

**YOUR RIGHTS  
UNDER  
WAGE AND HOUR  
LAW**

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**A Summary**

**The Center for Worker Rights**  
May 2008

## **Forward**

The Center for Worker Rights was founded by Norman Malbin, an attorney with over 20 years experience in representing workers in wage and hour matters.

The best way a worker can protect his or her rights begins with knowledge. The information in this pamphlet provides a basic understanding of wage and hour law by describing the most common ways these laws are violated.

## **Disclaimer**

The information in this pamphlet is not intended to provide specific legal advice. It can't. Each case depends on its own facts. The goal here is to provide you with basic concepts that generally apply. The materials in this pamphlet are based on the laws in effect as of May 2008.

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# **I. INTRODUCTION**

Every day workers get cheated out of wages. This booklet summarizes the most common ways employers do this. It also explains the rights and remedies that workers have. The emphasis is on construction workers but the rules apply to everyone.

Unless stated otherwise, the material in this pamphlet is based on federal law and is the law in every state.

## **II. UNPAID WORK TIME**

### **A. Overtime**

*The basic rule is that employees must be paid overtime if they work over 40 hours in a week.*

Employers frequently engage in a variety of tactics to avoid paying overtime. For example:

1. Employers get employees to engage in certain tasks before and after work for no pay at all. If the worker is paid for 40 hours and also spends additional time before and after work performing some of these activities, those hours are unpaid overtime.
2. Rather than pay overtime, the employer "banks" the overtime hours supposedly to fill in later weeks when the worker has less than 40 hours.
3. Employers complain that they can't afford the

overtime but if the employee wants the hours they will "let" the worker work overtime at straight-time.

4. Employer has the employee work overtime "off-the-clock" in exchange for certain privileges or barter.
5. Employer pays employee a salary and says employee is "exempt" from overtime. There are only a few exemptions from overtime and they are narrowly construed. Being paid a "salary" is not the determining factor.

#### **B. Time Spent Before and After Work**

Following are examples of before and after work activities that the law requires employees to be paid for:

- All time at the shop or job site when you are there because the employer has required it. (i.e. "Be here at 6:45.") This is true even if the employer says: "Be here by 6:45; you go on the clock at 7:00."
- Time in the morning reviewing job orders, pulling supplies, loading equipment and supplies into the truck, meeting with supervisors, regardless of whether the employer has specifically required it.
- Time spent before or after work unloading trucks or cleaning trucks out or meeting or waiting to meet with supervisors.

- Time spent completing paperwork for the benefit of the employer.
- Time spent getting supplies either from the shop or from a supply house.
- Time spent at the end of the day cleaning up the job site, putting tools away, making a supply list or returning the truck to the shop.

***The basic rule is that an employer may not "suffer nor permit" a worker to work without paying for this time.***

Following are examples of before and after work activities that are generally **not** compensable:

- Showing up early and drinking coffee or visiting while waiting for the day to begin.
- Catching a courtesy ride back to the shop and the driver stops to get supplies.

### **C. Travel Time**

***The basic rule is that commuting time is not compensable but time spent traveling for the benefit of the employer is work time.***

Following are examples of travel time that are “work time” that must be paid for:

- Time spent traveling from the shop to the job site, if you are required to report to the shop.
- Time spent traveling between jobs during the day.
- Time spent traveling to get supplies before, during or after the work day.
- Time spent transporting equipment or supplies for the benefit of the employer.
- Time spent returning the company truck to the shop.

Following are examples of travel time that are not "work time" and that the employer does not need to pay for:

- Time spent commuting between home and work.
- Time spent traveling from the shop to the job site, if you are required to report to the job site (and the only reason you went to the shop was to catch a ride).
- Time spent traveling from a staging area to the site of work (assuming no work was performed prior to, or at, the staging area).

### **III. PWR/PUBLIC WORKS**

A "public works" contract means a construction project by or for a public agency (i.e. police station, school, library, post office, irrigation district, etc.).

Federal law and many states, including Oregon and

Washington, require that every worker who works on a public works project shall receive no less than the prevailing wage rate (PWR). Unscrupulous employers have devised numerous ways to cheat workers out of the wages they are entitled to. For example:

- Lie to the government agencies about who is working and how much they are being paid (and lie to the workers about what they are entitled to).
- Mis-classify the worker into a lower paid classification.
- Report the workers on government forms as “apprentices” when they are not.
- Work apprentices out-of-ratio.

**Note:** In Oregon, there is a specific set of statutes that generally require overtime for all workers on a public works for all hours over 40 in a week or 8 in a day or any hours worked on a Saturday, Sunday, or holiday. (Note: An employer may establish a 4/10 schedule under certain limited circumstances.)

#### **IV. INDEPENDENT CONTRACTORS**

Employers violate wage and hour law by claiming that the employee is an “independent contractor.” To support this claim, the employer will pay the worker by the job, or not withhold any taxes and certainly will not pay travel time or overtime.

Whether a worker is an employee or an independent contractor is determined by law – not by what the employer says and not by what the worker has agreed to.

As a general rule, if the employer has the right to control the worker (i.e., control what, when, where, how) then the worker will be deemed to be an employee under wage and hour law as well as unemployment and workers' comp laws.

***If you are not a bona fide independent contractor then the laws that protect workers will protect you – regardless of what your employer says.***

## **V. UNLAWFUL DEDUCTIONS**

Oregon law states that an employer may make a deduction from your paycheck *if, and only if*, the deduction is:

1. Required by law;
2. Authorized by the employee, for the employee's benefit and recorded in employer's books;\*
3. Authorized by a collective bargaining agreement.\*

\* **Note:** If the recipient of the deduction is the employer, certain other conditions must be met.

Employers violate this statute when they:

- Deduct the full amount of a "loan" not in accordance with the loan agreement;
- Deduct for missing tools;

- Deduct for amounts owed allegedly due to employee negligence or mistake.

## **VI. LATE PAYCHECKS**

The law requires that the employer establish and maintain regular paydays. Paychecks cannot be withheld or delayed as a form of punishment. Paychecks cannot be withheld or delayed because the employer says it does not have the money to pay you. Paychecks cannot be withheld as a condition of returning equipment.

## **VII FRINGE BENEFITS**

Many non-union employers offer no or very limited fringe benefits.

There is no law that requires employers to provide fringe benefits. However, when an employer does offer fringe benefits, certain rules must be followed.

Some of the violations that non-union employers commit are the following:

Vacation: When an employee leaves, the employer does not pay for accrued but unused vacation.

Pension: The employer deducts money for a 401k but does not put the money into a pension account. The employer does not provide a description of the pension plan or tell the participant how to cash out.

Health Care: The employer does not offer the employee the right to continue health insurance coverage at the time of termination. (These are commonly referred to as COBRA rights.)

Break Time: This benefit is required by Oregon law. The statute requires workers to receive paid breaks twice in an eight hour day. (See chart on page 17.)

## **VIII FINAL PAYCHECK**

Most states have a law that requires all wages to be paid at the time of separation from employment. In Oregon, the law is ORS 652.140 which states:

- If employer fires employee, all wages are due by the end of the next business day.
- If employee gives at least two days notice (excluding weekends and holidays), all wages are due on the last day of employment.
- If employee does not give notice, all wages are due within five days (excluding weekends and holidays) or on the next payday after the quit, whichever comes first.

**Note:** "All wages" means all wages including accrued but unused vacation.

Your employer **cannot**:

- Hold your wages hostage in order to coerce you into returning equipment or signing a form;
- Delay paying you until someone else pays him.
- Deduct amounts from your final paycheck that are not authorized by law.

## **IX. YOUR RIGHT TO DAMAGES**

When an employer violates state or federal wage and hour law, the employee is entitled to recover one or more of the following:

- Unpaid Wages – Workers are always entitled to recover their unpaid wages.
- Liquidated Damages – Under federal law the worker is entitled to recover an additional amount equal to their unpaid wages; this is called "liquidated damages." Liquidated damages are designed to compensate the worker for not having received wages in a timely manner.
- Civil Penalty – Oregon has a state law designed to punish employers who do not pay a worker all wages due at the time of separation from employment. The amount of the penalty is set by law. The amount of the penalty is determined by

whether notice is given and when the employer pays. First, if the worker does not send a written request for the unpaid wages then the penalty is equal to the unpaid wages. Second, if the worker, or someone on the workers behalf, does send a written notice and the wages are paid within twelve days after the written notice is sent, then the penalty is equal to the unpaid wages. Third, if the worker does send a notice and the wages are not paid within twelve days then the penalty is eight hours of pay for each day the wages remain unpaid up to a maximum of 30 days.

**Note: Even if the employer pays all wages due, but not in a timely manner, you may still be entitled to liquidated damages or a penalty.**

- Interest – In Oregon, employees can typically recover interest at the rate of nine percent on unpaid wages.
- Attorney Fees and Costs – In addition to recovering unpaid wages, liquidated damages and/or a civil penalty, the law requires the employer to pay attorney fees and court costs.

## **X. IMPORTANT THINGS TO KNOW**

Individual Liability – Some employers threaten that they will go out of business or file bankruptcy if a worker pursues a claim for unpaid wages/overtime. Federal law makes key owners individually liable for unpaid wages.

Burden of Proof – Many workers are reluctant to pursue their unpaid wages because they don't have the records to "prove" their case (or because they signed time cards that do not include all hours worked).

Do not worry about this. The burden is on the employer to maintain records adequate to show that each employee has been paid for all hours worked. Workers can overcome incomplete or inaccurate records and estimate the hours worked – the burden is on the employer to disprove the worker's estimate.

Statement of Deductions – Oregon law requires employers to provide along with the paycheck a statement explaining each and every deduction made from a worker's pay.

Review of Personnel Records – In Oregon, every employee is entitled to a reasonable opportunity to inspect his or her personnel records, and to obtain (for a reasonable cost) a certified copy.

On-the-Job Injuries – Some employers encourage or

coerce their employees into saying that an injury was not work-related. This is wrong because the worker is then committing insurance fraud, a crime. Worse, the worker loses the lifelong health coverage for the injury that is provided by workers comp. My advice: Don't do it. (Technically this is not a wage and hour matter but it is an important issue.)

Agreements with Employers – Employers sometimes enter into pay arrangements that seem good for the employee, but really are not. For example:

- Pay in cash (i.e. "under the table").
- Give the employee services or equipment in trade for time worked:
  - Use of company gas card for personal use;
  - Use of company vehicle for personal use;
  - Use of company cell phone for personal use.

When the employer does this, you may think you are coming out ahead, but you better think again.

1. Regardless of whether you are receiving cash or a credit card, income is income and is subject to taxes. If you cheat on taxes, sooner or later the IRS will catch up with you.
2. Getting paid "under the table" reduces your income that is reported. This adversely effects health

insurance, disability pay, pension contributions, unemployment insurance, social security and/or your ability to obtain credit.

3. The employer is not doing this to do you a favor. By paying you in cash (or in-kind), the employer is avoiding taxes. (In Oregon, for every dollar the employer pays out in payroll, it pays an additional 11.5% in taxes and workers comp.)
4. Because these arrangements are typically not in writing, when you leave your job the employer can (and often does) assert that there was no such arrangement and that you owe it for the gas charged to the company credit card or the personal calls made on the company cell phone.

**Note:** Once employees figure out they may have a problem, they sometimes feel like they have no option but to continue the program to be paid illegally and keep it a secret. The reality is that although the federal IRS and the state Department of Revenue are going to make you pay the taxes you owe, they understand that in these arrangements it is the employer who is the real culprit. The general rule is that if you come forward and volunteer the information they will let you off with back taxes (and possibly interest) only; but if they catch you on their own, they are not as forgiving.

**Note:** The IRS pays a reward to individuals that turn in employers who cheat on their taxes.

## **XI. WHAT TO DO**

Keep Records – Keep a record of where you worked, what work you did, what hours you worked and the names and telephone numbers of your co-workers. Making a note about the weather that day increases its credibility. Today you may not think you are going to pursue a claim, but tomorrow you might. Start now. Take out a calendar and create a history to the best of your ability.

Don't be a Chump – A lot of workers don't pursue claims because they figure they don't deserve it (i.e., they agreed to work under those terms or conditions). Others don't pursue claims because their employer gave them a job, an advance, a truck, or whatever. Never forget, your employer is not doing you a favor by giving you a job – he or she hired you to make money off of you in order to own a nice home, drive a nice truck, and have a nice retirement plan. It is because of workers like you that the employer has those nice things.

Use a Private Attorney – Many workers turn to a government agency to pursue a wage claim. These agencies have informed and caring staff but frequently settle cases for less than is owed and frequently for no damages at all. My advice is to hire a private attorney on a contingent basis.

**The attorney fee statute and penalties will more than pay for the attorney who is motivated to maximize your recovery.**

Don't Get Greedy – Once workers realize they have been taken advantage of, they sometimes get angry. Don't let your anger make you greedy. A lawsuit is time consuming, emotionally draining and frequently unpredictable. Lawyers have a saying: in a good settlement, no one walks away happy.

Don't Delay – Different wage claims have different time lines that must be followed. Overtime claims are two years, three if the violation is “willful.” In Oregon, general wage claims can go back six years from the date a lawsuit is filed.

## **XII CONCLUSION**

It took a lot of years and a lot of hard work to establish the wage and hour laws described here.

If you think your employer may have violated one of these laws, my advice is ***do something about it***. If you are not sure about what to do, talk to a lawyer or a union organizer and let him or her help you figure out how to proceed.

Even if you do not want to do anything about it right now, at least begin keeping copies of your check stubs and a log of

the hours you work (in case you decide to do something in the future).

You owe it to yourself, your family and the workers who follow you.

**Rest/Lunch Breaks - Oregon**

<b>Length of Work Period</b>	<b>No. of Rest Breaks Required</b>	<b>No. of Meal Periods Required</b>
2 hrs or less	0	0
2 hrs 1 min – 5 hrs 59 min	1	0
6 hrs	1	1
6 hrs 1 min – 10 hrs	2	1
10 hrs 1 min – 13 hrs 59 min	3	1
14 hrs	3	2
14 hrs 1 min – 18 hrs	4	2
18 hrs 1 min – 21 hrs 59 min	5	2
22 hrs	5	3
22 hrs 1 min – 24 hrs	6	3

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