

Know Your Workers' Rights



BarberCosmo
Board of Barbering & Cosmetology

Know Your Workers' Rights

The barbering and cosmetology industry offers a number of employment options. A licensee may decide to be an employee of a cutting-edge salon or shop, be an independent contractor (booth renter), or maybe own his or her own salon or shop. Whichever direction your career takes you, it is important to know your workers' rights and responsibilities.

Workers in every state have certain defined rights that cannot be violated, including the right to a minimum wage, safe working conditions, and reasonable breaks. It is important for all workers to know their rights before taking any job and understand these obligations before becoming a salon or shop owner.

The purpose of workers' rights is to ensure that all employees are treated lawfully, paid a minimum wage, and not subjected to any form of harassment within the workplace. In this booklet you will find information on basic rights you are entitled to and what action you should take if you are not receiving these rights.

Please note that the materials provided in this publication are not comprehensive.

Workers' Rights and Responsibilities

Knowing your worker classification is essential in knowing what rights you are entitled to. For instance, your rights as an employee of a salon are much different than the rights of the salon owner. Let's take a moment to review the various worker classifications found in the barbering and beauty industry.

KNOW YOUR WORKER CLASSIFICATION

• Salon Owner

Owners are in business for themselves. They are responsible for the business and do not work for someone else. A business could be a sole proprietor, a partnership or a corporation. Many owners are also workers. Salon owners are responsible for reporting all income and expenses to the Internal Revenue Service (IRS), withholding employment taxes (if they have employees), and paying all taxes due. Salon owners are responsible for classifying workers correctly as employees or independent contractors (booth renters).

Example

Tiffany owns Clips Barbershop. Tiffany purchases all the supplies used in the Barbershop and sets the shop's hours of operation. She has determined the cost of services provided and menu of services. She maintains a lease agreement with the property owners. She has put in place a strict dress code requirement and since the barbershop has six barbers, she completes an employee work schedule. She arranges training for the employees so they can keep up-to-date with current trends. She regularly offers technical assistance to her team members. Tiffany sends each of her employees a W-2 because she is the owner of the salon.

• Independent Contractor (Booth Renter)

Independent contractors (booth renters) are licensees who rent or lease a workstation in someone else's salon or shop. They are self-employed and are often responsible for record keeping, setting their

work hours, and menu of services, and collecting their own client payments. They hold a key to the shop and can come and go depending on workflow. They are financially responsible for the profit or loss in their own business and receive all income generated from their work. They are responsible for the timely filing of their tax returns and payment of taxes related to their business. An independent contractor (booth renter) may work inside of a shop or salon owned by a salon owner but maintains a separate identity. An independent contractor (booth renter) works for himself or herself and is not subject to the will or control of the salon owner.

Example

Marisol is a manicurist and esthetician who has a business contract with two large salons where she provides her services. In her contracts, she is provided with a workstation for which she pays \$600 per month to each salon. She keeps her own appointment book and sets her own hours of operation at her convenience and has created her own menu of services. She has been provided with a key to the shop. She provides her own tools, nail polish, and makeup. Marisol handles her own payments from customers and is responsible for filing and paying tax on her income and tips. Marisol is an independent contractor booth renter.

Note: If the business contract specifies that Marisol must:

- Work four days a week, 9 a.m. to 5 p.m.
- Only use the products the salon markets
- Provide only the services listed on the shop's menu of services
- Charge the prices established by the salon owner

Then Marisol may no longer be an independent contractor booth renter but now may be considered an employee.

- **Employee**

Employees receive a W-2 form from their employer for wages earned and are responsible for reporting their tips to their employer. They follow a work schedule established by the salon owner. They offer services in the salon that have been determined by the salon owner. They are subject to the will and control of the employer, who has the authority to tell him or her what to do and how to do it.

Example

Patricia works at Blaze Hair Salon owned by Judy. Patricia is told to be at work Tuesday through Saturday, 9 a.m. - 5 p.m. Patricia does not purchase the products used on her clients, rather she uses the products supplied by the shop. The shop has a receptionist who books Patricia's appointments. Patricia would prefer to only do haircuts, however, the shop is a full service shop and so Patricia must provide chemical services to her clients when requested. Judy observes the work that Patricia does and provides technical direction when needed. Patricia reports all her tips to Judy. Patricia is Judy's employee.

KNOW YOUR TAX OBLIGATIONS

You will want to contact the IRS, legal counsel, and an accountant representative for detailed information regarding your specific tax obligations. The summary provided below is a guideline; it is not all inclusive.

- **Salon Owner**

A salon owner with employees may:

- ✓ File employment tax on all employees
- ✓ Prepare and file a W-2 form wage and tax statement to report to the IRS wages, tips, and other compensation paid to all employees
- ✓ File Social Security and Medicare tax withholdings on all employees
- ✓ Maintain workers' compensation insurance on all employees
- ✓ Maintain unemployment insurance on all employees
- ✓ Collect and pay sales taxes
- ✓ Be responsible for state and local taxes

- **Independent Contractor (Booth Renter)**

In addition to reviewing the salon owner tax obligations stated above, as an independent contractor you may complete a W-9 form (Request for Taxpayer Identification Number and Certification).

- **Employee**

As an employee, you will receive a W-2 form from each employer you have worked for during the year. Employers issue these forms in January of the following year. The W-2 form combines all wages and reported tips. It shows the amount of federal taxes withheld and paid throughout the year.

Additional information on tax obligations can be found in the Reference Publications section portion of this publication.

INCOME

Generally speaking, as a licensee working as an employee, your income will probably be earned in three different ways: wages (or salary), tips, and commission on product sales.

- **Minimum Wage**

Effective January 1, 2017, the State mandated minimum wage for California is \$10.50 per hour. If you live in a county or city that has adopted a higher mandated minimum wage, your employer is required to pay the higher mandated minimum wage.

To find out the minimum wage amount for your city or county go to:

www.minimum-wage.org/wage-by-state.asp

or search online for:

City/County, California+minimum wage amount

The minimum wage requirement cannot be waived by any work agreement made between the employee and the shop owner. In other words, an employee cannot agree to work for just tips and no minimum wage. Employers are expected to pay the minimum hourly wage, and the employee may keep his or her tips. Tips do not belong to the shop owner. If you find that you have not been paid the mandated minimum wage and the shop owner has made no efforts to rectify the situation, you may file a wage claim with the Division of Labor Standards or file a lawsuit against your employer for lost wages.

- **Overtime**

An employer who requires or permits an employee to work overtime is generally required to pay the employee overtime at time and one half of the regular rate of pay for all hours worked in excess of 8 hours a day or 40 per week. The overtime requirement may not be waived by an agreement between the employer and employees. An announcement by the employer that no overtime work will be permitted or that overtime work will not be paid for unless authorized in advance also will not impair the employee's right to compensation. To gain additional information, call (866) 487-9243 or visit the U.S. Department of Labor Wage and Hour Division website: www.wagehour.dol.gov or (844) 522-6734 or visit the Department of Industrial Relations website: www.dir.ca.gov/dlse/FAQ_Overtime.htm.



Tips are taxable and must be reported to your employer.

- **Tips**

Tips are not gifts. If you have provided a service to a customer and they have paid you more than what you have stated is your fee, then that additional amount is a tip. Tips are taxable and must be reported to your employer. For additional information regarding how to report tips, please see: <https://www.irs.gov/uac/About-Publication-531>.

Salon/shop owners will want to access the Reference Publications section of this publication and review the IRS publication, *Tips on Tips*.

Tips belong to you, the service provider. Unlike under federal regulations, in California an employer cannot use an employee's tips as a credit toward

its obligation to pay the minimum wage. California law requires that employees receive the minimum wage plus any tips left for them by patrons of the employer's business. See Labor Code Section 351, which states:

"No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment."

You may be wondering what can I do if my employer withholds my tips or refuses to pay me minimum wage or overtime? What if I tell my employer that I am going to report him or her to the Labor Commissioner's Office and he or she fires me? Is there anything I can do?

You have options if an employer withholds wages or tips. You have the right to file a wage claim or file a lawsuit against your employer for lost wages.

Filing a Wage Claim

An employee or former employee may file an INDIVIDUAL wage claim to recover:

- Unpaid wages, including overtime, commissions, and bonuses
- Wages paid by check issued with insufficient funds
- Final paycheck not received
- Unused vacation hours that were not paid upon termination of the employment relationship, e.g., left job, discharge or layoff
- Unauthorized deductions from paychecks

- Unpaid/nonreimbursed business expenses
- Reporting time pay/split shift premiums
- Failure to provide a meal and/or rest period in accordance with the applicable Industrial Welfare Commission Order
- Liquidated damages for failure to receive minimum wage for each hour worked
- Waiting time penalties for failure to receive final wages timely upon separation of employment
- Penalties for paycheck(s) that have bounced or are not negotiable within 30 days of receipt. Penalties for employer's failure to allow inspection or copying of payroll records within 21 days of request.
- Sick Leave Pay for time accrued and used for which you were not paid (effective July 1, 2015)

For an in-depth review on how to file a wage claim and the procedures and forms involved, visit:
www.dir.ca.gov/dlse/faq_minimumwage.htm.

A copy of the publication, *Recovering Your Unpaid Wages with the California Labor Commissioner's Office* can be found in the Reference Publications section of this publication.



You may be able to file a wage claim if you were not provided a meal and/or rest period in accordance with the applicable Industrial Welfare Commission Order.

Discrimination or Retaliation



If your employer discriminates or retaliates against you, you can file a discrimination/retaliation complaint.

If your employer discriminates or retaliates against you (for example, he fires you because you asked him why you weren't being paid the minimum wage, or because you file a claim or threaten to file a claim with the Labor Commissioner), you can file a discrimination/retaliation complaint with the Labor Commissioner's Office (also called the Division of Labor Standards Enforcement). In the alternative, you can file a lawsuit in court against your employer. For more details, please see the booklets located in the Reference Publications section of this publication, *Health and Safety Rights: Facts for California Workers* and *All Workers Have Rights in California*.

As an employee in the State of California, you have the right to speak to representatives of the office of the California Labor Commissioner or any other government or law enforcement agency about any issues affecting your working conditions. Your employer cannot fire, demote, suspend, or discipline you for answering questions or providing information to a government agency.

Filing a Lawsuit

If you decide to file a lawsuit for lost wages, you should consult with legal representation on how to proceed.

Workers' Compensation

Workers' compensation benefits are designed to provide employees with the medical treatment necessary to recover from work-related injuries or illness, partially replace wages that are lost while recovering, and help the employee return to work. Workers' compensation benefits do not include damages for pain and suffering or punitive damages.

The Division of Workers' Compensation (DWC) monitors the administration of workers' compensation claims and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits.

California employers are required by law to have workers' compensation insurance, even if they only have one employee. If your employees get hurt or sick because of work, you are required to pay for workers' compensation benefits. Workers' compensation insurance provides six basic benefits: medical care, temporary disability benefits, permanent disability benefits, supplemental job displacement benefits, or vocational rehabilitation and death benefits.

DWC's mission is to minimize the adverse impact of work-related injuries on California employees and employers. There are several offices throughout the State. Benefits Assistance and Enforcement Phone: (800) 736-7401.

- DWC contact information: www.dir.ca.gov/dwc/ContactDWC.htm.
- For locations: www.dir.ca.gov/dwc/dir2.htm.

The Family Medical Leave Act

The Family Medical Leave Act (FMLA) applies to employers who employ 50 or more employees. You may be eligible for this benefit if you work for a large chain salon. Eligible employees are entitled to take unpaid, job-protected leave with continuation of group health insurance coverage for up to 12 work weeks in a 12-month period for:

- The birth of a newborn child
- The placement and care of a child for adoption or foster care
- The serious health condition of the employee or the employee's spouse, child, or parent
- Qualifying needs arising out of a covered military member's active duty status

And 26 work weeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness.

For information regarding FMLA visit: www.dol.gov/whd/fmla/index.htm.



You may be eligible for FMLA due to the birth of a newborn child, or the placement and care of a child for adoption or foster care.

Immigrant Workers

The Department of Labor's Wage and Hour Division continues to enforce the Fair Labor Standards Act without regard to whether an employee is documented or undocumented. Regardless of your citizenship status, employees have the right to work for a minimum wage, keep their tips, and have a safe, healthy workplace.

Agency Contact Information:

LABOR COMMISSIONER'S OFFICE (also known as the Division of Labor Standards Enforcement [DLSE])

The Labor Commissioner provides information about employment rights, discrimination, and wrongful firings. The Labor Commissioner's Office also takes worker complaints about discrimination for health and safety activity and will investigate them. There are several locations throughout the State.

Website: www.dir.ca.gov/dlse/dlse.html

For locations and contact information:
www.dir.ca.gov/dlse/DistrictOffices.htm

E-mail: dlse2@dir.ca.gov

U.S. DEPARTMENT OF LABOR (WAGE AND HOUR DIVISION)

Website: www.wagehour.dol.gov

Monday-Friday, 8 a.m. to 5 p.m.

Phone (866) 4USWAGE ([866] 487-9243)

TTY (877) 889-5627

INTERNAL REVENUE SERVICE

Many tax questions can be answered online at the IRS website.

Website: <https://www.irs.gov>

If you require a face-to-face meeting, you can find your local office information at: <https://www.irs.gov/uac/Contact-My-Local-Office-in-California>

IRS SMALL BUSINESS AND SELF-EMPLOYED TAX CENTER

Website: <https://www.irs.gov/Businesses/Small-Businesses-Self-Employed>

STATE OF CALIFORNIA FRANCHISE TAX BOARD

Website: <https://www.ftb.ca.gov/>

Monday-Friday, 7 a.m.-5 p.m. (800) 852-5711

24/7 Automated Support (800) 338-0505

Outside the United States (916) 845-6500

TTY/TDD (800) 822-6268

BOARD OF EQUALIZATION

General Tax Questions (Toll-free) (800) 400-7115
Outside the United States (916) 445-6362
California Relay Service (CRS) 711 (for hearing and speech disabilities)

EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)

Website: www.edd.ca.gov/About_EDD/Contact_EDD.htm

Ask EDD: <https://askedd.edd.ca.gov>

Department Directory: www.edd.ca.gov/About_EDD/Department_Directory.htm

In Conclusion

This publication highlighted some basic workers' rights, what to do, and whom to contact if you are not receiving those rights.

Take a moment and review the materials located in the Reference Publications section. Simply click on the publication name and you will be directed to the online document.

Please note that the materials provided in this publication are not comprehensive. Always make it a priority to stay up to date on your basic rights by contacting the agencies listed on the previous page.

Thank you for working with the Board of Barbering and Cosmetology to ensure all licensees and consumers can have a safe, healthy salon or shop experience.

Reference Publications

- 1 Independent Contractor or Employee**
https://www.irs.gov/pub/irs_pdf/p1779.pdf
- 2 Tax Tips for the Cosmetology and Barber Industry**
https://www.irs.gov/pub/irs_pdf/p4902.pdf
- 3 Tips on Tips**
https://www.irs.gov/pub/irs_pdf/p3144.pdf
- 4 OSHA's Workers' Rights**
<https://www.osha.gov/Publications/osh3021.pdf>
- 5 Nail Salon Workers Wage and Hour Rights**
<https://www.dol.gov/whd/FLSAEmployeeCard/NailSalonFlyer.pdf>
- 6 Recover Your Unpaid Wages with the California Labor Commissioner's Office**
<https://www.dir.ca.gov/dlse/PubsTemp/DLSE%20Brochures/Recover%20your%20unpaid%20wages%20with%20the%20Labor%20Commissioner's%20Office/Brochure WCA WEB English.pdf>
- 7 Health and Safety Rights: Facts for California Workers**
<http://www.dir.ca.gov/dosh/documents/health-and-safety-rights-for-workers.pdf>
- 8 All Workers Have Rights in California**
<http://lohp.org/wp-content/uploads/2015/06/English.pdf>

Click on a document title to be redirected to the online version of that publication.



COPYRIGHT 2017

California Board of Barbering and Cosmetology
P.O. Box 944226, Sacramento, CA 94244-2260
(800) 952-5210
www.barbercosmo.ca.gov

All rights reserved.