

# How can I get paid for my work in Justice of the Peace Court?



*Information for workers in Texas*

**What is Justice of the Peace Court?** Justice of the Peace Court is a court where people can go to get back the money that another person or company owes them without the need to hire a lawyer. Hearings held in this court are informal and the procedures are easy to follow.

**Who can file suit in Justice of the Peace Court?** Anyone who is 18 or older, regardless of immigration status, can file a suit in this court. If a minor (under 18) wants to file suit, a family member can do so on their behalf and will later appear with them at the hearing.

**What kinds of suits can be filed in Justice of the Peace Court?** You can sue for amounts up to \$20,000.

## **CLAIMS THAT YOU CAN FILE**

- If you did not receive the minimum wage of \$7.25 per hour...
- If you were not paid overtime when you should have been...
- If your employer didn't pay you for work you did...
- If your employer didn't pay you your promised salary or hourly rate...

YOU CAN TAKE LEGAL ACTION IN JUSTICE OF THE PEACE COURT.

**But usually it's better to try other ways to solve the problem.** Filing a lawsuit means that you will spend time filling out forms and going through court procedures. The process can take time, and you might have to pay some court costs. That's why we recommend that you take the following steps before you file suit:

### 1) Try to talk to your employer

Sometimes you can solve the problem by talking to your employer. It's important not to yell or insult the employer. Stay calm and make specific demands.

### 2) Write a formal letter

If you can't resolve the problem by talking to your employer, sometimes it's a good idea to write a formal letter explaining why the employer owes you money and demanding that the employer pay you. Send the letter certified mail return receipt requested so that you can prove that your employer received the letter. If you want help writing the letter, visit the offices of Texas RioGrande Legal Aid or a local community organization.

## **How do I get ready to file suit?**

If you've taken these steps and your employer still refuses to pay you, then it might be time to consider filing a lawsuit. But first, in order to save time, it's good to get some documents in order before going to the courthouse:

1) A calculation of how much you are owed

It's important to know as exactly as possible the amount of money that your employer owes you because that is the amount you will ask for in court. If you have kept notes about the days and hours you have worked, you can use this information to figure out how much you should have been paid. If you don't have any notes, try to remember the best you can. Write down an estimate of the number of hours you worked each day, and the wage you were promised for this work.

**example:**

*Yolanda was promised she'd earn \$8 an hour. She worked 40 hours a week for 3 weeks total.*

*40 hours X 3 weeks = 120 total hours*

*\$8.00 per hour X 120 hours = \$960.00*

***Yolanda should have been paid a total of \$960.00 minus taxes.***

*Let's say that she only received \$500.00 total.*

*960.00  
-500.00  
460.00*

***Yolanda is still owed \$460.00.***

2) the name and location of the person or company you are suing

Even though it might seem simple, figuring out the name and location of the person or company you are suing is often the most complicated part of filing a claim. If you don't give the court the right information, it could mean that you might not be able to collect on a judgment in your favor.

First you will have to figure out whether the person or company is: (a) a sole proprietor, (b) a partnership, or (c) a corporation or other type of company (for example, an LLC).

You can find out what kind of business it is by calling the County Clerk's Office. Give them the first and last name of the person and the name of the company, if you know it. Ask them to tell you if that person works as a sole proprietor, a partnership, or a corporation.

If your employer is a sole proprietor, you should sue the person individually and also include the name of the sole proprietorship as a "d/b/a" or "doing business as" (Example: "*Juan Garcia d/b/a Garcia's Contracting*"). You'll need to put his or her full name on the lawsuit, as well as his or her business address.

If it turns out that the business is a partnership, ask the people at the County Clerk's Office for each partner's name, as well as the company name. You will have to include all of this information in the suit, along with the business address.

**[if you were an employee and your claim is for unpaid minimum wages or overtime, you may be able to sue an individual even if there was a company involved, if the individual owner or officer of the company was involved in running the business and supervising your work. Consult with a lawyer.]**

If you find out that it is a corporation, then you will need to contact the **Business Tax Department of the Texas Secretary of State** at the following number: 1-800-252-1386. The staff at this office can tell you what the official name of the business is, and who the agent of service is. When you are ready to file the lawsuit, you will need to know this person's name, as well as the business address.

***Where can I file suit?*** You can file the lawsuit in the Justice of the Peace Court where your employer lives or where the work took place.

***How much time do I have to file a lawsuit?*** Even though you may have up to four years for some claims, it is wise to file the lawsuit as soon as possible. Some claims may need to be filed within two years, or even less time.

***What forms do I need to fill out?*** You can go to the Justice of the Peace Court to ask for the forms you need to file suit. When you go to fill out the forms, you will need to have the following information:

- An address where you can receive mail.
- The full names of the business owner, and his partners, as well as the official name of the company.
- Any pay stub, receipt, invoice, contract, or other work-related document.
- A brief written summary of the problem at work. It should include the dates that you worked and the date when the problem began.

***Does it cost anything?*** Yes, there is a filing fee for bringing a civil action in Justice of the Peace Court. You can ask the court to let you file your lawsuit without paying the fee by filling out a special form called an "Affidavit of Inability to Pay Court Costs." To do this, you will need to sign a sworn statement of income. Most Justice of the Peace courts should have a form affidavit that you can fill out.

***What else do I have to do?*** You will also need to tell the court clerk where the person you are suing can be found, and the day and time that he or she might be around so that the constable can serve papers on them. If you would prefer that a jury hear the case, instead of the judge alone, you can request a jury for an extra cost.

***When will the hearing take place?*** The person or company you are suing will have fourteen days from the date that he or she receives the papers to respond to the claim. When he or she responds, or when those fourteen days run out, the court will send you and the person you are suing a summons with the date of the hearing. If you have any questions about the date of the hearing, you can call the court clerk. If you don't receive a letter after a few weeks, you should call the court clerk just to make sure that the papers were successfully served and to check the court date.

***What should I do to prepare for the hearing?***

### documents

Collect any evidence that might be related to the work you did: pay stubs, contracts, receipts, invoices, etc. Take **three copies** of each document you plan to present to the court. If you think that the other side has documents that could help prove your case, you can send a written request to the judge to ask that you be allowed to request documents from the other side. You must send a copy of your request to the other side. The court clerk can give you information on filing your request with the judge.

**[about keeping records: The employer has the obligation to keep up-to-date records on the hours you worked and the wages you received. If the employer doesn't have them, the court should believe what the worker says about the hours worked and wages received.]**

### witnesses

If there are witnesses who have firsthand knowledge about facts related to your work, they can help prove your case. In general, the best witnesses are usually your own coworkers, but supervisors or clients can also help sometimes. Normally, witnesses who would personally benefit from a decision in your favor (like members of your family) are not the best ones to use in your case.

**[about retaliation: All witnesses have protection from retaliation. Under the law, the employer cannot fire anyone or take any other action against them for participating in your case.]**

Once you know who your witnesses will be, call them and ask them to tell you their story just as they would in front of the judge. That way there won't be any surprises when you go to court.

If there are witnesses who are important to proving your case but they don't want to cooperate, you can "subpoena" them to make them appear in court. A "subpoena" is a court order that says a witness has to come to court and testify. If you need a subpoena, once you know the date of the hearing, ask the court clerk to help you. You will need to give the clerk the witness's full name and correct address, so that he or she can be served with the papers.

### your argument

Look over the documents you have and think about how you want to present your evidence. Make a list of questions that you want to ask each witness. Create an outline of what you want to say at the hearing. That way you won't forget any important details when you are in court.

## **What can I expect on the day of the hearing?**

### to start with

It's a good idea to call the court clerk to double check the date and time of the hearing. It's very important that you arrive on time. In general, you should arrive about 15 minutes before the time of the hearing.

When you arrive at the courthouse, take a seat in the courtroom and wait for the judge to call your case number. When the judge calls your case, stand up and tell the judge that you (the “plaintiff”) are ready to proceed. The judge will then ask if the person or company you are suing (the “defendant”) is ready. If that person does not show up, and you can prove to the judge how much money he or she owes you, then the judge will probably rule in your favor.

#### explaining the procedure and swearing in

The judge will explain the procedures for the hearing. If you have any questions, don't be afraid to ask the judge.

Then, you, the person you are suing, and all of the witnesses will be sworn in.

[If you have chosen a jury trial, then you and the person you are suing will receive a list of names of potential jurors. You will have the chance to ask the potential jurors questions to decide who you would like to remove from the jury. You can remove three people for any reason at all, as long as it is not for a discriminatory reason (for example, based on race or gender). You may also remove other potential jurors if you can show the judge that there is a specific reason to do so – for example, if it turns out that they are related to the person you are suing.)

#### your story

You will have the chance to tell your side of the story first. Look at the outline that you prepared. Try to be brief and focus on the most important details. Call your witnesses one by one to tell their stories. You can also give testimony yourself. If you have any documents, you can explain what they are during your testimony, or you can ask one of the witnesses to explain what they are. Give a copy of each document to the bailiff (the peace officer in the courtroom).

After you tell your side of the story, the person you are suing (or his or her lawyer, if he or she has hired one), will have the chance to ask you questions. The judge may ask you questions too. Always answer truthfully and show courtesy.

#### immigration status

Everyone has the right to be paid for the work they performed, regardless of immigration status. If anyone asks about your immigration status, or the immigration status of any of the witnesses, you can tell them that this information is not relevant to the case.

#### the employer's story

After you tell your story, the other side will have the opportunity to tell his or her side of the story. He or she might say they don't owe you anything, or that you are asking for too much money. He or she might also call witnesses to support their side of the story. You have the right to ask questions of the employer and his or her witnesses. If you think that they are not telling the truth, you should ask questions to show that.

### the decision

Once the judge has heard from everyone, and everyone has asked all of the questions that they want, the judge will decide whether you are owed any money, and if so, how much. Sometimes the judge will want to think about the case for a while before making a decision. In that case, the judge will probably tell you when you can expect an answer.

[If you chose a jury trial, then the jury will decide who is right and how much, if anything, should be paid.]

### **What if I don't win the case?**

Both you and the person you are suing have the right to appeal the decision made in the Justice of the Peace Court. You can ask for another hearing in the County Court.

The deadlines to appeal or somehow change a justice court judgment are very short. A motion for a new trial must be filed within **fourteen days** of the judgment being signed. The deadline to appeal a case to County Court is **twenty-one days** from the date the judgment is signed. To appeal a case to a County Court, a cash bond is required. However, you can file a "Statement of Inability to Afford Payment of Court Costs or an Appeal" instead of posting a bond, also within twenty-one days of the judgment being signed. This form is available at the Justice of the Peace Court.

If you won the case, and your employer decides to appeal the decision, you must appear in the County Court. Otherwise, the judge might throw out the case.

An appeal is a more formal process, so if there is an appeal, you should consult with an attorney.

### **And if I win the case, how do I get my money?**

If you win your case in Justice of the Peace Court, then the judge will sign a judgment in your favor. After there is a judgment, the person you are suing will sometimes just pay you, but sometimes you have to take extra steps to get your money:

1) First, you will need to ask the Court Clerk for the Justice of Peace to prepare and give you an **Abstract of Judgment**.

- Once you have the Abstract of Judgment, you should file it with the County Court Clerk in the county where the defendant lives and in any county where the defendant has property.
- If you need to file in more than one county, you will have to ask the Court Clerk for the Justice of the Peace to give you more than one Abstract of Judgment. If the person you are suing owns more than one piece of real property, you can get a lien on these properties in the county where you file the Abstract as soon as it is filed. This makes it difficult for the person to sell property without first paying you and allows you to force the sale of those properties to pay the judgment and receive your money.
- You can force the sale of properties by asking the Court Clerk for the Justice of Peace to issue a **Writ of Execution**. Once the Writ of Execution is issued, you ask the Constable for the precinct where the defendant's property is located to serve the Writ of Execution on

the defendant. If you know of specific property owned by the defendant, you should write down a description of it and give it to the Constable.

- Sometimes the defendant will pay your judgment when the Constable serves him/her in order to avoid having the Constable seize property for sale.
- If the defendant does not pay, the Constable should seize non-exempt personal property and/or real property and put it up for sale. Some property (like a homestead) is exempt from seizure. If the Constable determines there is no non-exempt property, the Constable will return the writ to you marked "nulla bona" (meaning "no goods") and will likely take no further action.

2) If the person you are suing does not own several pieces of real estate, you can go to the court where you got the judgment and file a garnishment case against a person or company that has money owned by or owed to the defendant (usually a bank where the defendant has an account). This new case requests that the court issue a "**writ of garnishment**," telling the bank (or other entity or person) to give the defendant's money to you. To get the writ of garnishment, you must know where the person you are suing has accounts (or the name the person or entity that has money owned by or owed to the defendant). If you have kept a paycheck, you can usually find out the name of the bank that way.

3) Another option is to get a "turn over order," by which the judge orders the person you sued to turn over to you personal property equal to the value of the judgment.

If you have questions about how to file the orders described above, ask the Court Clerk or consult with a lawyer.

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