
Attorney for Plaintiff/Respondent

8

9

10

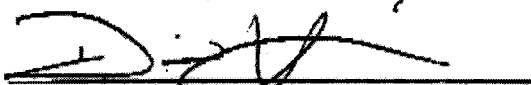
Dated: September 24, 2015

FINE, BOGGS, & PERKINS LLP

11

12

By:



DAVID A. HOSEYK  
Attorney for Defendant/Appellant

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**EXHIBIT 6**

Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse

Case Number: RG15785832  
Continuance of Trial Date of 10/06/2015

### DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 10/06/2015.

Chad Finke Executive Officer / Clerk of the Superior Court

By

A handwritten signature in black ink, appearing to be 'Chad Finke', written over a horizontal line. The signature is stylized and cursive.

Deputy Clerk



1 **STATE OF CALIFORNIA**  
 2 Department of Industrial Relations  
 3 Division of Labor Standards Enforcement  
 4 **FERNANDO FLORES (SBN 256193)**  
 5 455 Golden Gate Avenue, 9<sup>th</sup> Floor  
 6 San Francisco, CA 94102  
 7 Telephone No. (415) 703-4814  
 8 Facsimile No. (415) 703-4807  
 9 Attorney for Plaintiff and Respondent  
 10 **KEN KHO**

**FILED**  
 ALAMEDA COUNTY

OCT 06 2015 D

CLERK OF THE SUPERIOR COURT  
 By [Signature] Deputy  
**SIANTE DEWBERRY**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

11 **KEN KHO,**

Case No. RG15785832

13 Plaintiff/Respondent,

14 v.

~~PROPOSED~~ ORDER TO CONTINUE TRIAL DATE.

16 OTO, LLC, an Arizona Limited Liability  
 17 Company, dba ONE TOYOTA OF OAKLAND,  
 18 ONE SCION OF OAKLAND,

[No fee per Labor Code § 101, et seq.]

18 Defendant/Appellant.

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 GOOD CAUSE APPEARING THEREFORE, and pursuant to the parties' stipulation to  
 22 continue the trial date, the parties' request to continue the trial is hereby GRANTED.

23 The trial calendar call for this matter shall be continued from October 16, 2015 to February 5,  
 24 2016.

25 IT IS SO ORDERED.

26 Dated: October 6, 2015

[Signature]  
 JUDGE OF THE SUPERIOR COURT  
**Morris D. Jacobson**

**EXHIBIT 7**

STATE OF CALIFORNIA, Department  
of Industrial Relations  
Attn: Flores, Fernando  
455 Golden Gate Avenue  
9th Floor  
San Francisco, CA 94102

Fine, Boggs & Perkins LLP  
Attn: Perkins, Michael K.  
80 Stone Pine Rd.  
#210  
Half Moon Bay, CA 94019

**Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse**

Kho  Plaintiff/Petitioner(s)  VS.  One Toyota of Oakland  Defendant/Respondent(s) (Abbreviated Title)
--

No. RG15785832

**NOTICE OF HEARING (AMENDED)**

Master Court Trial on 10/16/2015 has been  
vacated and rescheduled.

To each party or to the attorney(s) of record for each party herein:  
Notice is hereby given that the above entitled action has been set for:  
Master Court Trial

You are hereby notified to appear at the following Court location on the date and  
time noted below:

Master Court Trial:  
DATE: 02/05/2016 TIME: 08:46 AM DEPARTMENT: 1  
LOCATION: Rene C. Davidson Alameda County Courthouse, Second Floor  
1225 Fallon Street, Oakland

NOTE: The Trial Date of October 16, 2015 is vacated. See Order To Continue Trial Date signed  
and filed 10/6/2015.

Dated: 10/06/2015

Chad Finke Executive Officer / Clerk of the Superior Court

By



Deputy Clerk

**CLERK'S CERTIFICATE OF MAILING**

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to  
this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by  
sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date  
stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 10/06/2015.

By



Deputy Clerk

LC00023

**EXHIBIT 8**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

STATE OF CALIFORNIA  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
FERNANDO FLORES (SBN 256193)  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, CA 94102  
Telephone No. (415) 703-4814  
Facsimile No. (415) 703-4807

Attorney for Plaintiff and Respondent  
KEN KHO

**FILED BY FAX**  
ALAMEDA COUNTY  
December 11, 2015  
CLERK OF  
THE SUPERIOR COURT  
By Lynn Wiley, Deputy  
CASE NUMBER:  
**RG15785832**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA**

KEN KHO,

Plaintiff/Respondent,

v.

OTO, LLC, an Arizona Limited Liability  
Company, dba ONE TOYOTA OF  
OAKLAND, ONE SCION OF OAKLAND,

Defendant/Appellant.

Case No. RG15785832

**PLAINTIFF/RESPONDENT'S NOTICE  
OF INTENT TO SEEK ADDITIONAL  
DAMAGES.**

*[No fee per Labor Code § 101 et seq.]*

TO DEFENDANT/APPELLANT OTO, LLC, an Arizona Limited Liability Company, dba  
ONE TOYOTA OF OAKLAND, ONE SCION OF OAKLAND:

Please take notice that Plaintiff/Respondent KEN KHO ("Plaintiff") will seek damages  
pursuant to Labor Code section 226(c) at the trial in the above stated matter, currently scheduled for  
February 5, 2016, in Department 1, for Defendant/Appellant OTO, LLC's, an Arizona Limited  
Liability Company, dba ONE TOYOTA OF OAKLAND, ONE SCION OF OAKLAND  
("Defendant") violation of section 226(a), in failing to provide Plaintiff with accurate itemized  
statements reflecting all accurate hours, all applicable hourly rates in effect during the pay period,  
and all the corresponding number of hours worked at each hourly rate by the employee. Plaintiff

1 seeks fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one-hundred  
 2 dollars (\$100.00) for each violation in a subsequent pay period, up to a maximum amount of  
 3 \$4,000.00.

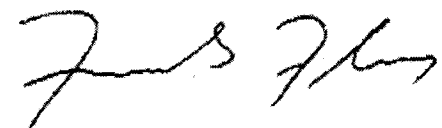
4 Additionally, Plaintiff seeks damages pursuant to Labor Code section 226.7(c) for  
 5 Defendant's violation of Labor Code section 226.7(a), in failing to provide Plaintiff with lawful 10-  
 6 minute rest periods as required by Labor Code sections 226.7(a)-(e) and Industrial Welfare  
 7 Commissioner Wage Order No. 7-2001, sections 12(A)-(B). Plaintiff seeks one hour of pay at  
 8 Plaintiff's regular rate of pay for each applicable work day that Defendant failed to provide an  
 9 adequate 10-minute rest period every four hours or major fraction thereof.

10 Plaintiff/Respondent seeks these damages in addition to interest thereon, costs, and  
 11 reasonable attorney's fees.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: December 11, 2015

STATE OF CALIFORNIA  
 Department of Industrial Relations  
 Division of Labor Standards Enforcement

By:   
 FERNANDO FLORES  
 Attorney for Plaintiff/ Respondent  
 KEN KHO

**PROOF OF SERVICE**

Ken Kho v. One Toyota of Oakland, LLC  
Alameda Superior Court Case No. RG-15785832

I, the undersigned, declare that I am and was at the time of service of the papers herein referred to, over the age of 18 and not a party to the within action or proceeding. My business address is 455 Golden Gate Avenue, 9<sup>th</sup> Floor, San Francisco, CA 94102 which is located in the county in which the within mentioned mailing occurred. I am familiar with the practice at my place of business for collection and processing of documents for mailing with the United States Post Office and by facsimile. Such documents will be deposited with the United States Postal Service with postage prepaid and/or faxed to the addressee and/or facsimile numbers as stated below on the same day in the ordinary course of business.

On December 11, 2015, I served the following documents:

**PLAINTIFF/RESPONDENT'S NOTICE OF INTENT TO SEEK ADDITIONAL DAMAGES**

by placing true copies thereof in an envelope(s) and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of Alameda, addressed as follows:

by placing true copies thereof in a FED EX envelope for delivery by overnight mail with all fees prepaid and addressed as follows:

John P. Boggs  
David A. Hosilyk  
FINE, BOGGS & PERKINS LLP  
80 Stone Pine Road, Suite 210  
Half Moon Bay, CA 94019


by electronic mail as follows:

by personal delivery addressed to the following person(s) at the address stated below at approximately 7:30 a.m.

by facsimile at the following facsimile number(s):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 11<sup>th</sup> day of December, 2015, in San Francisco, California.

  
\_\_\_\_\_  
Chike Ufombah

**EXHIBIT 9**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**STATE OF CALIFORNIA**  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
FERNANDO FLORES (SBN 256193)  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, CA 94102  
Telephone No. (415) 703-4814  
Facsimile No. (415) 703-4807  
  
Attorney for Plaintiff and Respondent  
KEN KHO

**FILED BY FAX**  
ALAMEDA COUNTY  
January 22, 2016  
CLERK OF  
THE SUPERIOR COURT  
By Burt Moskaira, Deputy  
CASE NUMBER:  
**RG15785832**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

KEN KHO,  
  
Plaintiff/Respondent,  
  
v.  
  
OTO, LLC, an Arizona Limited Liability  
Company, dba ONE TOYOTA OF OAKLAND,  
ONE SCION OF OAKLAND,  
  
Defendant/Appellant.

Case No. RG15785832  
  
**STIPULATION TO TAKE TRIAL  
DATE OFF CALENDAR.**  
  
*[No fee per Labor Code § 101, et seq.]*

IT IS HEREBY STIPULATED by and between the parties to the above entitled action,  
Defendant/Appellant, OTO, LLC, an Arizona Limited Liability Company, dba ONE TOYOTA OF  
OAKLAND, ONE SCION OF OAKLAND ("Defendant") and Plaintiff/Respondent, KEN KHO  
("Plaintiff"), through counsel, that the trial in the above-entitled matter may be taken off calendar.

IT IS HEREBY FURTHER STIPULATED by and between the parties that taking the trial  
off calendar is necessary to permit the Court to rule on Intervener Labor Commissioner's Motion for  
Reconsideration, currently scheduled for February 3, 2016. Should the Court grant Intervener Labor  
Commissioner's Motion for Reconsideration, the parties will schedule a new trial to a date that is

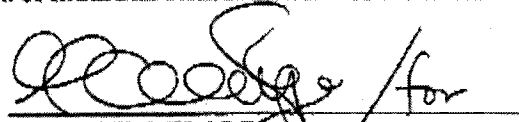
1 available in their respective trial calendars subject to any appeals or other court proceedings which  
2 may delay or make moot the trial date.

3 Respectfully Submitted,

4  
5 Dated: January 22, 2016

DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations, State of California


6  
7  
8 By:

  
FERNANDO FLORES  
Attorney for Plaintiff/Respondent

9  
10 Dated: January 22, 2016

FINE, BOGGS, & PERKINS LLP

11  
12  
13 By:

  
JOHN P. BOGGS  
Attorney for Defendant/Appellant

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT 10**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

STATE OF CALIFORNIA  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
FERNANDO FLORES (SBN 256193)  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, CA 94102  
Telephone No. (415) 703-4814  
Facsimile No. (415) 703-4807

Attorney for Plaintiff and Respondent  
KEN KHO

**FILED BY FAX**  
ALAMEDA COUNTY  
January 25, 2016  
CLERK OF  
THE SUPERIOR COURT  
By Angelica Mendola, Deputy  
CASE NUMBER:  
**RG15785832**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

KEN KHO,  
  
Plaintiff/Respondent,  
  
v.  
  
OTO, LLC, an Arizona Limited Liability  
Company, dba ONE TOYOTA OF OAKLAND,  
ONE SCION OF OAKLAND,  
  
Defendant/Appellant.

Case No. RG15785832

**[PROPOSED] ORDER TO TAKE  
TRIAL DATE OFF CALENDAR.**

*[No fee per Labor Code § 101, et seq.]*

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

GOOD CAUSE APPEARING THEREFORE, and pursuant to the parties' stipulation to take the February 5, 2016 trial date off calendar pending the Court's ruling on Intervener Labor Commissioner's Motion for Reconsideration, the parties' request to take the trial date off calendar is hereby GRANTED.

Should the Court grant Intervener Labor Commissioner's Motion for Reconsideration, the parties will schedule a new trial to a date that is available in their respective trial calendars subject to



1 any appeals or other Court proceedings which may delay or make moot the trial date.

2

IT IS SO ORDERED.

3

4

5 Dated: January \_\_\_\_\_, 2016

6

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

**EXHIBIT 11**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**STATE OF CALIFORNIA**  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
FERNANDO FLORES (SBN 256193)  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, CA 94102  
Telephone No. (415) 703-4814  
Facsimile No. (415) 703-4807

Attorney for Plaintiff and Respondent  
KEN KHO

**FILED BY FAX**  
ALAMEDA COUNTY  
January 25, 2016  
CLERK OF  
THE SUPERIOR COURT  
By Angelica Mendola, Deputy  
CASE NUMBER:  
**RG15785832**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

KEN KHO,

Plaintiff/Respondent,

v.

OTO, LLC, an Arizona Limited Liability  
Company, dba ONE TOYOTA OF OAKLAND,  
ONE SCION OF OAKLAND,

Defendant/Appellant.

Case No. RG15785832

**PROOF OF SERVICE**

*[No fee per Labor Code § 101, et seq.]*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

STATE OF CALIFORNIA  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
FERNANDO FLORES (SBN 256193)  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, CA 94102  
Telephone No. (415) 703-4814  
Facsimile No. (415) 703-4807

Attorney for Plaintiff and Respondent  
KEN KHO

**FILED BY FAX**  
ALAMEDA COUNTY  
January 22, 2016  
CLERK OF  
THE SUPERIOR COURT  
By Burt Moskaira, Deputy  
CASE NUMBER:  
RG15785832

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA**

KEN KHO,

Plaintiff/Respondent,

v.

OTO, LLC, an Arizona Limited Liability  
Company, dba ONE TOYOTA OF OAKLAND,  
ONE SCION OF OAKLAND,

Defendant/Appellant.

Case No. RG15785832

**STIPULATION TO TAKE TRIAL  
DATE OFF CALENDAR.**

*[No fee per Labor Code § 101, et seq.]*

IT IS HEREBY STIPULATED by and between the parties to the above entitled action,  
Defendant/Appellant, OTO, LLC, an Arizona Limited Liability Company, dba ONE TOYOTA OF  
OAKLAND, ONE SCION OF OAKLAND ("Defendant") and Plaintiff/Respondent, KEN KHO  
("Plaintiff"), through counsel, that the trial in the above-entitled matter may be taken off calendar.

IT IS HEREBY FURTHER STIPULATED by and between the parties that taking the trial  
off calendar is necessary to permit the Court to rule on Intervener Labor Commissioner's Motion for  
Reconsideration, currently scheduled for February 3, 2016. Should the Court grant Intervener Labor  
Commissioner's Motion for Reconsideration, the parties will schedule a new trial to a date that is

DEPARTMENT OF  
INDUSTRIAL RELATIONS  
DIVISION OF LABOR  
STANDARDS ENFORCEMENT  
1001 LAMAR

STIPULATION TO TAKE TRIAL DATE OFF CALENDAR

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

available in their respective trial calendars subject to any appeals or other court proceedings which may delay or make moot the trial date.

Respectfully Submitted,

Dated: January 22, 2016

DIVISION OF LABOR STANDARDS ENFORCEMENT  
Department of Industrial Relations, State of California


By:

  
FERNANDO FLORES  
Attorney for Plaintiff/Respondent

Dated: January 22, 2016

FINE, BOGGS, & PERKINS LLP

By:

  
JOHN P. BOGGS  
Attorney for Defendant/Appellant

**PROOF OF SERVICE**

Ken Kho v. One Toyota of Oakland, LLC  
Alameda Superior Court Case No. RG-15785832

I, the undersigned, declare that I am and was at the time of service of the papers herein referred to, over the age of 18 and not a party to the within action or proceeding. My business address is 455 Golden Gate Avenue, 9<sup>th</sup> Floor, San Francisco, CA 94102 which is located in the county in which the within mentioned mailing occurred. I am familiar with the practice at my place of business for collection and processing of documents for mailing with the United States Post Office and by facsimile. Such documents will be deposited with the United States Postal Service with postage prepaid and/or faxed to the addressee and/or facsimile numbers as stated below on the same day in the ordinary course of business.

On January 25, 2016, I served the following documents:

**CONFORMED STIPULATION TO TAKE TRIAL DATE OFF CALENDAR**

  X   by placing true copies thereof in an envelope(s) and then sealing the envelope with postage thereon fully prepaid, depositing it in the United States mail in the city and county of Alameda, addressed as follows:

John P. Boggs  
David A. Hosilyk  
FINE, BOGGS & PERKINS LLP  
80 Stone Pine Road, Suite 210  
Half Moon Bay, CA 94019

       by placing true copies thereof in a FED EX envelope for delivery by overnight mail with all fees prepaid and addressed as follows:


       by electronic mail as follows:

       by personal delivery addressed to the following person(s) at the address stated below at approximately 7:30 a.m.

       by facsimile at the following facsimile number(s):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 25<sup>th</sup> day of January, 2016, in San Francisco, California.

  
\_\_\_\_\_  
Chike Ufombah

**EXHIBIT 12**

STATE OF CALIFORNIA, Department of  
Industrial Relations  
Attn: Flores, Fernando  
455 Golden Gate Avenue  
9th Floor  
San Francisco, CA 94102

Finc. Boggs & Perkins LLP  
Attn: Perkins, Michael K.  
80 Stone Pine Rd.  
#210  
Half Moon Bay, CA 94019

Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse

<b>Kho</b> Plaintiff/Petitioner(s)
VS.
<b>One Toyota of Oakland</b> Defendant/Respondent(s) (Abbreviated Title)

No. RG15785832

Minutes

Department 1                                  Honorable Wynne Carvill , Judge

Cause called for Civil Court Trial on February 05, 2016.

Plaintiff Ken Kho not appearing.  
Defendant One Toyota of Oakland not appearing.

On February 5, 2016, the matter was called for trial on the master calendar, and no one appeared for either side. The case is hereby **DISMISSED WITHOUT PREJUDICE**.

It is hereby ordered that:

Case dismissed by Court without Prejudice - Pursuant to Court Order.

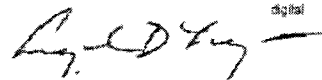
Notices will be mailed.

Minutes of 02/05/2016

Entered on 02/05/2016

Chad Finke Executive Officer / Clerk of the Superior Court

By

 digital

Deputy Clerk



Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse

Case Number: RG15785832  
Hearing Minutes of 02/05/2016


### DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 02/16/2016.

Chad Finke Executive Officer / Clerk of the Superior Court

By

 digital

Deputy Clerk

**EXHIBIT 13**

STATE OF CALIFORNIA, Department  
of Industrial Relations  
Attn: Flores, Fernando  
455 Golden Gate Avenue  
9th Floor  
San Francisco, CA 94102

---

**Superior Court of California, County of Alameda**  
**Rene C. Davidson Alameda County Courthouse**

---

Kho

Plaintiff/Petitioner(s)

VS.

One Toyota of Oakland

Defendant/Respondent(s)

(Abbreviated Title)

No. RG15785832

Order of Dismissal

Date: 02/05/2016

Time: 08:46 AM

Dept: 1

Judge: Wynne Carvill

It is hereby ordered that:

Case dismissed by Court without Prejudice - Pursuant to Court Order.

Dated: 02/05/2016

  
Facsimile

---

Judge Wynne Carvill

---

LC00037

Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse

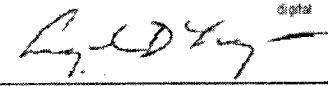
Case Number: RG15785832  
Court Ordered Dismissal of Case of 02/05/2016

**DECLARATION OF SERVICE BY MAIL**

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 02/16/2016.

Chad Finke Executive Officer / Clerk of the Superior Court

By  <sup>digital</sup>  
Deputy Clerk

**EXHIBIT 14**



"13377233"

1 John P. Boggs - Bar No. 172578  
2 Roman Zhuk - Bar No. 296306  
3 FINE, BOGGS & PERKINS LLP  
4 80 Stone Pine Road, Suite 210  
5 Half Moon Bay, California 94019  
6 (650) 712-8908 Tel  
7 (650) 712-1712 Fax

8 Attorneys for Petitioner  
9 ONE TOYOTA OF OAKLAND

**FILED**  
ALAMEDA COUNTY

DEC 02 2016  
CLERK OF THE SUPERIOR COURT  
By [Signature] Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA

12 KEN KHO,  
13 Plaintiff,  
14 v.  
15 ONE TOYOTA OF OAKLAND,  
16 Defendant.

Case No.: RG15785832

EX PARTE APPLICATION TO RELEASE  
THE LABOR CODE 98.2(b) APPEAL  
BOND

Hearing:  
Date: December 2, 2016  
Time: 9:15 a.m.  
Dept.: 511  
Judge: Hon. Kimberly Colwell

17 TO THE COURT AND ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF  
18 RECORD:

19 NOTICE IS HEREBY GIVEN THAT on December 2, 2016 at 9:15 a.m. in Department 511 of  
20 the Hayward Hall of Justice, 24405 Amador Street in Hayward, California, ONE TOYOTA OF  
21 OAKLAND ("OTO"), through undersigned counsel, will apply for an order to release the Labor Code  
22 section 98.2(b) appeal bond that has been previously lodged with the Court.

23 There are two related matters before the Alameda County Superior Court between Ken Kho and  
24 One Toyota of Oakland, arising out of a wage claim that Mr. Kho brought before the California Labor  
25 Commissioner. One—numbered RG15781961—was initiated via a petition by OTO to compel Mr. Kho  
26 to arbitrate his wage claims. The other—numbered RG15785832—is OTO's appeal of the Labor  
27 Commissioner Order, Decision, or Award, pursuant to Labor Code 98.2. In fact, both OTO's appeal and  
28 its petition to compel were heard as case number RG15781961 by the Honorable Evelio Grillo in later

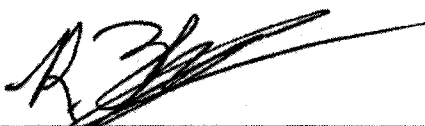
1 2015 and early 2016. Regardless, the matter numbered RG15785832 was dismissed without prejudice  
2 on February 5, 2016.

3 On November 28, 2016, undersigned counsel appeared ex parte before this Court in the matter  
4 numbered RG15781961 on an unopposed application to obtain release of the undertaking posted with  
5 the Court pursuant to Labor Code 98.2(b). This Court ordered the release of the bond in an order bearing  
6 the case number RG15781961. When undersigned counsel attempted to have the Clerk of Court execute  
7 the Court's order to release the bond, the Clerk's Office informed him that it could not release the  
8 undertaking because it was associated with the matter numbered RG15785832. Therefore, this  
9 application is being made so that the clerk's office can move forward with the release of the bond.

10 This application is made on the basis that there exist good cause for the release of the Appeal  
11 Bond. As stated in the Declaration of Roman Zhuk, filed herewith, Counsel has duly complied with the  
12 notice requirements of California Rules of Court, rule 3.1203(a) and California Rules of Court, rule  
13 3.1204(b). Fernando Flores of the California Labor Commissioner's office (455 Golden Gate Avenue,  
14 9th Floor, San Francisco; (t) 415-703-4814; FFlores@dir.ca.gov), counsel for Respondent Ken Kho and  
15 for Intervenor Labor Commissioner Julie Su, has stated he will *not* appear at the hearing to oppose the  
16 motion. Declaration of Roman Zhuk, ¶ 5.

17 This application is based on this Notice and the Declaration of Roman Zhuk; the pleadings and  
18 other files in this action; and such other written and oral argument as may be presented to the Court.

19 Respectfully submitted,

20  
21 December 1, 2016 

22 Date

23 Roman Zhuk  
24 Fine, Boggs & Perkins LLP

25 Attorneys for  
26 ONE TOYOTA OF OAKLAND

**EXHIBIT 15**





\*13370171\*

1 John P. Boggs - Bar No. 172578  
2 Roman Zhuk - Bar No. 296306  
3 FINE, BOGGS & PERKINS LLP  
4 80 Stone Pine Road, Suite 210  
5 Half Moon Bay, California 94019  
6 (650) 712-8908 Tel  
7 (650) 712-1712 Fax

8 Attorneys for Petitioner  
9 ONE TOYOTA OF OAKLAND

**FILED**  
ALAMEDA COUNTY

DEC - 2 2016

By *[Signature]*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA

12 KEN KHO,

13 Plaintiff,

14 v.

15 ONE TOYOTA OF OAKLAND,

16 Defendant.

Case No.: RG15785832

**DECLARATION OF ROMAN ZHUK IN  
SUPPORT OF PETITIONER'S  
APPLICATION TO RELEASE THE  
APPEAL BOND**

17 //  
18 //

19 I, ROMAN ZHUK, HEREBY DECLARE AND STATE:

20  
21  
22 I. I am over the age of 18 and an attorney with Fine, Boggs & Perkins LLP, counsel for  
23 ONE TOYOTA OF OAKLAND ("OTO") in this action. I am licensed to practice law before all courts  
24 of the State of California. I have personal knowledge of the facts herein and if called upon I could  
25 testify as to their truthfulness. I am submitting this Declaration in Support of OTO's Ex Parte  
26 Application to Release the Appeal Bond.  
27  
28

1           2.     There are two related matters before the Alameda County Superior Court between Ken  
2 Kho and One Toyota of Oakland, arising out of a wage claim that Mr. Kho brought before the California  
3 Labor Commissioner. One—numbered RG15781961—was initiated via a petition by OTO to compel  
4 Mr. Kho to arbitrate his wage claims. The other—numbered RG15785832—is OTO's appeal of the  
5 Labor Commissioner Order, Decision, or Award, pursuant to Labor Code 98.2. In fact, both OTO's  
6 appeal and its petition to compel were heard as case number RG15781961 by the Honorable Evelio  
7 Grillo in later 2015 and early 2016. Regardless, the matter numbered RG15785832 was dismissed  
8 without prejudice on February 5, 2016, after on February 3, 2016 Judge Grillo denied the motion of the  
9 Labor Commissioner for reconsideration of order granting OTO's motion to vacate Labor  
10 Commissioner's order.

11           3.     On November 28, 2016, I appeared in Department 511 to request release of a Labor Code  
12 98.2(b) appeal bond OTO has posted with this Court. This Court granted the *ex parte* application. A true  
13 and correct copy of the full application papers and supporting declaration are attached as Exhibit A,  
14 while a true and correct copy of the Court's order of November 28, 2016 is attached as Exhibit B. Both  
15 the application papers and Court's order bore the case number RG15781961.

16           4.     Immediately after the Court's ruling, I went downstairs to the Clerk's civil office to  
17 request that the clerk execute the order. It was eventually determined by the Clerk's staff that the  
18 undertaking was associated with the case numbered RG15785832 and that they could not release the  
19 bond without the Court's order in that matter.

20           5.     On November 29, 2016 at 12:41 p.m., I notified counsel for Kho and the intervenor  
21 Labor Commissioner of this *ex parte* application by email. A true and correct copy of this  
22 correspondence is attached hereto as Exhibit D. I emailed Fernando Flores, Esq., who I understand to be  
23 counsel for both the California Labor Commissioner and Ken Kho, at [FFlores@dir.ca.gov](mailto:FFlores@dir.ca.gov). I received  
24 confirmation from Mr. Flores on November 30, 2016 at 11:36 p.m. via email that he received my email  
25 and that he would not be appearing to oppose the *ex parte* application for December 2, 2016 at 9:15 a.m.  
26 A true and correct copy of our correspondence is attached hereto as Exhibit C.

27           6.     Because the sum of the bond posted with the Court is so great, irreparable harm would  
28 result to Petitioner if it is unable to access its own cash, which it is entitled to have for its own business

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

purposes in the absence of an ODA, or if it would have to wait to have this issue heard pursuant to ordinary notice requirements. Especially given that there appears to be no dispute to the release of the bond, *ex parte* relief is justified on this basis.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dec. 1, 2016  
Date

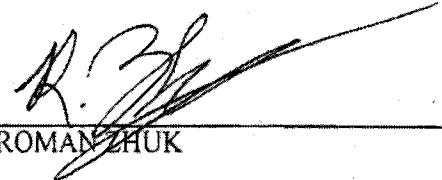
  
ROMAN ZHUK

Exhibit A

1 John P. Boggs – Bar No. 172578  
Roman Zhuk – Bar No. 296306  
2 FINE, BOGGS & PERKINS LLP  
80 Stone Pine Road, Suite 210  
3 Half Moon Bay, California 94019  
(650) 712-8908 Tel  
4 (650) 712-1712 Fax

5 Attorneys for Petitioner  
ONE TOYOTA OF OAKLAND  
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF ALAMEDA  
9

10 ONE TOYOTA OF OAKLAND,

11 Petitioner,

12 v.

13 KEN KHO,

14 Respondent.  
15  
16  
17

Case No.: RG15781961

EX PARTE APPLICATION TO RELEASE  
THE LABOR CODE 98.2(b) APPEAL  
BOND; MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT

Hearing:

Date: November 28, 2016

Time: 9:15 a.m.

Dept.: 511

Reservation Number: 1803416

Judge: Hon. Kimberly Colwell

18 TO THE COURT AND ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF  
19 RECORD:

20 NOTICE IS HEREBY GIVEN THAT on November 28, 2016 at 9:15 a.m. in Department 511 of  
21 the Hayward Hall of Justice, 24405 Amador Street in Hayward, California, Petitioner ONE TOYOTA  
22 OF OAKLAND ("Petitioner"), through undersigned counsel, will apply for an order to release the Labor  
23 Code section 98.2(b) appeal bond that has been previously lodged with the Court.

24 This application is made on the basis that there exist good cause for the release of the Appeal  
25 Bond. As stated in the Declaration of Roman Zhuk, filed herewith, Counsel has duly complied with the  
26 notice requirements of California Rules of Court, rule 3.1203(a) and California Rules of Court, rule  
27 3.1204(b). Fernando Flores of the California Labor Commissioner's office (455 Golden Gate Avenue,  
28 9th Floor, San Francisco; (t) 415-703-4814; FFlores@dir.ca.gov), counsel for Respondent Ken Kho and

EX PARTE APPLICATION FOR RELEASE OF APPEAL BOND; POINTS AND AUTHORITIES

LC00044

1 for Intervenor Labor Commissioner Julie Su, has stated he will *not* appear at the hearing to oppose the  
2 motion. Declaration of Roman Zhuk, ¶ 5.

3 This application is based on this Notice; the Memorandum in support hereof and the Declaration  
4 of Roman Zhuk; the pleadings and other files in this action; and such other written and oral argument as  
5 may be presented to the Court.

6 Respectfully submitted,

7  
8 

9 November 23, 2016

10 Date

Roman Zhuk  
Fine, Boggs & Perkins LLP

11 Attorneys for Petitioner  
12 ONE TOYOTA OF OAKLAND

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **INTRODUCTION**

15 Petitioner's request in this Application is simple. This Court has vacated the Labor  
16 Commissioner's Order, Decision, and Award ("ODA"). The only legal basis for the existence of the  
17 \$158,546.21 Appeal Bond that Petitioner previously lodged with the Court was the ODA. Absent the  
18 ODA, vacated by this Court, the Appeal Bond must be immediately returned to Petitioner.

19  
20 **SUMMARY OF FACTS**

21 On or about February 22, 2013, Ken Kho executed a written agreement which expressly provides  
22 for binding arbitration of all disputes between him and Petitioner OTO. Notwithstanding the arbitration  
23 agreement, Kho filed a claim for unpaid wages with the California Labor Commissioner, which  
24 scheduled the matter for hearing pursuant to the Berman process under which claims are submitted for  
25 adjudication by the Labor Commissioner's office. On August 14, 2015, Petitioner petitioned to compel  
26 arbitration and demanded that the Labor Commissioner stay her proceedings. The Labor Commissioner  
27 refused to do so, and proceeded to issue an Order, Decision, or Award (ODA) on August 25, 2015 in the  
28 amount of \$158,546.21 while the petition to compel arbitration was pending before the Superior Court.

1 On September 15, 2015, Petitioner posted an undertaking with the Court in the amount of  
2 \$158,546.21 and on September 17, 2015, Petitioner filed with the Superior Court of Alameda an  
3 Amended Notice of Cash Deposit Pursuant to Labor Code § 98.2(b). A true and correct copy of this  
4 Notice is attached hereto as Exhibit A. A true and correct copy of this Notice is attached hereto as  
5 Exhibit A to the Declaration of Roman Zhuk. On December 11, 2015, the Superior Court denied the  
6 petition to compel arbitration but granted Appellant's motion to vacate the ODA on the basis that  
7 enforcing the ODA would violate Appellant's right to a fair administrative hearing under California  
8 Code of Civil Procedure section 1094.5(b). A true and correct copy of this order is attached hereto as  
9 Exhibit B. On February 3, 2016, the Motion for Reconsideration of the Order Granting Petitioner's  
10 Motion to Vacate Labor Commissioner's Order was argued and submitted before the Court. It was  
11 ultimately denied. A true and correct copy of this ruling is attached hereto as Exhibit C to the  
12 Declaration of Roman Zhuk.

13 Although the ODA has been vacated, Petitioner's Appeal Bond has not been released to this  
14 present day. Currently, both the vacation of the ODA and the denial of arbitration are the subject of  
15 crossing appeals before the California Court of Appeal.

#### 16 LAW AND ARGUMENT

17 Petitioner's Appeal Bond should be released as the only reason for the existence of the Appeal  
18 Bond in the first place has been extinguished. Under Labor Code § 98.2(b), Petitioner was required to  
19 post the Appeal Bond in the first place as a condition to filing an appeal of the Labor Commissioner's  
20 ODA. No other justification or requirement for the Appeal Bond existed. Labor Code § 98.2  
21 presupposes the existence of an ODA. However, as we stand today, no ODA exists as this Court has  
22 vacated the Labor Commissioner's ODA of August 2015 in the underlying matter on December 11,  
23 2015 and later confirmed this decision when asked to reconsider. Therefore, the Court has no legal  
24 justification in continuing to hold an undertaking based on a non-existent ODA, and should order the  
25 release of the undertaking.

26 Because the sum of the bond posted with the Court is so great, irreparable harm would result to  
27 Petitioner if it is unable to access its own cash, which it is entitled to have for its own business purposes  
28 in the absence of an ODA, or if it would have to wait to have this issue heard pursuant to ordinary notice

1 requirements. Especially given that there appears to be no dispute to the release of the bond, *ex parte*  
2 relief is justified on this basis. Declaration of Roman Zhuk, ¶ 6.

3 **CONCLUSION**

4 Based on the foregoing, Petitioner respectfully requests that this Court order the Clerk of the  
5 Court to release the Petitioner's Appeal Bond.

6 Respectfully submitted,

7 

8  
9 November 23, 2016  
Date

Roman Zhuk  
Fine, Boggs & Perkins LLP  
  
Attorneys for Petitioner  
ONE TOYOTA OF OAKLAND

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2 **PROOF OF SERVICE**

3 I, Julie Dare, hereby declare and state:

4 1. I am engaged by the law firm of FINE, BOGGS & PERKINS LLP, whose address is 80  
5 Stone Pine Rd., Ste. 210, Half Moon Bay, California, and I am not a party to the cause, and I am over  
6 the age of eighteen years.

7 2. On the date hereof, I caused to be served the following document:

- 8  **EX PARTE APPLICATION TO RELEASE THE LABOR CODE 98.2(b)**  
9 **APPEAL BOND; MEMORANDUM OF POINTS AND AUTHORITIES IN**  
10 **SUPPORT**
- 11  **DECLARATION OF ROMAN ZHUK IN SUPPORT OF PETITIONER'S**  
12 **APPLICATION TO RELEASE THE APPEAL BOND**
- 13  **[PROPOSED] ORDER GRANTING PETITIONER'S APPLICATION TO**  
14 **RELEASE THE APPEAL BOND**

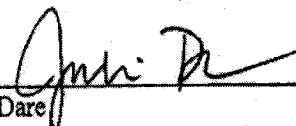
15 on the interested parties in this action by addressing true copies thereof as follows:

16 **Fernando Flores**  
17 **State of California**  
18 **Division of Labor Standards Enforcement**  
19 **Department of Industrial Relations**  
20 **455 Golden Gate Ave., 9<sup>th</sup> Floor**  
21 **San Francisco, CA 94102**  
22 **FFlores@dir.ca.gov**

23  **BY ELECTRONIC SERVICE** [Code of Civ. Proc. §1010.6]: by electronically mailing  
24 the document(s) listed above to the e-mail address(es) set forth above, or as stated on the  
25 attached service list per agreement in accordance with the Code of Civil Procedure  
26 §1010.6.

27  **BY OVERNIGHT COURIER:** I sent a copy of said document(s), pre-paid and/or on  
28 account, and in a sealed envelope, via private courier for delivery the next business day.

3. I declare under penalty of perjury under the laws of the State of California that the above  
is true and correct. Executed at Half Moon Bay, California, on Wednesday, November 23, 2016.

25   
26 Julie Dare



1 John P. Boggs – Bar No. 172578  
Roman Zhuk – Bar No. 296306  
2 FINE, BOGGS & PERKINS LLP  
80 Stone Pine Road, Suite 210  
3 Half Moon Bay, California 94019  
(650) 712-8908 Tel  
4 (650) 712-1712 Fax

5 Attorneys for Petitioner  
ONE TOYOTA OF OAKLAND

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF ALAMEDA  
9

10 ONE TOYOTA OF OAKLAND,

11 Petitioner,

12 v.

13 KEN KHO,

14 Respondent.  
15

Case No.: RG15781961

DECLARATION OF ROMAN ZHUK IN  
SUPPORT OF PETITIONER'S  
APPLICATION TO RELEASE THE  
APPEAL BOND

16  
17 I, ROMAN ZHUK, HEREBY DECLARE AND STATE:

18 1. I am over the age of 18 and an attorney with Fine, Boggs & Perkins LLP, counsel for  
19 Petitioner ONE TOYOTA OF OAKLAND in this action. I am licensed to practice law before all courts  
20 of the State of California. I have personal knowledge of the facts herein and if called upon I could  
21 testify as to their truthfulness. I am submitting this Declaration in Support of Petitioner's Ex Parte  
22 Application to Release the Appeal Bond.

23 2. On September 15, 2015, Petitioner posted an undertaking with the Court in the amount of  
24 \$158,546.21 and on September 17, 2015, Petitioner filed with the Superior Court of Alameda an  
25 Amended Notice of Cash Deposit Pursuant to Labor Code § 98.2(b). A true and correct copy of this  
26 Notice is attached hereto as Exhibit A.

27 3. On November 23, 2015, the matter came before the Court on Petitioner's Motion to  
28 Vacate the Order, Decision or Award ("ODA). On December 11, 2015, the Honorable Evelio Grillo

1  
DECLARATION OF ROMAN ZHUK IN SUPPORT OF EX PARTE

LC00049

1 granted Petitioner's Motion to Vacate Administrative Order. A true and correct copy of this order is  
2 attached hereto as Exhibit B.

3 4. On February 3, 2016, the Motion for Reconsideration of the Order Granting Petitioner's  
4 Motion to Vacate Labor Commissioner's Order was argued and submitted before the Honorable Evelio  
5 Grillo. It was ultimately denied. A true and correct copy of this ruling is attached hereto as Exhibit C.

6 5. On November 22, 2016 at 1:40 p.m., I notified counsel for Respondent of this *ex parte*  
7 application by email. A true and correct copy of this correspondence is attached hereto as Exhibit D. I  
8 emailed Fernando Flores, Esq., who I understand to be counsel for both the California Labor  
9 Commissioner and Ken Kho, at [FFlores@dir.ca.gov](mailto:FFlores@dir.ca.gov). I received confirmation from Mr. Flores that he  
10 received my email and that he would not be appearing to oppose the *ex parte* application for November  
11 28, 2016 at 9:15 a.m. A true and correct copy of our correspondence is attached hereto as Exhibit D.

12 6. Because the sum of the bond posted with the Court is so great, irreparable harm would  
13 result to Petitioner if it is unable to access its own cash, which it is entitled to have for its own business  
14 purposes in the absence of an ODA, or if it would have to wait to have this issue heard pursuant to  
15 ordinary notice requirements. Especially given that there appears to be no dispute to the release of the  
16 bond, *ex parte* relief is justified on this basis.

17  
18 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
19 true and correct.

20  
21  
22  
23 November 23, 2016  
Date

  
ROMAN ZHUK

# **EXHIBIT A**

**LC00051**

FILED  
ALAMEDA COUNTY

SEP 17 2015

CLERK OF THE SUPERIOR COURT  
By *[Signature]* Deputy

1 John P. Boggs - Bar No. 172578  
2 Ian G. Robertson - Bar No. 283151  
3 Michael K. Perkins - Bar No. 172560  
4 FINE, BOGGS & PERKINS LLP  
5 80 Stone Pine Road, Suite 210  
6 Half Moon Bay, California 94019  
7 (650) 712-8908 Tel  
8 (650) 712-1712 Fax

9 Attorneys for Defendant  
10 ONE TOYOTA OF OAKLAND

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF ALAMEDA

13 KEN KHO,

14 Plaintiff,

15 v.

16 ONE TOYOTA OF OAKLAND,

17 Defendant.

Case No.: RG15781961

AMENDED NOTICE OF CASH DEPOSIT  
PURSUANT TO LABOR CODE § 98.2(b)

Appeal Filed: September 15, 2015  
Trial Date: Not set

BY FAX

18 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

19 NOTICE IS HEREBY GIVEN THAT on September 15, 2015, Defendant ONE  
20 TOYOTA OF OAKLAND posted a cash undertaking with the Court in the amount of \$158,546.21 in  
21 accordance with the provisions of Labor Code § 98.2(b) as a condition to filing Defendant's Appeal of  
22 the Labor Commissioner's Order, Decision or Award.

23 Respectfully submitted,

24  
25 Date

9.17.15

26 *[Signature]*  
Michael K. Perkins  
Fine, Boggs & Perkins LLP

27 Attorneys for Defendant  
28 ONE TOYOTA OF OAKLAND

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**  
(C.C.P. §§ 1013(a) and 2015.5)

I, the undersigned declare that I am, and was at the time of service of the papers herein referred to, over the age of 18 years and not a party to the within action or proceeding. I am currently employed by the law firm of Fine, Boggs & Perkins LLP, and my business address is 80 Stone Pine Rd., Suite 210, Half Moon Bay, CA 94019.

On September 17, 2015, I served the following document(s):

AMENDED NOTICE OF CASH DEPOSIT PURSUANT TO LABOR CODE §98.2(b)

on the interested party(s) in this action by placing a true copy thereof, enclosed in sealed envelope, addressed as follows:

Ken Kho  
1650 Vida Court  
San Leandro, CA 94579  
Telephone: (510) 213-5367

State Labor Commissioner  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
1515 Clay Street, Suite 801  
Oakland, CA 94612  
Telephone: (510) 622-3273

- BY MAIL:** I am readily familiar with the firm's business practice of collection and processing of correspondence for mailing. Under that practice it will be deposited with U.S. postal service on that same date with postage thereon fully prepaid at San Marcos, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY PERSONAL SERVICE:** I caused a copy of said document(s) to be personally delivered to the party(s) set forth above.
- BY OVERNIGHT COURIER:** I sent a copy of said document(s), pre-paid and/or on account, and in a sealed envelope, via private courier for delivery the next business day.
- BY FEDERAL EXPRESS:** I sent a copy of said document via Federal Express or other overnight delivery service for delivery the next day to the party or parties set forth above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 17, 2015 at Half Moon Bay, California.

  
Julie Dare

# **EXHIBIT B**

**LC00054**

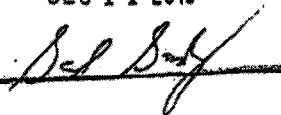
SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

FILED  
ALAMEDA COUNTY

DEC 11 2015

BY



ONE TOYOTA OF OAKLAND,

Petitioner,

v.

KEN KHO,

Respondent.

CASE NO. RG15781961

ORDER ON PETITIONER'S

MOTION TO VACATE

ADMINISTRATIVE AWARD

LABOR COMMISSIONER, STATE OF

CALIFORNIA,

Intervenor.

The motion by One Toyota of Oakland ("Petitioner") to to vacate the Order, Decision or Award ("ODA") issued by the Labor Commissioner, Division of Labor Standards Enforcement, Department of Industrial Relations, State of California, on August 25, 2015, came on regularly for hearing on November 23,

LC00055

2015, in Department 14 of the above-entitled court, the Honorable Evelio Grillo presiding. Petitioner appeared by counsel David A. Hosilyk and the law firm of Fine, Boggs & Perkins, LLP. Intervenor Labor Commissioner, Division of Labor Standards Enforcement, Department of Industrial Relations, State of California ("DLSE") appeared by counsel Fernando Flores, Attorney for Labor Commissioner. Following the hearing, the court took the matter under submission, and now rules as follows:

The motion to vacate the ODA issued on August 25, 2015 is GRANTED. In this case, Respondent Kenneth Kho ("Respondent") filed an administrative claim with the DLSE's office on October 9, 2014, and a "Berman" hearing was scheduled for August 17, 2015. Petitioner asserts that on the morning of August 17, 2015, counsel for Petitioner faxed a letter to the DLSE indicating that Respondent and Petitioner had agreed to arbitration of all employment-related disputes and that a Petition to Compel Arbitration had been filed with this court on August 14, 2015. Petitioner requested that the Berman hearing be taken off calendar until the completion of the arbitration. The Labor Commissioner refused to take the hearing off calendar. After the hearing, the Labor Commissioner issued an Order, Decision, or Award ("ODA") dated August 25, 2015 awarding \$158,546.21 to Respondent from OTO, LLC, dba One Toyota of Oakland, One Scion of Oakland.



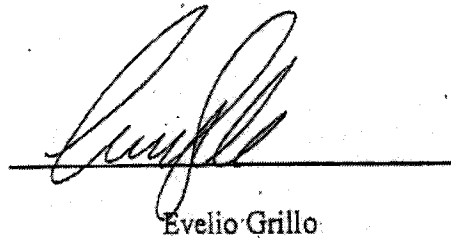
Under the holding in *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1142 ("*Sonic II*"), if an employer and employee have entered into an enforceable agreement to arbitrate disputes arising out of employment, employees are not entitled to proceed with a Berman hearing before proceeding to arbitration. Petitioner provided notice of its arbitration agreement with Respondent and that the fact that it had filed a petition to compel arbitration before the Berman hearing was held. Petitioner failed to attend the hearing for that reason.

Under the circumstances presented in this case, the court finds that the ODA should be vacated, because enforcing the ODA would violate the right of Petitioner to a fair administrative hearing. (Code Civ. Proc., sec. 1094.5(b).) The law with regard to the enforceability of arbitration agreements that require employees to waive Berman procedural rights is unsettled, but it is clear that employers are not required to participate in a Berman hearing prior to arbitration if there is an enforceable arbitration agreement. (*Sonic II, supra*, 57 Cal.4<sup>th</sup> at 1142.) Here, Petitioner provided notice prior to the hearing of the existence of the arbitration agreement and its petition to compel arbitration. Under the circumstances, Petitioner was substantially justified in refusing to participate in the hearing in relying on the arbitration agreement, and it would be unfair to enforce the ODA.

Petitioners and Respondents, on the other hand, will not be significantly prejudiced if the ODA is vacated and a new hearing is held, in which Petitioner has the opportunity to present a defense.

In light of the court's ruling denying the Petition to Compel Arbitration, the Labor Commissioner is authorized to schedule and provide notice of a renewed Berman hearing on Respondent's claims.

Date: December 11, 2015

A handwritten signature in black ink, appearing to read "Evelio Grillo", is written over a solid horizontal line.

Evelio Grillo

Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

Case Number: RG15781961

Case Name: One Toyota of Oakland vs. Kho

1) Order on Petitioner's Motion to Vacate Administrative Award

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing Order on Petitioner's Motion to Vacate Administrative Award was mailed first class, postage prepaid, in a sealed envelope, addressed as shown below by placing it for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

December 14, 2015

  
Executive Officer/Clerk of the Superior Court  
By M. Scott Sanchez, Deputy Clerk

Holsilyk, David A.  
Fine, Boggs & Perkins, LLP  
80 Stone Pine Rd., Suite 210  
Half Moon Bay, CA 94019

Ken Kho  
1650 Vida Court  
San Leandro, CA 94579

STATE OF CALIFORNIA  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
FERNANDO FLORES (SBN 256193)  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, CA 94102

LC00059

# EXHIBIT C

LC00060

Fine, Boggs & Perkins, LLP  
Attn: Holsilyk, David A.  
80 Stone Pine Rd., Suite 210  
Half Moon Bay, CA 94019

Ken Kho  
1650 Vida Court  
San Leandro, CA 94579

Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse

One Toyota of Oakland

Plaintiff/Petitioner(s)

vs.

Kho

Defendant/Respondent(s)

(Abbreviated Title)

No. RG15781961

Order

Motion for Reconsideration  
Denied

The Motion for Reconsideration was set for hearing on 02/03/2016 at 01:30 PM in Department 14 before the Honorable Evelio Grillo. The Tentative Ruling was published and was contested.

Third Party and Moving Party Labor Commissioner, State of California; Department of Industrial Relations appearing by counsel Fernando Flores.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The Motion of the Labor Commissioner for Reconsideration of Order Granting Petitioner's Motion to Vacate Labor Commissioner's Order is denied.

Dated: 02/03/2016



Judge Evelio Grillo

Order

LC00061

Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse

Case Number: RG15781961  
Order After Hearing Re: of 02/03/2016

**DECLARATION OF SERVICE BY MAIL**

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 02/11/2016.

Chad Finke Executive Officer / Clerk of the Superior Court

By

*Scott Sanchez*

Deputy Clerk

# EXHIBIT D

LC00063

**Julie Dare**

---

**From:** Flores, Fernando@DIR <FFlores@dir.ca.gov>  
**Sent:** Tuesday, November 22, 2016 1:49 PM  
**To:** Roman Zhuk  
**Cc:** Julie Dare  
**Subject:** RE: Ken Kho

Hi Roman,

Confirming that we will not be appearing. Thank you and have a good holiday.

Fernando Flores, Esq.  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, CA 94102  
T: 415-703-4814  
F: 415-703-4807

**\*\* Notice\*\***

This e-mail message is confidential, is intended only for the named recipient(s) above, and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you have received this message in error, or are not a named recipient(s), you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this message in error, please immediately notify the sender by return e-mail and delete this e-mail message from your computer. Thank you.

---

**From:** Roman Zhuk [rzhuk@employerlawyers.com]  
**Sent:** Tuesday, November 22, 2016 1:40 PM  
**To:** Flores, Fernando@DIR  
**Cc:** Julie Dare  
**Subject:** RE: Ken Kho

Fernando:

I will appear ex parte at the Hayward Hall of Justice at 24405 Amador Street, Hayward, CA 94544, Dept. 511, before the Honorable Judge Kimberly Colwell at 9:15 a.m. on Nov. 28, 2016 to request release of the Labor Code sec. 98.2(b) appeal bond. My reservation number is 1803416. I expect that you will not appear to oppose based on your Nov. 2 email. Let me know if that is incorrect.

I tried calling to notify, but was unable to reach you or your secretary referred to in your voicemail greeting.

Let me know if you have any questions. Thank you.

Very truly yours,

**Roman Zhuk, Esq.**  
FINE, BOGGS & PERKINS LLP  
80 Stone Pine Road, Suite 210  
Half Moon Bay, California 94019  
(O) (650) 712-7541 | (M) (415) 690-7303 | (F) (650) 712-1712



*Exhibit B*

~~FILED~~

John P. Boggs - Bar No. 172578  
Roman Zhuk - Bar No. 296306  
FINE, BOGGS & PERKINS LLP  
80 Stone Pine Road, Suite 210  
Half Moon Bay, California 94019  
(650) 712-8908 Tel  
(650) 712-1712 Fax

**FILED**  
ALAMEDA COUNTY

JUL 28 2016

Attorneys for Petitioner  
ONE TOYOTA OF OAKLAND

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ONE TOYOTA OF OAKLAND,

Petitioner,

v.

KEN KHO,

Respondent.

Case No.: RG15781961

~~PROPOSED~~ ORDER GRANTING  
PETITIONER'S APPLICATION TO  
RELEASE THE APPEAL BOND

TO ALL PARTIES AND COUNSEL OF RECORD:

Good cause having been shown, the Court ORDERS the clerk of the Court to immediately release to petitioner One Toyota of Oakland the cash undertaking previously lodged with the Court in the amount of \$158,546.21

Date:

*11/28/16*

*[Signature]*  
JUDGE OF THE SUPERIOR COURT

COPY

by Fax

Exhibit C.

Julie Dare

**From:** Flores, Fernando@DIR <FFlores@dir.ca.gov>  
**Sent:** Wednesday, November 30, 2016 11:36 PM  
**To:** Roman Zhuk  
**Cc:** Julie Dare  
**Subject:** Re: Ken Kho

Hi Roman,

Correct, we will not be appearing. Thanks.

Fernando Flores, Esq.  
Department of Industrial Relations  
Division of Labor Standards Enforcement  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102  
T: 415-703-4814  
F: 415-703-4807

**\*\* Notice\*\***

This e-mail message is confidential, is intended only for the named recipient(s) above, and may contain information that is privileged, attorney work product or exempt from disclosure under applicable law. If you have received this message in error, or are not a named recipient(s), you are hereby notified that any dissemination, distribution or copying of this e-mail is strictly prohibited. If you have received this message in error, please immediately notify the sender by return e-mail and delete this e-mail message from your computer. Thank you.

On Nov 29, 2016, at 12:41 PM, Roman Zhuk <[rzhuk@employerlawyers.com](mailto:rzhuk@employerlawyers.com)> wrote:

Fernando:

I will appear ex parte at the Hayward Hall of Justice at 24405 Amador Street, Hayward, CA 94544, Dept. 511, before the Honorable Judge Kimberly Colwell at 9:15 a.m. on December 2, 2016 to request release of the Labor Code sec. 98.2(b) appeal bond. I appeared yesterday, the judge granted the application for release of funds, but apparently the Court had placed the funds with a different case number and the clerk won't release the funds unless I have a court order with the case number associated with the funds. Therefore, I need to go to Hayward again to ask for the case number on the order to be changed.

I expect that you will not appear to oppose. Let me know if that is incorrect.

Also, let me know if you have any questions. Thank you.

Very truly yours,

**Roman Zhuk, Esq.**  
FINE, BOGGS & PERKINS LLP  
80 Stone Pine Road, Suite 210  
Half Moon Bay, California 94019

**EXHIBIT 16**

Superior Court of California, County of Alameda  
Hayward Hall of Justice

<b>Kho</b>	<small>Plaintiff/Petitioner(s)</small>
VS.	
<b>One Toyota of Oakland</b>	<small>Defendant/Respondent(s)</small>
<small>(Abbreviated Title)</small>	

No. RG15785832

Minutes

Department 511

Honorable Kimberly E. Colwell, Judge

Cause called for Hearing Re: Application Re: Other Ex Parte: 12/02/2016

Plaintiff Ken Kho represented by Roman Zhuk.

Defendant One Toyota of Oakland not appearing.

IT IS ORDERED that the Defendant's Application Re: Release the Appeal Bond is granted.

Plaintiff's proposed order signed OR to be submitted.

Minutes of 12/02/2016

Entered on 12/02/2016

Chad Finke Executive Officer / Clerk of the Superior Court

By

*Scott Sanchez*<sup>digital</sup>

Deputy Clerk

**EXHIBIT 17**



"13370179"

1 John P. Boggs - Bar No. 172578  
Roman Zhuk - Bar No. 296306  
2 FINE, BOGGS & PERKINS LLP  
80 Stone Pine Road, Suite 210  
3 Half Moon Bay, California 94019  
(650) 712-8908 Tel  
4 (650) 712-1712 Fax

**FILED**  
ALAMEDA COUNTY

DEC - 2 2016

By *[Signature]*

5 Attorneys for Petitioner  
ONE TOYOTA OF OAKLAND  
6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **COUNTY OF ALAMEDA**  
9

10 **KEN KHO,**  
11 **Plaintiff/Respondent,**  
12  
13 **v.**  
14 **ONE TOYOTA OF OAKLAND,**  
15 **Defendant/Petitioner.**

Case Nos.: RG15781961

RG15785832 *ke*

~~PROPOSED~~ ORDER GRANTING  
PETITIONER'S APPLICATION TO  
RELEASE THE APPEAL BOND

16  
17  
18 **TO ALL PARTIES AND COUNSEL OF RECORD:**

19 Good cause having been shown, the Court WITHDRAWS its prior order dated November 28,  
20 2016 in the case numbered RG15781961 and ORDERS the clerk of the Court to immediately release to  
21 One Toyota of Oakland the cash undertaking previously lodged with the Court in the amount of  
22 \$158,546.21, associated with the case numbered RG15785832.

23  
24 Date 12/2/16

*[Signature]*  
JUDGE OF THE SUPERIOR COURT

*Kimberly Colwell*

**EXHIBIT 18**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

RELEASE OF CIVIL FUNDS and OVERPAYMENTS FOR ALL DIVISIONS

One Toyota of Oakland  
Plaintiff

Case No. RG 1578583

VS

Kho  
Defendants

RCD660651

Orig. Amount: \$158,546.21

Receipt #: \_\_\_\_\_

Date: 09/15/2015

Mode of Pmt.: CHECK ACH Transfer

Reason for Release of Funds:

- Release of Deposit for Stay of Execution<sup>1</sup>
- Overpayment of \$10 or more (any division)<sup>2</sup>
- Exoneration of Bail - Civil, Family Law, Small Claims, Probate
- Small Claims Judgment Paid to Court<sup>3</sup>
- Filing Fee (Fee Type)<sup>4</sup> \_\_\_\_\_
- Court Order/Other (explain)<sup>5</sup> Release of Bond 11/28/2016

Amount to be Released/Refunded:

\$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ 158,546.21

Payee: (Please print) One Toyota of Oakland

Address: c/o David A. Holslyk Ronen Zhuk  
Fine, Boggs & Perkins, LLP  
Suite 210  
Half Moon Bay, CA 94019

I verify that to the best of my knowledge this release of funds complies with the appropriate statutes referenced above.

Completed by: \_\_\_\_\_  
Deputy Clerk

Date: 11/28/2016

Approved by: \_\_\_\_\_  
Division Chief/Designee

Date: \_\_\_\_\_

<sup>1</sup> CCP 1176

<sup>2</sup> GC 29375.1

<sup>3</sup> CCP 116.860

<sup>4</sup> At the discretion of the authorized approver

<sup>5</sup> At the discretion of the authorized approver

09/15/06

LC00069





RELEASE OF CIVIL FUNDS and OVERPAYMENTS FOR ALL DIVISIONS

One Toyota of Oakland  
Plaintiff

Case No. RG 15785832

vs

Kho  
Defendants

*RCDB660651*

Orig. Amount: \$158,546.21

Receipt #: \_\_\_\_\_

Date: 09/15/2015

Mode of Pmt.:  ACH Transfer / *check*

Reason for Release of Funds:

- Release of Deposit for Stay of Execution<sup>1</sup>
- Overpayment of \$10 or more (any division)<sup>2</sup>
- Exoneration of Bail - Civil, Family Law, Small Claims, Probate
- Small Claims Judgment Paid to Court<sup>3</sup>
- Filing Fee (Fee Type)<sup>4</sup> \_\_\_\_\_
- Court Order/Other (explain)<sup>5</sup> *Release of Bond 11/28/2016 to release Appeal Bond filed by police*

Amount to be Released/Refunded:

\$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ 158,546.21

Payee: (Please print) One Toyota of Oakland

Address: c/o David A. Holsilk *Roran Zhuk*  
Fine, Boggs & Perkins, LLP  
Suite 210  
Half Moon Bay, CA 94019

I verify that to the best of my knowledge this release of funds complies with the appropriate statutes referenced above.

Completed by: \_\_\_\_\_  
Deputy Clerk

Date: ~~11/28/2016~~

Approved by: *[Signature]*  
Division Chief/Designee

Date: 12/2/2016

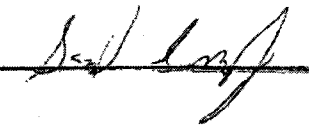
<sup>1</sup> CCP 1176  
<sup>2</sup> GC 29375.1  
<sup>3</sup> CCP 116.860  
<sup>4</sup> At the discretion of the authorized approver  
<sup>5</sup> At the discretion of the authorized approver

1 John P. Boggs - Bar No. 172578  
Roman Zhuk - Bar No. 296306  
2 FINE, BOGGS & PERKINS LLP  
80 Stone Pine Road, Suite 210  
3 Half Moon Bay, California 94019  
(650) 712-8908 Tel  
4 (650) 712-1712 Fax

5 Attorneys for Petitioner  
ONE TOYOTA OF OAKLAND

**FILED**  
ALAMEDA COUNTY


DEC - 2 2016

By: 

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF ALAMEDA

10 KEN KHO,  
11 Plaintiff/Respondent,  
12 v.  
13 ONE TOYOTA OF OAKLAND,  
14 Defendant/Petitioner.

Case Nos.: RG15781961

RG15785832 

~~PROPOSED~~ ORDER GRANTING  
PETITIONER'S APPLICATION TO  
RELEASE THE APPEAL BOND

17  
18 TO ALL PARTIES AND COUNSEL OF RECORD:

19 Good cause having been shown, the Court WITHDRAWS its prior order dated November 28,  
20 2016 in the case numbered RG15781961 and ORDERS the clerk of the Court to immediately release to  
21 One Toyota of Oakland the cash undertaking previously lodged with the Court in the amount of  
22 \$158,546.21, associated with the case numbered RG15785832.

23  
24 Date

12/2/16

  
JUDGE OF THE SUPERIOR COURT

Kimberly Colwell



**Superior Court of California**  
*County of Alameda*

**\*\* COPY \*\* COPY \*\* COPY \*\* COPY \*\* COPY \*\* COPY \*\* COPY \*\***

Superior Court of California, County of Alameda  
Rene C. Davidson Alameda County Courthouse  
1225 Fallon Street  
Oakland, CA 94612

Receipt Nbr: 660651  
Clerk: ebaker  
Date: 09/15/2015

Type	Case Number	Description	Amount
Deposit	RG15785832	Deposit for In Lieu of Bond	\$158546.21

Total Amount Due: \$158,546.21  
Prior Payment:  
Current Payment: \$158,546.21  
Balance Due: \$.00  
Overage:  
Excess Fee:  
Change:

Payment Method:  
Cash:  
Check: \$158,546.21

LC00072

**EXHIBIT 19**



*A report on the State of*  
THE DIVISION OF LABOR STANDARDS ENFORCEMENT



Julie A. Su, Labor Commissioner  
Department of Industrial Relations  
Labor & Workforce Development Agency

STATE OF CALIFORNIA  
Governor Edmund G. Brown Jr.

*May 2013*

LC00074

May 2013

When I was given the opportunity by Governor Brown to serve as the State Labor Commissioner, I set out to make the promise of a just day's pay for a hard day's work a reality in every workplace in California. As the head of the Division of Labor Standards Enforcement, I embraced the opportunity to promote the health and vitality of our state's economy by protecting working people and providing a level playing field for honest employers to prosper and thrive. To that end, I set the following priorities:

- **Ensure effective inspections and payment of owed wages.** Rather than random targeting of employers for easy-to-uncover violations that do little to address the underground economy, I emphasized meaningful investigations to combat wage theft. In 2012, our field investigations assessed 462% more in minimum wages and 642% more in overtime wages than the DLSE did in 2010, the year before Governor Brown took office, and in public works, we assessed the highest combined amount of total wages and civil penalties since 2002.
- **Create a business-friendly environment for law-abiding employers.** My goal was to increase compliance with labor laws, not to punish employers who abide by the law. In 2012, the ratio of civil penalty citations to inspections was the highest in a decade, proving that better targeting identifies violators and avoids indiscriminately sweeping in those already in compliance.
- **Eliminate backlogs.** I sought to cut down the significant time lag in processing wage claims and retaliation complaints brought before the DLSE. The last two years have seen marked progress in both areas.
- **Protect communities against criminal activity by unscrupulous employers.** I established a Criminal Investigation Unit comprised of sworn peace officers with the power to conduct criminal investigations, arrest employers for violating the state's penal code and labor laws, and refer criminal cases to the district attorney's office. Since its formation, we have filed 10 felony theft of labor cases seeking over \$655,000 in stolen wages.
- **Provide comprehensive training program for DLSE staff.** In order to equip all staff with the tools they need to work effectively and efficiently, I made it a priority to invest in training. In the last two years, the DLSE held over 60 training sessions and instituted improvements in internal communication and coordination.
- **Forge meaningful partnerships.** To work smarter, the Division has cultivated strong working relationships with employer groups, trade and industry associations, labor-management groups, unions, employee advocates, and community-based organizations, as well as local, federal and other state agencies.
- **Invest in technology and infrastructure.** In order to better serve the public and promote more efficient use of resources, I prioritized the development of online functions and the use of technology to target unlawful employers and track enforcement efforts.

The DLSE provides a wide array of essential services for California workers and employers, including adjudication of wage claims, inspections of workplaces, enforcement of prevailing wage rates and apprenticeship standards in public works projects, licensing and registration of businesses, investigations of retaliation complaints, and education of the public on labor laws. Our enforcement efforts generate substantial revenue for the state when unlawful employers pay penalties for breaking the law.

In the course of only two years, we have made historic advances in the critical work of the Division. I am proud of what we have accomplished in such a short span of time and grateful for the dedication and hard work of the DLSE staff, who have made the achievements we have realized during this Administration possible. In the work that we do every day, we will continue to strive to ensure that the working people of California and the businesses who follow the law know that the State is on their side.



Julie A. Su  
California Labor Commissioner  
LC00075



LC00076

## Table of Contents

Executive Summary	1
Introduction: The Labor Commissioner's Priorities	5
Impact of the DLSE's Enforcement Activities	7
<b>Major Achievements</b>	<b>8</b>
Wage Claims Adjudication	9
Accomplishments	10
Looking Ahead	12
Bureau of Field Enforcement	13
Accomplishments	14
Industry Snapshots	22
Looking Ahead	28
Public Works	29
Accomplishments	30
Looking Ahead	32
Retaliation Complaint Investigations	33
Accomplishments	34
Looking Ahead	36
Judgment Enforcement	37
Accomplishments	38
Looking Ahead	38
Licensing and Registration	39
Accomplishments	40
Looking Ahead	42
Legal	43
Accomplishments	44
Looking Ahead	45
<b>Conclusion</b>	<b>46</b>

# EXECUTIVE SUMMARY

Since her appointment by Governor Edmund G. Brown Jr., California Labor Commissioner Julie A. Su has led the Division of Labor Standards Enforcement (DLSE) through the two most robust years in its history. Prior to her tenure, the Division struggled with considerable operational challenges. Severe backlogs were clogging the timely processing of wage claims and retaliation complaints, and the volume of inspections conducted by the agency was prized over the ability to identify wage theft and target non-compliant employers. To meet these formidable challenges and raise the bar on the agency's enforcement efforts, new priorities were set for the Division in order to make the Labor Commissioner's vision the reality in all offices of the DLSE statewide (see pages 5-6). As a result, in a relatively short period of time, the DLSE has experienced a renaissance in enforcement activity as significant improvements have been instituted across the Division.

The breadth of the DLSE's accomplishments in 2011 and 2012 underscores the success of this Administration's new approach to enforcement that focuses on smarter and more effective use of resources.

## Wage Claims Adjudication (WCA)

### **Reduction in length of time from filing to hearing of individual wage claims ("Berman" claims).**

- In 2012, **almost two-thirds** of WCA offices experienced a reduction in the time it took for Berman claims to be heard, with an average decrease of **more than two months** compared to 2010 (the year before Governor Brown appointed Commissioner Su). On average, Berman claims were being heard in 2012 faster than any year since 2008.

### **Highest total amount of hearing awards in the past five years.**

- In 2012, WCA awarded over **\$85 million** in unpaid wages, other compensation, and penalties – the highest total amount in the last five years.

### **Highest total amount awarded in garment claims in the past five years.**

- In 2012, WCA awarded more than **\$7 million** in hearing decisions on garment claims – the highest amount in the last five years. This is more than **6 times** the amount awarded in 2010.
- In 2012, WCA issued the most hearing decisions (254) on garment claims compared to any other year in the past five years. This is **more than triple** the number of hearing decisions issued in 2010.

## Bureau of Field Enforcement (BOFE)

### **Highest amount on record of minimum wages assessed.**

- In 2012, BOFE assessed over **\$3 million** in unpaid minimum wages – more than any previous year for which such data is available. This is almost **triple** the amount assessed in 2009, the second highest year on record. It also represents an increase of **462%** from the minimum wages assessed in 2010.

### **Highest amount on record of overtime wages assessed.**

- In 2011, BOFE assessed more than **\$4.8 million** in unpaid overtime wages – the highest amount of any previous year on record.
- In 2012, BOFE nearly **tripled** the prior record set in 2011, by assessing more than **\$13 million** in overtime wages. The 2012 figure represents a **187%** increase from 2008 (the highest year on record before the current Administration took office), and a **642%** increase from 2010.

### **Highest amount of total wages assessed in nearly a decade.**

- Between 2008 to 2010, the total of all wages (minimum wage, overtime, meal and rest period premiums, and other compensation) assessed by BOFE dropped 68% to its lowest point in a decade in 2010. Under the Brown Administration, BOFE reversed this trend.
- In 2011, BOFE more than **doubled** the amount of total wages assessed compared to 2010.
- In 2012, BOFE assessed over **\$25 million** in total wages – the highest amount in nearly a decade and an increase of **157%** from 2011. The 2012 figure also represents a **419%** increase from 2010.

### **Highest total amount of civil penalties assessed in a decade.**

- In 2011, BOFE assessed almost **\$35 million** in civil penalties – more than any previous year in a decade – for various labor law violations including failure to pay minimum wage or overtime, failure to provide itemized wage deduction statements, failure to carry workers' compensation insurance, and failure to comply with licensing and registration requirements.
- In 2012, BOFE set a new record by assessing over **\$51 million** in civil penalties – a **150%** increase from 2010.

### **Highest amount of civil penalties for minimum wage violations in a decade.**

- In 2011, BOFE assessed over **\$670,000** in civil penalties for minimum wage violations – the highest amount on record in a decade.
- In 2012, BOFE broke its 2011 record and assessed over **\$770,000** in minimum wage penalties. The 2012 figure is nearly **double** the amount assessed in 2009 (which was the highest year before the current Administration took over the DLSE). It also represents an increase of **159%** from 2010.

### **Highest amount of civil penalties for overtime violations in a decade.**

- In 2011, BOFE assessed over **\$670,000** in civil penalties for overtime violations – the highest amount on record in a decade.
- In 2012, BOFE more than **tripled** the amount in 2011, by assessing nearly **\$2.4 million** in overtime penalties. The 2012 record is almost **6 times** the amount assessed in 2010 (which was the highest year before the current Administration took office).

### **Highest civil penalty citation rate in a decade.**

- In 2012, BOFE's more targeted, efficient use of inspections yielded the highest rate of civil penalty citations (**80%**) in the past 10 years.

# Executive Summary

## Public Works

### **Highest combined amount of wages and civil penalties assessed since 2002.**

- In 2012, Public Works assessed over **\$25 million** combined in total wages and civil penalties – the highest amount since 2002.
- In 2012, Public Works issued **370 Civil Wage & Penalty Assessments (CWPAs)** – the second highest number (trailing the 2010 high mark by only 3 CWPAs) since this data has been tracked.

### **Two of the three highest wage assessments in a decade.**

- In 2011, Public Works assessed over **\$17 million** in wages – the second highest amount in a decade (behind 2010).
- In 2012, Public Works assessed over **\$16 million** in wages – the third highest amount in a decade.

### **Highest amount of civil penalties assessed in nearly a decade.**

- In 2012, Public Works assessed over **\$8.6 million** in civil penalties – the highest amount in the past nine years and the third highest amount since 2002.

## Retaliation Complaint Investigations (RCI)

### **Reduction in average number of days to complete investigations.**

- In 2012, the average number of days it took to complete a retaliation investigation was the lowest it has been in the past five years, despite the highest volume of complaints accepted and violations alleged since 2008.

### **Increase in percentage of cause findings.**

- In 2012, the percentage of RCI investigative determinations that found violations (**23%**) was higher than in any previous year in the past five years.

### **Qualitative improvements in complaint and investigation procedures.**

- The DLSE's response to retaliation has been reinvigorated through the creation of better processes for prioritizing complaints, so that meritless cases can be dismissed quickly and meritorious ones given immediate attention. Improved forms and notices, enhanced capacity to expedite complaint processing, a new system of coordinated investigation efforts between the RCI unit and the DLSE's other enforcement units, and procedures to deter retaliation by educating employers and workers have all been implemented in the past two years.

## Judgment Enforcement

### **Record amount of wages and penalties collected.**

- In 2012, the Judgment Enforcement unit collected a record of over **\$3.9 million** in wages and penalties, exceeding any other previous year since the inception of the unit.

## Licensing and Registration

### **Fastest application review process in the past five years.**

- In 2012, it took the DLSE an average of only **21 days** to review licensing and registration applications – **50%** faster than in 2010. For applications involving garment contractors, car washes, and farm labor contractors, 2012 marked the shortest review period (30 days or under) in the past five years.

### **Creation of key online functions for the public and streamlined application process.**

- Employers are now able to pay required application and exam fees online, and the procedure for correcting defective applications has been expedited. Work permits for minors can now be obtained online as well. In addition, the licensing application for farm labor contractors has been simplified, and the current licensing status of farm labor contractors may be verified online.

## DLSE Legal

### **Successful representation of workers in de novo appeals of wage claims.**

- In 2011 and 2012, DLSE attorneys achieved favorable resolutions for the claimant (either through judgment or settlement) in over **95%** of cases.

### **Strategic lawsuits to combat wage theft.**

- Affirmative suits against employers who have engaged in widespread violations of wage and hour laws are one of the most powerful enforcement tools in the Division's arsenal. In 2011 and 2012, DLSE attorneys filed several high-profile cases: a lawsuit on behalf of real estate agents throughout California who were denied minimum wage, which brought much-needed attention to the fact that violations of minimum labor standards are occurring in a wide variety of industries; the first lawsuits against farm labor contractors in the agency's history, on behalf of hundreds of workers owed more than \$2 million in unpaid wages, damages, and penalties; and lawsuits against car washes for systematically underpaying their employees and attempting to avoid liability by transferring ownership.

# INTRODUCTION: THE LABOR COMMISSIONER'S PRIORITIES

When Governor Edmund G. Brown Jr. appointed Labor Commissioner Julie A. Su two years ago, the DLSE was facing significant operational challenges. Massive backlogs were clogging the timely processing of wage claims and retaliation complaints, and the volume of inspections conducted by the agency was prized over the ability to identify wage theft and target non-compliant employers. To raise the bar on the agency's enforcement efforts, the Administration set the following new priorities for the Division:

- **Ensuring effective inspections and payment of owed wages.** Because workplace investigations are central to the DLSE's efforts to combat the underground economy, Commissioner Su prioritized making inspections meaningful and effective. Prior to 2011, the DLSE utilized the "sweep" approach to inspections, where random investigations of as many employers as possible were launched within a given industry and geographical area, and employers were cited primarily for workers' compensation and licensing violations. Such violations could be confirmed through quick, superficial inspections. Without a focus on more in-depth evaluations of what workers were being paid and the often sophisticated means of covering up wage violations, "sweeps" resulted in a large number of inspections but left wage theft undetected. Under this Administration, the Division has refocused inspections on ensuring that employers comply with minimum wage and overtime requirements. Rather than merely citing employers for easy-to-uncover violations that only scratch the surface of the underground economy, the DLSE has eliminated the scattershot approach in favor of targeted investigations that are now based on: (a) better intelligence (through data sharing among state agencies and better leads from employer associations, industry groups, and worker advocates); and (b) a commitment to root out illegal schemes aimed at denying workers their wages and avoiding detection.
- **Creating a business-friendly environment for law-abiding employers.** This Administration's improved approach to field investigations targets scofflaws and protects those already in compliance from unnecessary inspections. Furthermore, the Division has expanded the use of self-audits of payroll records for employers who want to correct violations. The Administration's goal is to increase compliance, not to punish those who want to abide by the law, so that honest businesses can thrive and profit in California.
- **Eliminating backlogs.** The Brown Administration prioritized cutting down the significant time lag in processing claims brought before the DLSE. As a result, the time it takes to hear a wage claim filed under the Berman process (Labor Code Section 98) and to investigate a retaliation complaint (Labor Code Section 98.7) has been reduced.
- **Utilizing all available tools to combat wage theft and protect communities against crimes.** In order to enhance the state's ability to fight wage theft and worker exploitation, Labor Commissioner Su established a Criminal Investigation Unit (CIU) to conduct criminal investigations of employers who engage in illegal conduct. Prior to the formation of the CIU, the DLSE had failed to effectively utilize its authority to pursue criminal penalties against employers who commit wage theft and other crimes against workers. Made up of sworn peace officers who have completed the police academy, the CIU reflects our state's recognition that such crimes harm not only individual workers but also communities. The CIU has the power to conduct investigations into criminal activity, arrest employers for violating the state's penal code and labor laws, file criminal cases with the district attorney's office, and obtain and serve inspection and search warrants. To facilitate the Division's criminal

LC00082

# Introduction: The Labor Commissioner's Priorities

enforcement efforts, the DLSE has cultivated working relationships with district attorneys throughout California, who may utilize CIU investigations as the basis for criminal prosecutions. Since its formation, the CIU has pursued employers who have perpetrated crimes against workers, including filing 10 felony theft of labor cases seeking over \$655,000 in wages stolen from workers, in addition to 2 felony forgery charges.

As part of the Administration's commitment to combat wage theft and other crimes against workers, the Division has also begun certifying U-visa petitions,<sup>1</sup> in order to encourage immigrant workers to report criminal activity by unscrupulous employers, and to protect workers who have the courage to step forward. The DLSE's ability to certify petitions based on crimes targeting the state's most vulnerable workers serves an invaluable law enforcement goal; the DLSE is often the first and only agency of the state to encounter and uncover criminal conduct committed as part of a scheme of labor exploitation. The Labor Commissioner therefore deems U-visa certification in appropriate cases as integral to the DLSE's core mission to ensure robust enforcement of labor laws.

- **Launching comprehensive, Division-wide training program for DLSE staff.** For several years prior to 2011, DLSE staff had not received much-needed training. Any informal training that occurred was conducted ad hoc, office by office, which led to inconsistent practices and applications of the law. Under this Administration, the DLSE has instituted comprehensive, Division-wide staff trainings. In the past two years, the DLSE convened over 60 training sessions on 23 different topics including effective mediation of cases; investigative techniques in public works projects; effective worker interviews; best practices for administering wage claims; new procedures and forms for retaliation complaint investigations; citation appeals; identification of criminal cases; performing wage audits; understanding the underground economy; and new legislation. Each training has focused not only on the substantive knowledge necessary for staff to do their jobs well but also on improved processes for investigating cases, keeping abreast of developments in the law, identifying barriers to successful enforcement efforts, and working across different units within the DLSE. As a result of these trainings, DLSE staff are better equipped with the skills and knowledge necessary to handle claims and investigations effectively and efficiently.
- **Forging meaningful partnerships with businesses, labor, educational institutions, and community-based groups.** Working collaboratively with community partners is integral to smart, effective enforcement. As part of leveraging collective resources to help identify labor law violators, fight abuses in the underground economy, and level the playing field for honest employers, this Administration has prioritized the development of strong working relationships with employer groups, trade and industry associations, labor-management groups, unions, employee advocates, and community-based organizations, as well as local, federal and other state agencies. The DLSE has also piloted partnerships with California law schools, including Stanford, Loyola, UC Irvine, and Santa Clara, to train students to assist in retaliation investigations. Law school clinics allow students to help members of the public seeking assistance from the DLSE and have expanded the Division's ability to reach communities that would otherwise have trouble accessing services.
- **Investing in technology and infrastructure.** In order to better serve the public and promote more efficient use of resources, the Brown Administration has focused on developing more online functions, as well as improving the use of technology to target bad employers and track complaints and enforcement efforts. Currently, most DLSE data is still input manually multiple times or is not easily shared from one part of the Division to another. The Administration is working to implement an enhanced data management system that would facilitate the DLSE's ability to coordinate all its enforcement activities. The new system, unlike the antiquated system currently in use, would enable the DLSE to immediately determine if an employer who has a pending wage claim in one office has any other claims or outstanding judgments, has a valid state license to do business, or is (or should be) the subject of a field enforcement inspection.

---

<sup>1</sup> The U-visa is a special type of visa issued by the U.S. Citizenship and Immigration Services (USCIS) of the federal Department of Homeland Security. In recognition of the fact that immigrant crime victims might not have legal status and thus may be reluctant to step forward to report criminal activity, Congress created the U-visa in order to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute crimes that target immigrants and to protect immigrant victims of such crimes. In order to petition USCIS for a U-visa, an immigrant victim of a "qualifying crime" must submit a certification form from a federal, state, or local law enforcement agency along with his or her U-visa application. The U-visa extends critical protections to immigrant crime victims by providing temporary lawful status as a "U nonimmigrant" for up to four years, work authorization, and an opportunity to adjust to lawful permanent resident status.



# IMPACT OF THE DLSE'S ENFORCEMENT ACTIVITIES

The DLSE's enforcement activities are essential for a healthy California economy. When California workers are paid what they are owed, there is pride in the work accomplished, families can put food on the table, payroll taxes are generated, and consumer spending increases; when labor law violators are caught, law-abiding employers are not undercut by businesses that reap the economic benefits of operating illegally; and when the state penalizes employers who have tried to game the system, respect for the law is restored and substantial state revenues are gained.

## Ensuring Workers are Paid their Wages

The wage theft crisis in this state is well-documented. A recent UCLA study<sup>2</sup> reported that an estimated **\$26 million** in wages **per week** are stolen from low-wage workers in Los Angeles County alone. Workers who experienced a pay-based violation in the previous work week lost an average of \$2,070 annually due to workplace violations, out of total annual earnings of only \$16,536. Of the Los Angeles workers surveyed:

- Almost 30 percent were paid less than minimum wage in the work week preceding the survey.
- 21.3 percent worked more than 40 hours for a single employer during the previous work week. Over three-fourths (79.2 percent) of these workers were not paid the legally required overtime rate by their employers.
- 89.6 percent worked enough consecutive hours to be legally entitled to a meal break. However, more than three-fourths of these workers (80.3 percent) experienced a meal break violation in the previous work week.
- 63.6 percent did not receive statutorily-mandated documentation of their wage earnings and deductions.

Wage theft exacts a heavy socio-economic toll on workers, particularly low-wage workers and their communities. The proliferation of wage theft, particularly in the underground economy, underscores the fact that effective, strong enforcement of labor laws is needed now more than ever before, to give working people a chance in our economy.

## Leveling the Playing Field for Legitimate Businesses

Law-abiding businesses who play by the rules suffer the economic consequences when government enforcement of labor laws is lackluster or nonexistent; unscrupulous employers operating illegally are able to gain an unfair competitive advantage and ignite a race to the bottom that lowers even the most basic labor standards.

The Labor Commissioner has met with hundreds of businesses who are demanding more and better labor enforcement in California. Legitimate businesses count on the state to enforce the rules. Many of these businesses have come to the DLSE seeking our help and leadership; in industries such as janitorial, garment and car wash, honest employers fear they will be out of business in a year if the DLSE does not step up enforcement efforts. Legitimate construction contractors say they are on the verge of closing their businesses because of illegal competition posed by those who are unlicensed and pay in cash. In multiple other industries, law-abiding employers cannot compete against the scofflaws. These serial violators are a primary focus of the Division's enforcement efforts.

## Generating State Revenues

Addressing workplace violations through vigorous state enforcement of labor laws is necessary for a vibrant economy. When California workers are not paid their earned wages, they have less money to spend for basic necessities, which means less consumer spending to help spur economic growth. This adversely impacts not only local communities and economies, but also the entire state. The DLSE's enforcement activities not only put hard-earned wages in the pockets of workers, but also help generate tax revenue and substantial monetary penalties for the state.

<sup>2</sup> *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers*, Milkman, Gonzalez & Narro, Institute for Research on Labor and Employment, UCLA (2010).

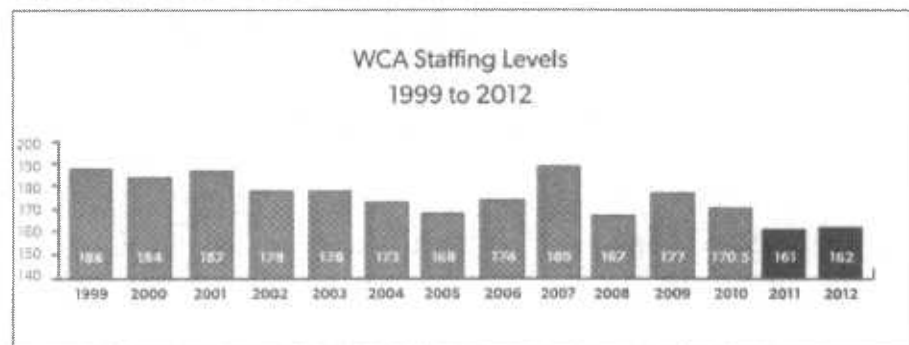
## **MAJOR ACHIEVEMENTS**

Under Labor Commissioner Su's leadership, the past two years were record-setting ones for the DLSE. Significant improvements to address long-standing problems that had hampered the DLSE's enforcement efforts were implemented across the Division, which experienced a renaissance in enforcement activity. Despite numerous challenges, three major enforcement areas – Wage Claims Adjudication, Bureau of Field Enforcement, and Licensing and Registration – demonstrated marked gains in performance. In addition, the Public Works unit operated at peak levels even during a critical period of transition for the unit. Considerable progress was made in revamping the Retaliation Complaint Investigation unit, although more work is necessary to address the entrenched problems that have historically held that unit back. The Division's Judgment Enforcement unit continued to improve its performance relative to previous years and recently implemented key measures intended to enhance its collections efforts. Finally, the Legal unit maintained the high quality of its enforcement work while also strategically broadening its impact through affirmative litigation against employers who have engaged in widespread violations of wage and hour laws.

# WAGE CLAIMS ADJUDICATION

As the largest unit within the DLSE, **Wage Claims Adjudication (WCA)** handles over 30,000 new wage claims a year in 16 offices across the state. Under Section 98 of the California Labor Code, workers may file a claim before the DLSE for unpaid wages (including minimum wage and overtime), other compensation, and penalties through an administrative claims process. Commonly known as the "Berman" process, this process has been heralded by the Legislature and the courts as an indispensable alternative to costly litigation for both workers and employers. When a Berman claim is filed, WCA staff typically hold a settlement conference and hearing on the claim. In addition, WCA staff administer wage claims brought by garment workers under a separate statutorily-mandated process (known as "AB 633") for investigating and adjudicating garment claims.

When the Brown Administration took over the DLSE in 2011, WCA was suffering from its lowest staffing levels in more than ten years.<sup>3</sup>



The unit operated with almost 10% fewer staff in both 2011 and 2012 as compared to 2009, when WCA was staffed at one of its highest levels over the past decade but nonetheless accumulated an excessive delay in adjudicating claims.<sup>4</sup> Before the Brown Administration came into office, it was taking an average of approximately 7 months (210 days in 2009 and 203 days in 2010) for a Berman claim to be heard. In 2011, Commissioner Su inherited this severe backlog in claims processing.

The backlog in AB 633 claims was even worse. When this Administration took office in 2011, **more than half** of the open AB 633 cases had been filed **two to three years ago**; some pending cases had been filed as far back as 2005. The Division's failure to properly handle AB 633 cases prior to 2011 is evidenced by the extremely low number of hearing decisions issued: a mere 54 in 2009 (an average of only 4.5 per month) and 73 in 2010 (an average of only 6 per month). As a result, many garment workers with pending claims cannot proceed now because their employers have since closed shop.

<sup>3</sup> Furloughs during the past four years have also affected staffing.

<sup>4</sup> Prior to 2008, the DLSE did not keep official statistics on how long it was taking to hear Berman claims.

## ACCOMPLISHMENTS

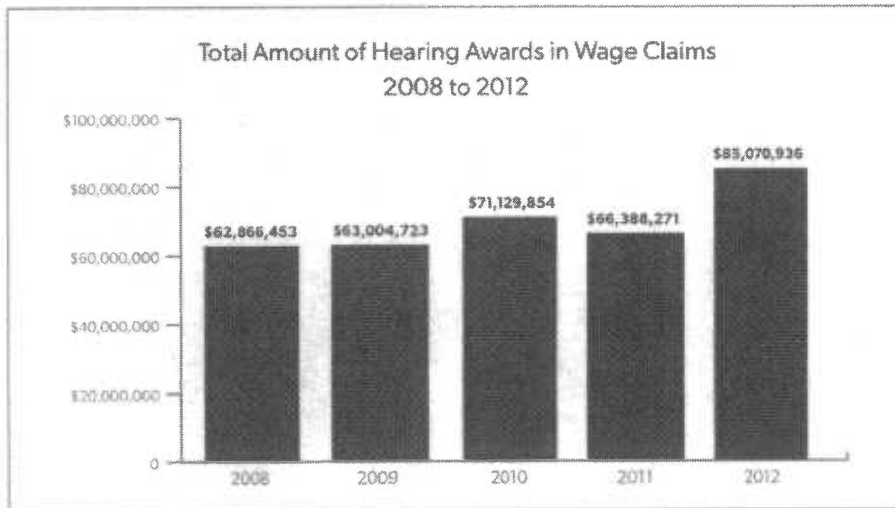
Despite these serious challenges, the Brown Administration has led several key improvements in both Berman and AB 633 claims processing over the past two years.

### Reduction in length of time for Berman claims to be heard.

- In 2012, WCA cut down the time it took to hear a Berman claim<sup>5</sup> by an average of approximately **one month** compared to 2009 and 2010 (a reduction of 31 days and 24 days, respectively). In 2012, Berman claims were heard within an average of 179 days from the date of filing, the lowest number on the books since 2008.
- In 2012, **almost two-thirds** of WCA offices<sup>6</sup> experienced a reduction in the average number of days for Berman claims to be heard, with an average decrease of **more than two months** (64.5 days) compared to 2010.

### Highest total amount of hearing awards in the past five years.

- In 2012, WCA issued the highest total amount of hearing awards for wage claims – over **\$85 million** in unpaid wages, other compensation, and penalties – within the last five years.<sup>7</sup>



## ENFORCEMENT SPOTLIGHT

A WCA deputy mediated a successful settlement on behalf of a worker who reported that he typically worked from 6 a.m. to 6 p.m., six days a week, for only \$300 a week. He was not paid the wages he had earned or allowed to take meal or rest breaks as required by law. The worker stated that when he asked to take his breaks, he was fired and was denied his wages upon termination. On the day of the settlement conference before the DLSE, the employer initially claimed he did nothing wrong and that he did not even know the worker. After the WCA deputy discussed the applicable law and potential liability of the employer, the case settled.

Cases like this are resolved daily by WCA deputies before they even proceed to hearing. However, data on unpaid wages recovered by WCA through settlement of claims has historically not been maintained by the DLSE, and successful settlement outcomes are thus not reflected in annual statistics. Nevertheless, such effective case resolution remains an important part of the critical work of the Division to ensure that the state's labor laws are followed.

<sup>5</sup> This statistic is based on the average number of days from the date of filing to the hearing.

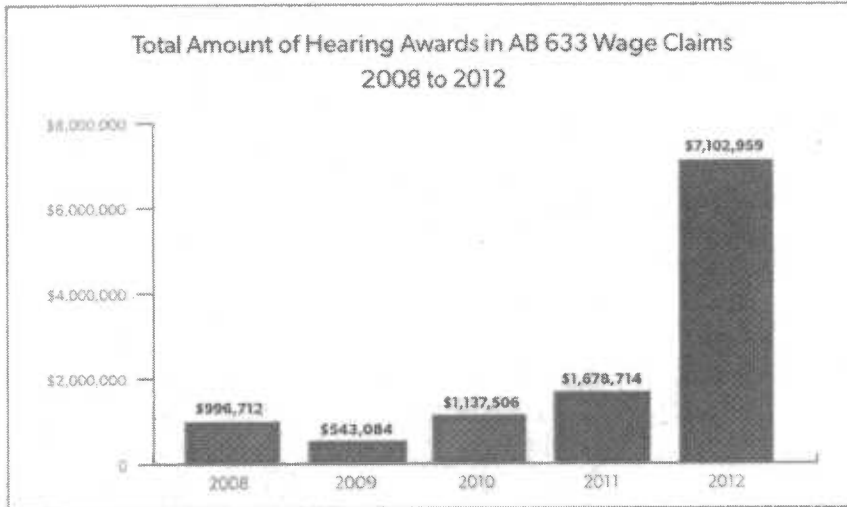
<sup>6</sup> Ten out of 16 WCA offices that experienced a reduction in the time it took to hear claims include Oakland, Sacramento, San Bernardino, San Diego, and Santa Ana, which typically process among the highest number of wage claims filed in the state.

<sup>7</sup> This statistic and accompanying graph include both Berman claims and AB 633 claims.

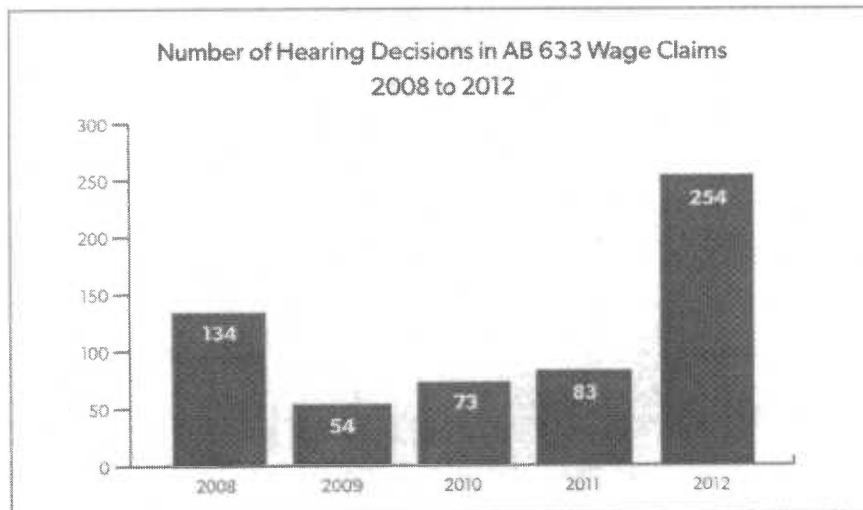
# Wage Claims Adjudication

## Highest total amount of AB 633 hearing awards and number of hearing decisions in the past five years.

- In 2012, WCA issued more than **\$7 million** in AB 633 hearing awards, the highest amount in the last five years. This represents more than **6 times** the amount awarded in 2010, the year before Governor Brown appointed Commissioner Su.



- In 2012, WCA issued the most AB 633 hearing decisions on record within the past five years. This represents **more than triple** the number of hearing decisions issued in 2010.



## ENFORCEMENT SPOTLIGHT

One day a woman came to the DLSE front counter crying. She informed the WCA deputy that she was a garment worker, paid by piece rate, and that her employer had not paid her in over a month. Her employer had kept promising to pay her each week, but payday never came. When the utility company threatened to shut off the power in the apartment she lived in with her children, she begged for her hard-earned wages. Her employer then gave her a check, but it bounced when she tried to cash it. With nowhere else to turn, she came to the DLSE. Based on a new, more proactive approach to cases, the WCA deputy promptly called the employer. The deputy informed the employer that the minimum wage had to be met in piece rate earnings and that if wages were found due, the employer could face waiting time penalties on top of paying wages owed. The employer agreed to pay the worker immediately.

## LOOKING AHEAD

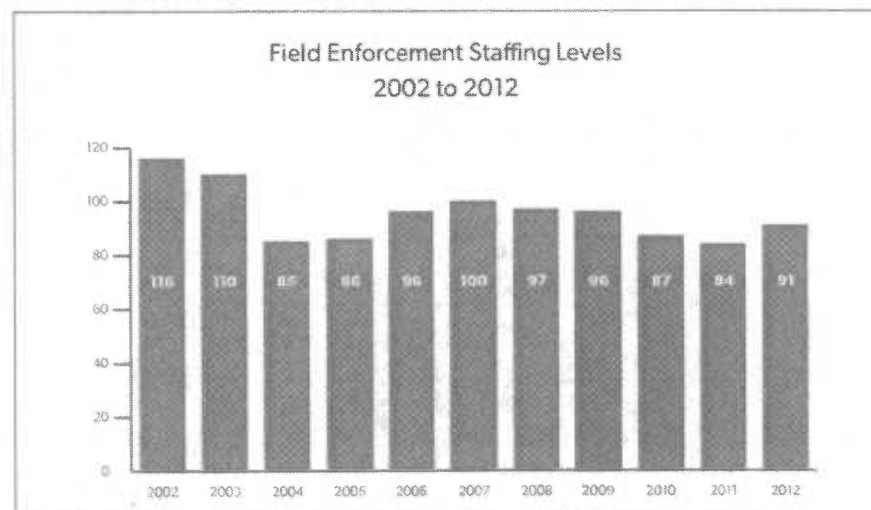
Although the DLSE has reduced the delay in hearing Berman claims and made appreciable headway in processing AB 633 cases in the past two years, more work needs to be done to further expedite the wage claims process. Building on the success of the comprehensive staff training program initiated under her leadership, the Labor Commissioner is committed to providing staff with additional tools necessary to efficiently and effectively handle wage claims. With a focus on case outcomes, the Division is implementing improved settlement and hearing procedures to ensure not only the payment of owed wages but also the imposition of penalties and damages meant to deter wage theft in the first place.

# BUREAU OF FIELD ENFORCEMENT

The Division's **Bureau of Field Enforcement (BOFE)** conducts investigations of employers and assesses civil penalties for non-compliance with wage and hour laws, workers' compensation, and business licensing and registration requirements. BOFE focuses on major underground economy industries in California where labor law violations are most rampant, including agriculture, garment, construction, car wash, and restaurant. In addition to levying civil penalties which generate substantial money for the state,<sup>8</sup> BOFE investigators conduct audits for unpaid wages, including minimum and overtime wages owed to workers. BOFE's efforts help ensure that workers are paid their lawful wages and legitimate employers are not forced out of business by those operating illegally in the underground economy.

When the Brown Administration came into office in 2011, the DLSE was facing several significant challenges within its field enforcement unit.<sup>9</sup> The "sweep" approach espoused by previous administrations did not prioritize uncovering wage theft, and instead focused heavily on violations that were relatively easier to detect, including workers' compensation and licensing and registration violations. Accordingly, Labor Commissioner Su inherited a steep 68% drop from 2008 to 2010 in the total amount of wages assessed by BOFE. In 2010, BOFE assessed only a little over \$4.8 million in total wages, the lowest amount in a decade; BOFE also experienced more than a 20% reduction from 2009 in the total amount of civil penalties assessed.

Furthermore, the overall number of DLSE field enforcement staff had substantially declined over the past decade. In 2011, when this Administration took office, the DLSE had the fewest field enforcement staff since 2002, with only 84 staff.<sup>10</sup>



- <sup>8</sup> Civil penalties that are collected pursuant to BOFE penalty citations are transferred to the General Fund and to the Uninsured Employers Fund (which helps to cover the cost of injured workers of those employers who do not have workers' compensation insurance).
- <sup>9</sup> The DLSE's field enforcement activity includes BOFE and the DLSE's efforts as part of multi-agency collaboratives such as the Labor Enforcement Task Force (LETf, formerly the Economic and Employment Enforcement Coalition, or EEEEC) and the Employment Enforcement Task Force (EETF, a project of the Joint Enforcement Strike Force). To capture the entirety of the DLSE's field enforcement activity, all references to "BOFE" throughout this report include DLSE efforts under LETf, EEEEC, and EETF, but do not include Public Works activity, which is detailed in a separate section.
- <sup>10</sup> This statistic includes all BOFE and EEEEC/LETf staff, including investigators, supervisors, and support staff.

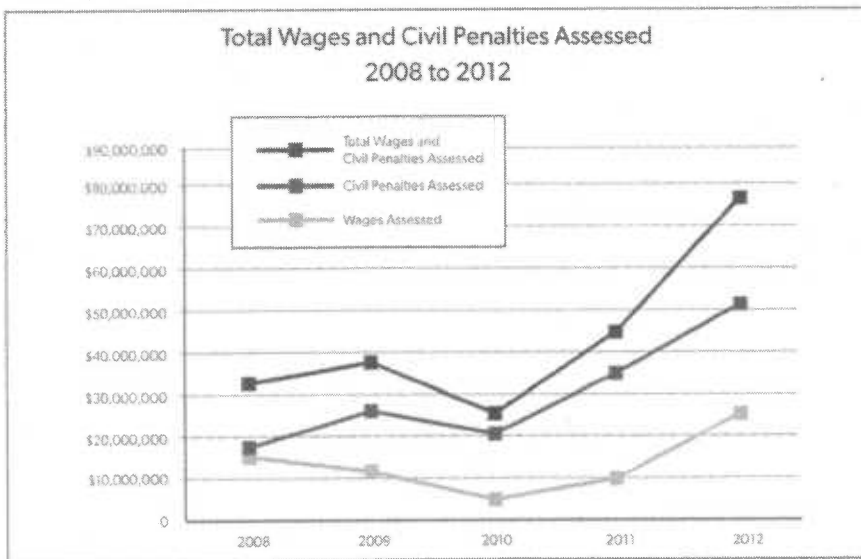
**LC00090**

When limiting the analysis to the number of investigative staff, between 2008 and 2011, the number of investigators fell to its low point in 2011 of only 60 statewide. By 2012, although the Administration was able to increase the total number of field enforcement staff to 91, of which 63 were investigators, the Division still had the second lowest number of investigators since 2008.

Year	Number of Investigators
2008	69
2009	66
2010	64
2011	60
2012	63

## ACCOMPLISHMENTS

Over the last two years, the DLSE has overcome these challenges and turned around BOFE's performance.<sup>11</sup>



<sup>11</sup> Data in this section was derived from two primary sources: (1) summary statistical information that has been reported annually to the Legislature; or (2) underlying data from BOFE deputies, compiled on a monthly basis and aggregated for the calendar year. Underlying data from BOFE deputies constitutes the more reliable data source, as it is based directly on deputies' records (such as citations and wage audits) and should have been the source of statistics reported to the Legislature in previous years. However, the Legislative reports submitted by the previous administration in 2008 and 2009 do not correspond with the underlying data maintained by the Division and were therefore deemed unreliable for this report. Instead, underlying data from BOFE deputies was utilized where it exists for a full calendar year (prior to 2008, such data generally could not be found). In general, the 2008 Legislative report overreported both penalties and wages assessed for that year, and the lower amounts supported by the underlying data have been utilized herein instead; the 2009 Legislative report underreported penalties assessed, and the higher amounts supported by the underlying data have been utilized.



## Bureau of Field Enforcement

In 2011, despite the lowest field enforcement staffing levels in a decade, BOFE more than doubled the amount of total wages assessed compared to 2010. By 2012, BOFE far surpassed its performance in previous years, including almost tripling the amount of overtime wages assessed and increasing the amount of minimum wages assessed by almost 7-fold compared to 2011.

	2010	2011	2012	Percent Increase from 2010 to 2012
Total Wages Assessed <sup>12</sup>	\$4,867,508	\$9,829,542	\$25,278,887	419%
Minimum Wages Assessed <sup>13</sup>	\$540,958	\$438,785	\$3,041,455	462%
Overtime Wages Assessed	\$1,795,609	\$4,834,712	\$13,324,098	642%
Total Civil Penalties Assessed	\$20,564,058	\$34,918,259	\$51,366,438	150%
Civil Penalties Assessed for Minimum Wage Violations	\$298,850	\$676,700	\$775,293	159%
Civil Penalties Assessed for Overtime Violations	\$414,542	\$672,763	\$2,394,390	478%

Under the Brown Administration, the DLSE has embraced a new approach to field enforcement that centers on improving the quality and depth of investigations to recover unpaid wages and that utilizes better targeting to focus resources on non-compliant employers. BOFE's achievements since 2011 showcase the success of this approach. In the past two years, while relatively lean staffing levels hindered the full realization of the DLSE's field enforcement capabilities, BOFE was nevertheless able to outperform prior years (when the DLSE had more field enforcement staff) and register record-high wage and penalty assessments.<sup>14</sup>

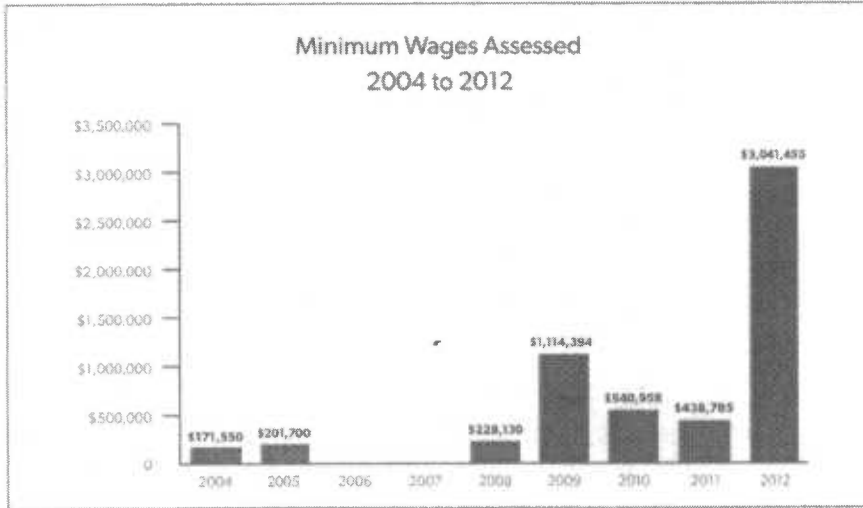
12 "Total wages" include minimum wages, overtime wages, premium pay for missed meal and rest periods, and other compensation.

13 Effective January 1, 2012, Labor Code Section 1197.1 was amended to explicitly provide for the authority of the DLSE to assess unpaid minimum wages on behalf of employees as part of a BOFE citation.

14 Most of the following field enforcement data was examined as far back as 2002. In some cases, as noted, data prior to 2004 or for calendar years 2006 and 2007 was not available.

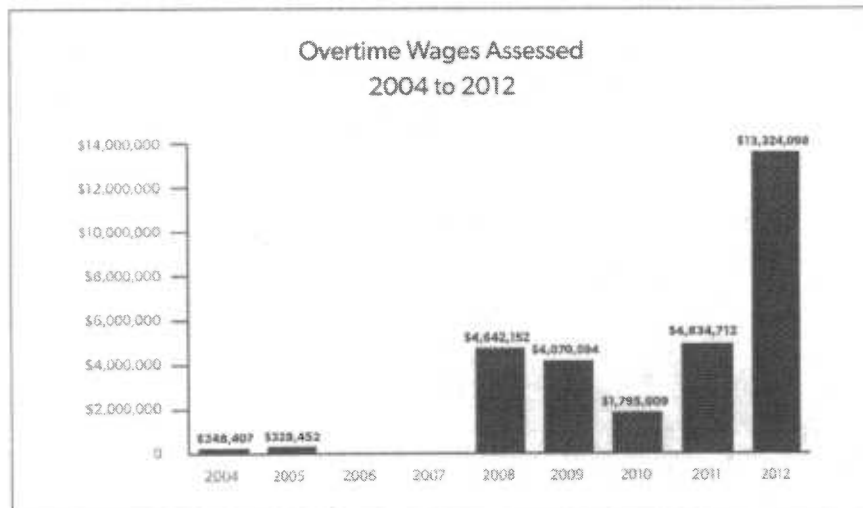
**Highest amount on record of minimum and overtime wages assessed.**

- In 2012, BOFE assessed over **\$3 million** in unpaid **minimum wages**, more than any previous year for which such data is available. This is almost **triple** the amount assessed in 2009 (the next highest year on record).



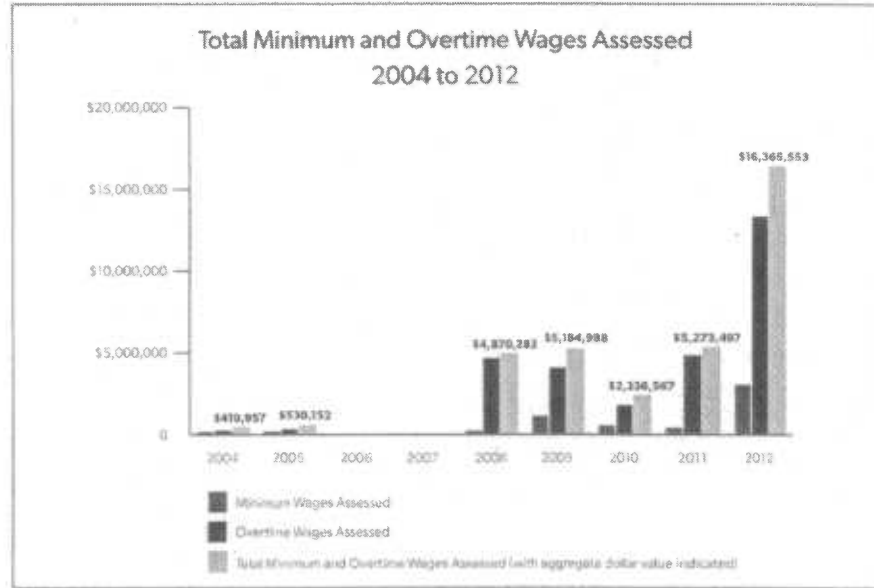
NOTE: Data for 2006 and 2007 and prior to 2004 could not be found.

- In 2011, BOFE assessed more than **\$4.8 million** in unpaid **overtime wages**, the highest amount of any previous year on record.
- In 2012, BOFE nearly **tripled** the prior record set in 2011, by assessing more than **\$13 million** in overtime wages. The 2012 figure represents a 176% increase from 2011; a 642% increase from 2010; a 227% increase from 2009, and a 187% increase from 2008.



NOTE: Data for 2006 and 2007 and prior to 2004 could not be found.

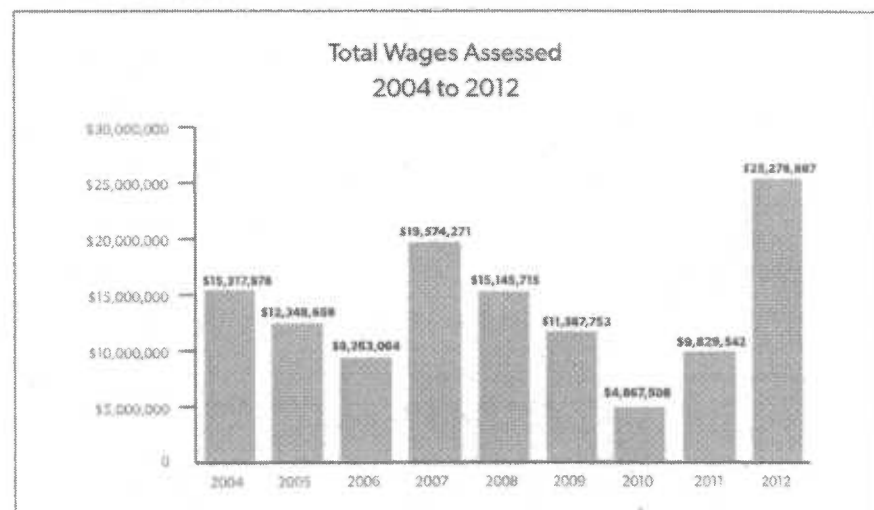
- In sum, in 2012, BOFE assessed a total of over **\$16 million in minimum and overtime wages**, exceeding any previous year for which such data is available. The 2012 record represents a 210% increase from 2011; a 600% increase from 2010; a 216% increase from 2009; and a 236% increase from 2008.



NOTE: Data for 2006 and 2007 and prior to 2004 could not be found.

**Highest amount of total wages assessed in nearly a decade.**

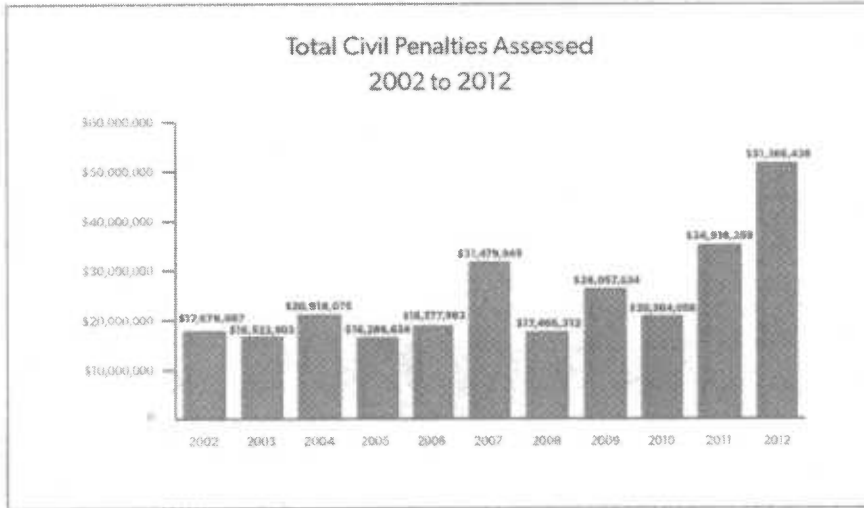
- In line with the overall jump in minimum and overtime wages assessed, in 2011 and 2012, BOFE reversed the steady decline since 2008 in total wage assessments.<sup>15</sup>
- In 2011, BOFE more than **doubled** the amount of total wages assessed compared to 2010.
- In 2012, BOFE assessed over **\$25 million** in total wages, the highest amount in nearly a decade and an increase of 157% from 2011.



<sup>15</sup> "Total wages" include minimum wages, overtime wages, premium pay for missed meal and rest periods, and other compensation.

**Highest total amount of civil penalties assessed in a decade.**

- In 2011, BOFE assessed more civil penalties<sup>16</sup> than any previous year in a decade.
- In 2012, BOFE assessed a record of over **\$51 million** in civil penalties. The 2012 figure represents a 47% increase from 2011; a 150% increase from 2010; a 97% increase from 2009; and a 194% increase from 2008.



- Of the civil penalties assessed in 2012, BOFE assessed over \$13 million for failure to provide itemized wage statements (record high for the past five years); over \$900,000 for operating as an unlicensed construction contractor (second highest assessment in the past five years, behind the record set in 2011 of over \$1 million in such penalties); and over \$30 million in workers' compensation penalties.<sup>17</sup>

**ENFORCEMENT SPOTLIGHT**

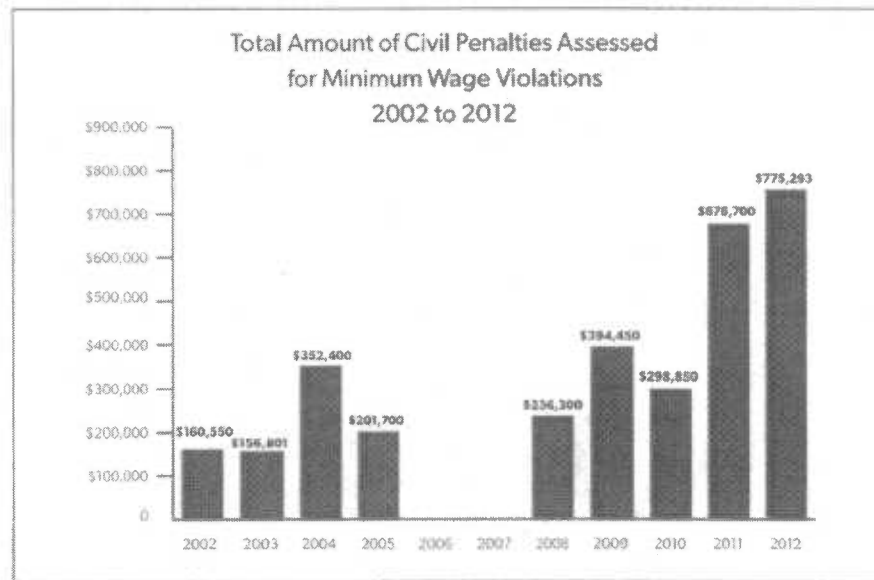
*In 2011, BOFE conducted an investigation of a large warehouse employing almost 200 workers in Riverside County. Due to effective pre-inspection preparation and surveillance, off-site worker interviews, and an in-depth investigation, BOFE issued over \$1 million in citations for failure to provide itemized wage statements to the warehouse workers. Accurate wage statements are essential to ensure that workers are not cheated out of their wages. Without these statements, the warehouse workers had no idea what they had earned; they were paid a piece rate to unload containers but did not know what that piece rate was or how it was calculated. After the BOFE inspection, one worker said, "I never expected the State to care about us, because we are invisible workers. Today, we can say they do." More than 100,000 people work in warehouses and distribution centers in the area of California known as the Inland Empire, the largest concentration of warehouses in the world. Most are considered "temp" workers even though many work for the same warehouse for years.*

<sup>16</sup> Civil penalties may be assessed for various violations of labor laws such as failure to pay minimum wage or overtime, failure to provide itemized wage deduction statements, failure to carry workers' compensation insurance, or failure to comply with licensing and registration requirements.

<sup>17</sup> The Legislature significantly increased the penalty for workers' compensation violations beginning in January 2011.

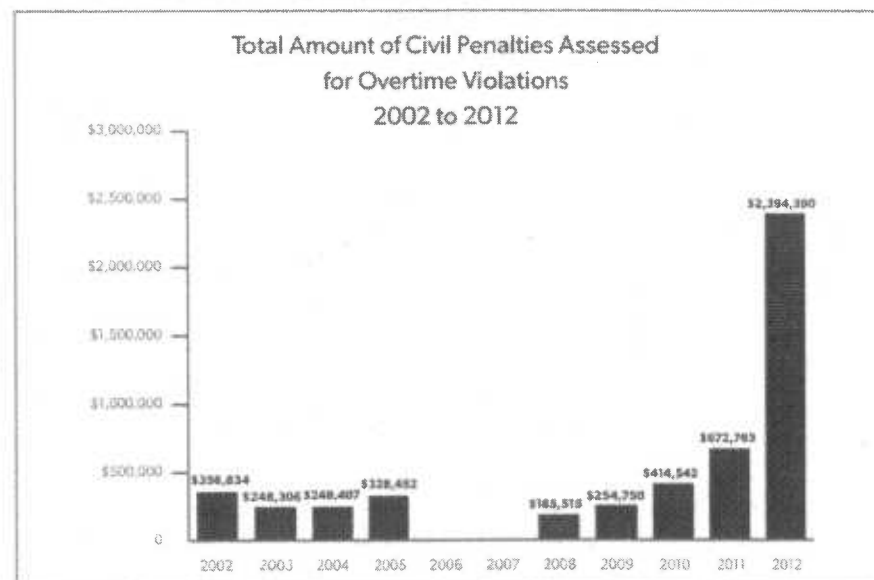
**Highest amount of civil penalties for minimum wage and overtime violations in a decade.**

- In 2011, BOFE assessed over **\$670,000** in civil penalties for **minimum wage** violations – the highest amount on record in a decade.
- In 2012, BOFE set a record of more than **\$770,000** in minimum wage penalties. The 2012 figure is nearly **double** the amount assessed in 2009, which was the highest year before this Administration assumed office.



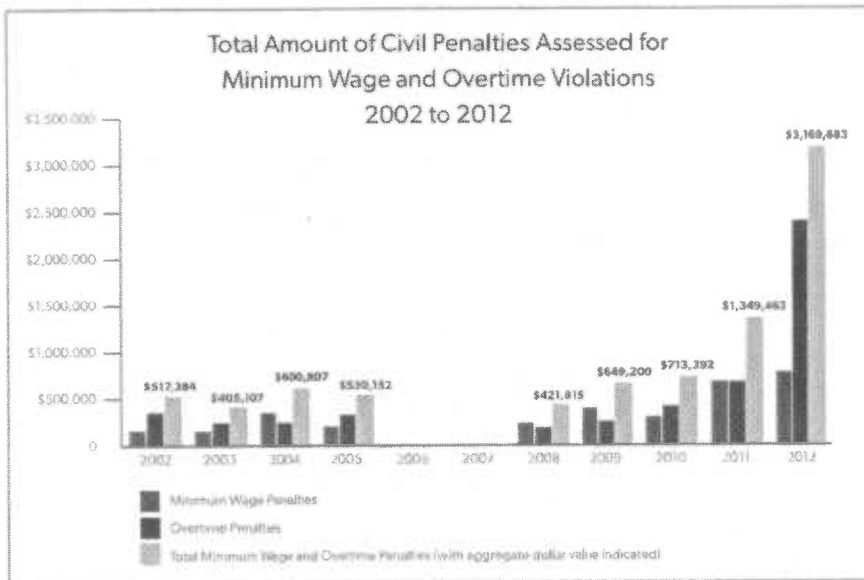
NOTE: Data are not available for 2006 and 2007.

- In 2011, BOFE assessed over **\$670,000** in civil penalties for **overtime** violations – the highest amount on record in a decade.
- In 2012, BOFE more than **tripled** the amount in 2011, by assessing nearly **\$2.4 million** in overtime penalties. The 2012 record is almost **6 times** the amount in 2010, which was the highest year before this Administration took office.



NOTE: Data are not available for 2006 and 2007.

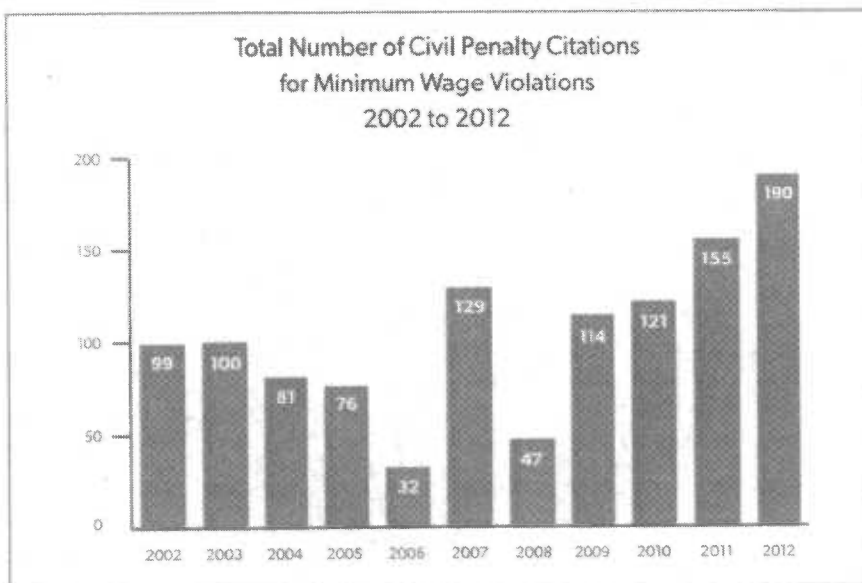
- In sum, in 2012, BOFE assessed a total of over **\$3.1 million in civil penalties for minimum wage and overtime violations**, the highest amount on record in more than a decade. The 2012 record represents a 135% increase from 2011; a 344% increase from 2010; a 388% increase from 2009, and a 651% increase from 2008.



NOTE: Data are not available for 2006 and 2007.

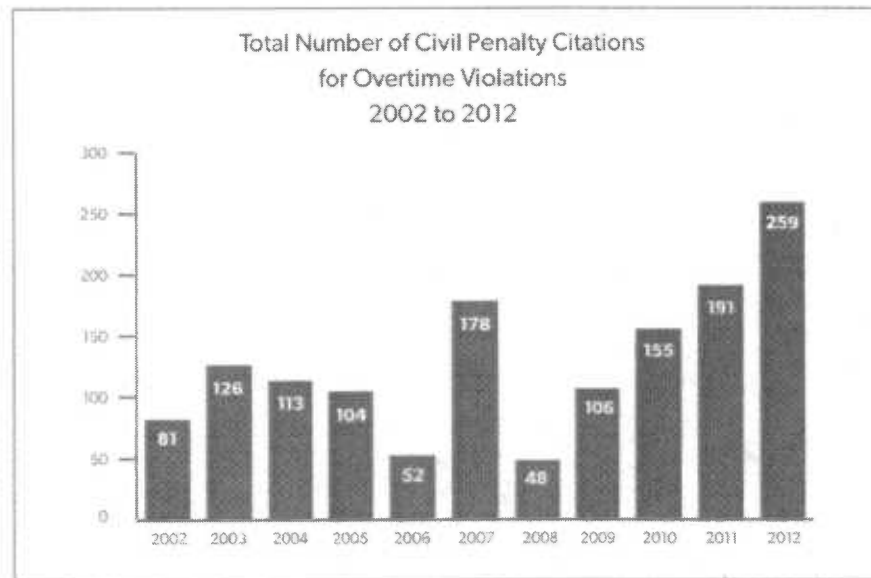
**Highest number of citations issued for minimum wage and overtime violations in a decade.**

- In 2011, BOFE issued **155 citations for minimum wage violations** – more than any previous year in a decade.
- In 2012, BOFE outpaced its 2011 record and issued a new high of **190 citations for minimum wage violations**.



## Bureau of Field Enforcement

- In 2011, BOFE issued **191 citations** for **overtime** violations – more than any previous year in a decade.
- In 2012, BOFE broke its 2011 record and issued **259 citations** for overtime violations.



### Highest civil penalty citation rate in a decade.

- In 2012, BOFE's more targeted, efficient use of inspections yielded the highest rate of civil penalty citations in the past 10 years.

Year	Number of Inspections Conducted	Number of Civil Penalty Citations Issued	Civil Penalty Citations as a Percentage of Inspections
2012	4403	3526	80%
2011	7081	4125	58%
2010	7779	4101	53%
2009	7701	4263	55%
2008	6958	2346	34%
2007	7883	4800	61%
2006	4720	2419	51%
2005	5407	2604	48%
2004	5796	2694	46%
2003	6816	2994	44%
2002	8684	3363	39%

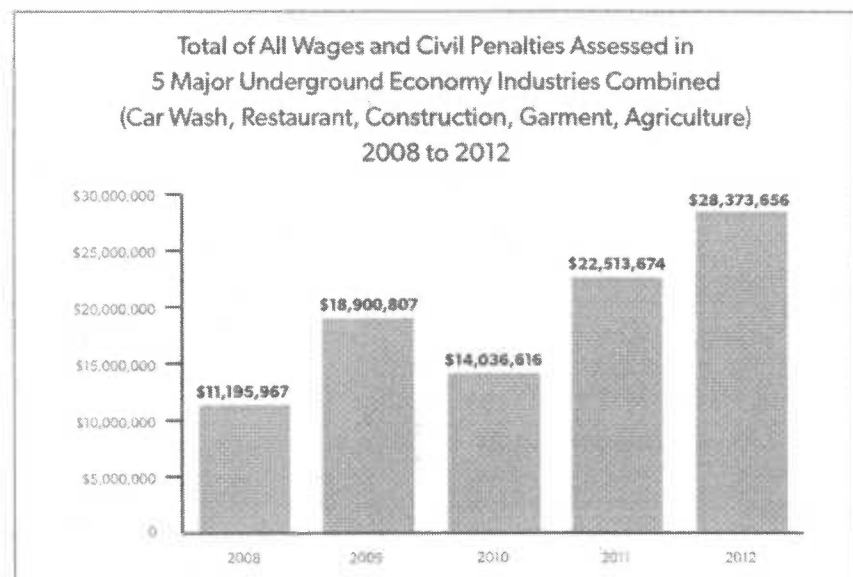
Under the Brown Administration, BOFE has eliminated the "sweep" style investigative approach that resulted in a higher volume of inspections which were indiscriminately directed at businesses already in compliance. Today, the DLSE is conducting fewer inspections but finding many more violations per inspection, with a top priority on identifying wage theft.

LC00098

## INDUSTRY SNAPSHOTS: INTRODUCTION

In 2011 and 2012, BOFE set various records in wage and civil penalty assessments in five major underground economy industries: car wash, restaurant, construction, garment, and agriculture. The following industry snapshots focus on the last five years (2008 to 2012) of enforcement activity in these industries.

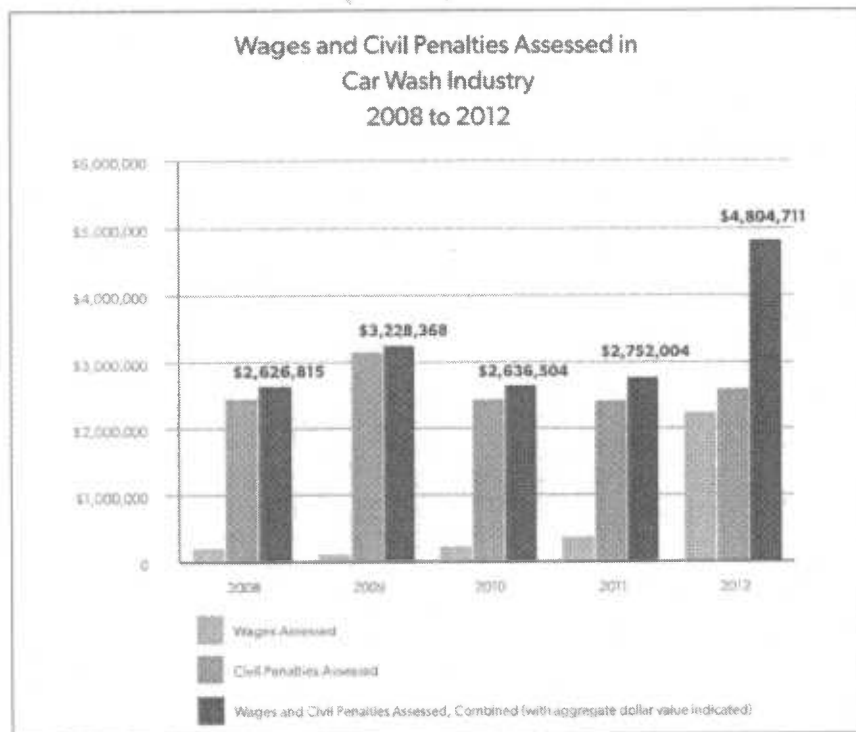
- In 2011, BOFE assessed over **\$22 million** in **total wages and civil penalties** for the **car wash, restaurant, construction, garment, and agricultural industries combined** – more than any previous year since 2008.
- In 2012, BOFE surpassed its 2011 record and assessed more than **\$28 million** in total wages and civil penalties in these industries.
- The 2012 record exceeds the total amount assessed for these industries in 2009 (the third highest total since 2008) by almost \$9.5 million – an increase of 50%.





## INDUSTRY SNAPSHOTS: CAR WASH

- In 2012, BOFE assessed over **\$4.8 million** combined in wages and civil penalties in the car wash industry – more than any previous year since 2008. The 2012 record exceeds the combined amount assessed in 2009 (the second highest since 2008) by almost **50%**.



### Wages Assessed

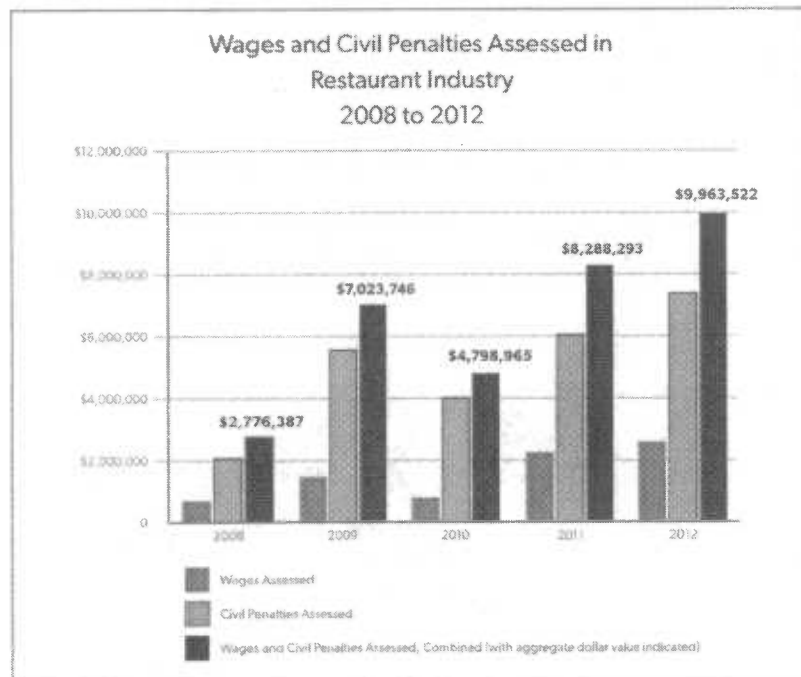
- In 2011, BOFE assessed over **\$349,000** in wages in the car wash industry – more than any previous year since 2008.
- In 2012, BOFE assessed a record high of over **\$2.2 million** in wages – more than **6 times** the amount assessed in 2011. The 2012 record represents an increase of more than **10 times** the wages assessed in 2010 (\$207,012, the third highest assessment since 2008).

### Civil Penalties Assessed

- In 2012, BOFE assessed almost **\$2.6 million** in civil penalties in the car wash industry, the second highest penalty amount since 2008.

## INDUSTRY SNAPSHOTS: RESTAURANT

- In 2011, BOFE assessed over **\$8.2 million** combined in wages and civil penalties in the restaurant industry – more than any previous year since 2008.
- In 2012, BOFE broke its 2011 record and assessed more than **\$9.9 million** combined in wages and civil penalties. The 2012 figure represents an increase of **20%** from 2011, and over **40%** from 2009 (the third highest year since 2008).



### Wages Assessed

- In 2011, BOFE assessed over **\$2.2 million** in wages in the restaurant industry – more than any previous year since 2008.
- In 2012, BOFE surpassed its 2011 record and assessed nearly **\$2.6 million** in wages. The 2012 figure represents a **15%** increase from 2011, and a **76%** increase from the wages assessed in 2009 (\$1,472,466, the third highest assessment since 2008).

### Civil Penalties Assessed

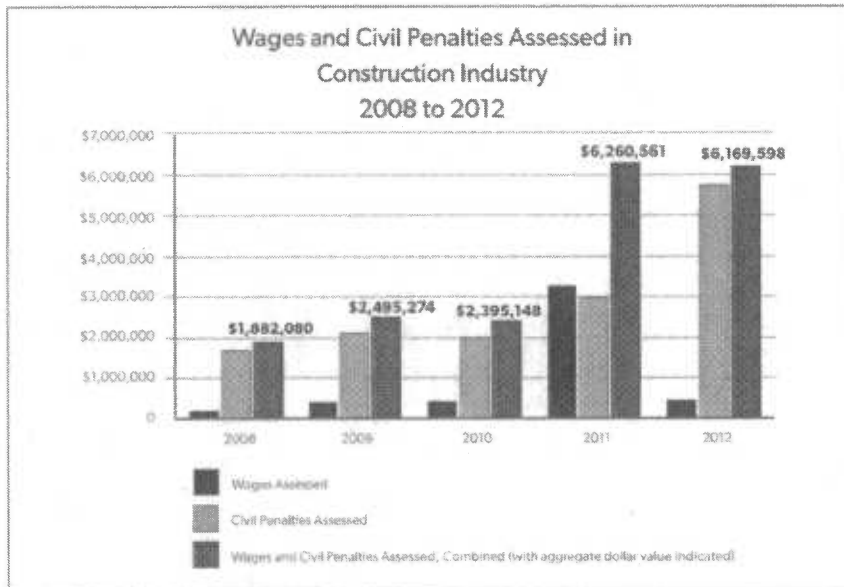
- In 2011, BOFE assessed over **\$6 million** in civil penalties in the restaurant industry – more than any previous year since 2008.
- In 2012, BOFE set a record high of almost **\$7.4 million** in civil penalties – an increase of **22%** from 2011. The 2012 record exceeds the amount assessed in 2009 (\$5,551,280, the third highest assessment since 2008) by **33%**.

### ENFORCEMENT SPOTLIGHT

After receiving a referral from San Francisco's Office of Labor Standards Enforcement (OLSE), BOFE collaborated with OLSE to launch an investigation of an employer in the San Francisco restaurant industry. Citations were issued for unpaid minimum and overtime wages and failure to provide itemized payroll statements on behalf of 28 restaurant workers. Within a matter of months, the DLSE reached a settlement of over \$300,000 – bringing the total amount of money recovered in 2012 for San Francisco restaurant workers to over \$900,000 through the Division's partnership with OLSE and assistance from community groups. The settlement stipulated that the employer pay wages owed as well as penalties for the violations. The employer also agreed to maintain accurate daily records of hours worked, to provide workers with wage statements as required by law, and to pay \$50,000 in liquidated damages if the employer engages in unlawful retaliation against any worker for cooperating with the DLSE investigation.

## INDUSTRY SNAPSHOTS: CONSTRUCTION

- In 2011, BOFE assessed over **\$6.2 million** combined in **wages and civil penalties** in the construction industry – the highest amount since 2008.
- In 2012, BOFE almost matched its record in 2011 by assessing over **\$6.1 million** combined in wages and civil penalties – the second highest amount since 2008.
- The record-high assessments in 2011 and 2012 are more than **double** the combined amount assessed in 2009 (the third highest amount since 2008).



### Wages Assessed

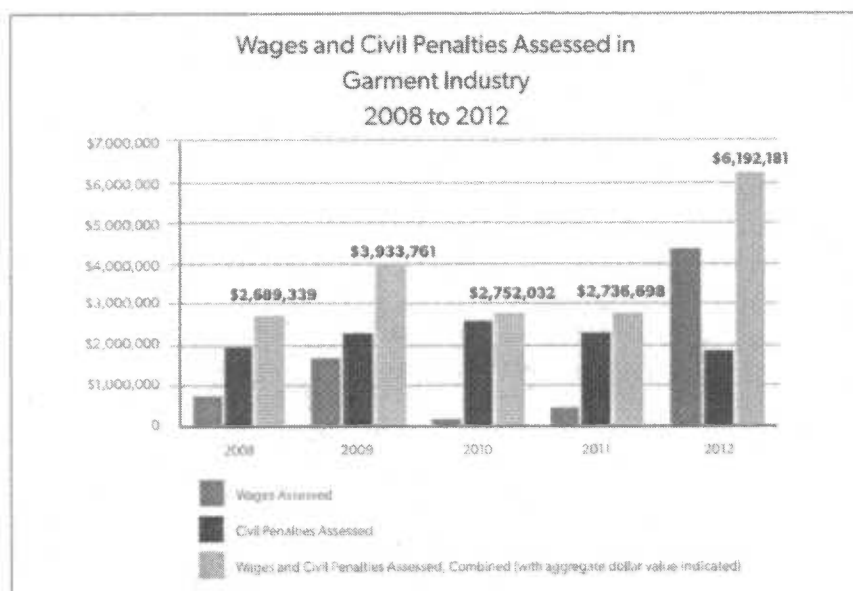
- In 2011, BOFE assessed over **\$3.2 million** in **wages** in the construction industry – more than any previous year since 2008.
- In 2012, despite falling below its high mark in 2011, BOFE assessed the second highest amount in wages (nearly **\$450,000**) since 2008.

### Civil Penalties Assessed

- In 2011, BOFE assessed almost **\$3 million** in **civil penalties** in the construction industry – more than any previous year since 2008.
- In 2012, BOFE assessed a record high of more than **\$5.7 million** in civil penalties. The 2012 figure is almost **double** the penalties assessed in 2011, and nearly **triple** the amount in 2009 (\$2,092,492, the third highest amount since 2008).

## INDUSTRY SNAPSHOTS: GARMENT

- In 2012, BOFE assessed almost **\$6.2 million combined in wages and civil penalties** in the garment industry – more than any previous year since 2008. The 2012 record represents an increase of almost **60%** from the combined amount assessed in 2009 (the second highest amount since 2008).



NOTE: The figures in this chart include wage assessments by BOFE in AB 633 cases

### Wages Assessed

- In 2012, BOFE assessed more than **\$4.3 million in wages** in the garment industry, the highest amount since 2008. This represents an increase of **161%** from the wages assessed in 2009 (\$1,662,761, the second highest amount since 2008).

### Civil Penalties Assessed

- In 2011, BOFE assessed over **\$2.28 million in civil penalties** in the garment industry, the second highest amount since 2008.

**ENFORCEMENT SPOTLIGHT**

*In 2012, BOFE's agricultural investigations resulted in high-profile lawsuits by the DLSE against two farm labor contractors (FLCs) that failed to pay workers their lawful wages.*

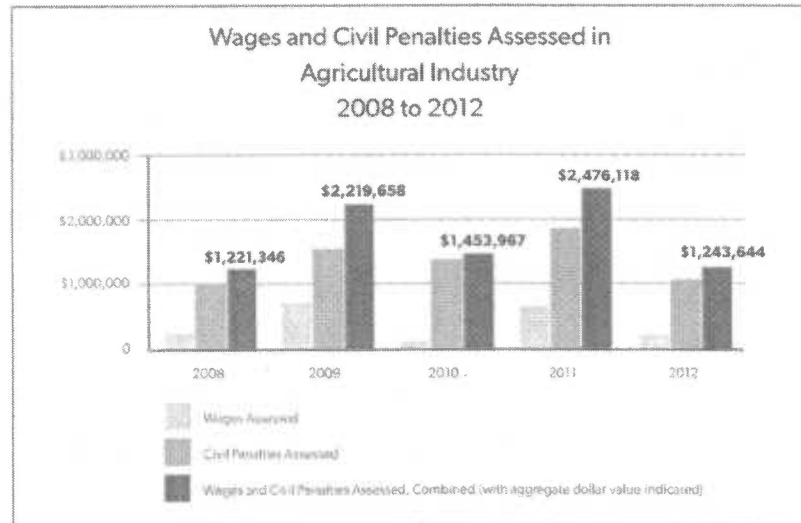
*In one case, BOFE launched an investigation of a FLC based on a tip from a nonprofit legal services organization. The FLC had failed to pay wages including minimum wage and overtime to its employees. The BOFE inspection led to the filing of a lawsuit by the DLSE on behalf of approximately 130 farmworkers seeking in excess of \$600,000 in unpaid wages, damages, and penalties.*

*In another case, BOFE conducted an investigation of a FLC after farmworkers courageously stepped forward to inform the DLSE about the illegal working conditions under which they labored. The farmworkers picked lettuce and worked in grape fields for over ten hours a day. The investigation revealed evidence establishing that the contractor willfully violated the law and failed to pay minimum and overtime wages to its workers for several years. Based upon the BOFE inspection, the DLSE filed a \$1.6 million lawsuit seeking unpaid wages, damages, and penalties against the FLC on behalf of hundreds of workers covering multiple work locations.*

*Both suits also seek injunctive relief to stop the FLCs from engaging in any future violations of the law. These underlying BOFE investigations in the agricultural industry that lay the groundwork for DLSE enforcement suits are not captured in the statistics for 2012.*

**INDUSTRY SNAPSHOTS: AGRICULTURE**

- In 2011, BOFE assessed almost **\$2.5 million combined in wages and civil penalties** in the agricultural industry – the highest amount since 2008.



**Wages Assessed**

- In 2011, BOFE assessed over **\$630,000 in wages** in the agricultural industry, the second highest amount since 2008.
- In 2012, the amount of wages assessed by BOFE dropped. However, BOFE investigations uncovering wage theft in the agricultural industry resulted in affirmative lawsuits filed by the DLSE on behalf of hundreds of farmworkers for over \$2 million in unpaid wages, damages, and penalties.

**Civil Penalties Assessed**

- In 2011, BOFE assessed more than **\$1.8 million in civil penalties** in the agricultural industry, the highest amount since 2008.

## LOOKING AHEAD

Overall, while remarkable improvements have already been made to the DLSE's field enforcement activity, still more can be achieved. Even with the Division's tremendous success over the past two years in identifying wage violations – and the exponential rise in the amount of minimum wage and overtime assessments by BOFE – effectively addressing the growing problem of wage theft that harms both workers and businesses requires stepping up labor law enforcement efforts now more than ever before.

In 2013 and beyond, the DLSE's field enforcement efforts will continue to face many tough challenges: an ever-expanding underground economy; complex industry structures that make it increasingly difficult to determine who the employer is (including misclassification, use of subcontractors, and joint employer relationships); and workers who are often vulnerable and fear coming forward to report violations. The Labor Commissioner's commitment to providing field enforcement staff with necessary tools and resources to conduct meaningful inspections and to engage in smarter and more strategic enforcement efforts will continue to be invaluable in BOFE's ability to meet these challenges.

# PUBLIC WORKS

The DLSE investigates and enforces prevailing wage rates and apprenticeship standards for public works construction projects. The **Public Works** unit conducts investigations based upon complaints filed with the DLSE and also includes a proactive Compliance Monitoring Unit (CMU), which specifically monitors activities and payment of prevailing wages on construction projects utilizing state bond funding and/or statutorily-defined design-build projects. The CMU is an enhanced enforcement mechanism that is aimed at improving compliance with prevailing wage statutes by requiring that employers subject to monitoring submit certified payroll reports electronically (in order to facilitate early detection and correction of violations and encourage compliance from the outset). When the DLSE finds that a public works contractor has improperly paid wages, the DLSE issues a Civil Wage and Penalty Assessment (CWPA) specifying the wages and penalties due for violating prevailing wage requirements. The Labor Commissioner also has authority to debar contractors that fail to comply with the law.

Over the past decade, staffing levels in the Public Works unit dramatically decreased – from a high point in 2002 of 38 staff to a low of 25 staff or less (a reduction of over 30%) for the majority of years from 2004 through 2011. Between 2004 and 2009, Public Works also experienced a sharp drop (an average decline of over \$13 million compared to 2002) in the combined amount of wages and penalties assessed by the unit.

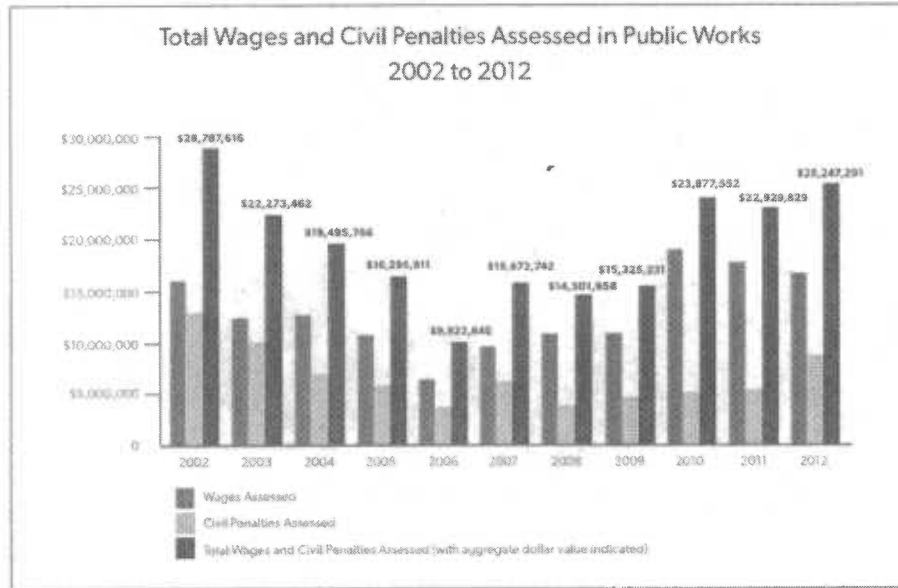
Although Public Works was able to improve its performance by 2010, the unit was facing a period of significant transition as this Administration took office. The Division was tasked with consolidating all public works enforcement activity, including implementation of the CMU, enforcement of apprenticeship requirements in public works projects, and incorporation of the Electrician Certification Unit, which administers exams for approximately 35,000 electricians in the state. Prior to 2012, implementation of the CMU had been held in abeyance, and enforcement responsibilities for apprenticeship standards and electrician certifications were lodged outside of the DLSE in a separate division. In order to implement these new enforcement responsibilities, the Division needed time to effectively integrate the activities of the Public Works unit, and to institute major upgrades to infrastructure and technology.

## ACCOMPLISHMENTS

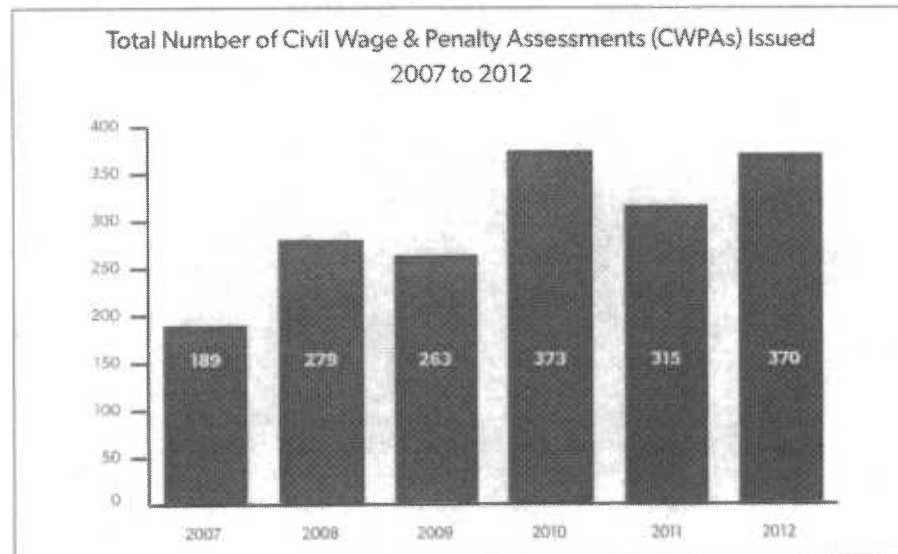
Under the Brown Administration, the Division has focused on rebuilding the Public Works unit and creating an efficient one-stop shop for public works enforcement. Although the Public Works Unit has undergone marked transition within the last two years, it has nevertheless performed at peak levels.

### Highest combined amount of wages and civil penalties assessed on public works projects since 2002.

- In 2012, Public Works assessed more than \$25 million combined in total wages and civil penalties – the highest amount since 2002.



- In 2012, Public Works issued 370 Civil Wage & Penalty Assessments (CWPAs), the second highest number of CWPAs issued (trailing the 2010 high mark by only 3 CWPAs) since this data has been tracked.



NOTE: Prior to 2007, the DLSE did not maintain statistics on the number of CWPAs issued.

### ENFORCEMENT SPOTLIGHT

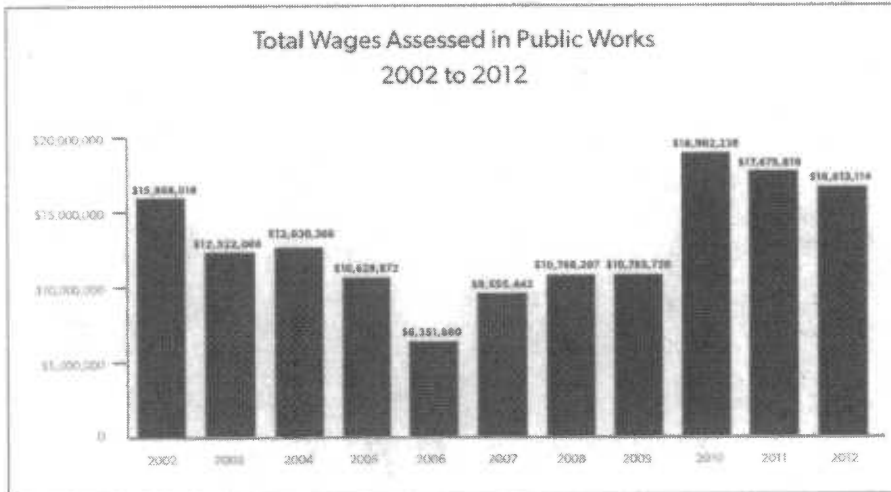
In 2011, the Public Works unit investigated a company employing workers for a large housing development in Orange County that involved a complicated mix of public and private funding. A comprehensive audit of the entire project by the Public Works investigator found that over \$2.4 million was owed in wages and training fund contributions, and almost \$600,000 was due in penalties. At trial, it was determined that 42% of the project was public and subject to payment of the prevailing wage. The DLSE was able to successfully settle the case on behalf of 70 workers for the full amount of wages due on the 42% of the project that was determined to be public (in the amount of over \$1 million), plus penalties.



# Public Works

## Two of the three highest wage assessments in a decade.

- In 2011, Public Works assessed more than **\$17 million** in wages (the second highest amount of wages assessed in a decade).
- In 2012, Public Works assessed more than **\$16 million** in wages (the third highest assessment in a decade).



## ENFORCEMENT SPOTLIGHT

Construction workers toil long hours and perform invaluable work building the infrastructure in our communities. The Public Works unit is committed to conducting meaningful investigations and holding accountable all parties responsible for labor law violations, so that workers are paid their hard-earned wages and decision-makers in construction projects have the incentive to deal only with honest, law-abiding contractors. The following investigations conducted in 2012 highlight the work of the unit.

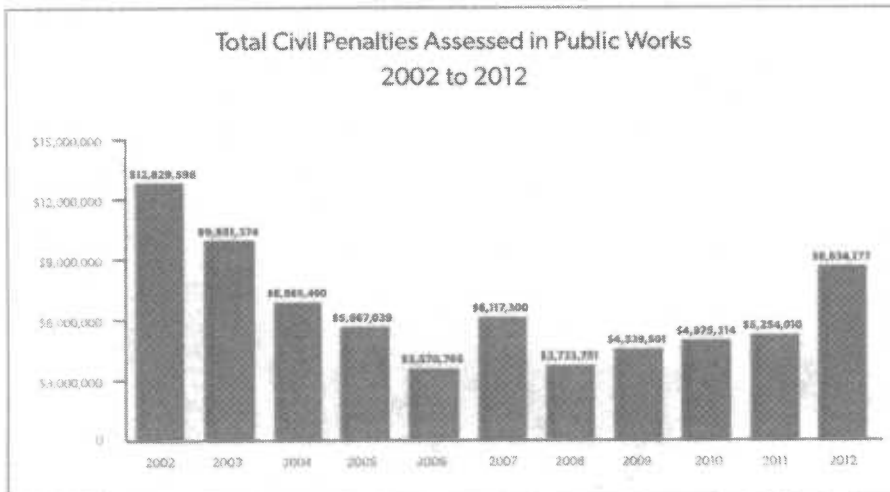
In one case, a general contractor that was hired to build a train station platform in Los Angeles was ordered by the Labor Commissioner to pay over \$400,000 in wages and more than \$180,000 in penalties for labor law violations committed on the public works project. The general contractor engaged in numerous violations, including failure to pay prevailing wages and daily overtime, failure to make employer payments into its fringe benefit programs, failure to pay Saturday and Sunday premium rates, and failure to pay into a state-approved training program for the California Apprenticeship Council.

In another case, the Public Works unit investigated a Cypress-based plumbing contractor that failed to pay 44 employees lawful wages on a public works project in Stockton. After the Public Works unit uncovered evidence that the contractor failed to pay prevailing wages and overtime and intentionally falsified certified payroll records by shaving the number of hours actually worked by its employees, the DLSE ordered the contractor to pay over \$850,000 in unpaid wages and \$200,000 in penalties. The Labor Commissioner issued a civil wage and penalty assessment against the plumbing contractor and the general contractor, who was deemed jointly responsible under the law for the plumbing contractor's violations.

In a third case, a San Diego-based stone and tile contractor was ordered to pay wages to 55 employees for their work on a public works project in Escondido. The Public Works investigation found that in addition to failing to pay overtime, the general contractor had illegally charged workers over 9 percent in various fees for payments made into a fringe benefit plan, causing a significant underpayment of the prevailing wage. Based on the investigation, the Labor Commissioner issued a civil wage and penalty assessment against the contractor in excess of \$100,000 in unpaid wages and \$400,000 in penalties.

### Highest amount of civil penalties assessed in nearly a decade.

- In 2012, Public Works assessed over **\$8.6 million** in civil penalties, the highest assessment in the past nine years and the third highest amount since 2002. The 2012 figure represents a 64% increase from 2011; a 74% increase from 2010; a 90% increase from 2009; and a 131% increase from 2008.



### Qualitative improvements that enhance public works enforcement.

- New electronic database to ensure compliance on public works projects.** Under this Administration, the DLSE has unveiled a new user-friendly online system that allows awarding bodies<sup>18</sup> to provide notice of public works projects. Awarding agencies now benefit from several convenient functions provided by the new system, including the ability to save notices of projects for up to six months, copy or save completed notices in pdf format, and edit previously submitted notices. Furthermore, all notices are available for review by the public and searchable online; the DLSE, as well as other enforcement groups, can expeditiously search for projects by date awarded, awarding agency, location, and estimated construction start date. Thus, the new database enables the DLSE to quickly identify projects that require monitoring and enforcement by the CMU and helps ensure the proper use of public funds earlier in the life of a public works project.
- One-stop shop for public works enforcement.** The DLSE has streamlined the public works complaint form to allow workers and the public to file reports of both prevailing wage and apprenticeship violations on a single online form. The integrated form was created to provide an efficient "one-stop" mechanism for reporting public works violations.

## LOOKING AHEAD

The last two years have been a period of considerable transition within Public Works. Under the leadership of Governor Brown, the DLSE has successfully worked to consolidate and coordinate various components of public works enforcement activity, including the CMU, apprenticeship standards, and electrician certifications. In 2013, the DLSE will continue integrating enforcement of apprenticeship requirements with prevailing wage investigations to better ensure full compliance on public works jobs; addressing the problems experienced to date by contractors in submitting electronic certified payroll records; implementing improvements to the Electrician Certification Unit; and developing new online functions to enhance services. Moreover, the use of increasing layers of subcontractors poses additional challenges to public works enforcement and requires a more creative and aggressive approach. To this end, the Administration has initiated a series of meetings with public works stakeholders across the state. These meetings are only the first step in facilitating open lines of communication and improving the quality and timeliness of leads in order to meet the Administration's goal of uncovering violations during the life of a project rather than continue the Division's historical practice of conducting investigations only after project conclusion. In 2013 and beyond, the DLSE remains committed to taking all necessary action to ensure the protection of workers, honest contractors, and public dollars on every public works job in California.

<sup>18</sup> An awarding body is a department, board, authority, officer or agent awarding a contract for public works. In most cases the awarding body is a unit of state or local government, such as a city, county, school district, water district, special district, or a state agency.

# RETALIATION COMPLAINT INVESTIGATIONS

The Division's **Retaliation Complaint Investigation** unit (RCI) is the first and last line of defense for most workers who speak up against workplace violations. One of the primary reasons workers do not report violations is the fear of retaliation, which can take the form of firing, reduced hours, and other adverse actions. Under Labor Code Section 98.7, individuals who allege retaliation or discrimination for engaging in protected activity – including complaining about underpayment, requesting time off for jury duty, raising health and safety issues with the employer, or disclosing information to a government or law enforcement agency about unlawful activity – may file a complaint with the DLSE within six months of the adverse action, subject to certain exceptions. The DLSE is required by law to investigate every complaint filed within its jurisdiction, and RCI investigators must conduct investigations to determine violations of over 30 statutory provisions the Division is charged with enforcing. In the event the Labor Commissioner determines a violation has occurred and issues a cause finding, the statute authorizes the Labor Commissioner to direct the violator to cease and desist from the violation and to take remedial action including, where appropriate, rehiring or reinstatement of the aggrieved employee and reimbursement of lost wages and interest. If the employer does not comply, the DLSE is empowered to file a lawsuit against the employer. If the Labor Commissioner determines after investigation that no violation has occurred, the complaint is dismissed.

When the Brown Administration assumed office in 2011, the RCI unit was suffering from years of neglect and inefficiency. In 2008, the average number of days it took to complete a retaliation investigation was 449 days; by 2010, the average number of days was reduced to 372, which still far exceeded the statutorily-mandated timeline for resolving retaliation complaints.

In the first two years under the Brown Administration, the RCI unit accepted more complaints for investigation<sup>19</sup> than any other previous year within the past five years. The complaints accepted in both 2011 and 2012 also alleged more violations<sup>20</sup> than in any other previous year in the past five years.<sup>21</sup>

Year	Total Number of Complaints Accepted for Investigation <sup>22</sup>	Total Number of Violations Alleged
2008	1118	1252
2009	1119	1302
2010	1081	1254
2011	1217	1624
2012	1391	1794

<sup>19</sup> The DLSE must reject complaints that do not fall within its jurisdiction.

<sup>20</sup> Retaliation complaints may contain one or more alleged violations.

<sup>21</sup> At the same time, in 2011, the RCI unit struggled with 3 vacancies in investigator positions, which were not fully staffed until mid-2012.

<sup>22</sup> Statistics on the total number of complaints accepted for investigation may differ slightly from the numbers previously reported to the Legislature due to a computer error in the retaliation complaint database, which has since been corrected.

# Retaliation Complaint Investigations

The influx of complaints involving increasing numbers of violations underscores the dire problem of retaliation in the workplace. At the same time, this influx of new complaints exacerbated the pre-existing backlog in investigations and presented serious challenges to the unit's ability to issue timely determinations on complaints.

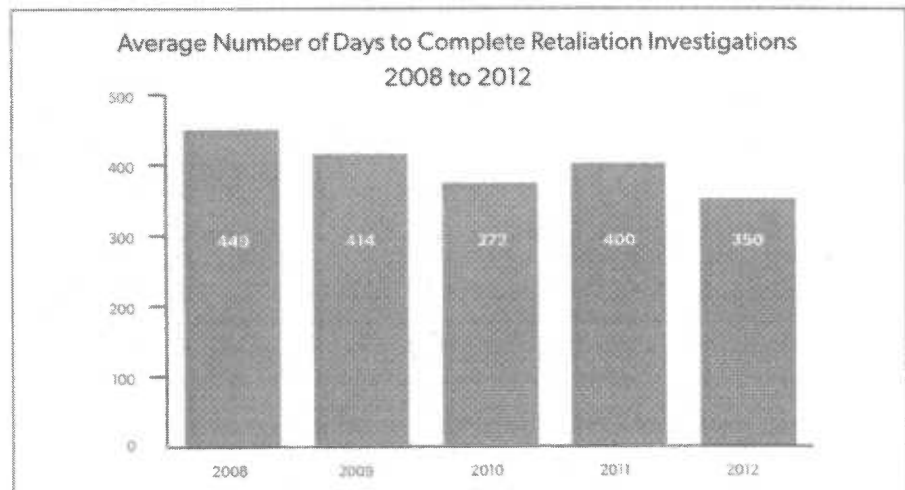
The numbers only paint half the picture, however. Several underlying qualitative problems have also historically plagued the unit. Although some complaints had been allowed to sit without action for years, thus resulting in the backlog in investigations, no system had been developed to triage cases so that the most urgent cases in need of attention could be addressed more immediately. Before Commissioner Su joined the DLSE, the processing of complaints was inefficiently relegated to a single DLSE office, which created a bottleneck and unnecessary delays in assigning cases for investigation. As the percentage of cause findings relative to the number of determinations issued remained low at no higher than 16% since 2008, the Division was under fire for the high volume of complaints dismissed, which raised questions about the quality of investigations that were taking place. Nor was the DLSE invested in educating employers and workers about the state's anti-retaliation provisions, in order to help deter retaliation in the first place. Moreover, RCI investigators had not been provided with the necessary resources to enable them to do their jobs effectively. The RCI unit lacked adequate training on investigative and interviewing techniques, complaint and investigation procedures, legal issues, and recent legislation. Basic notices and forms, such as the complaint form, were sorely in need of revision in order to promote accurate investigations in a more expeditious timeframe. These entrenched problems, which had accumulated over the years, urgently needed to be addressed when the Brown Administration took office.

## ACCOMPLISHMENTS

In light of these formidable challenges, Labor Commissioner Su has energized and improved the state's response to employer retaliation against workers who exercise their rights. Progress has been made in reducing the amount of time it takes to complete retaliation investigations, uncovering violations, and developing efficient and effective complaint and investigation procedures.

### **Reduction in average number of days to complete investigations.**

- In 2012, the average number of days it took to complete a retaliation investigation was the lowest it has been in the past five years. RCI was able to cut down the number of days to complete an investigation despite the highest volume of complaints accepted and violations alleged since 2008.



# Retaliation Complaint Investigations

## Increase in percentage of cause findings.

- In 2012, the percentage of RCI investigative determinations that found violations (i.e., where cause findings were issued) was higher than in any previous year within the past five years.

Year	Number of Determinations Issued	Number of Cause Findings	Cause Findings as a Percentage of Determinations Issued
2008	224	24	11%
2009	317	32	10%
2010	304	50	16%
2011	215	31	14%
2012	262	59	23%

## Qualitative improvements in complaint and investigation procedures.

- **Prioritization of cases.** The DLSE's response to retaliation has been reinvigorated through the adoption of better processes for prioritizing retaliation complaints, so that meritless cases can be dismissed quickly and meritorious ones given immediate attention. A complaint may now be assigned for priority investigation when it falls into one or more of the following three categories: (1) alleged retaliation after a worker files a wage claim with the DLSE; (2) alleged retaliation based on an investigation of an employer by the DLSE or the worker's cooperation with such a governmental investigation into workplace abuses; or (3) alleged retaliation following a complaint made to Cal-OSHA, DLSE's sister division, for health and safety violations. This new approach not only makes the anti-retaliation provisions of the Labor Code meaningful, it strengthens all of the Division's other enforcement efforts, protects honest employers, and builds worker trust in state enforcement activity. Investigations of complaints where the worker has sought the assistance of the Division, filed a wage claim, or cooperated with a DLSE investigation are now being completed within weeks, sometimes even days.

### ENFORCEMENT SPOTLIGHT

*RCI and BOFE investigators collaborated to assist three workers who claimed they were terminated because they told the truth about labor law violations of their employer to a BOFE investigator. The RCI investigator commenced his investigation on the same day the retaliation cases were filed and utilized information provided by the BOFE deputy about what occurred during the BOFE investigation. Within only weeks of filing, the RCI investigator brought the parties together and facilitated a settlement of the RCI complaints.*

- **Procedures to educate workers and employers and deter retaliation.** To further the Administration's commitment to education, field deputies now take with them a half-page flyer to inform employers and workers of their obligations and rights under anti-retaliation provisions of state law. This flyer is distributed during all inspections. Field deputies also provide information on anti-retaliation provisions to employers and workers as part of their concluding statement at the end of an inspection. Moreover, before retaliation complaints are closed, conferences are conducted with the parties to educate them on the law and the reasons for the outcome. These changes signal the Division's new focus on providing education about the state's anti-retaliation laws, in order to help prevent retaliation from occurring.
- **Improved forms and notices.** The DLSE has revised, updated, and streamlined RCI forms, letters, notices, and postings. As one example, an improved complaint form has been developed in response to many complaints from the public that the form was not user friendly and was not a productive tool for collecting information necessary to evaluate the claim. Written in lay language, the new form was formulated to better enable investigators to determine DLSE jurisdiction; to evaluate whether the basic elements of a claim are satisfied and, if not, to protect employers from frivolous case filings; to provide more complete information needed for investigation; to promote accurate investigations in a more expeditious timeframe; and to identify other sources of information about the claim that may reside with other agencies.

LC00112

# Retaliation Complaint Investigations

- **Extensive training of investigators.** The Labor Commissioner has vigorously promoted and provided essential training of RCI investigators to update their knowledge of investigative and interviewing techniques, procedures, legal issues, new legislation, and priorities such as treating all employers and employees with respect and the highest standards of professionalism. Such training is critical to the ability of DLSE staff to effectively and efficiently investigate retaliation complaints.
- **Enhanced processing of retaliation complaints.** In the past, all retaliation complaints, regardless of where they were filed, were sent to Sacramento for processing and assignment. This resulted in unnecessary delays before an investigation could even commence. In order to expedite the complaint process, a new Southern California location for processing complaints has been added. Today, all DLSE district offices accept in-person filings; complaints involving work performed in the southern part of the state (south of Bakersfield) are now processed in Santa Ana, while those involving work performed in the northern part of the state (north of Bakersfield) are processed in Sacramento.
- **New system of internal coordination and information sharing.** The Administration has also implemented a new system of information sharing and cooperative investigation efforts between enforcement units within the DLSE and the Department of Industrial Relations more broadly. Many claimants who file retaliation complaints also file claims for unpaid wages, have filed a safety complaint with Cal-OSHA, or have participated in a BOFE inspection. Complaints filed in multiple units can now be investigated in tandem. This new system of internal coordination results in streamlining of government functions, less waste, and more timely and accurate results.

## LOOKING AHEAD

The DLSE's investigation of retaliation complaints strengthens all of the Division's enforcement efforts. The vital work of the RCI unit helps to make workers whole (through reinstatement and/or payment of lost wages) and to level the playing field for law-abiding employers. In the span of only two years, the Brown Administration has already implemented pivotal improvements to the RCI process, including identifying and addressing the roadblocks to effective handling of complaints and investigations. However, the foundational changes that have been made require more time before quantifiable results will fully materialize. Moreover, although this Administration has been able to shorten the average amount of time it takes to complete a retaliation investigation, there is still significant room for improvement. In 2013 and beyond, the Division's ability to issue timely determinations on retaliation complaints will remain an utmost priority.

## ENFORCEMENT SPOTLIGHT

*When a worker who filed a Berman claim attended the DLSE settlement conference on his claim, he informed the WCA deputy that his employer, a health services company, had written him up for filing the claim. The WCA deputy immediately referred the retaliation claim to the RCI unit. An RCI investigator reviewed the WCA case file, contacted the worker, and completed the retaliation investigation within weeks.*

\*\*\*

*Following a BOFE inspection of a car wash, a worker told the BOFE investigator that his hours were reduced due to his participation in a BOFE interview. The BOFE investigator immediately provided the worker with a retaliation complaint form and informed an RCI investigator about what had transpired. The RCI investigator contacted the worker and ultimately issued a cause finding in the case, in addition to the cases of two other workers at the car wash who had been retaliated against for complaining to the employer about not being paid for all hours worked.*

\*\*\*

*When wage claims were filed by a group of hotel workers, BOFE launched an investigation of the hotel. The hotel claimed that the workers were not their employees but were hired through an agency. After the workers claimed they were fired in retaliation, the BOFE and RCI investigators worked together, setting up interviews of the workers. These joint efforts resulted in cause findings in the retaliation cases even before the wage claims were resolved.*

# JUDGMENT ENFORCEMENT

The **Judgment Enforcement** unit (JEU), which was established in November 2006, enforces judgments for unpaid wages and penalties that issue from WCA hearing decisions and BOFE citations. The unit's enforcement activity includes filing claims against employer debtors to satisfy judgments; pursuing surety bonds required in certain industries<sup>23</sup>; and administering three restitution funds, the Farmworker Remedial Account, Garment Special Fund, and Car Wash Worker Restitution Fund,<sup>24</sup> which give some of the lowest-wage workers in the state a place to go to collect their owed wages when their employers cannot be found. The JEU files approximately 2,500 BOFE citations each year with the various Superior Courts to be entered as judgments, records about 3,800 real property liens per year, and processes around 120 restitution fund requests annually.

When the Brown Administration took over the DLSE in 2011, major impediments existed to successful enforcement of judgments by the Division. Procedures were not consistently utilized up front in the wage claims process or BOFE investigations to ensure that the employer was correctly named; as a result, the failure to properly set forth the identity and form of the employer in a wage claim or citation affected the enforceability of the Division's administrative determinations. Once a WCA hearing decision or BOFE citation became final, the Division frequently lacked accurate information necessary to pursue collections against the employer. Moreover, effective judgment enforcement typically requires prompt action to prevent unlawful employers from absconding, hiding assets, or otherwise evading collections, but the Division's inability to act quickly more often than not turned judgments into nothing more than paper tigers. Recognizing these underlying problems that have hampered the DLSE's judgment enforcement efforts, Commissioner Su has begun to integrate and streamline procedures as well as pursue more proactive judgment enforcement aimed at enhancing the Division's ability to recover wages and penalties.

23 For example, as a condition of registration, car washes are required to post a \$15,000 bond, which is then used to satisfy any wage judgments against the car wash.

24 These restitution funds are funded through a portion of annual registration or licensing fees and/or fines collected by the DLSE.

## ACCOMPLISHMENTS

In 2012, collections of wages and penalties by the Judgment Enforcement unit exceeded any other previous year since the inception of the unit.

	2007	2008	2009	2010	2011	2012
Total Amount of Judgments	\$8,699,527.31	\$24,508,915.93	\$25,704,144.69	\$26,123,235.36	\$29,397,047.00	\$30,114,027.18
Total Amount Collected <sup>25</sup>	\$1,519,168.76	\$3,103,048.85	\$3,064,180.90	\$3,297,170.18	\$3,239,119.10	\$3,955,943.48

However, in 2012, as in previous years, the total amount recovered as a percentage of the total amount of judgments remained low (under 15%). The low collection rate has historically presented one of the most significant challenges to the DLSE's enforcement efforts, and is in part the result of the characteristics of many entities that typically engage in labor law violations: they are small, undercapitalized and often go out of business once violations are caught. Nonetheless, the Labor Commissioner believes that the DLSE can and must do better.

## LOOKING AHEAD

Improving the effectiveness of the Division's judgment enforcement efforts is an urgent priority. The Brown Administration is committed to aggressive and swift action on judgments, which is essential to the work of the Division as a whole; without it, workers frequently cannot recover their unpaid wages, and legitimate businesses are undercut by unscrupulous employers who flout the law.

To enhance the Division's collections efforts, the DLSE recently partnered with the Wage Justice Center, a non-profit organization in Los Angeles that specializes in collecting unpaid wages for low-income workers, with a particular expertise in enforcing judgments from Berman claims.<sup>26</sup> Too often, workers win judgments only to find that the employer has gone out of business, fraudulently transferred assets, and erected shell corporations to avoid paying what is owed. Through creative use of underutilized legal tools to track down and seize assets and income, the Wage Justice Center has made its hallmark the collection of "uncollectable" judgments. The DLSE's partnership with the Wage Justice Center will strengthen the Division's ability to seek satisfaction of wage judgments, putting earned wages into the hands of California workers.

Furthermore, the Administration is fostering better collaboration both within the Department of Industrial Relations (including leveraging department-wide collections capabilities, where appropriate) and across state agencies (for example, through joint efforts with the Employment Development Department). The Division is also working to streamline the means by which workers in the agricultural, garment, and car wash industries can collect wages owed from existing restitution funds. Finally, the DLSE is committed to enforcing criminal penalties against employers who fail to pay outstanding wage judgments within 90 days.<sup>27</sup> The Labor Commissioner is confident that through implementation of these critical measures, the ability of the Division to enforce judgments and recover wages and penalties will improve dramatically within the coming years.

<sup>25</sup> The figures in this table do not include money recovered outside the Judgment Enforcement unit, such as voluntary payments by employers short of judgments or payments in settlement of DLSE enforcement lawsuits. As a result, the total amount of money that workers recover and that flows into state coffers as a result of DLSE enforcement activity is not reflected in the statistics of the Judgment Enforcement unit.

<sup>26</sup> This collaboration will take the place of the DLSE's former partnership with the Franchise Tax Board. In 2012, the Franchise Tax Board ceased accepting judgment enforcement referrals from the DLSE.

<sup>27</sup> See Labor Code Section 1197.2.



# LICENSING AND REGISTRATION

A threshold mechanism for ensuring compliance with minimum labor standards is the statutory requirement that certain industries obtain a business license from the state. The Division's **Licensing and Registration** (L&R) unit provides the essential service of processing licenses and registrations for farm labor contractors, garment contractors, car washes, studio teachers, and talent agencies. Less common but still under the jurisdiction of the DLSE are licenses for special minimum wage workers, sheltered workshops, industrial homework, and individuals using minors in door-to-door sales. In addition, the DLSE issues entertainment work permits for minors as well as employer permits to employ child entertainers.

Before the Brown Administration took office, the L&R unit suffered from long delays in processing applications, cumbersome application forms and procedures, and an antiquated payment system. In 2010, it took an average of 2 months (60 days) for the unit to review registration and licensing applications for garment contractors, car washes, and farm labor contractors. Online functions for application forms and fees were non-existent. In order to support California businesses that are committed to compliance, one of this Administration's top priorities has been to enhance DLSE licensing activities, speed up review of applications, and streamline and modernize application procedures so that they are efficient, accurate, and user-friendly.

## ACCOMPLISHMENTS

In the past two years, the Brown Administration has instituted significant improvements to the licensing and registration process, including accelerating the application review process, simplifying forms and procedures, and developing more online functions to better serve the public.

### Fastest application review process in the past five years.

- In 2012, it took the DLSE an average of only **21 days** to review licensing and registration applications – 50% faster than in 2010. For applications involving garment contractors, car washes, and farm labor contractors, 2012 marked the shortest review period in the past five years.

Type of License/ Registration	Average Number of Days to Review Applications from Date Received				
	Average Number of Days in 2008	Average Number of Days in 2009	Average Number of Days in 2010	Average Number of Days in 2011	Average Number of Days in 2012
Garment Contractors	120	55	60	60	30
Car Washing & Polishing	40	45	60	40	30
Farm Labor Contractors	60	45	60	55	25
Talent Agencies	30	15	30	30	15
Studio Teachers	30	15	30	30	15
Sheltered Workshops	30	15	30	30	15
Special Minimum Wage	30	90	30	30	20
<b>AVERAGE OF ALL LICENSES/ REGISTRATIONS</b>	<b>49</b>	<b>40</b>	<b>43</b>	<b>39</b>	<b>21</b>

## ENFORCEMENT SPOTLIGHT

Since 2011, the Licensing and Registration unit has conducted outreach to approximately 600 cities and counties in California that license businesses, in order to help educate employers about the state's licensing and registration laws for garment contractors, farm labor contractors, car washes, talent agencies, and studio teachers. This effort is part of the DLSE's collaboration with other public entities in the state that issue business licenses, in order to provide all employers with accurate information about licensing and registration requirements and to help employers take the steps they need to start and maintain a lawful business.

### **Creation of key online functions for the public.**

- **Payment of application fees online.** All applicants for licenses or registrations in the farm labor, garment, talent agency and car wash industries can now pay application fees (for both new and renewal applications) and exam fees online. The DLSE's implementation of online payments (a basic function that was previously unavailable) has made the application process for businesses easier and faster.
- **Fillable application forms.** Application forms to obtain a license or registration are now available on the DLSE website as fillable forms that allow the applicant to use a computer to type and print the application.
- **Verification of farm labor contractor licenses online.** The DLSE has implemented a one-step online system for growers to verify whether a farm labor contractor is licensed. Previously, such verification could only be conducted by email, fax, or phone, required the assistance of DLSE staff, and resulted in delays. Growers can now request, view, and print an official verification online. Moreover, verification data is updated daily; for a license issued today, the public will be able to see the updated information online the very next day.
- **Online entertainment work permits for minors.** For the first time in DLSE history, entertainment work permits for minors can be obtained online. The new system also enables online verification of permits by prospective employers. Although applicants may still apply for such permits by mail or in person, they now have another option that is convenient, secure, and fast.

### **Updated, streamlined application process.**

- **Expedited process to correct defective applications.** The process to correct defective applications for licenses and registrations in the farm labor, garment, talent agency, and car wash industries has been streamlined. Previously, the application process was protracted and inefficient; defective applications were allowed to linger for up to 120 days, while multiple letters were sent by the Division to solicit corrective action. By tying up the entire review process, such delay negatively impacted those businesses that had submitted completed applications. Applicants are now provided with no more than two letters for corrective action and must perfect their application within an average of 60 days.
- **Simplified licensing application for farm labor contractors.** The Division has instituted new licensing application forms for farm labor contractors that simplify the application process, including a new "Short-Form" application that minimizes the paperwork and documentation required for a renewal license.

## LOOKING AHEAD

Even with the considerable progress that has been made in this area, the Labor Commissioner recognizes that additional improvements are necessary to further expedite and facilitate the licensing and registration process. The Administration's goal is to fully integrate all licensing and registration systems online. For example, the DLSE is currently working on a comprehensive online application system for farm labor contractors, which would enable applicants to apply for a license online, pay their fees online, and receive information about defective applications as well as reminders about impending license expiration via email notifications rather than by regular mail. The same system would be implemented for garment contractors, car washes, and talent agencies.

Moreover, in order to maximize the effectiveness of the Division's enforcement efforts, the Labor Commissioner is working to promote more interface between units and to fully integrate the DLSE's enforcement efforts. Procedures have been established to foster the exchange of information and coordination of enforcement activities across the Division. For example, L&R is collaborating with WCA offices to provide information about the licensing status of garment contractors in AB 633 cases.<sup>28</sup> L&R is also exploring mechanisms to provide leads for BOFE investigations.<sup>29</sup> As part of the Labor Commissioner's holistic approach of engaging in smarter, more coordinated enforcement instead of addressing issues piecemeal, this Administration is invested in developing systems that enable units to work symbiotically and to share information that will enhance the work of each unit.

---

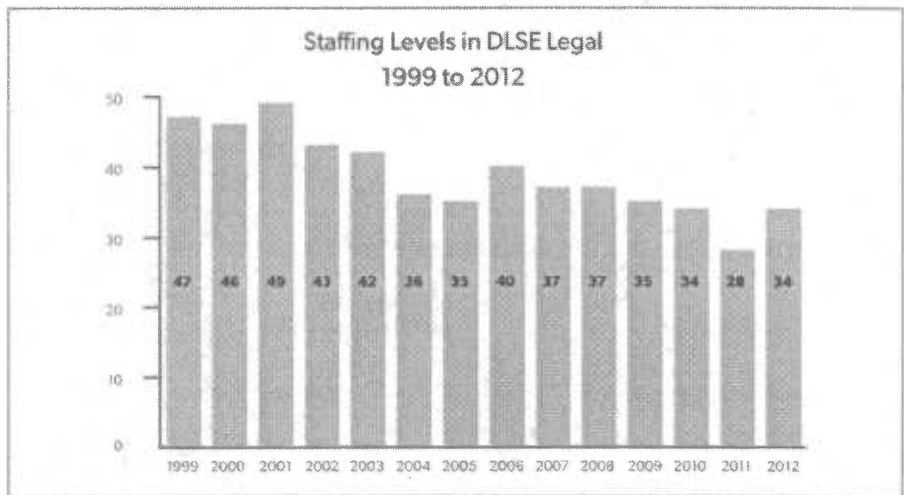
28 The Labor Code provides for joint liability of garment manufacturers when they have contracted with an unlicensed contractor.

29 Entities that fail to obtain licenses or registrations as required under the law may be more likely to have perpetrated wage and hour abuses.

# LEGAL

As the backbone of the Division, the DLSE's **Legal** unit plays an indispensable role in all of the Division's enforcement activities. Among their various responsibilities, DLSE attorneys represent workers in de novo appeals of the Division's wage claims decisions; defend BOFE citations to ensure they are enforced; file affirmative lawsuits<sup>30</sup> when employers have refused to comply with the Division's demands for payment based on a BOFE audit for unpaid wages, or when employers have engaged in systemic violations of wage and hour laws; defend Public Works civil wage and penalty assessments and file debarment actions against contractors who have violated the law; file retaliation complaints in court; enforce subpoenas and obtain inspection warrants; draft amicus briefs on behalf of the Labor Commissioner; and provide ongoing legal counsel to all DLSE staff.

Over the years, staffing levels of the Legal unit have plummeted. In 2011, the first year under the Brown Administration, the unit operated with only 28 staff<sup>31</sup> – the lowest number of staff in well over a decade.



In addition, historically, the primary focus of DLSE attorneys has been their representation of workers in de novo appeals of wage claims, through which the Legal unit has built a long tradition of success. However, given this focus and the relative lack of resources in recent years, the Legal unit has been unable to maximize its use of affirmative suits – one of the most powerful enforcement tools in the Division's arsenal – to recover unpaid wages for workers, stop retaliation, and bring employers into compliance.

<sup>30</sup> Labor Code Sections 98.3 and 1193.6 provide the Labor Commissioner with broad authority to file lawsuits to recover wages for workers and to remedy violations of the Labor Code and IWC wage orders.

<sup>31</sup> This statistic is inclusive of all Legal staff, including attorneys and support staff.

## ACCOMPLISHMENTS

Under the Brown Administration, the Division has been committed to rebuilding the ranks of the Legal unit and increasing the use of strategic lawsuits to combat wage theft. In 2012, the DLSE raised staffing levels in the unit by over 20%. During the past two years, the Labor Commissioner filed high-profile lawsuits on behalf of thousands of low-wage workers, while the Division maintained its success rate in de novo appeals.

### **Successful representation of workers in de novo appeals of wage claims.**

In 2011 and 2012, the Legal unit remained highly successful in representing wage claimants in de novo appeals. DLSE attorneys achieved favorable resolutions for the claimant (either through judgment or settlement) in over 95% of cases.

### **Strategic lawsuits to combat wage theft.**

In the past two years, the Division launched a concerted effort to bring lawsuits against employers who have engaged in widespread violations of wage and hour laws, with a focus on safeguarding the floor on minimum labor standards and deterring employers from perpetrating wage theft. Highlights include:

- **Lawsuit on behalf of real estate agents throughout California who were denied minimum wage.** On behalf of thousands of real estate agents throughout California, the DLSE filed a lawsuit against an Emeryville-based realty company that had failed to pay its real estate agent employees minimum wage and overtime for over four years. The agents frequently received no pay at all for their work. The lawsuit, which sought several millions of dollars in unpaid minimum wages and overtime, in addition to damages and penalties, brought much-needed attention to the fact that violations of minimum labor standards are occurring in a wide variety of industries and affecting employees outside traditional low-wage occupations. The DLSE originally became involved in the case when four real estate agents in Bakersfield filed wage claims before the DLSE for nonpayment of minimum wage and overtime by the company. After the Labor Commissioner issued an award in favor of the claimants in the amount of approximately \$75,000, the company appealed. When the DLSE prevailed against the appeals in superior court, the company settled the claims of the four agents for over \$595,000. Because the DLSE determined that the company's violations were not isolated events but indicated a pattern of wage theft across the state, the Labor Commissioner filed suit to recover unpaid wages for all the company's real estate agents in California. The DLSE subsequently settled the suit for \$5 million.

- **High-profile lawsuits against farm labor contractors, the first in DLSE history.** The DLSE filed the first case against a farm labor contractor in the history of the Division, after a BOFE investigation revealed that the contractor had failed to pay minimum wage and overtime for approximately 130 workers. The DLSE subsequently filed a second suit on behalf of hundreds of workers against another farm labor contractor for \$1.6 million in unpaid wages, damages, and penalties. (See Enforcement Spotlight, page 27, for details.) The enforcement suits send a powerful message that the Division is committed to aggressively combating wage theft in the agricultural industry.
- **Lawsuits against Los Angeles car washes that routinely failed to pay minimum wage and overtime.** The DLSE filed two separate lawsuits on behalf of over 40 workers against Los Angeles car washes for rampant wage and hour abuses, including failure to pay minimum wage and overtime to employees, failure to properly record accurate employee time records, and failure to provide itemized wage deduction statements as required by law. In one suit, the Labor Commissioner alleged that for a period of three years, the car wash systematically cheated workers out of their earned wages, resulting in over \$1.5 million in unpaid minimum wages and overtime, damages, and penalties. The second suit, which was filed against a car wash and its successor, demonstrates the Division's vigorous enforcement of successorship provisions under the law that hold both the original employer and successor entity responsible for making sure workers are paid. The DLSE suit, which seeks several hundred thousand dollars in unpaid minimum wages, overtime, meal and rest period premiums, damages, and penalties, underscores that car wash employers who violate the law cannot avoid paying their workers by closing one entity down and opening up a new one under a different name.

## LOOKING AHEAD

DLSE Legal represents the Labor Commissioner in court and supports all of the Division's enforcement activities. In the last two years, the Legal unit has played a leadership role in the Division's statewide training program. In addition, the last two years have seen an increase in the Division's enforcement responsibility in ways that directly affect the workload of DLSE attorneys. The other improvements described in this report, including the record numbers of citations issued and increased percentage of cause findings in retaliation investigations, also place growing demands on DLSE attorneys, the full impact of which has yet to be felt. Although Labor Commissioner Su has augmented the number of DLSE Legal staff, the Division has seen the retirement of senior attorneys and currently faces a need to train many of the new additions to the Legal unit. In 2013 and beyond, the Legal unit will continue to play its central role in the Division's enforcement efforts while working to enhance the breadth and impact of its work.

## CONCLUSION

At the beginning of his term in 2011, Governor Brown said in his State of the State address, "California is on the mend." The DLSE, too, has experienced a remarkable period of transformation, with a focus on fixing what did not work while building on what does. As a result, the last two years of enforcement activity have been the most robust by almost every measure in the Division's history. With Labor Commissioner Su's vision guiding the hard work of the entire Division, the dramatic improvements that have been made in the past two years have laid the foundation for the DLSE to successfully meet the challenges that lie ahead.



**EXHIBIT 20**

https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm

Go

JUL OCT DEC

◀ 01 ▶

2013 2014 2015



766 captures

10 Nov 2001 - 29 Jan 2018

About this capture

CA gov | Contact DIR | Press Room



Search

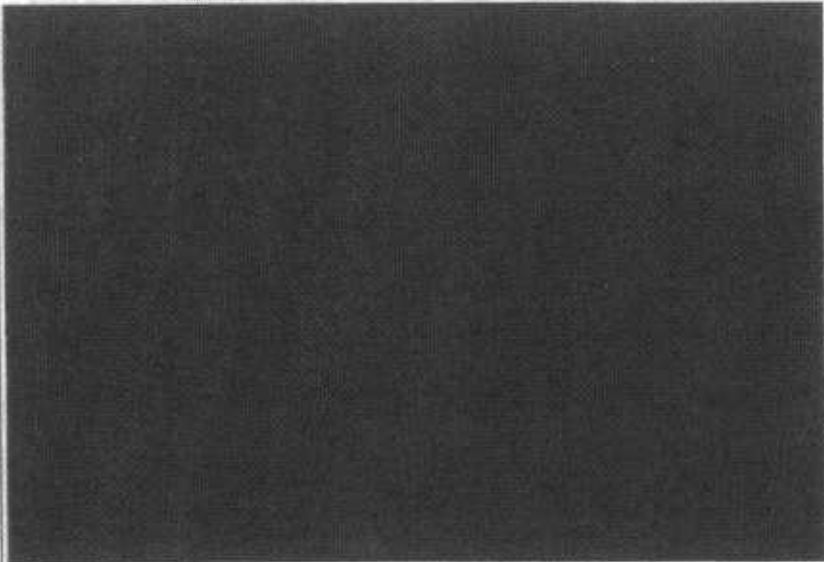
This Site

California

Home Labor Law Cal/OSHA - Safety & Health Workers' Comp Self Insurance Apprenticeship Director's Office Boards

Division of Labor Standards Enforcement (DLSE)

### How to file a wage claim

<p><b>What is a wage claim?</b></p>	<p>An employee or former employee may file an <b>INDIVIDUAL</b> wage claim to recover:</p> <ul style="list-style-type: none"> <li>• Unpaid wages, including overtime, commissions and bonuses.</li> <li>• Wages paid by check issued with insufficient funds.</li> <li>• Final paycheck not received.</li> <li>• Unused vacation hours that were not paid upon termination of the employment relationship, e.g., a quit, discharge, or layoff.</li> <li>• Unauthorized deductions from paychecks.</li> <li>• Unpaid/non-reimbursed business expenses.</li> <li>• Reporting time pay/split shift premiums.</li> <li>• Failure to provide a meal and/or rest period in accordance with the applicable Industrial Welfare Commission Order.</li> <li>• Liquidated damages for failure to receive minimum wage for each hour worked.</li> <li>• Waiting time penalties for failure to receive final wages timely upon separation of employment.</li> <li>• Penalties for paycheck(s) not negotiable within 30 days of receipt.</li> <li>• Penalties for employer's failure to allow inspection or copying of payroll records within 21 days of request.</li> </ul>
<p><b>How can the Labor Commissioner's Office help you recover your unpaid wages?</b></p> <p>Vea un video sobre el proceso del reclamo de salario en español aqui</p> 	
<p><b>What are the policies and procedures for</b></p>	<p>Click here to download a pamphlet that describes the policies and procedures for processing a wage claim.</p>

#### Labor Commissioner's Office

#### Quick Links

- Apply for a Farm Labor Contractor license online
- Make an online payment
- Verify a license or registration
- Find a wage order
- Labor law training
- Forms
- Publications
- Frequently asked questions

#### About DLSE

- About Us
- Contact Us
- Locations

[DLSE Home](#)

LC00124

https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm Go JUL OCT DEC  
 796 captures < 01 > 2013 2014 2015 About this capture

**NEW CLAIM FORM as of July 2012**

<p>How do I file a wage claim?</p>	<p>Download, complete, and print the Initial Report or Claim, DLSE Form 1 (Revised 07/2012). The Form 1 claim form is accompanied by two information sheets to assist claimants. The "Instructions for Filing a Wage Claim" explain which documents and forms should be submitted by claimants in order to file a wage claim. If you need assistance in filling out the Form 1, the "Guide to Completing Initial Report or Claim Form" is a question-by-question guide that presents some basic information about each question on the claim form.</p> <table border="1"> <tr> <td> English Form 1</td> <td> English Instructions &amp; Guide</td> </tr> <tr> <td> Spanish Form 1 Reporte Inicial o Reclamo</td> <td> Spanish Instructions &amp; Guide Instrucciones Para Llenar Un Reclamo De Salario Guía Para Completar El "Reporte Inicial O Reclamo" (Forma DLSE 1)</td> </tr> <tr> <td> Chinese Form 1 初次報告或索償</td> <td> Chinese Instructions &amp; Guide 工資索償說明 "初次報告或索償"表格完成指南 (DLSE 表格 1)</td> </tr> <tr> <td> Korean Form 1 초기 보고서 및 청구</td> <td> Korean Instructions &amp; Guide 임금청구 제기 설명서 "초기 보고서 또는 청구"양식(DLSE 1 양식서) 판로 안내서</td> </tr> <tr> <td> Vietnamese Form 1 Khiếu nại hoặc Báo cáo Bức đầu</td> <td> Vietnamese Instructions &amp; Guide HƯỚNG DẪN NỘP ĐƠN KHIẾU NẠI TIỀN LƯƠNG Hướng dẫn Điền Đơn "Khiếu nại hoặc Báo cáo Bức đầu"(DLSE Form 1)</td> </tr> <tr> <td> Tagalog Form 1 Inisyal na Ulat o Paghahabol</td> <td> Tagalog Instructions &amp; Guide Mga Instrukiyon Para Sa Pagsasampa Ng Isang Paghahabol Ng Sahod Gabay sa Pagkumpleto ng Form para sa "Inisyal na Ulat o Paghahabol" (DLSE Form 1)</td> </tr> <tr> <td> Punjabi Form 1 ਸ਼ੁਰੂਆਤੀ ਰਿਪੋਰਟ ਜਾਂ ਦਾਅਵਾ</td> <td> Punjabi Instructions &amp; Guide ਮਜ਼ਦੂਰੀ ਦਾ ਦਾਅਵਾ ਤਰਨ ਵਾਸਤੇ ਵਿਦਾਇਤਾ "ਸ਼ੁਰੂਆਤੀ ਰਿਪੋਰਟ ਜਾਂ ਦਾਅਵਾ" ਫਾਰਮ (DLSE ਫਾਰਮ 1) ਤਰਨ ਲਈ ਗਾਈਡ</td> </tr> </table> <ul style="list-style-type: none"> <li>• Please be sure to provide all information on the claim form to avoid delay in the claim process.</li> <li>• Please be sure to sign and date your claim form.</li> </ul>	English Form 1	English Instructions & Guide	Spanish Form 1 Reporte Inicial o Reclamo	Spanish Instructions & Guide Instrucciones Para Llenar Un Reclamo De Salario Guía Para Completar El "Reporte Inicial O Reclamo" (Forma DLSE 1)	Chinese Form 1 初次報告或索償	Chinese Instructions & Guide 工資索償說明 "初次報告或索償"表格完成指南 (DLSE 表格 1)	Korean Form 1 초기 보고서 및 청구	Korean Instructions & Guide 임금청구 제기 설명서 "초기 보고서 또는 청구"양식(DLSE 1 양식서) 판로 안내서	Vietnamese Form 1 Khiếu nại hoặc Báo cáo Bức đầu	Vietnamese Instructions & Guide HƯỚNG DẪN NỘP ĐƠN KHIẾU NẠI TIỀN LƯƠNG Hướng dẫn Điền Đơn "Khiếu nại hoặc Báo cáo Bức đầu"(DLSE Form 1)	Tagalog Form 1 Inisyal na Ulat o Paghahabol	Tagalog Instructions & Guide Mga Instrukiyon Para Sa Pagsasampa Ng Isang Paghahabol Ng Sahod Gabay sa Pagkumpleto ng Form para sa "Inisyal na Ulat o Paghahabol" (DLSE Form 1)	Punjabi Form 1 ਸ਼ੁਰੂਆਤੀ ਰਿਪੋਰਟ ਜਾਂ ਦਾਅਵਾ	Punjabi Instructions & Guide ਮਜ਼ਦੂਰੀ ਦਾ ਦਾਅਵਾ ਤਰਨ ਵਾਸਤੇ ਵਿਦਾਇਤਾ "ਸ਼ੁਰੂਆਤੀ ਰਿਪੋਰਟ ਜਾਂ ਦਾਅਵਾ" ਫਾਰਮ (DLSE ਫਾਰਮ 1) ਤਰਨ ਲਈ ਗਾਈਡ
English Form 1	English Instructions & Guide														
Spanish Form 1 Reporte Inicial o Reclamo	Spanish Instructions & Guide Instrucciones Para Llenar Un Reclamo De Salario Guía Para Completar El "Reporte Inicial O Reclamo" (Forma DLSE 1)														
Chinese Form 1 初次報告或索償	Chinese Instructions & Guide 工資索償說明 "初次報告或索償"表格完成指南 (DLSE 表格 1)														
Korean Form 1 초기 보고서 및 청구	Korean Instructions & Guide 임금청구 제기 설명서 "초기 보고서 또는 청구"양식(DLSE 1 양식서) 판로 안내서														
Vietnamese Form 1 Khiếu nại hoặc Báo cáo Bức đầu	Vietnamese Instructions & Guide HƯỚNG DẪN NỘP ĐƠN KHIẾU NẠI TIỀN LƯƠNG Hướng dẫn Điền Đơn "Khiếu nại hoặc Báo cáo Bức đầu"(DLSE Form 1)														
Tagalog Form 1 Inisyal na Ulat o Paghahabol	Tagalog Instructions & Guide Mga Instrukiyon Para Sa Pagsasampa Ng Isang Paghahabol Ng Sahod Gabay sa Pagkumpleto ng Form para sa "Inisyal na Ulat o Paghahabol" (DLSE Form 1)														
Punjabi Form 1 ਸ਼ੁਰੂਆਤੀ ਰਿਪੋਰਟ ਜਾਂ ਦਾਅਵਾ	Punjabi Instructions & Guide ਮਜ਼ਦੂਰੀ ਦਾ ਦਾਅਵਾ ਤਰਨ ਵਾਸਤੇ ਵਿਦਾਇਤਾ "ਸ਼ੁਰੂਆਤੀ ਰਿਪੋਰਟ ਜਾਂ ਦਾਅਵਾ" ਫਾਰਮ (DLSE ਫਾਰਮ 1) ਤਰਨ ਲਈ ਗਾਈਡ														
<p>What other DLSE forms must be submitted with my Initial Report or Claim (DLSE 1)?</p>	<p><b>IMPORTANT:</b> Along with your completed "Initial Report or Claim" form (Form 1), submit these additional DLSE forms if any of the following situations apply to you:</p> <ul style="list-style-type: none"> <li>• <b>DLSE Form 55 for claimants who worked irregular hours:</b> If your work hours and/or days of work varied per week or were irregular and you are claiming unpaid wages (for non-overtime or overtime hours worked) or meal and rest period violations, then also fill out and submit the DLSE Form 55.             <ul style="list-style-type: none"> <li>• Download, print and complete the DLSE-55 (Rev. 10/03). See Sample DLSE-55.</li> <li>• Instructions (DLSE-55)/ Instrucciones (la Forma DLSE 55) </li> </ul> </li> <li>• <b>DLSE Form 155 for claimants with commission claims:</b> If you are claiming commission pay, then also fill out and submit the DLSE Form 155.             <ul style="list-style-type: none"> <li>• Download, print and complete the DLSE-155 (Rev.12/03). See Sample DLSE-155.</li> <li>• instructions (DLSE-155)/ Instrucciones (la Forma DLSE 155):  Pdf</li> </ul> </li> <li>• <b>DLSE Vacation Pay Schedule for claimants seeking vacation wages:</b> If you are claiming vacation wages, then also fill out and submit the DLSE Vacation Pay Schedule form.             <ul style="list-style-type: none"> <li>• Download, print and complete the DLSE Vacation Pay Schedule . See Sample Vacation Pay Schedule .</li> <li>NOTE: Sample is for review only, do not use.</li> <li>• instructions (Recapitulation of Vacation Pay)/ Instrucciones (Recapitulación de Pago de Vacaciones) </li> </ul> </li> <li>• <b>Claimants who are represented:</b> If you are represented by an attorney or other advocate, you may submit a calculation prepared by your attorney or advocate instead of the DLSE Form 55, DLSE Form 155, or DLSE Vacation Pay Schedule required above.</li> </ul>														

<p>documents should I submit with my claim (DLSE 1)?</p>	<p>one copy of the following documents, if you have them (DO NOT SUBMIT ORIGINAL DOCUMENTS):</p> <ul style="list-style-type: none"> <li>• <b>Time records.</b> Provide a COPY of any records you kept of the hours and dates you worked that support your claim.</li> <li>• <b>Paychecks and pay stubs.</b> Provide a COPY of any paychecks and pay stubs you received showing the wages you were paid during your claim period.</li> <li>• <b>Dishonored (or "bounced") paycheck(s).</b> 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.</li> <li>• <b>Notice of employment information.</b> 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.</li> </ul> <p><i>NOTE: It is the employer's legal responsibility to keep accurate employee time and payroll records, and to provide employees with itemized wage statements each time they are paid (or at least semi-monthly). In order to file a claim, you are <u>not</u> 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.</i></p> <ul style="list-style-type: none"> <li>• <b>Collective Bargaining Agreement.</b> If your employment was covered by a union contract, provide a COPY of the Collective Bargaining Agreement.</li> </ul>	<p>JUL OCT DEC ◀ 01 ▶ 2013 2014 2015</p>
<p>Where do I file my wage claim?</p>	<p>File your claim either by mail or in person with the Division of Labor Standards Enforcement (DLSE) office that handles wage claims for the city/location/community where you performed the work. To locate such office, click here for an alphabetical listing of cities/locations/communities.</p> <p>The claim form CANNOT be filed electronically or by fax. If your internet browser supports email of pages, DO NOT use this feature to submit your claim form as an original signature is required. You MUST print and either mail or hand-deliver a copy of your claim form to the DLSE office that handles wage claims for the city/location/community where you performed the work.</p>	

If you do not already have Adobe Acrobat installed on your computer, you should download the free Acrobat Reader from Adobe's web site at [www.adobe.com](http://www.adobe.com), download instructions are available on the Adobe web site. Once you have downloaded the Acrobat Reader you can view PDF documents in your web browser if it supports plug-ins, or if it does not support plug-ins, you can save the file(s) to your hard drive and view them by opening them in Acrobat Reader.

**File a Claim**

- Wage claims
- Bureau of Field Enforcement
- Public works complaints
- Claims for retaliation or discrimination

**More Services**

- Public records requests
- Translations
- Verify a license or registration
- Find a wage order
- Online payments
- Haga un pago por linea

**Learn more about DLSE**

- Frequently asked questions
- Archives
- DLSE site map
- Workplace postings
- Legislative reports

**About DIR**

- Who we are
- DIR Divisions, Boards & Commissions
- Contact DIR

**Work with Us**

- Licensing, registrations, certifications & permits
- Notification of activities
- Public Records Act

**Learn More**

- Site Map
- Frequently Asked Questions
- Jobs at DIR

Conditions of Use | Privacy Policy | Disclaimer | Disability accommodation | Site Help

LC00126

https://www.dir.ca.gov/dlse/HowToFileWageClaim.htm Copyright © 2014 State of California Go JUL OCT DEC  
766 captures 18 Nov 2011 - 29 Jan 2018 ◀ 01 ▶ 2013 2014 2015 About this capture

<a href="http://www.dir.ca.gov:80/dlse/Policies.htm">http://www.dir.ca.gov:80/dlse/Policies.htm</a>	Go	JUL	SEP	NOV			
491 captures		◀ 26 ▶					
27 Nov 1999 - 19 Dec 2017		2013	2014	2015	▼ About this capture		

## POLICIES AND PROCEDURES FOR WAGE CLAIM PROCESSING

### INTRODUCTION

The purpose of this pamphlet is to provide a basic overview of the Division of Labor Standards Enforcement's (DLSE) wage claim process and to outline the basic filing, conference, hearing and appeal procedures. Since this guide is not meant to be a definitive statement regarding the processing of wage claims, parties are strongly urged to *read all forms* received by them throughout the process. *Failure to comply with each requirement of the process may result in the loss of important rights.*

### SUMMARY OF THE PROCEDURES

Any employee who has a claim against his or her employer or former employer for unpaid wages or other compensation, which falls under the jurisdiction of the Labor Commissioner, may file a claim with DLSE which is under the direction of the State Labor Commissioner. The Labor Commissioner has no jurisdiction over those persons determined to be bona fide independent contractors and only limited jurisdiction over employees of public agencies (for example, federal, state, county or municipal employees). In addition, based on California law and court decisions, the Labor Commissioner, in some cases, does not have jurisdiction over the wage claims of union members working under collective bargaining agreements.

The Labor Commissioner, pursuant to the provisions of Labor Code Sections 98 and 98.3, has established procedures for investigating wage complaints, which may include either a conference pursuant to Section 98.3 or a hearing pursuant to Section 98(a), or both.

Sometimes claims are filed which are very complex and involve a large number of employees and records. Such claims will usually be investigated by DLSE's Bureau of Field Enforcement and not through the procedures described in this pamphlet. If this occurs, the parties will be so informed by the deputy handling the case. However, the majority of claims filed with DLSE are resolved through Section 98.3 conferences and/or Section 98(a) hearings that are explained in this pamphlet.

### FILING THE COMPLAINT

An employee (plaintiff) alleging the non-payment of wages or other compensation by his or her employer (defendant), must file a claim (the **DLSE Form 1, "Initial Report or Claim"** form) with a local office of DLSE to initiate investigation of the claim by the Labor Commissioner. When filing a claim, the plaintiff should provide as much information as possible on the "Initial Report or Claim" form, including the legal name, location, and status (method of doing business, i.e. sole proprietorship, partnership, corporation) of the defendant.

Along with the completed "Initial Report or Claim" Form, plaintiffs should also submit these additional DLSE Forms if **any of the following situations apply:**

- **DLSE Form 55** (if the plaintiff's work hours or days of work varied per week or were irregular and the plaintiff is seeking unpaid wages or premium pay for meal or rest period violations)
- **DLSE Form 155** (if the claim involves commission pay)
- **DLSE "Vacation Pay Schedule"** (if the claim involves vacation wages)

In addition, along with the completed "Initial Report or Claim" form, the plaintiff should submit **ONE COPY** of the following documents in support of the claim, if the plaintiff has these documents (**DO NOT submit original documents**):

LC00128

Time records the plaintiff kept of the hours and dates worked during the claim period. NOV 2013, 2014, 2015

Paychecks and pay stubs showing the wages paid during the claim period. 26

491 captioned (or "bounced") paycheck(s) during the claim period.

27 NOV Notice of employment information (pursuant to Labor Code Section 28013, 2014, 2015) on the employer that employees may have received after January 1, 2012, which indicates the employee's basic employment information including rate of pay, any overtime rate of pay, whether the employee was paid by the hour, shift, day, week, salary, piece, commission, or otherwise, and the regular payday).

**NOTE:** It is the employer's legal responsibility to keep accurate employee time and payroll records, and to provide employees with itemized wage statements each time they are paid (or at least semimonthly). In order to file a claim, employees are not required to keep their own time records or to have the documents above. These documents are being requested only if employees have them because they may help DLSE better understand the claim.

- Collective Bargaining Agreement (if the plaintiff's employment was covered by a union contract).

After the claim is assigned to a Deputy Labor Commissioner (deputy), he or she will determine, based on the circumstances of the claim, how best to proceed. Within thirty (30) days of the filing of the complaint, the deputy shall notify the parties as to the specific action which will initially be taken regarding the claim:

- referral to a conference
- referral to a hearing
- dismissal of the claim

Not all cases will go to a conference before going to a hearing. Moreover, many cases will be resolved informally before either a conference or a hearing is scheduled.

## THE CONFERENCE

- If the decision has been made by the deputy to hold a conference, a Notice of Claim Filed and Conference will be sent to both parties which will describe the claim, provide the date, time and place of the conference, and direct the parties that they are expected to attend.
- The conference will be conducted informally and the parties will not be under oath. The purpose of the conference is to determine if the claim can be resolved without a hearing. Plaintiffs are not required to prove their case at the conference. The parties should be prepared to talk with the deputy about the claim, including whether there are any witnesses. However, the parties do not need to bring witnesses to the conference. Plaintiffs should bring a copy (not the original) of any document that supports the claim, but should not bring documents that have already been submitted with the claim form. Defendants should also bring any documents that support their position.
- If the defendant fails to appear at the conference, in most cases, the claim will be scheduled for a hearing. If the plaintiff fails to appear, except for good cause shown, the claim will be dismissed.
- If the case is not resolved at the conference, the deputy will determine the appropriate action with regard to the claim, usually referral to a hearing or dismissal (if there is not a legal basis to proceed).
- If the defendant makes payment of the claim, or any part of the claim, directly to the plaintiff, the plaintiff must notify the deputy. If the payment satisfies the claim in full, the case will be closed.
- The plaintiff may withdraw the claim, by written request to the deputy, at any time during the process.

## THE HEARING

- If a hearing is scheduled (either after the claim is filed or after a conference), the parties will receive, either by mail or by personal service, a Notice of Hearing which will set the date, time and place of the hearing.
- Although hearings are conducted in an informal setting, they are formal proceedings, as opposed to the conference. At the hearing the parties and witnesses testify under oath, and the proceedings are recorded.
- Each party has the following basic rights at the hearing:
  1. To be represented by an attorney or other party of his or her choosing.
  2. To present evidence.

LC00129

<http://www.dir.ca.gov/80/dlse/Policies.htm> Go JUL SEP NOV  
 4. To have his or her own witnesses testify. ◀ 26 ▶  
 491 captures cross-examine the opposing party and witnesses. f t  
 27 Nov 2018 To explain evidence offered in support of his or her position and to 2018 2018 2018 2018 2018 2018 2018 2018 2018 2018  
 7. To have a translator present, if necessary.

- The hearing officer has sole authority and discretion for the conduct of the hearing and may:
  1. Explain the issues and the meaning of terms not understood by the parties.
  2. Set forth the order in which persons will testify, cross-examine and give rebuttal.
  3. Assist parties in the cross-examination of the opposing party and witnesses.
  4. Question parties and witnesses to obtain necessary facts.
  5. Accept and consider testimony and documents offered by the parties or witnesses.
  6. Take official notice of well-established matters of common knowledge and/or public records.
  7. Ascertain whether there are stipulations by the parties that may be entered into the record.>
- You should bring all documents that will support your position. An employer who intends to introduce business records into evidence should also bring a person to the hearing who can explain how such records were prepared. **If available, the originals of all documents should be brought to the hearing plus two sets of copies.**
- If you wish witnesses to testify, you may arrange for the witnesses to attend voluntarily or you may request issuance of a personal subpoena to compel their attendance.
- Subpoenas for documents, records or witnesses must be issued by the Labor Commissioner. Applications to the Labor Commissioner for issuance of subpoenas should be made at least fifteen (15) business days prior to the date of the hearing. Submit a written request, using Information for Subpoena (DLSE 564) stating the reasons you feel the documents, records or witnesses are relevant or necessary. Costs incurred in the service of a subpoena, witness fees and mileage will be borne by the party requesting the subpoena.
- Changes in the date, time or place of the hearing will not be granted except upon the showing of extraordinary circumstances. The decision to grant such a request is within the sole discretion of the hearing officer and senior deputy, and will be rare.
- If the plaintiff fails to attend the hearing, the case will be dismissed.
- If the defendant is served with a notice of hearing and fails to attend the hearing, the hearing officer will decide the matter on the evidence he or she receives from the plaintiff.
- The hearing officer is not bound by formal rules of evidence and therefore, has wide discretion in accepting evidence. He or she also has discretion in deciding whether the assessment of penalties is appropriate in a particular case.
- Within fifteen (15) days after the hearing, the Order, Decision or Award (ODA) of the Labor Commissioner will be filed in the DLSE office and served on the parties shortly thereafter. The ODA will set forth the decision and the amount awarded, if any, by the hearing officer.

## APPEAL TO CIVIL COURT

Either party, or both, pursuant to Labor Code Section 98.2, may appeal the Labor Commissioner's ODA to the appropriate court, in accordance with the applicable rules of jurisdiction. The party appealing may obtain a Notice of Appeal (DLSE 537) from the DLSE office. The appeal must be filed in court within the time period set forth on the ODA, and a copy of the Notice of Appeal must be served on the Labor Commissioner and the opposing party. Whenever the defendant files an appeal, a bond in the amount of the ODA must be posted with the reviewing court. The court clerk will then set the matter for de novo hearing, which means that a judge will hear the case again with each party having the opportunity to present evidence and witnesses.

In the case of an appeal by a defendant, DLSE may represent a plaintiff who is financially unable to afford counsel in the appeal proceedings. The decision to represent the plaintiff is within the sound discretion of DLSE legal staff. The plaintiff must meet the financial criteria set forth by DLSE. The assigned deputy will send to the plaintiff a Request for Attorney Representation (DLSE 553) along with a Statement of Financial Status (DLSE 554) that must be completed and returned

LC00130



to the DLSE office. If the applicant does not meet the requirements for representation, the applicant will be notified by the legal staff of the reasons that DLSE will not be providing legal representation.

<http://www.dir.ca.gov:80/dlse/Policies.htm>

491 captures

State Labor Commissioner

27 Nov 1999 - 19 Dec 2017

26

2013 2014 2015

About this capture

(Revised 06-12)

CLEAR

PRINT

<b>Initial Report or Claim</b>	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?  
 YES, on: \_\_\_\_/\_\_\_\_/\_\_\_\_  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?  
 YES [if "YES," attach a copy of the Collective Bargaining Agreement.]  
 NO

4. Are other employees also filing wage claims against your employer?  YES  NO  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				

PRINT YOUR NAME: \_\_\_\_\_

**Part 4: FINAL WAGES / BOUNCED CHECKS**

<b>25. DATE OF HIRE</b> _____ / _____ / _____ <small>Month Day Year</small>	<b>26. Check which box applies to you:</b> <input type="checkbox"/> Still working for employer <input type="checkbox"/> QUIT on _____ / _____ / _____ <small>Month Day Year</small> <input type="checkbox"/> DISCHARGED on _____ / _____ / _____ <small>Month Day Year</small> <input type="checkbox"/> Other (specify): _____
<b>27a. If you QUIT, did you give 72 hours notice before quitting?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	<b>27b. If you QUIT, have you received your final payment of wages including all wages owed?</b> <input type="checkbox"/> YES, on: _____ / _____ / _____ <small>Month Day Year</small> <input type="checkbox"/> NO
<b>28. If you were DISCHARGED, have you received your final payment of wages including all wages owed?</b> <input type="checkbox"/> YES, on: _____ / _____ / _____ <small>Month Day Year</small> <input type="checkbox"/> NO	
<b>29a. How were your wages paid?</b> <input type="checkbox"/> BY CHECK <input type="checkbox"/> BY CASH <input type="checkbox"/> BY BOTH CASH & CHECK <input type="checkbox"/> OTHER: _____	<b>29b. If paid by check, did any of your paychecks "bounce" (for example, paycheck could not be cashed because employer has insufficient funds)?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO

**Part 5: HOURS YOU TYPICALLY WORKED**

30. Check which box applies:  My work hours and days of work were usually the same each week that I worked.

My work hours and/or days of work varied per week or were irregular. If you checked this box and you are claiming unpaid wages or meal and rest period violations, you should also fill out and submit the DLSE FORM 55.

31. If your work hours and days of work were usually the same each week, give your **BEST ESTIMATE** below of the hours you usually worked and any time you took for a duty-free meal period during your **TYPICAL** workweek. **DO NOT** fill this out if your work hours were too irregular to estimate a typical or average workweek (instead fill out the DLSE Form 55).

	TIME WORK		1st MEAL		2nd MEAL		ONLY IF YOU WORKED A SPLIT SHIFT:		
	STARTED	ENDED	START TIME (if applicable)	END TIME (if applicable)	START TIME (if applicable)	END TIME (if applicable)	1st shift ended at	2nd shift started at	
DAY 1 of your workweek:	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am _____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am _____ <input type="checkbox"/> pm
DAY 2 of your workweek:	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am _____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am _____ <input type="checkbox"/> pm
DAY 3 of your workweek:	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am _____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am _____ <input type="checkbox"/> pm
DAY 4 of your workweek:	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am _____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am _____ <input type="checkbox"/> pm
DAY 5 of your workweek:	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am _____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am _____ <input type="checkbox"/> pm
DAY 6 of your workweek:	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am _____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am _____ <input type="checkbox"/> pm
DAY 7 of your workweek:	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	<input type="checkbox"/> am _____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am _____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am _____ <input type="checkbox"/> pm

**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):			\$
<b>ENTER SUBTOTAL (add all Amounts Earned/Claimed):</b>			\$
<b>ENTER TOTAL AMOUNT PAID:</b>			\$
<b>GRAND TOTAL OWED [Subtotal minus Total Amount Paid]:</b>			\$

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

**RECORD OF PAYMENTS TO CLAIMANT**

Date Received	Check, Cash, etc.	Receipt Number	Amount	Division Check Number	Date Paid	Balance Due	Signature/Remarks

**CONFERENCE: DATES**

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/HowToFileDiscriminationComplaint.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."

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.



- 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.**

## INSTRUCTIONS (DLSE FORM 55)

### *Instrucciones (La Forma DLSE 55)*

If your work hours and/or days of work varied per week 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 (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). *Si sus horas de trabajo y/o días de trabajo variaban o eran irregulares y usted esta reclamando salarios no pagados (por horas extras u horas regulares trabajadas) o por violaciones a su periodo de comida y descanso, entonces también llene y presente la Forma DLSE 55 (llénela lo mejor que usted pueda, basado en su mejor cálculo de horas trabajadas o cualquiera de sus propios archivos, que usted haya guardado de sus horas trabajadas).*

General overtime rules require an employer to pay overtime at a time and one-half rate:

- for hours worked in excess of eight hours in a workday,
- for the first eight hours of work on the seventh consecutive day of work in the **same** workweek and/or
- hours in excess of 40 regular hours in a workweek.

*Las reglas generales del tiempo suplementario requieren un patrón pagar las horas extras a la tasa de vez y una mitad:*

- *por las horas trabajadas mas de ocho horas en un día laborable,*
- *para las primeras ocho horas del trabajo sobre el séptimo día consecutivo del trabajo en el mismo semanalaborable y/o*
- *horas más de 40 horas regulares en un semanalaborable.*

Overtime at double the regular rate is required:

- for hours worked in excess of 12 hours in a workday or
- in excess of eight hours on the seventh consecutive day of work in the **same** workweek.

*En horas extras en el doble se requiere la tasa regular:*

- *por las horas trabajadas mas de 12 horas en un día laborable o*
- *mas de ocho horas en el séptimo día consecutivo del trabajo en el mismo semanalaborable*

Workday is defined by Labor Code section 500(a) as any consecutive 24-hour period beginning at the same time each calendar day. The 24-hour period may begin at any hour of the day, but thereafter must be consistent and unchanged.

*El día laborable es definido por la sección 500(a) del código laboral como cualquier 24 períodos consecutivo de horas que comienzan al mismo tiempo cada día de calendario. Los 24 períodos de horas pueden comenzar en cualquier hora del día, pero después de eso deben ser constantes y sin cambiar*

Workweek is defined by Labor Code section 500(b) as any seven (7) consecutive days starting with the same calendar day each week. A workweek is a fixed and regularly recurring period of 168 hours, seven consecutive 24-hour periods.

*Workweek/semanalaborable es definido por la sección 500(b) del código laboral como cualquier siete (7) días consecutivos comenzando con el mismo día de calendario cada semana. Un workweek o semanalaborable es un periodo fijo y regularmente que se repite de 168 horas, siete periodos consecutivos de 24 horas.*

There are exceptions to the general overtime rules. For example agricultural work has different overtime requirements and many truck drivers are not required to be paid overtime. In the event your employer has a valid alternative workweek, different overtime requirements apply.

*Hay excepciones a las reglas generales del tiempo suplementario. Por ejemplo el trabajo agrícola tiene diversos requisitos del tiempo suplementario y muchos camioneros no se requieren ser pagados en horas extras. En el acontecimiento su patrón tiene un workweek o semanalaborable alternativo válido, diversos requisitos del tiempo suplementario se aplica.*

If you have questions regarding overtime in your particular circumstances, please contact one of our field offices and ask for the deputy on duty. You may find a list of our field offices at <http://www.dir.ca.gov/dlse/DistrictOffices.htm>.

*Si usted tiene preguntas con respecto al pago de horas extra en sus circunstancias particulares, por favor comuníquese con una de nuestras oficinas y pida hablar con un delegado de nuestra oficina. Usted puede encontrar una lista de nuestras oficinas en: <http://www.dir.ca.gov/dlse/DistrictOffices.htm>.*

#### **Instructions for completing the DLSE Form 55**

#### **Instrucciones para completar la Forma DLSE 55**

For further assistance, please see the sample of the form filled out correctly at the DLSE website at <http://www.dir.ca.gov/dlse/DLSE-55-Sample.pdf>

*Para la ayuda adicional, vea por favor la muestra de la forma completada correctamente en el Website de DLSE en: <http://www.dir.ca.gov/dlse/DLSE-55-Sample.pdf>*

Use this worksheet completing the following items if you are claiming unpaid wages (for regular hours and/or overtime hours worked). You will also use this form if your employer does not provide meal or rest periods.

**EMPLOYER NAME:** What is the name of the business? If it does not have a business name, what is the name of the owner?

*¿Cuál es el nombre del negocio o si no tiene nombre, como se llama el empleador?*

**EMPLOYEE NAME:** This is the name of the employee who is claiming overtime wages or meal or rest period premiums.

*Éste es el nombre del empleado que está reclamando horas extras o pago extraordinario por tiempo de descanso y comida.*

CASE NO.: The state case number assigned to the claim after it has been reviewed and approved for processing. Initially it will be blank.

*Se refiere al número del caso estatal que será asignado al reclamo después que ha sido revisado y aprobado para procesarlo. Inicialmente queda en blanco.*

PAY PERIOD DATES: The period of time paid on your payday. As indicated on the bottom of this information, a pay period is one 7-day period, a week; or a day period, biweekly or 15 or more days which is a semimonthly pay period.

*De que fecha a que fecha trabajó usted por cada día de pago. Tal como se indica en la sección abajo del formulario, el período de pago, puede ser de un día, una semana (cada siete días), o bisemanal (cada quince días o mas días el cual sería un periodo de dos veces al mes (quincena).*

HOURLY RATE: The regular rate of pay for every hour worked. In the event you are paid a salary, divide your weekly wage by 40 hours, for a biweekly salary divide by 80 hours. A monthly rate would be multiplied by 12 months, divided by 52 weeks and divided by 40 hours to determine the hourly rate.

*\*\*Tasa por Hora. La tasa de pago por cada hora trabajada. En caso que le pague un salario fijo, debe dividir su sueldo semanal por 40 horas, o el sueldo bisemanal por 80 horas. Una tasa mensual debe ser multiplicada por 12 meses, dividida por 52 semanas y finalmente dividida entre 40 horas para determinar la tasa de pago por hora. \*\**

*\*\*Example: \$400.00 per week divided by 40 equals \$10.00 regular hourly rate of pay. The overtime rate is 1.5 times \$10.00 equals \$15.00 per overtime hour.*

*\*\*Ejemplo: \$400 por semana dividido por 40 horas equivale a \$10 por hora. La tasa de hora extra sale en multiplicar \$10.00 por 1.5 o \$15 por hora.*

*\*\*Example: \$2,500.00 per month (two times \$1,250.00 per semi-monthly pay period) times 12 months equals \$30,000.00 divided by 52 weeks per year equals \$576.92 divided by 40 hours equals \$14.42 regular hourly rate of pay. The overtime rate is 1.5 times \$14.42 which equals \$21.63 per overtime hour.*

*\*\* Ejemplo: Si ganas \$2,500.00 por mes (pago de \$1,250.00 por quincena) multiplicado por 12 meses, equivale a \$30,000.00; dividido por 52 semanas equivale a \$576.92 dividido por 40 horas equivale a \$14.42 por hora normal. La hora extra es tiempo y medio (1.5 x \$14.42) lo cual equivale a \$21.63 por cada hora de tiempo extra.*

# OF REG. HOURS: This number will very rarely exceed 40 weekly, 80 hours biweekly or 96 hours semimonthly.

# (Número) de horas regulares que muy raramente excederá 40 horas por semana, o 80 horas bisemanales, o 96 horas por un periodo quincena.

OVERTIME RATE: Is 1.5 times the regular rate of pay or time and one half.  
*Tasa de horas extra: es la tasa regular más ½ tiempo o sea a tiempo y medio.*

# OF O.T. HOURS: The number of overtime hours worked. Please see information at the top of this explanation in order to calculate overtime hours.

# (número) de O.T. (horas extras): El numero de horas extras trabajados. Favor de ver la información anterior para calcular las horas extras.

DOUBLE TIME RATE: Is two times the regular rate of pay.  
*Esto quiere decir dos horas por cada hora de trabajo (tiempo doble)*

# OF DOUBLE TIME HOURS: The number of double time hours worked. Please see information at the top of this explanation to calculate double time hours.

*Total de horas de tiempo doble que se trabajó. Favor de ver la información anterior para calcular las horas de tiempo doble.*

\$ EARNED: Multiply the regular hours times the hourly rate; the overtime hours times the time and one-half rate; and the double time hours times the double time rate. Add the totals to obtain the total amount earned. This is the amount you should have been paid.

*Total (cantidad) ganado. Multiplique las horas normales por la tasa de hora; las horas de tiempo extra por la tasa de tiempo y medio (1.5); y las horas de tiempo doble por la tasa de tiempo doble (2). Sume los totales para obtener la cantidad total ganada. Ésta es la suma de lo que tendrían que haberle pagado.*

\$ PAID: This is the total gross amount you received from your employer part of which may be in cash and part of which may have been by check or with a deduction statement. It is the total amount you received for working this pay period.

*\$(total) pagado, esto es la cantidad bruta que usted recibió de su empleador, parte de la cual puede ser en efectivo y parte de la cual puede haber sido pagada por cheque o con una declaración de deducción. Este es el total que usted recibió por el periodo de tiempo que trabajó*

\$ OWED: This is the gross amount that your employer owes you. You arrive at this amount by subtracting \$ earned from \$ paid.

*Salario que se le debe (cantidad debida) esto es la cantidad bruta que su empleador le debe. Usted determina esta cantidad restando el total ganado menos el total pagado.*

TOTAL EACH COLUMN: Add up each pay period and you will have a partial total of the hours worked and the amount due. If you have a number of sheets completed use the final sheet for the grand total, combining each page's total for a grand total. *Sume cada columna. Si usted suma cada período del pago usted tendrá un total parcial de las horas trabajadas y el total que le deben. Si usted completa varias hojas, utilice la hoja final e incorpore el total de cada página para determinar la suma final.*

The calculations above are used to calculate penalties in the event they are found due. Public policy in California has long favored the full and prompt payment of wages due an employee. To ensure that employers comply with the laws governing the payment of wages when an employment relationship ends, the Legislature enacted Labor Code section 203 which provides for the assessment of a penalty against the employer when there is a willful failure to pay wages due the employee at conclusion of the employment relationship. The penalty is measured at the employee's daily rate of pay and is calculated by multiplying the daily wage by the number of days that the employee was not paid, up to a maximum of 30 days.

*Los cálculos arriba se utilizan para calcular multas en el evento que se encuentren debidos. La orden pública en California ha favorecido el pago completo y pronto de los salarios debidos a un empleado. Para asegurarse de que los patrones se conformen con las leyes que gobiernan el pago de salarios cuando termina la relación del empleo, la legislatura aprobó la sección 203 del código de trabajo que proporciona para el monto de una multa contra el patrón cuando hay una falta voluntariosa de pagar salarios debidos al empleado al concluir la relación de empleo. La multa se mide en el índice diario del pago del empleado y es calculada multiplicando el salario por día por el número de los días que el empleado no fue pagado, hasta un máximo de 30 días.*

#### **MEAL & REST PERIODS SECTION**

**# OF DAYS'REST PERIODS MISSED:** One 10-minute rest period is required for every four hours worked or major fraction of four hours. Enter the total number of days in the pay period that you did not receive one or more rest periods. Regardless of whether you missed one rest period or more than one rest period, you count only one per day.

*Periodos De Comida y Descanso: Por cada cuatro horas de trabajo es necesario cumplir con 10 minutos de descanso. Complete el total de días por cada periodo de paga en el cual no recibió uno o más periodos de descanso. Si faltó en recibir uno o más periodos de descanso solamente calcule uno por día.*

#OF DAYS MEAL PERIODS MISSED: Generally, a 30-minute, unpaid meal period is required if your workday exceeds five hours. Enter the total number of days in the pay period that you did not receive one or more meal periods. Regardless of whether you missed one meal period or more than one meal period, you count only one per day.

*Total de Días que no recibió los Periodos de Comida: por lo general, si trabaja en exceso de cinco horas, se recibe el periodo de comida de 30 minutos remunerado. Complete el total de días por cada periodo de paga en la cual no recibió uno o más periodos de comida. Solamente calcule un periodo de comida por día.*

At the bottom of these columns you would total the number of days you have missed meal periods and the number of days you have missed rest periods for the pay period. *Al fondo de estas columnas usted calculará el total de días que no recibió periodos de comida y el total de días sin descanso por cada periodo de paga.*

<http://www.dir.ca.gov/80/dlse/DistrictOffices.htm>
Go AUG OCT DEC
854 captures
29 Aug 2000 - 19 Dec 2017
◀ 06 ▶
2013 2014 2015
▼ Altium: No capture



CA.gov | Contact DIR | Press Room

Search This Site California

[Home](#)
[Labor Law](#)
[Cal/OSHA - Safety & Health](#)
[Workers' Comp](#)
[Self Insurance](#)
[Apprenticeship](#)
[Director's Office](#)
[Boards](#)

Division of Labor Standards Enforcement (DLSE)

## Contact the Labor Commissioner's Office

español

For general information, please read our frequently asked questions. You can also contact the office closest to your workplace. Locate the office by looking at the list of offices below or using the alphabetical listing of cities, locations, and communities. Staff are available in person and by telephone.

Please note: If telephone call volume is high, your call will be answered in the order received.

**Bakersfield**  
7718 Meany Ave  
Bakersfield, CA 93308  
(861) 567-3060

**Sacramento**  
2031 Howe Avenue,  
Suite 100  
Sacramento, CA 95825  
(916) 263-1811

**Santa Ana**  
605 West Santa Ana Blvd., Bldg. 28,  
Room 625  
Santa Ana, CA 92701  
(714) 558-4910

**El Centro**  
1550 W. Main St.  
El Centro, CA 92243  
(760) 353-0807

**Salinas**  
1870 N. Main St.,  
Suite 150  
Salinas, CA 93908  
(831) 443-3041

**Santa Barbara**  
411 E. Canon Perdido,  
Room 3  
Santa Barbara, CA 93101  
(805) 668-1222

**Fresno**  
770 E. Shaw Avenue,  
Ste. 222  
Fresno, CA 93710  
(559) 244-5340

**San Bernardino**  
484 W. Fourth Street,  
Room 348  
San Bernardino, CA 92401  
(909) 383-4334

**Santa Rosa**  
50 "D" Street,  
Suite 380  
Santa Rosa, CA 95404  
(707) 576-2362

**Long Beach**  
300 Oceangate,  
Suite 302  
Long Beach, CA 90802  
(562) 590-5048

**San Diego**  
7575 Metropolitan Dr.,  
Room 210  
San Diego, CA 92108  
(619) 220-5461

**Stockton**  
31 E. Channel Street,  
Room 317  
Stockton, CA 95202  
(209) 948-7771

**Los Angeles**  
320 W. Fourth Street,  
Suite 450  
Los Angeles, CA 90013  
(213) 620-6330

**San Francisco**  
455 Golden Gate Ave.,  
10th Floor  
San Francisco, CA 94102  
(415) 703-5300  
DLSE2@dir.ca.gov

**Van Nuys**  
8150 Van Nuys Blvd.,  
Room 206  
Van Nuys, CA 91401  
(818) 901-5315

**Oakland**  
1515 Clay Street,  
Suite 801  
Oakland, CA 94612  
(510) 822-3273

**San Francisco--Headquarters**  
455 Golden Gate Avenue,  
9th Floor  
San Francisco, CA 94102  
(415) 703-4810  
DLSE2@dir.ca.gov

**Van Nuys - Entertainment Work Permits**  
8150 Van Nuys Blvd.,  
Room 100  
Van Nuys, CA 91401  
(818) 901-5484  
Walk in Service Available At This Location  
Monday through Friday  
9:00 a.m. to noon and 1:00 p.m. to 4:00 p.m.  
Unit Office closed noon to 1:00 p.m.

**Redding**  
2115 Civic Center Drive,  
Room 17

**San Jose**  
100 Paseo de San Antonio,  
Room 120  
San Jose, CA 95113

### Labor Commissioner's Office

#### Quick Links

- [Apply for a Farm Labor Contractor license online](#)
- [Make an online payment](#)
- [Verify a license or registration](#)
- [Find a wage order](#)
- [Labor law training](#)
- [Forms](#)
- [Publications](#)
- [Frequently asked questions](#)

#### About DLSE

- [About Us](#)
- [Contact Us](#)
- [Locations](#)

[DLSE Home](#)

LC00146



<http://www.dir.ca.gov/80/dlse/DistrictOffices.htm> Go AUG OCT DEC  
 (530) 225-2655  
 864 captures  
 29 Aug 2000 - 18 Dec 2017  
 May 2013  
 06  
 2013 2014 2015  
 About this capture

**File a Claim**

- Wage claims
- Bureau of Field Enforcement
- Public works complaints
- Claims for retaliation or discrimination

**More Services**

- Public records requests
- Translations
- Verify a license or registration
- Find a wage order
- Online payments
- Haga un pago por línea

**Learn more about DLSE**

- Frequently asked questions
- Archives
- DLSE site map
- Workplace postings
- Legislative reports

**About DIR**

- Who we are
- DIR Divisions, Boards & Commissions
- Contact DIR

**Work with Us**

- Licensing, registrations, certifications & permits
- Notification of activities
- Public Records Act

**Learn More**

- Site Map
- Frequently Asked Questions
- Jobs at DIR

[Conditions of Use](#) | [Privacy Policy](#) | [Disclaimer](#) | [Disability accommodation](#) | [Site Help](#)

Copyright © 2014 State of California

**EXHIBIT 21**



State of California  
Department of Industrial Relations

Labor Commissioner's Office | How to file a wage claim

## How to file a wage claim

What is a wage claim?

An employee or former employee may file an **INDIVIDUAL** wage claim to recover:

- Unpaid wages, including overtime, commissions and bonuses.
- Wages paid by check issued with insufficient funds.
- Final paycheck not received.
- Unused vacation hours that were not paid upon termination of the employment relationship, e.g., a quit, discharge, or layoff.
- Unauthorized deductions from paychecks.
- Unpaid/non-reimbursed business expenses.
- Reporting time pay/split shift premiums.
- Failure to provide a meal and/or rest period in accordance with the applicable Industrial Welfare Commission Order.
- Liquidated damages for failure to receive minimum wage for each hour worked.
- Waiting time penalties for failure to receive final wages timely upon separation of employment.
- Penalties for paycheck(s) that have bounced or are not negotiable within 30 days of receipt. Penalties for employer's failure to allow inspection or copying of payroll records within 21 days of request.
- Sick Leave Pay for time accrued and used for which you were not paid (effective July 1, 2015).

If you are a garment worker, you have special rights. Learn more about how to file a garment wage claim.

Read more about the wage claim process

For workers: view, print or download a guide on how to recover your unpaid wages with the Labor Commissioner's Office. This guide is available in English, Spanish, Chinese, Korean, Russian, Tagalog, and Vietnamese.

[Click here](#) to get more information about the policies and procedures for processing a wage claim.

Haga clic aquí para obtener más información sobre las políticas y los procedimientos necesarios para procesar una reclamación salarial.

How do I file a wage claim?

**Download, complete, and print the Initial Report or Claim, DLSE Form 1 (Revised 07/2012).**

The Form 1 claim form is accompanied by two information sheets to assist claimants.

**LC00148**


The "Instructions for Filing a Wage Claim" explain which documents and forms should be submitted by claimants in order to file a wage claim. If you need assistance in filling out the Form 1, the "Guide to Completing Initial Report or Claim Form" is a question-by-question guide that presents some basic information about each question on the claim form.





Please be sure to provide all information on the claim form and to sign and date the form in order to avoid delay in the claim process.

 English Form 1	 English Instructions & Guide
 Spanish Form 1 Reporte Inicial o Reclamo	 Spanish Instructions & Guide <b>Instrucciones Para Llenar Un Reclamo De Salario&gt; Guía Para Completar El "Reporte Inicial O Reclamo" (Forma DLSE 1)</b>
 Chinese Form 1 初次報告或索償	 Chinese Instructions & Guide 工資索償說明 "初次報告或索償" 表格完成指南 (DLSE 表格 1)
 Korean Form 1 초기 보고서 및 청구	 Korean Instructions & Guide 임금청구 제기 설명서 "초기 보고서 또는 청구"양식(DLSE 1 양식서) 완료 안내서
 Vietnamese Form 1 Khiếu nại hoặc Báo cáo Bước đầu	 Vietnamese Instructions & Guide HƯỚNG DẪN NỘP ĐƠN KHIẾU NẠI TIỀN LƯƠNG Hướng dẫn Điền Đơn "Khiếu nại hoặc Báo cáo Bước đầu"(DLSE Form 1)
 Tagalog Form 1 Inisyal na Ulat o Paghahabol	 Tagalog Instructions & Guide Mga Instruksiyon Para Sa Pagsasampa Ng Isang Paghahabol Ng Sahod Gabay sa Pagkumpleto ng Form para sa "Inisyal na Ulat o Paghahabol" (DLSE Form 1)
 Punjabi Form 1 ਸ਼ੁਰੂਆਤੀ ਰਿਪੋਰਟ ਜਾਂ ਦਾਅਵਾ	 Punjabi Instructions & Guide ਮਜ਼ਦੂਰੀ ਦਾ ਦਾਅਵਾ ਭਰਨ ਵਾਸਤੇ ਹਿਦਾਇਤਾਂ "ਸ਼ੁਰੂਆਤੀ ਰਿਪੋਰਟ ਜਾਂ ਦਾਅਵਾ" ਫਾਰਮ (DLSE ਫਾਰਮ 1) ਭਰਨ ਲਈ ਗਾਈਡ

What other DLSE forms must be submitted with my Initial Report or Claim (DLSE 1)?

**IMPORTANT:** Along with your completed "Initial Report or Claim" form (Form 1), submit these additional DLSE forms if any of the following situations apply to you:

- **DLSE Form 55 for claimants who worked irregular hours:** If your work hours and/or days of work varied per week or were irregular and you are claiming unpaid wages (for non-overtime or overtime hours worked) or meal and rest period violations, then also fill out and submit the DLSE Form 55.
  - Download, print and complete the DLSE-55 (Rev. 10/03). See Sample DLSE-55.
  - Instructions (DLSE-55)/ Instrucciones (la Forma DLSE 55) 
- **DLSE Form 155 for claimants with commission claims:** If you are claiming commission pay, then also fill out and submit the DLSE Form 155.

- Download, print and complete the DLSE-155 (Rev.12/03). See Sample DLSE-155.
- Instructions (DLSE-155)/ Instrucciones (la Forma DLSE 155):  Pdf
- **DLSE Vacation Pay Schedule for claimants seeking vacation wages:** If you are claiming vacation wages, then also fill out and submit the DLSE Vacation Pay Schedule form.
  - Download, print and complete the DLSE Vacation Pay Schedule . See Sample Vacation Pay Schedule .
  - NOTE: Sample is for review only, do not use.*
  - Instructions (Recapitulation of Vacation Pay)/ Instrucciones (Recapitulación de Pago de Vacaciones) 
- **Claimants who are represented:** If you are represented by an attorney or other advocate, you may submit a calculation prepared by your attorney or advocate instead of the DLSE Form 55, DLSE Form 155, or DLSE Vacation Pay Schedule required above.

What supporting documents should I submit with my Initial Report or Claim (DLSE 1)?

**IMPORTANT:** Along with your completed "Initial Report or Claim" form (Form 1), submit **one copy** of the following documents, if you have them (**DO NOT SUBMIT ORIGINAL DOCUMENTS**):

- **Time records.** Provide a **COPY** of any records you kept of the hours and dates you worked that support your claim.
- **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.
- **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.
- **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.

**NOTE:** *It is the employer's legal responsibility to keep accurate employee time and payroll records, and to provide employees with itemized wage statements 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.*

- **Collective Bargaining Agreement.** If your employment was covered by a union contract, provide a **COPY** of the Collective Bargaining Agreement.

Where do I file my wage claim?

File your claim by mail, fax, email, or in person with the Labor Commissioner's Office location that handles wage claims for the city/location/community where you performed the work. To locate such office, click here for an alphabetical listing of click here for an alphabetical listing of

LC00150

cities/locations/communities.

**We are currently working toward a solution to enable electronic filing via our web application in the future. However at this time, we do allow digital signatures on our claim forms.**

How do I get status on an open or closed wage claim file?

You can call our offices. However, you may be able to receive a quicker response by sending us an email. Please send the email to the address for the district office that is handling/was handling your claim. Please note that these email addresses are only for questions having to do with an open or closed wage claim. These email addresses are not for general questions that are not related to a specific wage claim. **In your email, please be sure to include your claim number in the subject line. The email addresses are:**

Wage Claim Adjudication Office	Email Address
AB633	<a href="mailto:LaborComm.WCA.633@dir.ca.gov">LaborComm.WCA.633@dir.ca.gov</a>
Bakersfield	<a href="mailto:LaborComm.WCA.BAK@dir.ca.gov">LaborComm.WCA.BAK@dir.ca.gov</a>
Fresno	<a href="mailto:LaborComm.WCA.FRE@dir.ca.gov">LaborComm.WCA.FRE@dir.ca.gov</a>
Long Beach	<a href="mailto:LaborComm.WCA.LBO@dir.ca.gov">LaborComm.WCA.LBO@dir.ca.gov</a>
Los Angeles	<a href="mailto:LaborComm.WCA.LAO@dir.ca.gov">LaborComm.WCA.LAO@dir.ca.gov</a>
Oakland	<a href="mailto:LaborComm.WCA.OAK@dir.ca.gov">LaborComm.WCA.OAK@dir.ca.gov</a>
Redding	<a href="mailto:LaborComm.WCA.RED@dir.ca.gov">LaborComm.WCA.RED@dir.ca.gov</a>
Sacramento	<a href="mailto:LaborComm.WCA.SAC@dir.ca.gov">LaborComm.WCA.SAC@dir.ca.gov</a>
Salinas	<a href="mailto:LaborComm.WCA.SJO@dir.ca.gov">LaborComm.WCA.SJO@dir.ca.gov</a>
San Bernardino	<a href="mailto:LaborComm.WCA.SBO@dir.ca.gov">LaborComm.WCA.SBO@dir.ca.gov</a>

San Diego	<a href="mailto:LaborComm.WCA.SDO@dir.ca.gov">LaborComm.WCA.SDO@dir.ca.gov</a>
San Francisco	<a href="mailto:LaborComm.WCA.SFO@dir.ca.gov">LaborComm.WCA.SFO@dir.ca.gov</a>
San Jose	<a href="mailto:LaborComm.WCA.SJO@dir.ca.gov">LaborComm.WCA.SJO@dir.ca.gov</a>
Santa Ana	<a href="mailto:LaborComm.WCA.ANA@dir.ca.gov">LaborComm.WCA.ANA@dir.ca.gov</a>
Santa Barbara	<a href="mailto:LaborComm.WCA.SBA@dir.ca.gov">LaborComm.WCA.SBA@dir.ca.gov</a>
Santa Rosa	<a href="mailto:LaborComm.WCA.SFO@dir.ca.gov">LaborComm.WCA.SFO@dir.ca.gov</a>
Stockton	<a href="mailto:LaborComm.WCA.STK@dir.ca.gov">LaborComm.WCA.STK@dir.ca.gov</a>
Van Nuys	<a href="mailto:LaborComm.WCA.VNO@dir.ca.gov">LaborComm.WCA.VNO@dir.ca.gov</a>

If you do not have access to email, you can either call the assigned deputy who is handling your claim or call the main number for the office handling your claim. Please always have your claim number BEFORE you call. Include your claim number in the message.




## VIDEOS ABOUT THE WAGE CLAIMS PROCESS

## How Can the Labor Commissioner's Office Help You Recover Your Unpaid Wages?

English, Spanish, Chinese, Korean

## How the Labor Commissioner's Office Can Help Garment Workers Recover Their Unpaid Wages

English, Spanish

 If you do not already have Adobe Acrobat installed on your computer, you should download the free Acrobat Reader from Adobe's web site at [www.adobe.com](http://www.adobe.com), download instructions are available on the Adobe web site. Once you have downloaded the Acrobat Reader you can view PDF documents in your web browser if it supports plug-ins, or if it does not support plug-ins, you can save the file(s) to your hard drive and view them by opening them in Acrobat Reader.

### File a Claim

Wage claims

Bureau of Field Enforcement

Public works complaints

Claims for retaliation or discrimination

### More Services

Public records requests

Translations

Verify a license or registration

Find a wage order

Online payments

Haga un pago en línea

### Learn more about DLSE

Frequently asked questions

Archives

DLSE site map

Workplace postings

Legislative reports

---

Labor Commissioner's Office

---



## Quick Links

---

Bureau of Field Enforcement  
Wage Claim Adjudication  
Retaliation (RCI)  
Permits, Licenses, Certifications, and Registrations  
Public Works  
Electrician Certification Unit  
Frequently asked questions  
Legislative reports  
Labor Commissioner's Databases  
Private Attorney General Act (PAGA)

---

## Resources

---

Frequently asked questions  
Labor Commissioner's Databases  
Legislative reports  
Publications  
Forms

---

## About DLSE

---

About Us  
Locations, Contacts, and Hours of Operation

Jobs at DIR

**WAGE THEFT IS A CRIME**

You can **pay your bill online**.  
Need to make a payment?

About DIR

Who we are

DIR Divisions, Boards & Commissions

Contact DIR

Work with Us

Jobs at DIR

Licensing, registrations, certifications & permits

Required Notifications

Public Records Requests

Learn More

Acceso al idioma

Frequently Asked Questions

Site Map



Site Feedback

Back to Top

Conditions of Use

Privacy Policy

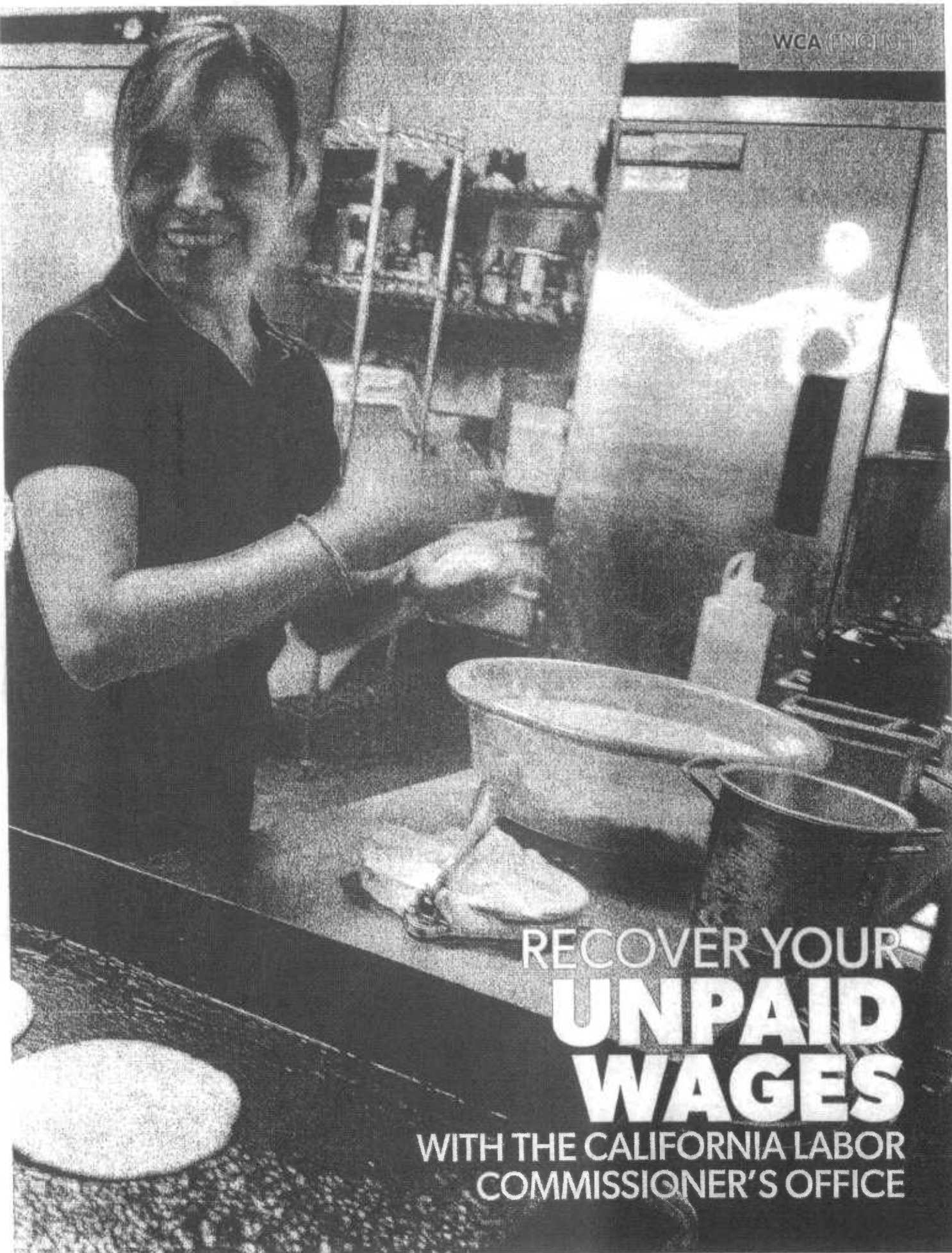
Disclaimer

Disability Accommodation

Standard Browser Usability Features

Site Help

Copyright © 2018 State of California



RECOVER YOUR  
**UNPAID  
WAGES**

WITH THE CALIFORNIA LABOR  
COMMISSIONER'S OFFICE

# The Labor Commissioner's Office,

also called the Division of Labor Standards Enforcement (DLSE), is a part of the California Department of Industrial Relations. The Labor Commissioner's Office is the state agency that decides your claim for unpaid wages. It enforces minimum labor standards to ensure employees are not permitted to work under substandard or unlawful conditions. It also protects employers who comply with the law from having to compete with those who do not.

YOU DO NOT NEED A SOCIAL SECURITY NUMBER OR PHOTO IDENTIFICATION TO FILE A CLAIM.

YOU MAY FILE A CLAIM REGARDLESS OF YOUR IMMIGRATION STATUS.

YOU DO NOT NEED A LAWYER AND THE LABOR COMMISSIONER WILL PROVIDE AN INTERPRETER IN YOUR LANGUAGE.

## THE LABOR COMMISSIONER'S OFFICE ENFORCES LABOR LAWS THROUGH THE FOLLOWING UNITS:

**THE WAGE CLAIM ADJUDICATION UNIT** reviews and decides individual claims for unpaid wages and other labor law violations.

### THE GARMENT WAGE CLAIM ADJUDICATION UNIT

reviews and decides claims filed by garment workers under the "Garment Worker Protection Act," a law known as "AB 633."

### THE BUREAU OF FIELD ENFORCEMENT (BOFE)

investigates reports of employers' failure to provide minimum wage, overtime or meal and rest periods to groups of workers. BOFE also investigates complaints against employers for violations of workers' compensation, child labor, recordkeeping, licensing, and registration laws.

**THE PUBLIC WORKS UNIT** investigates violations of labor laws on public works construction projects. "Prevailing wages" are wages that are higher than the State minimum wage and are required for workers on most public construction projects.

### THE RETALIATION COMPLAINT INVESTIGATION UNIT

investigates complaints of retaliation. "Retaliation" occurs when an employer takes actions such as firing a worker or reducing hours or pay because the worker took steps to enforce his or her labor rights.

**THE JUDGMENT ENFORCEMENT UNIT** helps workers to collect their wages after the Labor Commissioner determines that an employer owes unpaid wages.

VIOLATIONS OF BASIC LABOR LAW PROTECTIONS SUCH AS NOT PAYING MINIMUM WAGE AND OVERTIME IS CALLED **WAGE THEFT**. IF YOU HAVE EXPERIENCED WAGE THEFT, FILE A WAGE CLAIM WITH THE LABOR COMMISSIONER.

# HOW TO RECOVER YOUR UNPAID WAGES



1

## PREPARE TO FILE

### CHECK THE DEADLINE

- You must file claims for violations of minimum wage, overtime, illegal deductions from pay or unpaid reimbursements within **three years**.
- You must file claims based on an oral promise to pay more than minimum wage within **two years**.
- You must file claims based on a written contract within **four years**.

### RESEARCH

Gather any documents you have to prove your claim, such as paystubs, time sheets, calendars or notes about your work hours. If possible, identify any property your employer owns, such as buildings, equipment, and inventory, in case you win your case but your employer refuses to pay. This information may be used to collect your unpaid wages and the Deputy Labor Commissioner assigned to your claim will ask you to list this property.

### IDENTIFY ALL YOUR EMPLOYERS

Many workers have one single employer, but some may have more than one employer. Be aware that any person or business that has control over wages, hours or working conditions may be included as a defendant in your claim and may be responsible for your wages.



"I worked as a janitor at a supermarket. The supermarket manager gave me my schedule and supervised me daily. However, my paychecks came from another cleaning company and my uniform had their name on it. I filed a claim because I was not paid for my overtime hours. The Labor Commissioner decided that both the supermarket and the cleaning company were responsible for my unpaid wages."



## 2

## FILE A CLAIM

Complete and file the "Initial Report or Claim" with the Labor Commissioner district office that handles wage claims for the city where you worked. This form is available at any of the Labor Commissioner office locations and at the agency's website ([www.dir.ca.gov/dlse](http://www.dir.ca.gov/dlse)). Claim forms are available in English, Spanish, Chinese, Korean, Vietnamese, Tagalog, Thai, and Russian. If you go to the Labor Commissioner to file your claim, there may be interpreters to help you in your language. However, it is still a good idea to bring someone who can interpret for you, if needed. Indicate your primary language on the claim form to receive interpretation assistance in the future.

Submit the form with copies of your supporting documents. Do not submit originals, as they may not be returned to you. After you file your Initial Report or Claim, you and your employer will be notified by mail about the next steps of your claim. Update the Deputy Labor Commissioner assigned to your claim in writing of any change in your address or phone number.

You must attend the settlement conference and hearing or your claim may be dismissed. If you are unable to attend the conference in person, you may be able to participate by phone by making prior arrangements with your assigned Deputy Labor Commissioner.

**THE LABOR COMMISSIONER'S OFFICE IS HERE TO PROTECT YOUR RIGHTS, REGARDLESS OF YOUR IMMIGRATION STATUS. WE WILL NOT ASK ABOUT YOUR IMMIGRATION STATUS OR REPORT YOUR IMMIGRATION STATUS TO OTHER GOVERNMENT AGENCIES.**



### 3 ATTEND A SETTLEMENT CONFERENCE

A settlement conference will be scheduled for most claims. During this conference, a Deputy Labor Commissioner will try to help you and your employer reach a settlement agreement for the payment of your claim. At any point during the conference you may ask to speak with the Deputy Labor Commissioner in private. If you do not reach a settlement agreement before or during the conference, then your claim will move to a hearing.



"I filed a claim because I was not paid minimum wage for my restaurant job. My boss made a settlement offer at the conference but I rejected it because it was much less than the amount of wages I was claiming. To prepare for the hearing, I made notes of all the important dates and activities for my claim to help me remember all the facts. I practiced testifying about the hours that I worked and how much I was paid. I also asked a co-worker to attend the hearing to testify about the hours that I worked. I knew my boss would argue that I was wrong, so I made a list of questions to ask her and her witnesses. The Hearing Officer was patient and fair, and later I received a decision that ordered my employer to pay me the unpaid wages."

# 4

## PROVE YOUR CLAIM AT A HEARING

If your claim does not settle at the conference, a hearing will be scheduled and you will receive a Notice of Hearing with the hearing date and time. During the hearing, you and your employer will testify under oath and submit evidence about the claim. You are responsible for proving that your employer owes you wages. The Hearing Officer will not have any supporting documentation that you previously provided to the Labor Commissioner, so you must submit all of your evidence at the hearing.

### TO PREPARE FOR THE HEARING:

- Review your claim information, such as the hours you worked and how much you were paid, and prepare notes and a timeline of events that you can review during the hearing.
- Bring at least three sets of copies to the hearing of any documents that support your claim so that you can refer to them and provide copies to the Hearing Officer and your employer.
- If you have witnesses who can testify to support your claim, make sure they can attend the hearing.
- You have the right to question the defendants and any of their witnesses. Prepare a list of possible questions in advance.



# 5

## REVIEW THE DECISION AND **GET HELP** IF YOUR EMPLOYER APPEALS

After the hearing, you will receive a decision called an Order, Decision or Award ("ODA"). The ODA will explain the Labor Commissioner's decision and the amount that the employer must pay you, if any. An appeal must be filed within 10 days. If neither side appeals within that time, the decision will become final and enforceable as a court judgment. If your employer appeals, the Superior Court will hear the case without reviewing the decision of the Labor Commissioner. You and your employer will have to present your evidence and testimony again. You will receive a "Request for Attorney Representation" and a form called "Claimant's Financial Status." Low-income workers may use these forms to request free representation from one of the Labor Commissioner's attorneys. If you appeal the decision, you may represent yourself or hire an attorney.

### SETTLEMENT:

When you enter a **SETTLEMENT AGREEMENT**, you agree to end your claim by accepting an employer's offer to pay you an amount that may be less than the full value of your claim. You may receive a settlement offer at any point in your claim process. Accepting or rejecting a settlement offer is an important decision. You can consider the following points before you make your decision.

- **WHY ACCEPT A SETTLEMENT OFFER?** Your claim resolves promptly and you may receive payment of your wages sooner. You eliminate the risk of losing at the hearing. If you do not settle and proceed with your claim, there is a possibility that your employer will file for bankruptcy or close before you receive any wages.
- **WHY REJECT A SETTLEMENT OFFER?** You may get far less than the wages and penalties to which you are entitled according to the law. If you receive a settlement offer that is too low, you can demand more and try to negotiate for an acceptable settlement amount.

# KNOW YOUR RIGHTS:

**Minimum Wage:** Almost all employees in California must receive the minimum wage as required by State law, whether they are paid by piece rate, by commission, by the hour, or by salary.

**Overtime:** Most workers in California must receive overtime pay of:

- 1.5 times the regular rate of pay for all hours worked over 8 hours in a workday or over 40 hours in a week, and
- double the regular rate of pay for all hours worked over 12 hours in a workday.

If a worker works 7 days in a workweek, the worker must be paid:

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

However, overtime laws do not apply to all workers and certain workers, such as domestic workers and farm workers, are covered by different overtime laws.

**Hourly Wages Promised:** Your employer must pay you the wages promised. The Labor Commissioner enforces all wages an employer owes, not just minimum wage. For example, if your employer promised to pay you \$15 per hour and only paid you \$10 per hour, you may file a wage claim for the unpaid amount of \$5 per hour.

**Meal and Rest Breaks:** Most workers in California must receive an uninterrupted 30-minute unpaid meal period for every 5 hours worked and a paid 10-minute rest period for every 4 hours worked. You may be entitled to a rest break even if you work less than 4 hours. Certain workers such as domestic workers and farm workers have different meal and rest break laws.

**Deductions from Pay:** Except for withholdings required by law (such as social security tax), your employer may not withhold or deduct wages from your pay. Common violations include deductions for uniforms or tools.

**Reimbursement of Expenses:** You must receive reimbursement for all expenses reasonably necessary for your job. For example, your employer must pay for tools and supplies required for the job and must provide mileage reimbursement if you use your personal car for work. However, if you earn at least twice the minimum wage, your employer can require you to provide certain hand tools customarily used in your occupation.

**Reporting Time Pay:** If you report to work expecting to work your usual schedule, but receive less than half of your usual hours, you must still be paid for at least half of your usual hours (for a minimum of at least 2 hours). For example, a farm worker who reports to work for an 8-hour shift and only works for 1 hour must receive 4 hours of pay—1 for the hour worked, and 3 as reporting time pay, so that the worker receives pay for at least half of the expected 8-hour shift.

**Split Shift Premium:** If you work 2 or more shifts in a workday with an unpaid break of more than an hour, your employer may be required to pay a "split shift premium" which is calculated based on your rate of pay.

**Final Paychecks at Termination:** If your employer fires you, you must receive your final paycheck on your last day. If you are not paid when your job ends, you may be entitled to receive an additional payment of a day's wages for each day your employer withholds your final paycheck, for up to 30 days.

**Penalties for Bounced Checks:** If your employer writes you a check that is returned for insufficient funds, you have a right to receive penalties of up to 30 days' wages in addition to the amount of the check.

# FAQs

## 1. Who can file?

California labor laws protect all workers regardless of immigration status. The Labor Commissioner accepts complaints from any employee who performed work in California, and in some cases from public employees.

## 2. Where can I get help?

You may go to your local office of the Labor Commissioner to ask for help with your claim. Many non-profit organizations, including Legal Service Providers, help workers fill out and file claims with the Labor Commissioner.

## 3. When will I receive my unpaid wages?

It depends. Many claims settle and you receive your settlement either when you sign the settlement agreement or based on the agreed date of payment. If your case does not settle, the hearing and decision process may take several months. If you win and your employer does not pay, you have a number of collection methods available, such as requesting that the Sheriff seize your employer's assets (such as bank accounts, equipment, or inventory).

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

Your individual claim should not affect your co-workers. Co-workers who experienced the same wage violations will not recover their unpaid wages unless they file their own wage claims. You may also consider filing a Report of Labor Law Violation with the Labor Commissioner's Bureau of Field Enforcement (BOFE), the unit that investigates wage theft violations that affect groups of workers. Co-workers may recover wages as a result of a BOFE investigation.

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

California law prohibits employers from retaliating against workers for enforcing workplace rights. If your employer retaliates against you, you can file a complaint for retaliation with the Labor Commissioner's Retaliation Complaint Unit.



## LABOR COMMISSIONER'S OFFICE LOCATIONS

### BAKERSFIELD

(661) 833-3020

### EL CENTRO

(760) 353-0040

### FRESNO

(559) 431-1340

### LONG BEACH

(562) 530-0048

### LOS ANGELES

(213) 620-6330

### OAKLAND

(510) 221-3070

### REDDING

(530) 225-2655

### SACRAMENTO

(916) 263-1811

### SALINAS

(831) 443-3041

### SAN BERNARDINO

(909) 383-4334

### SAN DIEGO

(619) 220-5451

### SAN FRANCISCO

(415) 703-5200

### SAN JOSE

(408) 277-1200

### SANTA ANA

(714) 558-4910

### SANTA BARBARA

(805) 568-1222

### SANTA ROSA

(707) 576-2362

### STOCKTON

(209) 948-7771

### VAN NUYS

(818) 901-5315

REV. 09/2014

LC00164



State of California  
Department of Industrial Relations

Labor Commissioner's Office | Policies and Procedures for Wage Claim Processing

# Policies and Procedures for Wage Claim Processing

Español

## Introduction

This is to provide a basic overview of the Division of Labor Standards Enforcement's (DLSE) wage claim process and to outline the basic filing, conference, hearing and appeal procedures. Since this guide is not meant to be a definitive statement regarding the processing of wage claims, parties are strongly urged to *read all forms* received by them throughout the process. *Failure to comply with each requirement of the process may result in the loss of important rights.*

## Summary of the Procedures

Any employee who has a claim against his or her employer or former employer for unpaid wages or other compensation, which falls under the jurisdiction of the Labor Commissioner, may file a claim with DLSE which is under the direction of the State Labor Commissioner. The Labor Commissioner has no jurisdiction over those persons determined to be bona fide independent contractors and only limited jurisdiction over employees of public agencies (for example, federal, state, county or municipal employees). In addition, based on California law and court decisions, the Labor Commissioner, in some cases, does not have jurisdiction over the wage claims of union members working under collective bargaining agreements.

The Labor Commissioner, pursuant to the provisions of Labor Code Sections 98 and 98.3, has established procedures for investigating wage complaints, which may include either a conference pursuant to Section 98.3 or a hearing pursuant to Section 98(a), or both.

Sometimes claims are filed which are very complex and involve a large number of employees and records. Such claims will usually be investigated by DLSE's Bureau of Field Enforcement and not through the procedures described in this pamphlet. If this occurs, the parties will be so informed by the deputy handling the case. However, the majority of claims filed with DLSE are resolved through Section 98.3 conferences and/or Section 98(a) hearings that are explained in this pamphlet.

## Filing the Complaint

An employee (plaintiff) alleging the non-payment of wages or other compensation by his or her employer (defendant), must file a claim (the **DLSE Form 1, "Initial Report or Claim"** form) with a local office of DLSE to initiate investigation of the claim by the Labor Commissioner. When filing a claim, the plaintiff should provide as much information as possible on the "Initial Report or Claim"-form, including the legal name, location, and status (method of doing business, i.e. sole proprietorship, partnership, corporation) of the defendant.

Along with the completed "Initial Report or Claim" Form, plaintiffs should also submit these additional DLSE Forms if any of the following situations apply:

- **DLSE Form 55** (if the plaintiff's work hours or days of work varied per week or were irregular and the plaintiff is seeking unpaid wages or premium pay for meal or rest period violations)
- **DLSE Form 155** (if the claim involves commission pay)
- **DLSE "Vacation Pay Schedule"** (if the claim involves vacation wages)

In addition, along with the completed Initial Report or Claim form, the plaintiff should submit **ONE COPY** of the following documents in support of the claim, if the plaintiff has these documents (**DO NOT submit original documents**):

- Time records the plaintiff kept of the hours and dates worked that support the claim.
- Paychecks and pay stubs showing the wages paid during the claim period.
- Dishonored (or "bounced") paycheck(s) during the claim period.
- Notice of employment information (pursuant to Labor Code Section 2810.5, a notice from the employer that employees may have received after January 1, 2012, which indicates the employee's basic employment information including rate of pay, any overtime rate of pay, whether the employee was paid by the hour, shift, day, week, salary, piece, commission, or otherwise, and the regular payday).

**NOTE:** *It is the employer's legal responsibility to keep accurate employee time and payroll records, and to provide employees with itemized wage statements each time they are paid (or at least semimonthly). In order to file a claim, employees are not required to keep their own time records or to have the documents above. These documents are being requested only if employees have them because they may help DLSE better understand the claim.*

- Collective Bargaining Agreement (if the plaintiff's employment was covered by a union contract).

After the claim is assigned to a Deputy Labor Commissioner (deputy), he or she will determine, based on the circumstances of the claim, how best to proceed. Within thirty (30) days of the filing of the complaint, the deputy shall notify the parties as to the specific action which will initially be taken regarding the claim:

- referral to a conference
- referral to a hearing
- dismissal of the claim

Not all cases will go to a conference before going to a hearing. Moreover, many cases will be resolved informally before either a conference or a hearing is scheduled.

### The Conference

- If the decision has been made by the deputy to hold a conference, a Notice of Claim Filed and Conference will be sent to both parties which will describe the claim, provide the date, time and place of the conference, and direct the parties that they are expected to attend.
- The conference will be conducted informally and the parties will not be under oath. The purpose of the conference is to determine if the claim can be resolved without a hearing. Plaintiffs are not required to prove their case at the conference. The parties should be prepared to talk with the

**LC00166**

deputy about the claim, including whether there are any witnesses. However, the parties do not need to bring witnesses to the conference. Plaintiffs should bring a copy (not the original) of any document that supports the claim, but should not bring documents that have already been submitted with the claim form. Defendants should also bring any documents that support their position.

- If the defendant fails to appear at the conference, in most cases, the claim will be scheduled for a hearing. If the plaintiff fails to appear, except for good cause shown, the claim will be dismissed.
- If the case is not resolved at the conference, the deputy will determine the appropriate action with regard to the claim, usually referral to a hearing or dismissal (if there is not a legal basis to proceed).
- If the defendant makes payment of the claim, or any part of the claim, directly to the plaintiff, the plaintiff must notify the deputy. If the payment satisfies the claim in full, the case will be closed.
- The plaintiff may withdraw the claim, by written request to the deputy, at any time during the process.

### The Hearing

- If a hearing is scheduled (either after the claim is filed or after a conference), the parties will receive, either by mail or by personal service, a Notice of Hearing which will set the date, time and place of the hearing.
- Although hearings are conducted in an informal setting, they are formal proceedings, as opposed to the conference. At the hearing the parties and witnesses testify under oath, and the proceedings are recorded.
- Each party has the following basic rights at the hearing:
  1. To be represented by an attorney or other party of his or her choosing.
  2. To present evidence.
  3. To testify in his or her own behalf.
  4. To have his or her own witnesses testify.
  5. To cross-examine the opposing party and witnesses.
  6. To explain evidence offered in support of his or her position and to rebut evidence offered in opposition.
  7. To have a translator present, if necessary.
- The hearing officer has sole authority and discretion for the conduct of the hearing and may:
  1. Explain the issues and the meaning of terms not understood by the parties.
  2. Set forth the order in which persons will testify, cross-examine and give rebuttal.
  3. Assist parties in the cross-examination of the opposing party and witnesses.
  4. Question parties and witnesses to obtain necessary facts.
  5. Accept and consider testimony and documents offered by the parties or witnesses.
  6. Take official notice of well-established matters of common knowledge and/or public records.
  7. Ascertain whether there are stipulations by the parties that may be entered into the record.>
- You should bring all documents that will support your position. An employer who intends to introduce business records into evidence should also bring a person to the hearing who can

explain how such records were prepared. **If available, the originals of all documents should be brought to the hearing plus two sets of copies.**

- If you wish witnesses to testify, you may arrange for the witnesses to attend voluntarily or you may request issuance of a personal subpoena to compel their attendance.
- Subpoenas for documents, records or witnesses must be issued by the Labor Commissioner. Applications to the Labor Commissioner for issuance of subpoenas should be made at least fifteen (15) business days prior to the date of the hearing. Submit a written request, using Information for Subpoena (DLSE 564) stating the reasons you feel the documents, records or witnesses are relevant or necessary. Costs incurred in the service of a subpoena, witness fees and mileage will be borne by the party requesting the subpoena.
- Changes in the date, time or place of the hearing will not be granted except upon the showing of extraordinary circumstances. The decision to grant such a request is within the sole discretion of the hearing officer and senior deputy, and will be rare.
- If the plaintiff fails to attend the hearing, the case will be dismissed.
- If the defendant is served with a notice of hearing and fails to attend the hearing, the hearing officer will decide the matter on the evidence he or she receives from the plaintiff.
- The hearing officer is not bound by formal rules of evidence and therefore, has wide discretion in accepting evidence. He or she also has discretion in deciding whether the assessment of penalties is appropriate in a particular case.
- Within fifteen (15) days after the hearing, the Order, Decision or Award (ODA) of the Labor Commissioner will be filed in the DLSE office and served on the parties shortly thereafter. The ODA will set forth the decision and the amount awarded, if any, by the hearing officer.

### Appeal to Civil Court

Either party, or both, pursuant to Labor Code Section 98.2, may appeal the Labor Commissioner's ODA to the appropriate court, in accordance with the applicable rules of jurisdiction. The party appealing may obtain a Notice of Appeal (DLSE 537) from the DLSE office. The appeal must be filed in court within the time period set forth on the ODA, and a copy of the Notice of Appeal must be served on the Labor Commissioner and the opposing party. Whenever the defendant files an appeal, a bond in the amount of the ODA must be posted with the reviewing court. The court clerk will then set the matter for de novo hearing, which means that a judge will hear the case again with each party having the opportunity to present evidence and witnesses.

In the case of an appeal by a defendant, DLSE may represent a plaintiff who is financially unable to afford counsel in the appeal proceedings. The decision to represent the plaintiff is within the sound discretion of DLSE legal staff. The plaintiff must meet the financial criteria set forth by DLSE. The assigned deputy will send to the plaintiff a Request for Attorney Representation (DLSE 553) along with a Statement of Financial Status (DLSE 554) that must be completed and returned to the DLSE office. If the plaintiff does not meet the requirements for representation, he or she will be notified by the legal staff of the reasons that DLSE will not be providing legal representation.

June 2012

## File a Claim

Wage claims

Bureau of Field Enforcement

Public works complaints

Claims for retaliation or discrimination

## More Services

Public records requests

Translations

Verify a license or registration

Find a wage order

Online payments

Haga un pago en línea

## Learn more about DLSE

Frequently asked questions

Archives

DLSE site map

Workplace postings

Legislative reports

---

Labor Commissioner's Office

---

---

## Quick Links

---

Bureau of Field Enforcement

Wage Claim Adjudication

Retaliation (RCI)

Permits, Licenses, Certifications, and Registrations

Public Works



Electrician Certification Unit

Frequently asked questions

Legislative reports

Labor Commissioner's Databases

Private Attorney General Act (PAGA)

---

## Resources

---

Frequently asked questions

Labor Commissioner's Databases

Legislative reports

Publications

Forms

---

## About DLSE

---

About Us

Locations, Contacts, and Hours of  
Operation

Jobs at DIR

**WAGE THEFT IS A CRIME**

You can **pay your bill online**.

Need to make a payment?

( Haga un pago en línea. )

About DIR

Who we are

Work with Us

Jobs at DIR

Learn More

Acceso al idioma

[DIR Divisions, Boards & Commissions](#)

[Licensing, registrations, certifications & permits](#)

[Frequently Asked Questions](#)

[Contact DIR](#)

[Required Notifications](#)

[Site Map](#)

[Public Records Requests](#)



[Site Feedback](#)

[Back to Top](#)

[Conditions of Use](#)

[Privacy Policy](#)

[Disclaimer](#)

[Disability Accommodation](#)

[Standard Browser Usability Features](#)

[Site Help](#)

Copyright © 2018 State of California

## 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."

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.

- 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.**

**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: _____ / _____ / _____ Month Day Year <input type="checkbox"/> NO [If you have been retaliated against, you may file a retaliation complaint by filling out another form, "DLSE FORM 205."]
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				

PRINT YOUR NAME: \_\_\_\_\_

### Part 4: FINAL WAGES / BOUNCED CHECKS

25. DATE OF HIRE ____/____/____ Month Day Year	26. Check which box applies to you: <input type="checkbox"/> Still working for employer <input type="checkbox"/> QUIT on ____/____/____ Month Day Year <input type="checkbox"/> DISCHARGED on ____/____/____ Month Day Year <input type="checkbox"/> Other (specify): _____
27a. If you QUIT, did you give 72 hours notice before quitting? <input type="checkbox"/> YES <input type="checkbox"/> NO	27b. If you QUIT, have you received your final payment of wages including all wages owed? <input type="checkbox"/> YES, on: ____/____/____ Month Day Year <input type="checkbox"/> NO
28. If you were DISCHARGED, have you received your final payment of wages including all wages owed? <input type="checkbox"/> YES, on: ____/____/____ Month Day Year <input type="checkbox"/> NO	
29a. How were your wages paid? <input type="checkbox"/> BY CHECK <input type="checkbox"/> BY CASH <input type="checkbox"/> BY BOTH CASH & CHECK <input type="checkbox"/> OTHER: _____	29b. If paid by check, did any of your paychecks "bounce" (for example, paycheck could not be cashed because employer has insufficient funds)? <input type="checkbox"/> YES <input type="checkbox"/> NO

### Part 5: HOURS YOU TYPICALLY WORKED

30. Check which box applies:  My work hours and days of work were usually the same each week that I worked.  
 My work hours and/or days of work varied per week or were irregular. If you checked this box and you are claiming unpaid wages or meal and rest period violations, you should also fill out and submit the DLSE FORM 55.

31. If your work hours and days of work were usually the same each week, give your BEST ESTIMATE below of the hours you usually worked and any time you took for a duty-free meal period during your TYPICAL workweek. DO NOT fill this out if your work hours were too irregular to estimate a typical or average workweek (instead fill out the DLSE Form 55).

	TIME WORK STARTED	TIME WORK ENDED	1st MEAL START TIME (if applicable)	1st MEAL END TIME (if applicable)	2nd MEAL START TIME (if applicable)	2nd MEAL END TIME (if applicable)	ONLY IF YOU WORKED A SPLIT SHIFT:	
DAY 1 of your workweek:	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am ____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am ____ <input type="checkbox"/> pm
DAY 2 of your workweek:	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am ____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am ____ <input type="checkbox"/> pm
DAY 3 of your workweek:	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am ____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am ____ <input type="checkbox"/> pm
DAY 4 of your workweek:	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am ____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am ____ <input type="checkbox"/> pm
DAY 5 of your workweek:	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am ____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am ____ <input type="checkbox"/> pm
DAY 6 of your workweek:	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am ____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am ____ <input type="checkbox"/> pm
DAY 7 of your workweek:	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	<input type="checkbox"/> am ____ <input type="checkbox"/> pm	1st shift ended at <input type="checkbox"/> am ____ <input type="checkbox"/> pm	2nd shift started at <input type="checkbox"/> am ____ <input type="checkbox"/> pm



**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):			\$
<b>ENTER SUBTOTAL (add all Amounts Earned/Claimed):</b>			\$
<b>ENTER TOTAL AMOUNT PAID:</b>			\$
<b>GRAND TOTAL OWED [Subtotal minus Total Amount Paid]:</b>			\$

\*\*\* 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: Name & Address of Advocate:		Phone No. of Defendant:		DATE(S) CLAIM RECEIVED			
Phone No. of Advocate: Address change of Claimant as of:		Address change of Defendant 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:



State of California  
**Department of Industrial Relations**

Labor Commissioner's Office | Contact the Labor Commissioner's Office

## Contact the Labor Commissioner's Office

► en Español

For general information, please read our frequently asked questions. You can also contact the office closest to your workplace. Locate the office by looking at the list of offices below or using the alphabetical listing of cities, locations, and communities. Staff are available in person and by telephone.

**Please note:** If telephone call volume is high, your call will be answered in the order received. Our hours of operation are weekdays from 8:00 AM until 5:00 PM except for the following offices: Redding, Salinas, Santa Barbara, and Santa Rosa. The hours of operation for the public desk (PID) in those four offices are 9:00 AM to 1:00 PM, closed from 1:00 PM until 2:00 PM, then open again from 2:00 PM until 5:00 PM. However, the lobby of those offices might be open sooner to accommodate people who have conferences, hearings, an Order to Appear, or meetings.

The email addresses listed below are for information on open or closed wage claims only, as well as new wage claim filings. Any general questions not pertaining to an open or closed wage claim, or new wage claim filing, will not receive a response. General questions should be directed to [DLSE2@dir.ca.gov](mailto:DLSE2@dir.ca.gov).

### Bakersfield

7718 Meany Ave  
 Bakersfield, CA 93308  
 (661) 587-3060  
[LaborComm.WCA.BAK@dir.ca.gov](mailto:LaborComm.WCA.BAK@dir.ca.gov)

### San Diego

7575 Metropolitan Dr.,  
 Room 210  
 San Diego, CA 92108  
 (619) 220-5451  
[LaborComm.WCA.SDO@dir.ca.gov](mailto:LaborComm.WCA.SDO@dir.ca.gov)

### El Centro

1550 W. Main St.  
 El Centro, CA 92243  
 (760) 353-0607

### San Francisco

455 Golden Gate Ave.,  
 10th Floor  
 San Francisco, CA 94102  
 (415) 703-5300  
[LaborComm.WCA.SFO@dir.ca.gov](mailto:LaborComm.WCA.SFO@dir.ca.gov)

### Fresno

770 E. Shaw Avenue,  
 Ste. 222  
 Fresno, CA 93710  
 (559) 244-5340  
[LaborComm.WCA.FRE@dir.ca.gov](mailto:LaborComm.WCA.FRE@dir.ca.gov)

### San Jose

100 Paseo de San Antonio,  
 Room 120  
 San Jose, CA 95113  
 (408) 277-1266  
[LaborComm.WCA.SJO@dir.ca.gov](mailto:LaborComm.WCA.SJO@dir.ca.gov)

### Long Beach

300 Oceangate,

### Santa Ana

605 West Santa Ana Blvd., Bldg. 28,

Suite 302  
 Long Beach, CA 90802  
 (562) 590-5048  
 LaborComm.WCA.LBO@dir.ca.gov

**Los Angeles**

320 W. Fourth Street,  
 Suite 450  
 Los Angeles, CA 90013  
 (213) 620-6330  
 LaborComm.WCA.LAO@dir.ca.gov

**Oakland**

1515 Clay Street,  
 Suite 801  
 Oakland, CA 94612  
 (510) 622-3273  
 LaborComm.WCA.OAK@dir.ca.gov

**Redding**

250 Hemsted Drive,  
 2nd Floor, Suite A  
 Redding, CA 96002  
 (530) 225-2655  
 PID 9:00 AM – 1:00 PM,  
 2:00 PM – 5:00 PM  
 LaborComm.WCA.RED@dir.ca.gov

**Sacramento**

2031 Howe Avenue,  
 Suite 100  
 Sacramento, CA 95825  
 (916) 263-1811  
 LaborComm.WCA.SAC@dir.ca.gov

**Salinas**

950 E. Blanco Rd.,  
 Suite 204  
 Salinas, CA 93901  
 (831) 443-3041  
 PID 9:00 AM – 1:00 PM,  
 2:00 PM – 5:00 PM

Room 625  
 Santa Ana, CA 92701  
 (714) 558-4910  
 LaborComm.WCA.ANA@dir.ca.gov

**Santa Barbara**

411 E. Canon Perdido,  
 Room 3  
 Santa Barbara, CA 93101  
 (805) 568-1222  
 PID 9:00 AM – 1:00 PM,  
 2:00 PM – 5:00 PM  
 LaborComm.WCA.SBA@dir.ca.gov

**Santa Rosa**

50 "D" Street,  
 Suite 360  
 Santa Rosa, CA 95404  
 (707) 576-2362  
 PID 9:00 AM – 1:00 PM,  
 2:00 PM – 5:00 PM  
 LaborComm.WCA.SRO@dir.ca.gov

**Stockton**

31 E. Channel Street,  
 Room 317  
 Stockton, CA 95202  
 (209) 948-7771  
 LaborComm.WCA.STK@dir.ca.gov

**Van Nuys**

6150 Van Nuys Blvd.,  
 Room 206  
 Van Nuys, CA 91401  
 (818) 901-5315  
 LaborComm.WCA.VNO@dir.ca.gov

**Van Nuys - Entertainment Work Permits**

6150 Van Nuys Blvd.,  
 Room 100  
 Van Nuys, CA 91401  
 (818) 901-5484  
 Walk In Service Available At This Location:  
 9:00 a.m. to 12:00 p.m. - Monday and Friday

LaborComm.WCA.SAL@dir.ca.gov

9:00 a.m. to 4:00 p.m. - Tuesday, Wednesday and Thursday

**San Bernardino**

464 W. Fourth Street,

Room 348

San Bernardino, CA 92401

(909) 383-4334

LaborComm.WCA.SBO@dir.ca.gov

**Oakland**

**(Headquarters)**

1515 Clay Street,

Room 401

Oakland, CA 94612

(510) 285-2118

DLSE2@dir.ca.gov

February 2018

**File a Claim**

Wage claims

Bureau of Field Enforcement

Public works complaints

Claims for retaliation or discrimination

**More Services**

Public records requests

Translations

Verify a license or registration

Find a wage order

Online payments

Haga un pago en línea

**Learn more about DLSE**

Frequently asked questions

Archives

- DLSE site map
- Workplace postings
- Legislative reports

---

## Labor Commissioner's Office

---

---

### Quick Links

---

- Bureau of Field Enforcement
- Wage Claim Adjudication
- Retaliation (RCI)
- Permits, Licenses, Certifications, and Registrations
- Public Works
- Electrician Certification Unit
- Frequently asked questions
- Legislative reports
- Labor Commissioner's Databases
- Private Attorney General Act (PAGA)

---

### Resources

---

- Frequently asked questions
- Labor Commissioner's Databases
- Legislative reports
- Publications
- Forms

---

### About DLSE

---

- About Us
- Locations, Contacts, and Hours of Operation

Jobs at DIR

# WAGE THEFT IS A **CRIME**

You can **pay your bill online**.  
Need to make a payment?  
( Haga un pago en línea. )

## About DIR

Who we are

DIR Divisions, Boards & Commissions

Contact DIR

## Work with Us

Jobs at DIR

Licensing, registrations, certifications & permits

Required Notifications

Public Records Requests

## Learn More

Acceso al idioma

Frequently Asked Questions

Site Map

**Site Feedback**



[Back to Top](#)

[Conditions of Use](#)

[Privacy Policy](#)

[Disclaimer](#)

[Disability Accommodation](#)

[Standard Browser Usability Features](#)

[Site Help](#)

Copyright © 2018 State of California

**EXHIBIT 22**



This information is provided free of charge by the Department of Industrial Relations from its web site at [www.dir.ca.gov](http://www.dir.ca.gov). These regulations are for the convenience of the user and no representation or warranty is made that the information is current or accurate. See full disclaimer at [http://www.dir.ca.gov/od\\_pub/disclaimer.html](http://www.dir.ca.gov/od_pub/disclaimer.html).

**Chapter 6. Division of Labor Standards Enforcement**  
**Subchapter 6.5. Hearings on Actions to Recover Wages, Penalties, and Other Demands for Compensation and on Claims from Holders of Dishonored Payroll Checks or Drafts**

**Article 1. Rules of Practice and Procedure**

New Query

---

**§13500. Definition of "DIVISION."**

---

As used herein, the term "DIVISION" shall mean the DIVISION OF LABOR STANDARDS ENFORCEMENT of the Department of Industrial Relations of the State of California, formerly called DIVISION OF LABOR LAW ENFORCEMENT.

NOTE: Authority cited: Section 98.8, Labor Code. Reference: Section 82, Labor Code.

**HISTORY**

1. New Group 6.5 (Article 1, Sections 13500-13510, not consecutive) filed 1-4-77 as an emergency; effective upon filing (Register 77, No. 2).
2. Certificate of Compliance filed 5-2-77 (Register 77, No. 19).
3. Amendment of NOTE filed 8-21-87; operative 9-20-87 (Register 87, No. 35).

[Go Back to Article 1 Table of Contents](#)

This information is provided free of charge by the Department of Industrial Relations from its web site at [www.dir.ca.gov](http://www.dir.ca.gov). These regulations are for the convenience of the user and no representation or warranty is made that the information is current or accurate. See full disclaimer at [http://www.dir.ca.gov/od\\_pub/disclaimer.html](http://www.dir.ca.gov/od_pub/disclaimer.html).

**Chapter 6. Division of Labor Standards Enforcement**  
**Subchapter 6.5. Hearings on Actions to Recover Wages, Penalties, and Other Demands for Compensation and on Claims from Holders of Dishonored Payroll Checks or Drafts**

**Article 1. Rules of Practice and Procedure**

New Query

---

**§13501. Filing of Complaint.**

---

An employee complaint or claim for wages, penalties or other demand for compensation properly before the DIVISION or the Labor Commissioner, including Orders of the Industrial Welfare Commission, under Labor Code Section 98(a) shall be initiated by the filing of a complaint on the form prescribed herein in any District Office of the DIVISION. If the District Office is not the proper office serving the county in which compensation claimed was earned or in which any of the acts complained of was performed, the complaint shall be referred to the proper office of the DIVISION serving said county, for investigation and hearing.

NOTE: Authority cited: Section 98.8, Labor Code. Reference: Section 98, Labor Code.

**HISTORY**

1. New NOTE filed 8-21-87; operative 9-20-87 (Register 87, No. 35).

[Go Back to Article 1 Table of Contents](#)

This information is provided free of charge by the Department of Industrial Relations from its web site at [www.dir.ca.gov](http://www.dir.ca.gov). These regulations are for the convenience of the user and no representation or warranty is made that the information is current or accurate. See full disclaimer at [http://www.dir.ca.gov/od\\_pub/disclaimer.html](http://www.dir.ca.gov/od_pub/disclaimer.html).

**Chapter 6. Division of Labor Standards Enforcement**  
**Subchapter 6.5. Hearings on Actions to Recover Wages, Penalties, and Other Demands for Compensation and on Claims from Holders of Dishonored Payroll Checks or Drafts**

**Article 1. Rules of Practice and Procedure**

New Query

---

**§13501.5. Form of Complaint.**

---

The complaint contemplated by Labor Code Section 98 and filed with the DIVISION shall be in writing and substantially in the following form:

Form of Complaint  (.pdf format, 5K)

NOTE: Authority cited: Section 98.8, Labor Code. Reference: Section 98, Labor Code.

**HISTORY**

1. Amendment filed 8-21-87; operative 9-20-87 (Register 87, No. 35).

 [Go Back to Article 1 Table of Contents](#)

LABOR COMMISSIONER, STATE OF CALIFORNIA Department of Industrial Relations DIVISION OF LABOR STANDARDS ENFORCEMENT		DATE FILED
		DISTRICT OFFICE
PLAINTIFF		TAKEN BY
DEFENDANT		
DOES I THROUGH V, Defendant(s)		
STATE CASE NUMBER	COMPLAINT	

**PLAINTIFF ALLEGES:**

1. He/She was employed by the defendant named above to perform personal services as: \_\_\_\_\_
2. for the period \_\_\_\_\_ to \_\_\_\_\_
3. in the County of \_\_\_\_\_, California; under the terms of the (written) (oral) agreement at the promised rate of compensation of \_\_\_\_\_

4. that there is due, owing and payable from the defendant to the plaintiff an amount as and for wages, penalties and/or other demands for compensation:

a. as shown in attached Exhibit A, incorporated herein;

b. as set out below:

c. plus additional wages accrued pursuant to Labor Code Section 203 as a penalty at the rate of \$ \_\_\_\_\_ per day for an indeterminate number of days not to exceed thirty (30) days.

*Plaintiff certifies that the foregoing is true and correct to the best of his/her knowledge and belief.*

Executed at \_\_\_\_\_, County of \_\_\_\_\_, California  
on \_\_\_\_\_, 19 \_\_\_\_\_

*Signature of Plaintiff*

**COMPLAINT**

**LC00188**

This information is provided free of charge by the Department of Industrial Relations from its web site at [www.dir.ca.gov](http://www.dir.ca.gov). These regulations are for the convenience of the user and no representation or warranty is made that the information is current or accurate. See full disclaimer at [http://www.dir.ca.gov/od\\_pub/disclaimer.html](http://www.dir.ca.gov/od_pub/disclaimer.html).

**Chapter 6. Division of Labor Standards Enforcement**  
**Subchapter 6.5. Hearings on Actions to Recover Wages, Penalties, and Other Demands for Compensation and on Claims from Holders of Dishonored Payroll Checks or Drafts**

**Article 1. Rules of Practice and Procedure**

New Query

---

**§13501.6. Form of Complaint on Claim from Holder of Dishonored Payroll Check or Draft.**

---

A complaint on a claim from a holder of a dishonored payroll check or draft, contemplated by Labor Code Section 98 and filed with the DIVISION shall be in writing and substantially in the following form:

[Form of Complaint on Claim from Holder of Dishonored Payroll Check or Draft](#)  (.pdf format, 5K)

NOTE: Authority cited: Section 98.8, Labor Code. Reference: Section 98, Labor Code.

**HISTORY**

1. Amendment filed 8-21-87; operative 9-20-87 (Register 87, No. 35).

 [Go Back to Article 1 Table of Contents](#)

LABOR COMMISSIONER, STATE OF CALIFORNIA Department of Industrial Relations DIVISION OF LABOR STANDARDS ENFORCEMENT.		DATE FILED
		DISTRICT OFFICE
COMPLAINANT	TAKEN BY	
DEFENDANT		
STATE CASE NUMBER	COMPLAINT PAYROLL CHECK OR DRAFT - PAYMENT REJECTED	

Claimant and Complainant named above complains of and makes claim against Defendant named above as follows:

1. That the claimant and complainant furnished goods and/or services and/or Cash to those employee-payees listed on the attached Schedule "A", and received from the employee-payee: in exchange *and/or* in payment of same, the payroll check or draft issued by the Defendant named above, in the amount set forth opposite the name of the employee-payee; and that each employee-payee properly endorsed his/her payroll check or draft to claimant and complainant, who thereby became a holder in due course thereof.
2. That the check or draft is simultaneously being deposited by claimant and complainant with the office of the Labor Commissioner of the *State of California*, for payment and prosecution of claimant-complainant's rights thereunder, and a copy of the check is attached as Schedule "B", and incorporated for all purposes as though set forth in full;
3. That each check or draft totaling \$ \_\_\_\_\_ was presented by claimant and complainant to (name of bank) \_\_\_\_\_ the bank upon which it was drawn and was returned to claimant and complainant, unpaid and dishonored;
4. That claimant and complainant has made diligent search for the employee-payee but is still unable to return the dishonored check or draft to the employee-payee for the recovery from the employee-payee of the respective sum of the check or draft as shown on Schedule "A", paid out by claimant and complainant, and that the dishonored check or draft in the total sum of \$ \_\_\_\_\_ remains fully unpaid and unsatisfied;
5. That claimant and complainant requests the Labor Commissioner of the State of California to set the matter of this complaint for hearing; and
6. That claimant and complainant asks for Order, Decision or Award determining the claim in his favor, and more particularly, as follows:
  - a. Defendant pay to claimant-complainant the sum of \$ \_\_\_\_\_, the amount of the dishonored payroll check or draft.

Claimant and complainant certifies under penalty of perjury that the foregoing is true and correct to the best of his/her knowledge and belief.

Executed at \_\_\_\_\_, California, on \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
*Signature of Claimant--Complainant*

COMPLAINT  
PAYROLL CHECK OR DRAFT - PAYMENT REJECTED

LC00190

This information is provided free of charge by the Department of Industrial Relations from its web site at [www.dir.ca.gov](http://www.dir.ca.gov). These regulations are for the convenience of the user and no representation or warranty is made that the information is current or accurate. See full disclaimer at [http://www.dir.ca.gov/od\\_pub/disclaimer.html](http://www.dir.ca.gov/od_pub/disclaimer.html).

**Chapter 6. Division of Labor Standards Enforcement**  
**Subchapter 6.5. Hearings on Actions to Recover Wages, Penalties, and Other Demands for Compensation and on Claims from Holders of Dishonored Payroll Checks or Drafts**

**Article 1. Rules of Practice and Procedure**

[New Query](#)

---

**§13501.7. Form of Answer.**

---

The answer which may be filed by the defendant or defendants pursuant to Labor Code Section 98(c) shall be in writing and substantially in the following form:


[Form of Answer](#) (pdf format, 7K)

NOTE: Authority cited: Section 98.8, Labor Code. Reference: Section 98, Labor Code.

**HISTORY**

1. Amendment filed 8-21-87; operative 9-20-87 (Register 87, No. 35).

[Go Back to Article 1 Table of Contents](#)

LABOR COMMISSIONER, STATE OF CALIFORNIA Department of Industrial Relations DIVISION OF LABOR STANDARDS ENFORCEMENT		
PLAINTIFF		
DEFENDANT		
STATE CASE NUMBER	ANSWER	

Defendant answers the complaint on the file as follows:

**AGREES:**

**DENIES**

(Set forth any particulars in which the complaint is inaccurate or incomplete and the facts upon which you intend to rely. Use additional sheet if necessary.)

Defendant certified that the foregoing, including attachments, is true and correct to the best of his/her knowledge and belief.

Executed at \_\_\_\_\_, California, on \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
(Signature of person answering, with title if answer is made on behalf of another person or entity.)

\_\_\_\_\_  
(Type or print your name and name of person or entity, if any, on whose behalf this form is signed.)



This information is provided free of charge by the Department of Industrial Relations from its web site at [www.dir.ca.gov](http://www.dir.ca.gov). These regulations are for the convenience of the user and no representation or warranty is made that the information is current or accurate. See full disclaimer at [http://www.dir.ca.gov/od\\_pub/disclaimer.html](http://www.dir.ca.gov/od_pub/disclaimer.html).

## **Chapter 6. Division of Labor Standards Enforcement**

### **Subchapter 6.5. Hearings on Actions to Recover Wages, Penalties, and Other Demands for Compensation and on Claims from Holders of Dishonored Payroll Checks or Drafts**

#### **Article 1. Rules of Practice and Procedure**

##### New Query

---

#### **§13502. Conduct of Hearings.**

---

Hearings by the Labor Commissioner under Sections 98 et seq., of the Labor Code shall be presided over by a Deputy Labor Commissioner. The hearing shall be reported or phonographically recorded. Either party may request a copy of the transcript or recording, and shall bear all costs incidental to the preparation of same. If the record of the hearing is transcribed by any party, a copy thereof shall be provided to the Labor Commissioner free of any charge or cost within five (5) days of such transcription. Proceedings need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

NOTE: Authority cited: Section 98.8, Labor Code. Reference: Section 98, Labor Code.

#### **HISTORY**

1. Amendment filed 8-21-87; operative 9-20-87 (Register 87, No. 35).

[Go Back to Article 1 Table of Contents](#)

This information is provided free of charge by the Department of Industrial Relations from its web site at [www.dir.ca.gov](http://www.dir.ca.gov). These regulations are for the convenience of the user and no representation or warranty is made that the information is current or accurate. See full disclaimer at [http://www.dir.ca.gov/od\\_pub/disclaimer.html](http://www.dir.ca.gov/od_pub/disclaimer.html).

**Chapter 6. Division of Labor Standards Enforcement**  
**Subchapter 6.5. Hearings on Actions to Recover Wages, Penalties, and Other Demands for Compensation and on Claims from Holders of Dishonored Payroll Checks or Drafts**

**Article 1. Rules of Practice and Procedure**

New Query

---

**§13505. Taking of Evidence.**

---

Oral evidence shall be taken only on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him (her) to testify; and to rebut the evidence against him (her).

NOTE: Authority cited: Section 98.8, Labor Code. Reference: Section 98, Labor Code.

**HISTORY**

1. Amendment filed 8-21-87; operative 9-20-87 (Register 87, No. 35).

[Go Back to Article 1 Table of Contents](#)

This information is provided free of charge by the Department of Industrial Relations from its web site at [www.dir.ca.gov](http://www.dir.ca.gov). These regulations are for the convenience of the user and no representation or warranty is made that the information is current or accurate. See full disclaimer at [http://www.dir.ca.gov/od\\_pub/disclaimer.html](http://www.dir.ca.gov/od_pub/disclaimer.html).

## **Chapter 6. Division of Labor Standards Enforcement**

### **Subchapter 6.5. Hearings on Actions to Recover Wages, Penalties, and Other Demands for Compensation and on Claims from Holders of Dishonored Payroll Checks or Drafts**

#### **Article 1. Rules of Practice and Procedure**

##### New Query

---

#### **§13506. Deputy Labor Commissioner's Authority.**

---

In presiding over a hearing conducted hereunder, the Deputy Labor Commissioner shall control the order of presentation of evidence at the hearing, and direct and rule on matters concerning the conduct of the hearing and of the parties appearing. Prior to a hearing, upon the application of any party to the proceedings, the Deputy Labor Commissioner may issue subpoenas to compel the attendance of necessary witnesses and the production of books and documents. In the exercise of his (her) sound discretion, the Deputy Labor Commissioner may limit the number of witnesses subpoenaed either for the purpose of corroboration or establishing a single material fact in issue, or where the party requesting the subpoena has not furnished satisfactory evidence that the witness will be able to give necessary and competent testimony, material to the issues, at the hearing.

NOTE: Authority cited: Section 98.8, Labor Code. Reference: Section 98, Labor Code.

#### **HISTORY**

1. Amendment filed 8-21-87; operative 9-20-87 (Register 87, No. 35).

[Go Back to Article 1 Table of Contents](#)

This information is provided free of charge by the Department of Industrial Relations from its web site at [www.dir.ca.gov](http://www.dir.ca.gov). These regulations are for the convenience of the user and no representation or warranty is made that the information is current or accurate. See full disclaimer at [http://www.dir.ca.gov/od\\_pub/disclaimer.html](http://www.dir.ca.gov/od_pub/disclaimer.html).

**Chapter 6. Division of Labor Standards Enforcement**

**Subchapter 6.5. Hearings on Actions to Recover Wages, Penalties, and Other Demands for Compensation and on Claims from Holders of Dishonored Payroll Checks or Drafts**

**Article 1. Rules of Practice and Procedure**

New Query

---

§13507. Right to Counsel.

---

Any party to a proceedings conducted hereunder may, but need not, be represented by counsel.

NOTE: Authority cited: Section 98.8, Labor Code. Reference: Section 98, Labor Code.

**HISTORY**

1. New NOTE filed 8-21-87, operative 9-20-87 (Register 87, No. 35).

[Go Back to Article 1 Table of Contents](#)

This information is provided free of charge by the Department of Industrial Relations from its web site at [www.dir.ca.gov](http://www.dir.ca.gov). These regulations are for the convenience of the user and no representation or warranty is made that the information is current or accurate. See full disclaimer at [http://www.dir.ca.gov/od\\_pub/disclaimer.html](http://www.dir.ca.gov/od_pub/disclaimer.html).

**Chapter 6. Division of Labor Standards Enforcement**  
**Subchapter 6.5. Hearings on Actions to Recover Wages, Penalties, and Other Demands for Compensation and on Claims from Holders of Dishonored Payroll Checks or Drafts**

**Article 1. Rules of Practice and Procedure**

New Query

---

**§13508. Continuances.**

---

Continuance of hearing ordinarily will not be granted. The Deputy Labor Commissioner, in the exercise of his (her) sound discretion, may grant a continuance of hearing upon a showing of extraordinary circumstances and good cause for continuance by the party requesting same.

NOTE: Authority cited: Section 98.8, Labor Code. Reference: Section 98, Labor Code.

**HISTORY**

1. Amendment filed 8-21-87; operative 9-20-87 (Register 87, No. 35).

[Go Back to Article 1 Table of Contents](#)

This information is provided free of charge by the Department of Industrial Relations from its web site at [www.dir.ca.gov](http://www.dir.ca.gov). These regulations are for the convenience of the user and no representation or warranty is made that the information is current or accurate. See full disclaimer at [http://www.dir.ca.gov/od\\_pub/disclaimer.html](http://www.dir.ca.gov/od_pub/disclaimer.html).

**Chapter 6. Division of Labor Standards Enforcement**

**Subchapter 6.5. Hearings on Actions to Recover Wages, Penalties, and Other Demands for Compensation and on Claims from Holders of Dishonored Payroll Checks or Drafts**

**Article 1. Rules of Practice and Procedure**

New Query

---

§13510. Order, Decision or Award. (Repealed)

---

**HISTORY**

1. Repealer filed 8-21-87; operative 9-20-87 (Register 87, No. 35).

[Go Back to Article 1 Table of Contents](#)

This information is provided free of charge by the Department of Industrial Relations from its web site at [www.dir.ca.gov](http://www.dir.ca.gov). These regulations are for the convenience of the user and no representation or warranty is made that the information is current or accurate. See full disclaimer at [http://www.dir.ca.gov/od\\_pub/disclaimer.html](http://www.dir.ca.gov/od_pub/disclaimer.html).

## **Chapter 6. Division of Labor Standards Enforcement**

### **Subchapter 6.5. Hearings on Actions to Recover Wages, Penalties, and Other Demands for Compensation and on Claims from Holders of Dishonored Payroll Checks or Drafts**

#### **Article 1. Rules of Practice and Procedure**

##### New Query

---

#### **§13520. Definition of "Willful."**

---

A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203.

(a) Good Faith Dispute. A "good faith dispute" that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recover on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist. Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a "good faith dispute."

NOTE: Authority cited: Sections 55 and 98.8, Labor Code. Reference: Section 203, Labor Code.

#### **HISTORY**

1. New section filed 7-8-88; operative 8-7-88 (Register 88, No. 29).

[Go Back to Article 1 Table of Contents](#)