

## **Filing a Wage Claim with the Wage and Hour Division**

Any person who performed work as an employee in the state of Oregon may file a wage claim. BOLI's Wage and Hour Division accepts claims for unpaid wages for hours worked, nonpayment of overtime wages for hours worked beyond 40 in a week, and payment of wages at a rate of pay less than the minimum hourly rate established by state law. In addition, in cases where an employer has gone out of business and is unable to pay final wages, any person who is owed wages may file a claim for payment from the state's Wage Security Fund.

The Wage and Hour Division does not accept all claims and will not accept a claim if any of the following apply:

- More than 6 months have passed since the date of termination and the claim does not involve minimum wage or overtime\*;
- More than 1 year has passed since the date the violation first occurred and the claim does not involve minimum wage or overtime\*;
- The claim is for penalty wages or expenses only;
- The claim is over \$10,000 and does not involve minimum wage, overtime, or prevailing wage rate;
- The claimant was self-employed;
- The claimant was paid on a commission basis and received at least minimum wage for all hours worked;
- The claimant was a member of a union or collective bargaining unit. (Union members should speak with a Bureau representative before filing a claim);
- The claimant has already begun private legal action to recover the wages claimed;
- The claimant has not yet asked the employer for the wages claimed;
- None of the work was performed in Oregon;
- The claim is against a business in which the claimant was a partner or an owner, or in which the claimant had a direct financial interest;
- The claim is against a close relative;
- The claim is against a person the claimant is unwilling to take to court.

\*Exceptions may apply if the claimant was an active military service member during this time.

## **Frequently Asked Questions**

### **Q. How do I file a wage claim?**

A. Anyone who wishes to file a wage claim must complete a Wage Claim form provided by the Wage and Hour Division and submit it to any BOLI office. When completing the form, a claimant must provide such information as the dates on which work was performed, the rate of pay, the reason, if known, wages have not been paid in full, and a close estimate of the amount of wages due. In addition to the wage claim form, claimants must submit documentary evidence in support of their claim for unpaid wages. Examples of evidence include:

- Time cards, shift schedules, log books, or personal time records reporting the hours of work;
- Paycheck stubs, itemized wage statements, or other evidence of payment of wages;
- Paychecks without sufficient funds or notices from financial institutions;
- W-2 statements or other tax forms;
- Written wage agreements;

- Statements from witnesses, other than a relative, who have direct knowledge regarding the hours worked and the wage agreement (include contact information); and,
- Job listings or recruitment documents.

Those who file a wage claim with the division must also assign their wages to the agency in writing. The assignment authorizes the agency to settle the wage claim, including wages and penalties, on the claimant's behalf. Because the division may settle a wage claim for the amount of unpaid wages only, those who wish to recover both the amount of unpaid wages and any penalties to which they may be entitled by law should pursue their claim privately rather than file a wage claim with the division.

Anyone who wishes to file a wage and hour-related complaint regarding an employer but who is NOT claiming unpaid wages should complete a Complaint form and return it to any Wage and Hour Division office. The Division's complaint form is available online at: [www.oregon.gov/boli/WHD/pages/w\\_whcomplaint.aspx](http://www.oregon.gov/boli/WHD/pages/w_whcomplaint.aspx).

If the nonpayment or underpayment of wages involves work performed on a public works project, a complaint may be filed with the Wage and Hour Division's Prevailing Wage Rate Unit. The prevailing wage complaint form may be found at [www.oregon.gov/boli/WHD/PWR/docs/wh-168.pdf](http://www.oregon.gov/boli/WHD/PWR/docs/wh-168.pdf).

#### **Q. What happens after I file a wage claim?**

A. Upon receipt of a wage claim, Wage and Hour Division staff will review the claim and any accompanying documents for completeness. If a wage claim is not complete and more information is required, division staff will provide the claimant with an opportunity to correct any deficiencies or submit additional information. Failure to respond promptly to communication from the division may result in closure of the claim. In the event that a wage claim is not accepted, either because the claim is incomplete, the claim fails to meet the criteria of the types of claims investigated by the division, or the division lacks jurisdiction to pursue the matter, division staff will notify the claimant that the claim has been closed.

When a claim is complete and accepted by the division, a notice of claim is sent to the employer. The notice identifies the claimant, the amount of wages being claimed, and the period of time covered by the claim. Generally, an employer is permitted ten business days to respond to the claim, either by submitting payment or, if disputing that any wages are owed, by completing and submitting a written response to the division.

If, in response to a notice of claim, an employer submits payment of the claim in full, the payment is forwarded to the claimant and, generally, the claim is closed. If an employer disputes a claim or fails to respond to the notice, the claim is assigned to a compliance specialist for investigation.

#### **Q. What happens during the investigation of a claim?**

A. The compliance specialist assigned to the wage claim will review the claim and any documentation submitted by the claimant and employer. Often times, the compliance specialist will request that the claimant or employer submit additional documentation or provide additional information. The compliance specialist also may interview witnesses or attempt to gather other types of evidence in order to evaluate the validity of a claim.

If a claim is determined not to be valid, or if it is determined that insufficient evidence exists to establish the validity of a claim, the compliance specialist will close the claim and notify the claimant.

If the claim is determined to be valid, the compliance specialist will attempt to collect from the employer the amount of unpaid wages calculated to be owed. In those cases where an employer continues to dispute a claim and the compliance specialist is unable to collect the amount of unpaid wages determined to be owed, the division may issue an order of determination, a legal order setting out the amount of unpaid wages and any penalty wages or civil penalties owed to the claimant by the employer.

With regard to claims filed for payment from the Wage Security Fund, the compliance specialist will determine whether the claim is eligible for payment based on the criteria established by law.

**Q. How long will it take to investigate my claim?**

A. While the division attempts to resolve wage claims as quickly as possible, the length of an investigation depends on a number of factors, including the complexity of the issue, the length of the claim period, the availability of records and other types of evidence, and the degree of responsiveness among the parties to the claim. In many cases, however, the division is able to resolve a claim within 35 days from the time the claim is assigned to a compliance specialist.

**Q. What happens if an order of determination is issued?**

A. When served with an order of determination, the employer may request a contested case hearing or a trial in a court of law. An employer's failure to respond to an order of determination may result in a default judgment against the employer.

**Q. What happens if my employer requests a hearing?**

A. A hearing is scheduled when an employer, or "respondent," files an answer to an order of determination and requests a hearing. The agency's Administrative Prosecution Unit (APU) prosecutes cases on behalf of the Wage and Hour Division after the division has concluded its investigation. An Administrative Law Judge (ALJ), who is employed by BOLI but is separate and independent of the APU, presides over all contested case proceedings. Hearings are generally held in the geographic location most convenient for all parties. The hearing itself is a trial-like proceeding that may last a few hours or multiple days, depending on the complexity of the case. At hearing, the respondent may be represented by an attorney or "authorized representative," except that an "authorized representative" may not represent a respondent who is an individual. After the hearing, the ALJ issues a written proposed order that addresses all the issues in the case. The APU and respondent may file written objections ("exceptions") to the proposed order. After the time period for exceptions expires, BOLI's Commissioner issues a Final Order. A respondent may appeal a Commissioner's Final Order to the Oregon Court of Appeals.

When a respondent requests a court trial in response to an order of determination, the case is referred to the state's Department of Justice, which prosecutes cases before a court on behalf of the division.

**Q. If BOLI obtains a judgment for my wages, how does it attempt to collect?**

A. Judgments for unpaid wages and penalties obtained by the agency are referred to the state's Department of Revenue for collection.

**Q. What alternatives exist to filing a wage claim with BOLI?**

A. A claim for \$10,000 or less may be filed in small claims court. A person also may pursue a private right of action to recover unpaid wages by obtaining the assistance of an attorney.

**Q. Can my employer retaliate against me for filing a claim?**

A. An employer may not discharge or discriminate against an employee for filing a wage claim or discussing, inquiring about or consulting an attorney or agency about a wage claim; or, for filing a complaint that the employer has not paid the employee in accordance with the state's minimum wage regulations or has otherwise violated minimum employment conditions.

**Additional Information**

For additional information, please contact the Wage and Hour Division.

Online: [www.oregon.gov/BOLI/WHD](http://www.oregon.gov/BOLI/WHD)

Email: [whdscreener@boli.state.or.us](mailto:whdscreener@boli.state.or.us)

Telephone: 971-673-0844 (Ore. Relay TTY: 711). Se habla español.