

# Paydays/Late Pay/Bounced Paychecks

## YOUR LEGAL RIGHTS

### 1. How often am I supposed to be paid?

Generally, employees must be paid twice a month. All work done from the 1st to the 15th of the month must be paid no later than the 26th, and work done from the 16th to the last day of the month must be paid no later than the 10th of the following month. Your employer is required to set regular paydays, and must pay employees on those days. If your employer sets the payday before the 26th and the 10th, then that set payday is the day you should be paid. Your employer may pay you more than twice a month, but cannot make an agreement with you or other workers to pay you less than twice a month.

**Exceptions:** The above rule may not apply to exempt administrative, executive and professional employees, or to union members.

- Some administrative, executive and professional employees may be paid once a month because they are "**exempt.**" (See our Fact Sheet titled "**Exemptions from Overtime Pay**" for more information on which employees are administrative, executive or professional.)
- If you are in a **union** and covered by a collective bargaining agreement that has a different pay arrangement, that agreement trumps the above rules and sets your paydays.

### 2. Does my employer have to let me know when the paydays are?

Your employer is required to post a notice listing regular paydays and the time and place of payment. The notice should be posted where all the employees will see it, or if that is not possible, then the notice can be posted at your employer's office.

### 3. Does my employer have to stick to the posted paydays, or is there a "grace period" for late pay?

There is no grace period for regular pay, but your employer can wait until the next check to pay overtime. For example, if you are paid weekly, then your *regular* hours during the pay period must be paid on the check for that period - but your *overtime* hours for that period must be paid by the following check.

#### 4. What if we disagree about the amount of wages I'm owed? Can my employer wait until we agree on the amount?

No. If there is a disagreement about the amount of wages owed to you, your employer still must pay you the undisputed amount (the wages she acknowledges are due). You can then file a claim with the Division of Labor Standards Enforcement (DLSE) for any amount that remains in dispute. Although your employer may note on the check "payment-in-full" or other similar language, you can still cash your check without giving up your claim for further wages. However, to make sure the employer knows that you are not accepting the check as a full payment, when you cash the check you should consider crossing out "payment-in-full" and write "under protest" on the back before endorsing the check.

#### 5. Can my employer pay me with a voucher?

No. Your employer must pay your wages using cash or a form of payment that can be exchanged to cash (e.g., a check). Your employer can deposit your wages into a bank, savings and loan, or credit union of your choice provided that you have voluntarily authorized it. Your employer cannot pay you by a "voucher" that is subject to a service charge, nor can it pay you by any method that is redeemable in services or goods other than money. These provisions do not apply to students, or employers that are cities, counties, or school districts.

#### 6. Does my employer have to give me a check stub with my check?

Your employer must give you a statement that shows your gross wages, total hours worked (only if you are "non-exempt," or the type of worker who has the right to receive overtime pay), any deductions from your pay, your net wages, and the beginning and ending dates of the pay period. It must also include your name and your employer's name and address. This payroll information can be on the check stub, or it can be on a separate statement. Your employer is required to give you this statement every time you are paid, even if you are paid in cash. You should keep all of your check stubs in case you ever have a payroll dispute with your employer.

#### 7. If my paycheck bounces, do I have any rights?

**Yes.** Your employer is required to have enough money in the bank (or a credit arrangement) to cover your paycheck for 30 days after the date it is issued. If your employer's check bounced, and you attempted to cash or deposit the check within 30 days of receiving it, you can collect a penalty from your employer. If your employer doesn't pay you the owed wages immediately after the check bounces, it will **owe you an extra day of wages for each and every day you remain unpaid** (in addition to the amount of the paycheck itself). This penalty begins on the day you present the check to your bank for deposit and accrues until your employer pays you or for 30 days, whichever is shorter.

Your employer may be able to avoid paying the penalty by showing that the mistake with your check was unintentional. In order to receive this penalty you must file a claim with the Division of Labor Standards Enforcement (DLSE).

You may have the right to additional (or different) penalties if you file a claim in civil court rather than filing a claim with the DLSE. You should consult a private attorney about filing a claim in civil court.

Finally, if your employer does not have enough money to pay you, it has committed a misdemeanor and may have to pay a criminal penalty.

## 8. How do I report my employer for late or bounced paychecks?

Call the DLSE ("Labor Commissioner") and tell them you want to report your employer. The Labor Commissioner is listed in the state government listings at the front of your local phonebook under "Department of Industrial Relations, Division of Labor Standards Enforcement." You can also look up your local office and find out more information at the DLSE website: <http://www.dir.ca.gov/dlse/HowToFileWageClaim.htm>.

## 9. What if I am not paid on time or my check bounces after I quit or have been fired?

If you are *fired*, your employer is required to pay you all of your wages immediately, including any accrued vacation time and overtime pay. If you *quit*, you are entitled to all wages *within 72 hours of giving notice* (or on your last day if you give more than 72 hours notice). If you are not paid on time, your employer may have to pay your wages plus a penalty. (For more information on receiving your final pay and any associated penalties, see our Fact Sheet titled "**Getting your Final Paycheck.**")

## 10. Can my employer make me sign a release before I am paid?

No. It is illegal for your employer to agree to pay you only if you will sign an agreement releasing it from any claim related to your unpaid wages. If you signed a release like this before you were paid, it is not valid and you can still file a claim for any wages that are still owed. Your employer has committed a misdemeanor by making you sign the release before paying you, and may have to pay further fines.

## 11. I work for the government. Am I still covered?

It depends. The above rules do not apply to employees of counties, municipal corporations, school districts and students of nonprofit schools.

## 12. What should I do if I am not paid on time?

You should start by asking your employer for the wages you are owed and remind your employer that the wages are late. It is best to do this in writing (and keep a copy of the note).

If your employer refuses to pay you, you may have to take legal action. If you file a claim with the California Division of Labor Standards Employment ("Labor Commissioner"), you will not need a lawyer (although you can bring one). The Labor Commissioner is able to award you most of the unpaid wages and penalties described above.

You can also choose to file in Small Claims court or Superior Court. In Small Claims court, you do not need to find a lawyer (in fact, lawyers are not permitted in Small Claims court), but the maximum amount you can recover is \$7,500. If your claim is greater than \$7,500 then you should file in Superior Court.

For larger cases filed in Superior Court, you will have a much easier time if you hire a lawyer to represent you. Unfortunately, it might be difficult to find a lawyer to represent you unless you have a particularly large case. If you are not sure where to find a lawyer, you should start by contacting your local Bar Association and asking for a referral. Many questions about filing in court can also be answered by the Superior Court Clerk.

The turnaround on Small Claims Court claims is usually faster than Superior Court. The Small Claims Court hearing is normally held within 30 to 70 days after the claim is filed. See the California Courts Self-Help Center for more information:

<http://www.courtinfo.ca.gov/selfhelp/smallclaims/>. Many counties also have a Small Claims Legal Advisor's Office that can you help with your claim.

If you file a court case, you can recover your lost wages plus any penalties your employer might have to pay (see Section 7). Remember, however, that the daily penalty is only available if you do not recover the money for late charges or the "triple damages" penalty.

Filing with the Labor Commissioner or in court can take time; you may want to see if your employer will pay the penalties voluntarily to avoid the hassle. For more information about filing a claim with the Labor Commissioner, please see our Do-It-Yourself Guide titled, "Recovery of Unpaid Wages: How to Represent Yourself Before the California Labor Commissioner".

**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.**

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.