

# Don't Work for Free!

## Your Rights to Fair Pay in Texas



Information for workers in Texas

**These rights apply to all workers, regardless of immigration status.**

### What is the minimum I have to be paid?

- ✓ Almost all employees in Texas have the right to be paid a **minimum wage of \$7.25** per hour for regular hours (up to 40 in a workweek). You have to be paid minimum wage even if you agree to be paid less.
- ✓ The majority of employees in Texas also have to be paid **overtime** (1.5 times your normal pay for every hour you work beyond 40 in a workweek). For example, if you make minimum wage, you must be paid at least \$10.88 per overtime hour (1.5 x \$7.25). If you make \$10 per hour, you must be paid at least \$15 per overtime hour.
- ✓ You also have to be paid your **promised wage** for work you have performed, even if you don't have a written contract. For example, if you are promised \$10 per hour and you performed 40 hours of work, your employer must pay you \$400 for the work.

### I heard that I don't have the right to minimum wage or overtime if I'm paid a salary. Is that true?

No, that's not true. Your rights to minimum wage and overtime don't depend on how you are paid. Employees who are paid a weekly or monthly salary, a day rate, or a piece rate can all have the right to minimum wage and overtime pay.

You calculate your hourly pay like this:  $\frac{\text{weekly pay}}{\text{weekly hours worked}} = \text{hourly rate}$

*Example:* Eva cleans houses and is paid \$25 per house. She cleaned 8 houses this week, working 40 hours, and was paid \$200 for the 8 houses. Eva is being paid \$5 per hour ( $\frac{\$200}{40 \text{ hours}} = \$5$ ). Eva is not being paid correctly and has a minimum wage claim.

*Example:* Mario is paid a salary of \$480 per week that is supposed to cover 40 hours of work. However, Mario worked 50 hours this week. Since Mario worked overtime hours, first you have to figure out his hourly rate. Mario's hourly rate is \$12 ( $\frac{\$480}{40 \text{ hours}} = \$12$ ), so his overtime rate is \$18 (\$12 x 1.5). For his overtime hours this week, Mario should be paid an extra \$180 (\$18 x 10 hours) on top of his salary.

### My employer pays me every two weeks, not every week. Do I only get overtime after 80 hours in the two-week period, or do I still get paid overtime after 40 hours per week?

You get overtime after 40 hours per week. Overtime is always calculated week by week, even if you are not paid by the week. If you have a two-week pay period and work 30 hours in Week 1

and 50 hours in Week 2, your employer must pay you 10 hours of overtime for the second week, even though you worked 80 hours over the two-week period. A workweek is seven 24-hour periods in a row, and it must stay the same (your employer cannot change the workweek in order to avoid paying you overtime).

### **If I work more than eight hours in a day, do I get overtime?**

Not in Texas (unless you have a union contract or other agreement with your employer saying so). In Texas, overtime is calculated on a week by week basis, so working a long day does not give you the right to overtime unless you work more than 40 hours in a workweek. For example, if you work four 10-hour days in a workweek and rest the other three days, you don't have the right to overtime pay because you have only worked 40 hours in that week.

### **I get tips at my job. Do I have to be paid minimum wage and overtime?**

Yes, most tipped workers have the right to the minimum wage of \$7.25 an hour and overtime. Usually, if you make tips, your employer only has to pay you \$2.13 an hour in your check for regular hours, but you still have to make \$7.25 an hour in tips and your check combined. The employer has to follow a lot of rules to be able pay you this way. For more information, go [here](#).

### **What time counts as working time?**

In general, your employer has to pay you beginning from the moment when you have to be available for work until you are free to leave. You must be paid for time you are not able to use for your own purposes that is for the benefit of the employer, even if you are not actually performing work. You must generally be paid for:

- ✓ **Travel between worksites** during the day.
- ✓ **Waiting time**, if you are required by the employer to be available and ready for work and cannot use the time for your own purposes.
- ✓ **Short breaks** (for example, 20 minutes or less).
- ✓ **Preparatory work before your shift or cleanup work after your shift**, even if it was not part of your scheduled shift.

You generally do not have to be paid for:

- ✓ Travel between your home and work (**commuting time**);
- ✓ Meal breaks or other **breaks that are at least 30 minutes** (if you don't have to work at all during that time and are free to use the time however you want).

### **Does my employer have to give me breaks?**

In Texas, usually not (unless you have a union contract or other agreement with your employer saying so). Some laws require breaks or leave for certain types of workers. For example, many employers must provide employees with leave related to COVID-19, and your employer may have to provide you with breaks or leave related to a disability or serious health conditions (for info, [go here](#)). Most employers must provide employees with breaks to express breast milk (for info, [go here](#)). In Austin, an ordinance requires employers to give construction workers breaks (for info, [go here](#)). However, most Texas employers are not generally required to provide breaks or vacation time.

## **What deductions can my employer make from my pay?**

Private employers in Texas cannot make deductions from your wages unless:

- a court ordered your employer to make deductions (for child support, for example);
- your employer has the right to do so by law (for taxes, for example); or
- you gave authorization *in writing* to make deductions for a lawful purpose.

Your employer cannot make deductions or require you to pay for things that are really **for the benefit of the employer**, if those deductions take your pay below minimum wage or overtime.

Things that your employer cannot deduct from your pay or require you to buy include, for example:

- necessary tools used for the work
- the cost to repair damaged tools and property (even if you accidentally caused the damage)
- cash register shortages
- the cost of stolen property
- uniform costs (if the work uniform has a logo or cannot be worn in everyday life, or if the uniform is required by law)
- customer refunds
- work-related telephone costs
- work-related travel expenses
- medical bills that should be covered by workers' compensation
- housing – in some cases (for example, if the housing is very substandard, or if the employer requires you to leave your home and live in the housing to be “on call”).

*The key question is: was the expense/deduction for the employer's benefit, or for your benefit?*

If your employer does not deduct money from your pay for these items but requires you to buy them, that also counts as an unlawful deduction if it takes your pay below minimum wage or overtime.

## **Does my employer still have to pay me if they say I did a bad job?**

Yes, your employer still has to pay you. If your employer does not like your work, they may have the option to fire you but must pay you for the work you have already done. They also have to pay you even if they say:

- you broke tools or equipment
- the employer is waiting to get paid by a customer
- the employer does not have enough funds to pay you
- the employer does not have your tax identification number or SSN.

Your employer must still pay you for your work, even if the employer makes these excuses.

## **My employer pays me in cash. Am I protected by these laws?**

Yes. Workers who are paid in cash have the same rights that other workers have.

## **My employer says I am an independent contractor and don't have the right to minimum wage or overtime. Is that true?**

No, not necessarily. Most workers are employees, not independent contractors. The law says that you can be an employee even if your employer calls you or treats you as an independent contractor (for example, gives you a 1099) and even if you sign something agreeing that you are an independent contractor. Many employers treat employees as independent contractors to avoid having to pay them correctly (for info, go [here](#)). Even if you were misclassified by your employer, you can still enforce your rights as an employee.

And even if you really are an independent contractor, you have the right to enforce your contract, and construction workers (both employees and independent contractors) may have special rights (for info, go [here](#)).

## **How can I protect myself from wage theft?**

It's the employer's responsibility to keep track of your hours and pay and make sure you are paid correctly. But here are some steps you can take to put yourself in a better position if your employer doesn't pay you correctly:

- ✓ **Write down and permanently keep** your own notes of the **hours and dates** that you work (for example, in a calendar). This is not required, but it will put you in a better position to show how many hours you worked.
- ✓ Keep all your **pay stubs**. If your employer pays you in cash, note the date and amount of each payment.
- ✓ Keep all documents related to the work, including **texts and emails**.
- ✓ If you work construction, take **photos** of your finished work.
- ✓ If you had a personal **cell phone** during the work, keep it.
- ✓ **Write down:**
  - the names, phone numbers, and addresses of your supervisor(s) and any companies you do work for.
  - the names and phone numbers of your co-workers.
  - the address where you worked.
  - license plate numbers for the employer's and supervisor's vehicles.

## **What can I do if I'm not paid what I'm owed?**

1. Try to **talk with your employer** about why you haven't been paid correctly. If possible, take a co-worker with you or send your employer something in writing in case you are retaliated against so you will have proof.
2. **Contact a lawyer** for advice or contact a workers' center. You can contact Texas RioGrande Legal Aid for free, confidential information and legal services at 888-988-9996. For referrals to private employment attorneys representing workers in Texas, [go here](#).
3. If you want to take action to try to recover your unpaid wages, with or without an attorney, you can:
  - ✓ Contact the **U.S. Department of Labor Wage and Hour Division** at 1-866-478-9243. This federal agency is in charge of investigating minimum wage and

overtime violations and can recover unpaid wages for you or other workers in your workplace. You can file an anonymous complaint, and the process is free. The Department of Labor will not ask you about your immigration status.

- ✓ For wages due to you within the last 180 days (about six months), file a written complaint with the **Texas Workforce Commission (TWC)**. The process is free. Call 800-832-9243 or [go here](#) for information and forms. *Note: if you choose this option and get a final decision from the TWC, you usually cannot file a claim in court later for the same unpaid wages.*
- ✓ File a claim in **Justice of the Peace Court (“JP Court”)** for amounts up to \$20,000. JP Court is a court with simple procedures that is designed for people with smaller claims. You do not need an attorney to file in this court. For more information on this process, go [here](#) and [here](#). In general, you must file a claim for unpaid wages within **two years** (or three years in some cases). If you file a claim for unpaid minimum or overtime wages in court, you are usually entitled to request two times the wages you are owed.
- ✓ If your employer has given you a **hot check** (check with insufficient funds) or has **intentionally refused to pay you**, you may be a victim of a crime (theft by check or theft of services/wage theft). You can file a theft of service complaint with your local police or sheriff’s department, and you can file a hot check complaint with your local prosecutor.

## **What if my employer retaliates against me?**

You have the right to complain to your employer or others about not being paid correctly, regardless of your immigration status.

It is generally illegal for your employer or former employer to retaliate against you for demanding your rights by:

- firing, demoting, or disciplining you, or cutting your hours;
- reporting you to immigration or the police, suing you, or harming you in other ways;
- or *threatening* to do these things.

If your employer retaliates against you, you may have a **retaliation claim** that could allow you to try to get your job back, lost pay, and other damages. You can contact an attorney for advice or file a retaliation complaint with the U.S. Department of Labor (above). In general, retaliation claims must be filed in court within two years of when the retaliation happened, though some claims can be filed within three years.

\*\*\*

*Note: this information is not legal advice. For free, confidential advice and information, contact Texas RioGrande Legal Aid at 888-988-9996.*