

WORKERS' WAGE AND HOUR RIGHTS: DON'T BE A VICTIM OF WAGE THEFT

Every day, tens of millions of workers labor as construction workers, retail sales workers, farmworkers, food processors, hotel room cleaners, dishwashers, home health aides and child care workers. In most of these industries, starting wages are low and rarely increase significantly. In many of these industries, increasing numbers of employers routinely fail to pay workers the wages they are owed. A [recent survey](#) of 4,400 workers in three major American cities found:

- 26 percent had not been paid the minimum wage in the most recent workweek;
- 76 percent had not been paid overtime for the extra hours they worked;
- In these three cities alone, workers lost \$56.4 million per week as a result of labor law violations.

Employers take advantage of workers in numerous ways, including non-payment of wages, failure to pay minimum wage, and failure to pay for all hours worked. Don't let yourself fall prey to wage theft. Understand your rights under federal law.

How much is the federal minimum wage?

Minimum wage under federal law is currently \$7.25 per hour. There are some exceptions based on the job you do or the size of the employer's business. Many states have higher minimum wages. The [U S Department of Labor](#) lists state minimum wage rates on its website. Note that most states have their own minimum wage rates and many are higher than the federal rate. Be sure to check!

What about overtime pay?

If you work over 40 hours in one work week, your employer must pay an overtime rate of one and a half times your regular rate for every extra hour worked.

- ✓ If your regular rate is \$10 an hour and you worked 50 hours, you should receive:
- $\$10 \times 40 = \400 PLUS $\$15 \times 10 = \150 , or a total of \$550 for the week.

How do I count my hours worked?

A general rule of thumb to count your hours worked is this: If you are free to use time for your own purposes, your employer doesn't have to pay for it. That means:

- ✓ Time spent waiting at the worksite after you have reported for duty is paid time.
- ✓ Time spent in trainings and meetings your employer requires from you is paid time.

What about transportation time?

- ✓ Ordinary home to work transportation is unpaid.
- ✓ Transportation while on your employer's business between job sites is paid time.

What about time spent getting ready for work?

- ✓ Time spent putting on or taking off required clothing or equipment is paid time.

Does the employer have to pay for my break or meal time?

- ✓ Yes, for short, 5-20 minute breaks.
- ✓ No, for longer breaks of 30 or more minutes, but ONLY if you are really free to use that time for your own purposes.

What deductions can the employer take from my paycheck?

In general, an employer is not allowed to make deductions that bring your hourly cash pay below the federal minimum wage of \$7.25 per hour. Federal law allows an employer to make deductions that cut into the minimum wage for items like food,¹ lodging or other goods or services if

- ✓ The employer customarily provides employees with items that are for the benefit of the employee, and
- ✓ The item is actually provided to the employee.²
- ✓ The employer cannot charge more than the reasonable cost of the item.³

For example, these are generally considered to benefit the employer and can't be deducted, if the deduction reduces your pay below the minimum wage:

- ✓ Required tools;
- ✓ A health permit required for your job;
- ✓ Uniforms required by the employer, the law, or the nature of the work.

What payroll tax deductions are allowed?

Your employer CAN deduct payroll taxes from your paycheck, such as FICA and Medicaid. In a few states, workers pay a portion of workers' compensation or unemployment insurance premiums.

My boss says I'm in business for myself, not her employee. Do I still get minimum wage?

¹ State and local laws may also regulate paycheck deductions. In relation to deductions for meals for instance, Florida state law prohibits operators of labor halls from making the purchase of lunch a condition of employment, providing greater protection to workers than the federal law in that state.

² The federal regulations state, "Not only must the employee receive the benefits of the facility for which he is charged, but it is essential that his acceptance of the facility be voluntary and uncoerced." However, the Courts of Appeals for both the 5th and 11th Circuits (covering the states of Texas, Louisiana, Mississippi, Alabama, Georgia and Florida) have found that, under federal law, benefits can be deducted from wages even when they are not voluntarily accepted.

³ This means that the benefit is not provided at a profit to the employer and is provided at no greater than market cost, whichever is the lower. Such a deduction is lawful, even if the employer makes a profit, if the deduction does not reduce the cash component of the wage below the minimum level.

Employers of low-income workers frequently misclassify their employees as “independent contractors” (either by giving them an IRS Form 1099 instead of a W-2, or by paying them in cash and not withholding any taxes). For help, see NELP’s Fact Sheet, 1099’d.

What if my employer doesn’t pay me what I’m owed?

You can complain to your union, a local workers’ center, state or federal Departments of Labor, legal services or private attorneys. They can tell you more about your rights.