

Minimum Wage

YOUR LEGAL RIGHTS

This publication provides a brief summary of California's minimum wage laws and does not discuss the federal minimum wage. Because the state minimum wage (\$8.00 as of January 1, 2008) is higher than the federal minimum wage (\$7.25/hour as of July 24, 2009), most workers in California have the right to the state minimum wage.

Your employer is required to pay you at least the minimum wage for every hour worked, even if your employer tells you he will pay you less. In fact, even if your employer persuades you to work for nothing, you still have the right to minimum wage (see section 3, below.) However, there are certain employees who do not have the right to minimum wage (see section 8, below, for these exceptions).

The minimum wage has changed over the years. The minimum wage you should receive for any work you have done (or work you will do) is the minimum wage in place at the time you performed (or will perform) the work in question.

You also may have the right to *overtime* pay if you work more than eight (8) hours in a day or forty (40) hours in a week. (See our Fact Sheet titled "**Overtime Pay**" for more information).

1. How much is minimum wage?

The minimum wage in California is \$8.00 per hour as of January 1, 2008.

2. What if I am not paid by the hour?

Even if you are paid by piece rate, commission, salary or some other type of wage, you must receive at least the minimum wage for every hour you work and every hour you are under the control of your employer. If, for example, you get paid \$1.00 per piece and only make 5 pieces in an hour, your employer cannot pay you only \$5.00 for that hour, but must make up the difference up to the current minimum wage.

3. What if I agree to work for less than minimum wage?

You have the right to be paid minimum wage for every hour you work, even if you tell your employer that you will work for less (or even nothing). In other words, you cannot give up ("waive") your right to minimum wage no matter what you say or do. If you agreed to perform work for less, you still can file a claim to recover up to minimum wage. (see Section 7, below)

4. The San Francisco Minimum Wage (only for workers in San Francisco)

San Francisco has a higher minimum wage for most employees working in the city. To earn this wage, you must work at least two (2) hours a week within the city limits. The minimum wage rate changes on January 1st of every year to keep up with inflation. Effective January 1, 2011 the SF minimum wage is \$9.92 per hour. For information about the most current SF minimum wage rate or how to file a claim, check with the Office of Labor Standards Enforcement at (415) 554-6235 or go online to http://www.sfgov.org/site/olse_index.asp?id=27452.

Use this table to calculate your minimum wage if you work at least 2 hours a week in San Francisco:

Dates of work	Minimum wage
January 1, 2011 – December 31, 2011	\$9.92/ hour
January 1, 2010 – December 31, 2010	\$9.79/ hour
January 1, 2009 - December 31, 2009	\$9.79/ hour

These amounts will normally change every year on January 1st to keep up with inflation. Check for updates on annual changes with the the Office of Labor Standards Enforcement at (415) 554-6235 or go online to http://www.sfgov.org/site/olse_index.asp?id=27452.

5. What is the difference between the minimum wage and a “living wage”?

Some cities and counties in California have “living wage” laws. These laws are different than the state minimum wage and the San Francisco minimum wage. Living wage laws give only some employees the right to a higher minimum wage, and in some cases the laws also require that employers give their employees health benefits. These laws normally cover workers who work for the city (or county) and, in most cases, people who work for private employers that are working on city (or county) contracts. Some cities and counties that have living wage laws include San Francisco, Oakland, San Jose, Marin County, Los Angeles, Sacramento and Santa Cruz. Check with your local city or county office to see if you are covered by a living wage law.

6. What if I am a “volunteer”?

A true volunteer is not an employee and does not have the right to minimum wage. However, some employers try to avoid paying workers by calling them “volunteers” even when they are not.

If you work for a for-profit company, you are not a volunteer. Only non-profit employers (such as churches and community-based organizations) can have unpaid volunteers. Even if you work for a non-profit, you will only be considered a volunteer if you do not work in a section of the non-profit that is a commercial enterprise competing with other businesses. For example, if you sell clothes in a church thrift store, you are an employee. Also, it must be very clear that you are willing to work for the non-profit without pay. If there is evidence that you expected some payment (even if it is in the form of food or shelter) or your non-profit employer coerced you into calling yourself a “volunteer,” you may well actually be an employee who has the right to minimum wage.

7. What if my employer pays me with food or housing?

In very limited cases, an employer can substitute housing or food for some (not all) of your minimum wage. In order to “credit” housing or food against minimum wage, an employer must have a *voluntary* written agreement with each employee who receives this substitution.

Even in those cases where the employer has a written agreement, there are *limits* on the amounts that can be deducted for lodging or food. The maximum deductions are listed below:

Lodging:

Effective January 1, 2008, the maximum amounts that can be credited for lodging are:

Type of accommodation	Maximum amount to be credited
Own room	\$37.63 each week
Shared room	\$31.06 each week
Apartment	2/3 of the ordinary market value, but never more than \$451.89. per month

If the lodging is not adequate (e.g., unsanitary), an employer cannot substitute housing for wages. Employees cannot be required to share a bed and cannot be charged for lodging they do not use.

Food:

Effective January 1, 2008, the maximum amounts that can be credited for food are:

Type of meal	Maximum amount to be credited
Breakfast	\$ 2.90 per meal
Lunch	\$ 3.97 per meal
Dinner	\$ 5.34 per meal

If the food is not adequate and well balanced (covering basic nutritional needs), an employer cannot substitute food for wages. Employees cannot be charged for meals they do not actually receive.

For information about the maximum credits for time periods prior to 2008, or any future changes, check with the Division of Labor Standards Enforcement at (888) ASK-WAGE (275-9243) or check the applicable Wage Order online at <http://www.dir.ca.gov/Iwc/WageOrderIndustries.htm>.

8. Does every worker have the right to minimum wage?

Almost. However, if you fall into one of the groups listed below, you probably do not have the right to minimum wage.

a) Parent, Child or Spouse of Employer. If you work for your spouse, parent or child, you do not have the right to minimum wage. Other close relatives (e.g., uncles, aunts and siblings) are fully protected by the law and must be paid at least minimum wage.

b) Learners. Workers may be paid a reduced rate of 85% of the minimum wage, rounded to the nearest nickel (\$7.30 as of January 1, 2008), but *only* for the first 160 hours of work, when the work being learned requires a *new skill* and they have no similar or related experience. For example, a factory worker who has never worked with a certain type of machine can be paid the reduced rate while learning how to operate that particular machine.

9. What if I was paid less than minimum wage?

If you have been paid less than minimum wage during any pay period for any job, and the employer refuses to make up the difference, you can file a claim with the California Division of Labor Standards Enforcement (also known as the “Labor Commissioner”) to recover the wages you should have been paid. You can also go to court to collect your wages. If you go to court and can prove you have been denied minimum wage, you may be able to recover additional money (up to double your wages) as a penalty. This penalty is not available if you file with the Labor Commissioner, but you may be able to get a different penalty if you no longer work for the employer (See our Fact Sheet titled “**Getting Your Final Paycheck**” for more information). The Labor Commissioner’s process is normally easier for workers who cannot afford lawyers and there is no maximum amount you can claim. (If you go to Small Claims Court, the maximum is \$7500. If your claim is for more than \$7500, you can go to Superior Court).

To have the best chance of recovering the money you are owed, try to keep your own written record of the hours you work, and keep any paperwork (e.g. check stubs and timecards) that your employer gives you.

California law allows you to collect minimum wage (and overtime pay) for work you performed **up to three years** before the day you file a formal claim to collect your overdue pay. If your claim is more than three years old, it may have expired because of the **statute of limitations** (time limit). If you go to court instead of the Labor Commissioner, you may be able to go back **four years** because of California's unfair competition laws.

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.