

Payroll Taxes

YOUR LEGAL RIGHTS

1. What Are Payroll Taxes?

Payroll taxes are the state and federal taxes that your employer is required to withhold from your paycheck and forward to the government to fund benefits that you may be eligible to receive when you are disabled, unemployed, or retired.

You are responsible for contributing some payroll taxes, such as your full state and federal income taxes, as well as your half of Social Security and Medicare taxes, which are known as FICA taxes. Your employer is responsible for its fair share of payroll taxes, too. It must pay the other half of your Social Security and Medicare taxes, as well as the full amount of any state and federal unemployment tax.

Payroll taxes are normally paid through your paycheck. However, if you are paid cash, these deductions are often not made (in error) by your employer.

Also, even if your employer correctly makes the deductions when you are paid, there is no guarantee that your employer will send your payroll taxes (that were deducted from your wages) to the government.

2. How Do Payroll Taxes Benefit You?

Paying the proper amount of payroll taxes helps to ensure that you will receive the government benefits that you deserve. These government benefits include:

- Unemployment Insurance Benefits
- Disability Insurance Benefits
- Social Security Income
- Medicare Benefits
- Other Need-based Services

Furthermore, paying proper payroll taxes and receiving paycheck stubs and W-2s will provide you with documentation to prove your income. That documentation may be helpful if you apply for loans, housing, or other income-sensitive applications.

3. What Happens If Your Employer Does Not Pay Payroll Taxes?

When employees are paid cash, employers often do not pay the appropriate payroll taxes. (Employees who are paid by check rarely encounter this problem.) This is called “payroll tax fraud.” Employers may try to justify this fraud by claiming that:

- You will receive more money in cash.
- Every small business, or everyone in this industry, is doing the same.
- You will not be hurt in any way.

However, your employer's tax fraud **does** harm you, by creating the following difficulties:

- You cannot document your income (for example, for loan or housing applications) because you do not receive W-2s and paycheck stubs. Without proper documentation of your income, it also may be difficult to file an accurate income tax return, which may prompt an audit by the government.
- You may owe the government unreported taxes that will have to be paid all at once,
- You may be ineligible to receive unemployment, disability, Social Security, or Medicare benefits when you need them.

4. What Can You Do If You Are Receiving Cash Wages?

File Appropriate Tax Documents: Make your best effort to follow the tax laws. Pay your share of income taxes, Social Security taxes, and Medicare taxes. Fill out the appropriate forms so the government knows that you are paying your fair share of taxes, which will help you to preserve the benefits that you deserve.

If You Do Not Receive a W-2: File a Substitute W-2 form that will take the place of a standard W-2. The substitute form is IRS Form 4852 and can be obtained from the IRS website at www.irs.gov/formspubs.

Keep Detailed Records of Your Hours & Pay: Keep track of the number of hours you work and the amounts you are paid. If the employer does not have documentation of your hours and pay, your records will be critical in showing the amount of taxes that your employer owes.

Report Your Employer: If you do not receive a W-2 and believe that your employer is committing tax fraud, report your employer to the three government agencies that collect taxes – California's EDD, the Federal IRS, and the Federal Social Security Administration. See the Remedies section below.

5. Your Rights & Protections

Employees Are Not Liable For Employer Fraud: If your employer withholds taxes from your earned income, but does not pay these taxes to the IRS, you do not have to pay these taxes yourself. You are entitled to a credit for the withheld taxes if you file a Substitute W-2 or report the employer's fraud to the IRS.

Employers Must Furnish a W-2: Your employer must furnish you with a W-2 form that describes the deductions it took from your wages during the year. Your employer must file a duplicate copy of this W-2 with the government.

6. Remedies

You do not need an attorney to report tax fraud to any of the following agencies:

To file a proper tax return using a Substitute Form W-2:

Download *Internal Revenue Service (IRS)* Form 4852, available at:
<http://www.irs.gov/pub/irs-pdf/f4852.pdf>

To report tax fraud to California's Employment Development Department (EDD):

Submit a Fraud Reporting Form online at:
<https://eapply4ui.edd.ca.gov/eddcmm/fmFraudStart.htm>;

File an Underground Economy Operations Lead Referral/Complaint Form, available at:
<http://www.edd.ca.gov/taxrep/de660.pdf>;

Or contact EDD by telephone, e-mail, or fax:
 Telephone: (800) 528-1783 (English/Spanish)
 E-mail: ueo@edd.ca.gov
 Facsimile: (916) 227-2772

To report tax fraud to the IRS:

Send a letter or submit Form 3949-A, available at:
<http://www.irs.gov/pub/irs-pdf/f3949a.pdf>;
 Or contact the IRS by telephone:
 (800) 829-0433 (English/Spanish)

To report tax fraud to the Federal Social Security Administration:

Submit a Fraud Reporting Form online at:
http://www.ssa.gov/oig/public_fraud_reporting/index.htm;
 Or contact the Office of Inspector General at:
 Social Security Fraud Hotline
 P.O. Box 17768
 Baltimore, Maryland 21235
 Telephone: (800) 269-0271 (English/Spanish)
 Facsimile: (410) 597-0118
 E-mail: oig.hotline@ssa.gov

7. Take Precautions, *Before* A Problem Arises

Know Your Employer:

Get the full English name of your employer, plus the address and telephone number of your workplace.

Keep Your Own Records of Your Hours Worked & Amounts Paid:

Write your work hours on a calendar each day, so that you can prove how many hours you worked. Keep a copy of any written correspondence between you and your employer that documents your wages or work schedule. If you are paid in cash, keep a log of all amounts received.

Make Copies of Important Documents:

You have the right to get a copy of all your time cards and payroll records. Ask for a copy of anything you are asked to sign, including the W-4 form filled out at the beginning of your employment. Save any bank statements showing the cash you deposited.

You Have Rights Even If You Are Undocumented:

All California workers, whether or not they are legally authorized to work in the United States, are covered by State and Federal laws that protect an employee from being liable for their employer's tax fraud. Even if you are undocumented, you have the right to file a proper tax return to allow you to pay taxes and receive the benefits to which you are entitled.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

The Legal Aid Society of San Francisco-Employment Law Center extends its appreciation to the Asian Law Caucus, which developed a brochure that served as the basis for this fact sheet.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

