

Getting Your Final Paycheck

When you should be paid in full

YOUR LEGAL RIGHTS

1. Final pay when an employee is fired or laid off:

An employer that terminates (fires or lays off) an employee must immediately pay the employee all of the employee's unpaid, earned wages (California Labor Code Section 201). This final payment must include wages earned for days of work up to and including the last day of work, as well as payment for any accrued and unused vacation time (see "Vacation Pay" below). If there are any unpaid wages from earlier pay periods, the employer also must make up all those wages in the final paycheck. For example, if an employee is owed hours, overtime, or if the employee had wages unlawfully deducted during an earlier pay period, the employer must make up for the mistake when the employee is fired or risk paying the employee a penalty. See section 4, below, for more information about this penalty. It is illegal for an employer that terminates an employee to withhold final payment until the end of the regularly scheduled pay period.

Suspensions: The Labor Commissioner's office (California Department of Industrial Relations, Division of Labor Standards Enforcement), which enforces California's wage laws, says that a suspension of an employee is to be treated as a discharge if the suspension is used simply to avoid having to meet the final pay requirement. An employer may, however, suspend an employee without paying all unpaid, earned wages if the suspension does not result in termination or if the purpose of the suspension is to conduct a legitimate investigation of misconduct before making a decision whether termination is appropriate and the employer can show it actually investigated.

Temporary Layoffs: If an employee is temporarily laid off without a specified return date within the same pay period, all wages owed to the employee should be paid on the day of the layoff. If the employee will return to work for the employer within the same pay period, wages may be paid on the next regular pay day.

Working for Two Employers: Where an employee is working jointly for more than one employer (for example through a temp. agency), both employers are jointly responsible for ensuring that final wages are paid in a timely fashion.

Seasonal Workers: A seasonal employee (e.g. farm worker) is entitled to a full, final paycheck regardless of whether the worker is scheduled to return to work at the same employer in the next season.

Exceptions to Immediate Final Pay: An exception to the requirement that wages be paid in full on the last day of work may be made when the employee's work is done away from the employer's administrative offices. Industries in which this exception applies include the motion picture and oil drilling industries. Yet even in these cases, all owed wages must be paid within 24 hours of the

termination, excluding weekends and holidays. Employers that terminate seasonal employment in the preparation and packaging of foods may have up to 72 hours after termination to pay final wages. Where these exceptions apply, the date wages are mailed is considered the date of payment.

2. Final pay when an employee resigns from a job:

An employee who resigns from a job must be paid all unpaid, earned wages within 72 hours (3 days) of the resignation (Cal. Labor Code §202). If, however, the employee gives notice of resignation more than 72 hours in advance, the employer must pay all such wages on the day of resignation. This payment must include wages for days worked up to and including the last day of work, plus payment for any accrued, unused vacation time (see “Vacation Pay” below).

If final wages are mailed to an employee who resigns, the date wages are mailed is considered the date of payment for purposes of the 72-hour rule.

It is unlawful for an employer to withhold final pay until the regular payday if that payday is later than the last day of work and is more than 72 hours after the employee gives notice of resignation.

3. Unused vacation should be paid with final wages.

Employers are not required by law to provide paid vacation benefits to employees. However, if an employer does provide vacation benefits to an employee, the vacation time an employee earns is a form of wages which “vest” as the employee works (Cal. Labor Code §227.3). This means (1) that vacation “wages” (unused vacation time) are earned as the employee works; and (2) that any earned vacation time that remains unused when employment is terminated must be paid on time as part of the employee’s final wages. See our Fact Sheet titled “**Vacation Pay/Sick Pay**” for more information about vacation pay rules.

4. “Waiting time” penalties for late final wages:

An employer that “willfully” fails to pay all final wages to an employee within the time limits specified above may be assessed “waiting time” penalties (Cal. Labor Code §203). If an employee files a claim for unpaid wages and penalties are assessed, the employer must pay the employee—in addition to the unpaid wages—a full day’s wages for every day the wages remain unpaid. Waiting time penalties stop accruing when a complaint for unpaid wages is filed with a court, but penalties do not stop accruing if, instead, a claim for unpaid wages is filed with the Labor Commissioner’s office (see “*Taking Legal Action to Recover Unpaid Wages*” below for further information). Regardless of the type of legal action taken, however, waiting time penalties stop accruing when they reach the legal limit of 30 days’ pay.

The Labor Commissioner’s office interprets a failure to comply with laws regarding final pay as “willful” if an employer intentionally fails or refuses to pay final wages to an employee on time. However, an employer will not be assessed waiting time penalties where there is a “good faith dispute,” which generally applies when the employer believes it has a valid reason for withholding the final wages. Even if the employer’s reason is ultimately rejected by the court or Labor Commissioner’s office, the waiting time penalties will not be assessed if the withholding is considered a “good faith dispute.” If, however, the employer’s reason is unsupported by evidence, is unreasonable, or is presented in bad faith, a waiting time penalty should be assessed.

A few things to know about waiting time penalties:

- 1) An employer's **inability to pay final wages** is not a valid reason for avoiding waiting time penalties.
- 2) An employee will not be awarded waiting time penalties if the employee **avoids payment** or refuses to receive payment of wages fully tendered to him.
- 3) If the employer **mails** the employee's wages, the date the wages are mailed is considered the date of payment. Likewise, **direct deposit** wages are considered paid as of the date the employer makes the deposit.
- 4) Waiting time penalties apply only to unpaid wages after the employment relationship has ended. An employer cannot be assessed waiting time penalties for withholding unpaid wages while the employee continues to work for the employer.

Calculating penalties: Waiting time penalties are calculated by multiplying the number of calendar days (not business days) since final wages were due by the employee's daily wage rate. The number of days per week or per month the employee actually worked does not matter when calculating the penalty. If, for example, an employee who worked two days per week and earned \$75 per day is paid final wages two weeks late, the accrued waiting time penalty is 14 (days) x \$75 = \$1050. If the unpaid employee's daily wages varied, an average daily wage should be used for calculating the penalties. If the unpaid employee's daily wages changed while employed, the daily rate that was in effect when the job ended should be used for calculating the penalties.

5. Taking action to recover unpaid final wages:

Letter requesting Unpaid Final Wages: If you have not been paid final wages, you can send or deliver a letter to your employer to request immediate payment before taking legal action. This option is often taken by workers who need their final wages immediately. The following form letter is provided to help individuals who decide to draft such a letter to their employers.

[Employer Name/ Address]

[Date]

Re: Payment of Final Wages

Dear [Employer]:

On [date], I [was terminated/ resigned] from my job at [employer]. To date, however, I have not been paid \$[amount] in wages [including vacation pay] due at the time of my termination in accordance with California Labor Code Sections 201/202. By this letter, I request that you immediately send me these unpaid wages at [address] or make them immediately available for me to pick up at [employer]. Prompt payment of the full wages due will eliminate further liability for waiting time penalties under California Labor Code Sections 203.

Thank you for your attention to this matter.

Sincerely,

[Employee Name]



Filing a Claim with the Labor Commissioner's Office: If you need to take legal action to recover final wages and/or waiting time penalties, contact your local Labor Commissioner's office (look in the state government listings at the front of your local phone directory under California Department of Industrial Relations, Division of Labor Standards Enforcement). You do not need an appointment to pick up a claim form for unpaid wages and there is no fee for filing a claim with the Labor Commissioner's office. These claims take months to resolve because of the volume of claims your local Labor Commissioner's office receives. For further information on filing a wage claim, see the publication titled **Do It Yourself Recovery of Unpaid Wages**.

Filing a Complaint in Court: You may also file a civil complaint for unpaid final wages with the appropriate court (see the government listings in the front of your local phone directory). If the amount of unpaid wages (plus any penalties) is under \$7,500, you may file your complaint in Small Claims Court where neither you nor your employer is represented by attorneys. If your complaint is for more than \$7,500 in unpaid wages, you will have to file in Superior Court and may need an attorney to represent you or assist you with the rules of court and civil procedure. For further information on filing a wage complaint in Small Claims Court, see the publication titled **Do It Yourself Recovery of Unpaid Wages**.

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 legal rights in your situation.

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.

