



HOW TO FILE A WAGE & HOUR CLAIM IN CALIFORNIA

California law lets employees recover unpaid wages by filing a wage claim with the Labor Commissioner's Office (the DLSE); this guide walks through the process from start to finish.

This document is a PDF version of the following article:

<https://www.worklawyers.com/how-to-file-wage-claim-california-dlse/>

CONTENTS

Decide if a Wage Claim is the Best Option

Prepare the Wage and Hour Claim

Gather Supporting Documents

Locate the Local DLSE Office and File the Claim

Attend the Settlement Conference

Wait for a Notice of Hearing

Attend the DLSE's "Berman" Hearing

Review the Order and Decide Whether to Appeal

References

BY KYLE D. SMITH

Kyle D. Smith is a California employment lawyer and the author of the articles on WorkLawyers.com. He represents employees in disputes with their employers, from unpaid wages and misclassification to wrongful termination.

He writes these guides to put the state's labor laws into plain English, in neutral terms, with a citation for every claim.



The wages and hours of California employees are protected by both state and federal law. Those laws, however, do not enforce themselves. When an employer violates them, many workers file a *wage claim* to recover the money they are owed.

A wage claim is a complaint an employee files to collect unpaid wages, penalties, and related compensation, whether from a current employer or a former one.¹ In California, most workers file that claim with the Labor Commissioner's Office, also known as the Division of Labor Standards Enforcement (the "DLSE").²

To start one, the worker submits a form called the Initial Report or Claim (DLSE Form 1), which can now be filed online, by mail, by email, or in person.³ The claim then moves through an investigation, a settlement conference, and, if it does not settle, an informal hearing that ends in an order either side may appeal to the superior court.⁴

This guide explains that process in detail, from deciding whether a wage claim is the right option through the hearing and any appeal. It covers California's wage claim process and does not address the separate process of filing an administrative claim with a federal agency.⁵ It is not intended as legal advice and should not be relied on for that purpose.

Decide if a Wage Claim is the Best Option



Employees who want to recover money for violations of wage and hour laws have options. The most obvious is to raise the issue with their employer and resolve it informally. Often, however, employers do not want to meet their legal obligations.

When employers fail to pay their employees' wages in full and on time, employees usually have three choices:

-  File a lawsuit in court,
-  File a wage claim with a *federal* agency, or
-  File a wage claim with California's Division of Labor Standards Enforcement (the "DLSE").⁶

For many employees, a wage claim with the DLSE is the easiest or best option. All three are explored in more detail below.

1.1 Civil Lawsuits

Employees who have been unlawfully underpaid have a right to file a lawsuit in court to seek the money they are owed.⁷

Lawsuits in California usually take place in the superior court.⁸ They are different than wage claims, which are normally handled outside of court. But the two approaches have similarities.

Both lawsuits and wage claims involve conferences and hearings at which evidence can be presented and legal arguments made. But lawsuits are a more formal process and can be costly, complicated, and time-consuming.

Wage claims, on the other hand, are designed to reduce an employee's risks and costs.⁹ It usually does not make sense to file a lawsuit in court for smaller claims.

When the legal issues are numerous, complex, or involve substantial sums of money, a lawsuit might be the best way to fully adjudicate the dispute.¹⁰

1.2 Federal Wage Claims

On the federal level, the Fair Labor Standards Act (the "FLSA") controls workplace rules that apply nationwide.¹¹ It sets minimum standards employers must follow, like the federal minimum wage.¹²

States like California, however, are free to adopt laws that protect employees to a greater extent.¹³ The law that benefits employees the most usually controls.¹⁴

Like California's Labor Code, the FLSA provides a procedure for employees to pursue a wage claim with an administrative agency.¹⁵ The Wage and Hour Division [↗](#) of the Labor Department handles such claims.

In many cases, pursuing a claim under the FLSA is less desirable than a claim brought under the California Labor Code. California usually (but not always) provides broader protections for employees than federal law.¹⁶

For example, California has adopted a higher minimum wage than is required by federal law.¹⁷ California also provides more overtime rights than the FLSA.¹⁸

When California law benefits an employee more than federal law, it can make sense for employees to pursue their claims with the agency tasked with enforcing state law: the DLSE.

1.3 Wage Claims with the DLSE

In addition to federal protections, employees in California are protected by the Labor Code and regulations written by state administrative agencies.¹⁹ Those laws cover matters like:

-  The time and manner of paying wages,
-  Minimum wage requirements, and
-  Mandatory overtime pay.²⁰

Through the wage claim process, the DLSE has the power to investigate and hold a hearing on employee complaints about violations of these laws and regulations.²¹

The DLSE can decide *any* question that is within its jurisdiction.²²

1.4 Which Option is Best?

Choosing how to proceed is often the first important decision in a case. Employees usually cannot pursue multiple forms of relief.²³

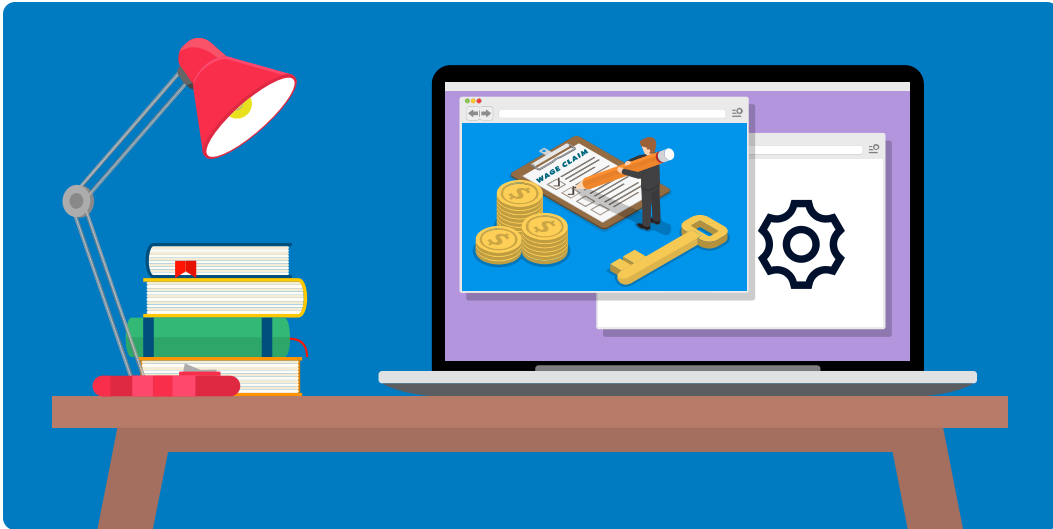
Employees may choose the wage claim process with the DLSE for several reasons:

-  It can be cheaper, faster, and less risky than a traditional lawsuit.²⁴
-  The DLSE has the power to issue subpoenas that compel witnesses to attend hearings.²⁵
-  The DLSE can force employers to produce documents.²⁶
-  The DLSE can issue citations to employers and require them to pay penalties.²⁷
-  Employees can hire a lawyer to represent them at DLSE hearings.²⁸

The main downside to filing a wage claim with the DLSE is that employees usually cannot recover attorney fees in a wage claim with the DLSE. In a lawsuit, on the other hand, that is sometimes possible, depending on the type of claim the employee is bringing.²⁹

Ultimately, the best course of action will depend on the specific facts of the employee's situation. It is often a good idea to speak with a qualified employment lawyer before deciding how to proceed.

Prepare the Wage and Hour Claim



California employees have the right to file a wage claim against their employer for wages, penalties, and other demands for compensation.³⁰ They can do so by filing a document called the “Initial Report or Claim” with the Division of Labor Standards Enforcement (the “DLSE”).³¹

The Initial Report or Claim is sometimes referred to as “DLSE Form 1.” It can be found by clicking [here](#).

The DLSE maintains a list of forms online, which contains the most recent version of DLSE Form 1. That list can be found by clicking [this link](#). Instructions for completing the form are available in several languages.

DLSE Form 1 allows employees to make a claim for wages and penalties concerning any violation of California wage and hour laws that fall within the Labor Commissioner’s jurisdiction, including:

-  Unpaid wages,³²
-  Unpaid commissions,³³
-  Unpaid vacation wages,³⁴

-  Failure to pay minimum wage,³⁵
-  Failure to pay overtime,³⁶
-  Failure to make payments for agreed benefits,³⁷
-  Failure to make timely payment of wages after termination,³⁸
-  Meal and rest period violations,³⁹
-  Unpaid split shift premium (required when two distinct work periods are separated by more than a one-hour meal period),⁴⁰
-  Unpaid reporting time pay (required when an hourly employee is required to report to work but is given less than half of a usual day's work),⁴¹
-  Unlawful deductions from a paycheck,⁴²
-  Unreimbursed business expenses,⁴³
-  Late payment or nonpayment of final wages,⁴⁴ and
-  Dishonored payroll checks.⁴⁵

DLSE Form 1 *cannot* be used to request an adjudication of claims relating to fraud or unfair business practices. Those claims are beyond the jurisdiction of the Labor Commissioner.⁴⁶ They would need to be raised in a lawsuit filed in court.

It is important for the employee to identify all wage claims against the employer that the employee might have. The failure to state *all* wage claims might prevent the employee from raising claims later that could have been resolved in the same administrative proceeding.⁴⁷

Gather Supporting Documents

Employees may also need to file certain supporting documents to support their wage claim with the Division of Labor Standards Enforcement (the “DLSE”). These might include a computation of the employee’s unpaid wages, a computation of penalties that are owed, or evidence.

A computation of wages or penalties is necessary if the amount owed is not clear from the information provided on DLSE Form 1. The DLSE’s online list of forms can be found by clicking [this link](#).

If applicable, the following forms can be used for that purpose:

-  **Meal & Rest Period Violations.** Employees claiming violations of California’s meal and rest period laws should complete DLSE Form 55 [↗](#). They can then detail the number of missed meal breaks and rest periods in the appropriate columns.
-  **Certain Unpaid Wage Claims.** If the employee is claiming wage violations that involve irregular or varying hours or days of work, they should complete DLSE Form 55 [↗](#). They can then detail their hours in the appropriate columns.
-  **Unpaid Commissions.** Employees claiming violations of California law regarding commissions should complete DLSE Form 155 [↗](#).
-  **Retaliation Claims.** If the employee wishes to file a claim concerning employment retaliation, they will need to complete DLSE Form RCI 1 [↗](#).
-  **Unpaid Vacations.** The DLSE also provides a vacation pay schedule form [↗](#) for unpaid vacation wages, which employees should include with their wage claim if they are making those claims.

The employee should also submit documentation in support of the claim. Depending on the type of claim, that documentation can include any of the following:

-  Time records that the employee made to document hours worked for which payment was not made,

-  Pay stubs showing wages paid during the period that is relevant to the claim,
-  Dishonored paychecks, or
-  Any document given to the employee by the employer describing the basis for the employee's compensation, if the employer provided one.⁴⁸

The employee should provide *copies* of these documents while retaining the originals. It may be necessary to submit the originals as evidence if the claim proceeds to a hearing.

Other than a copy of dishonored paychecks, employees will not necessarily have many of the documents listed above. Fortunately, employees are *not* required to keep these records and therefore are not required to submit them to DLSE to prove their claim.

Providing supporting evidence, if the employee has it, can make it easier for DLSE to understand the claim, increase the employee's credibility, and may speed up the time it takes for DLSE to investigate.

Locate the Local DLSE Office and File the Claim



Employees can now file a wage claim online, by email, by mail, or in person. The DLSE offers an online portal for filing wage claims, which lets an employee complete the claim and upload any supporting documents electronically. An employee who prefers a paper claim can instead download DLSE Form 1 and submit the completed form by email, mail, or in person.⁴⁹

4.1 Where to File

The Initial Report or Claim (DLSE Form 1) can be filed with any district office of the Division of Labor Standards Enforcement (the “DLSE”).

It is best for the form to be filed with the office location that handles wage claims for the area where the work was performed. If it is filed with the wrong office, the DLSE will transfer it to the appropriate district, which could cause delays in processing the claim.⁵⁰

The DLSE maintains a list of offices that can be found by following this link [link](#).

4.2 What Happens Next

When DLSE Form 1 is filed, the employee's claim is assigned to the Labor Commissioner. At this early stage, DLSE Form 1 is not a formal complaint against the employer. Instead, it is a mechanism for the Labor Commissioner to evaluate the potential merit of the employee's claim.⁵¹

In other words, filing DLSE Form 1 empowers the DLSE to screen and investigate the claim. If the case moves forward after it is screened, a formal complaint may be filed by the DLSE.

Within 30 days after the wage claim is filed, the DLSE must provide the employee and the employer with a notice that it intends to do one of the following:

-  Hold a hearing on the claim.
-  Bring a civil action in court if the employee cannot afford to hire a lawyer to do so.
-  Take no action.⁵²

If the screening of DLSE Form 1 suggests that the claim may have merit, the DLSE will usually set the matter for a settlement conference before deciding whether to hold a hearing.⁵³

Attend the Settlement Conference



If the DLSE decides that a hearing may be appropriate, it will often, but not always, hold a settlement conference before a hearing is scheduled. This settlement conference is sometimes referred to as a *conciliation* conference.

5.1 Settlement Conference Defined

The **settlement conference** is an informal meeting between the employer, the employee, and a Deputy Labor Commissioner. The conference is not a trial or a contested hearing. Parties are not put under oath and are not expected to present witnesses.

Instead, the employer and employee each explain their side of the dispute to the deputy and will generally discuss the evidence they will rely upon to prove their claim or defense if the case proceeds to a hearing. They may be asked to identify witnesses so that the deputy can estimate the amount of time that will be needed for a hearing.

The deputy will ask the parties whether they can resolve their differences and might make suggestions for settling the case. If, however, it is clear that the claim has no merit at all, the deputy may dismiss it without a hearing.

5.2 Attending the Settlement Conference

If a settlement conference is held, the DLSE will send a “Notice of Claim Filed and Conference” to both the employer and employee.⁵⁴

The notice will describe the claim and will direct the employee and employer to attend the conference at a specified date, time, and place.

Historically, the DLSE has aimed to hold the settlement conference within 30 days of when the notice is sent, though in practice the conference cannot always be scheduled within that time frame.⁵⁵

If the employee does not appear at the settlement conference, the claim will probably be dismissed. If the employer does not appear, the claim will probably be scheduled for a hearing.⁵⁶

5.3 Settlement Terms

If the parties settle their dispute at the conference, the employee should be very clear about the settlement terms. Some settlement agreements have effects that the employee might not realize.

An employee should be wary about giving up the right to bring unrelated claims, particularly since the employee might be surrendering claims without knowing that those claims exist.

It is usually a good idea to obtain legal advice before signing a settlement agreement or a release of claims.

Wait for a Notice of Hearing

If the claim is not resolved or dismissed at the settlement conference, the DLSE will prepare a formal complaint for the employee's signature.⁵⁷

The complaint is treated as the formal initiation of the complaint process. The DLSE then schedules the claim for an administrative hearing.

The administrative hearing at this stage has come to be known as a **Berman hearing** because the sponsor of the legislation that created this process was named *Howard Berman*.⁵⁸

6.1 Timing and Service of the Notice

The law provides that a Berman hearing must be held within 90 days of when the Labor Commissioner decides that a hearing is needed to resolve the claim.⁵⁹ In practice, the hearing is not always held within that time frame.⁶⁰

The DLSE has historically taken the position that a hearing should usually be held within 150 days of the date the initial claim is filed unless additional time is granted.⁶¹

When the hearing is scheduled, the time, date and place of the hearing is served on the parties, usually by certified mail.⁶² Personal service of the hearing is also authorized.⁶³

In addition to the hearing notice, the DLSE is required to serve a copy of the formal complaint. The complaint must state the amount of compensation requested.⁶⁴

6.2 The Employer's Answer

Within 10 days of when the complaint is served, the employer may file a written response to the complaint called "an answer."⁶⁵

The employer's answer can be written on the DLSE's answer form [☞](#). It should include all defenses that the employer wishes to rely on. If the employer fails to do so, it might be barred from presenting evidence on those defenses.⁶⁶

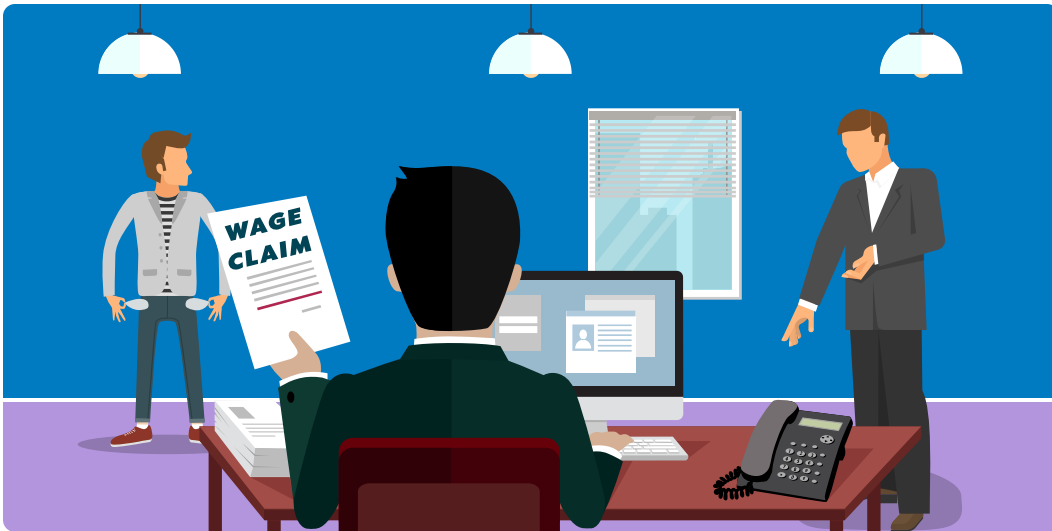
No other documents are required from the parties.⁶⁷

6.3 Postponing the Hearing

The hearing can be postponed (or "continued") at the request of the employer or employee, but only if there is a very good reason for doing so. The Labor Commissioner's general policy is to deny requested continuances of the scheduled hearing.⁶⁸

One exception to this policy is when employers present evidence on defenses that weren't alleged in the answer. If the DLSE allows the employer to present such evidence, it must give the employee a continuance if the employee requests one.⁶⁹ This enables the employee to review the evidence and prepare to challenge it at the hearing.

Attend the DLSE's "Berman" Hearing



7.1 How the Hearing is Conducted

A Berman hearing is similar to a trial in that evidence is presented and arguments are made. The setting, however, is much less formal than a court trial.⁷⁰ And instead of a judge, a Deputy Labor Commissioner acts as a hearing officer who presides over the hearing.

The rules of procedure and evidence that apply to court proceedings generally do not govern a Berman hearing.⁷¹ Certain concepts embodied in those rules, however, also apply in Berman hearings, including:

-  Both parties are entitled to call their own witnesses,
-  Witnesses may only testify under oath,
-  Each party is entitled to question witnesses called by the other party,
-  Each party is entitled to impeach the other party's witnesses (that is, to challenge their credibility),
-  Both parties are entitled to submit documents as evidence.⁷²

Additionally, both parties are entitled, but not required, to be represented by counsel.⁷³

7.2 Types of Permissible Evidence

Although formal rules of evidence do not apply, the hearing officer will only consider evidence that is relevant to the claim or a defense.⁷⁴

The hearing officer may consider evidence that might be excluded in a normal court proceeding, like hearsay evidence. The evidence must, however, be of the sort “which responsible persons are accustomed to rely in the conduct of serious affairs.”⁷⁵

The hearing officer has discretion to decide the order in which evidence is presented.⁷⁶ The employee will usually present evidence first since the employee bears the burden of proving the wage claim. The employer then presents evidence to challenge the claim.

Notably, even if an employer does not file an answer or fails to appear at a Berman hearing, the employee will still be required to prove the claim.⁷⁷

7.3 Documentary Evidence

If either party relies on documents as evidence, they should be prepared to explain the source of each document and why it is reliable. The hearing officer is likely to consider documents to be reliable if they are provided by the employer in the ordinary course of business.

If the employee presents documents they created (like their own record of hours worked), the documents will probably be given more weight if they made them as a regular practice while working. Evidence is much weaker if the employee created it from memory after filing the claim.

If a party will be relying on documents as evidence, the employee should bring *the original and two copies of each document*.⁷⁸ The original will be marked as an exhibit, a copy will be provided to the employer, and the employee will keep the other copy.

7.4 Witnesses

Each party must arrange for his or her own witnesses to testify. The employee can request a subpoena from the DLSE to assure that a witness attends.⁷⁹ The employee can also use a subpoena to compel the production of documents (such as time records maintained by the employer) at the hearing.⁸⁰

The Deputy Labor Commissioner has discretion to limit the number of witnesses subpoenaed.⁸¹

Review the Order and Decide Whether to Appeal

The hearing officer must make an order that grants or denies relief within 15 days after the hearing concludes. The order must contain an explanation of the hearing officer's decision. The order will be sent to each party by first-class mail.⁸²

If the hearing officer finds in favor of the employee's claim, either in whole or in part, the order will specify the wages, penalties, or other compensation owing to the employee.⁸³ The employee is entitled to interest at a statutory rate from the date the wages should have been paid until payment is made.⁸⁴

8.1 Appealing the Decision

If either party is dissatisfied with the order, the matter may be appealed to the superior court.⁸⁵ The Labor Code sets a short window: an appeal must be filed within 10 days after the order is served.⁸⁶ Because the order is served by mail, that period is extended, so the practical deadline is **15 days** from the date the order is mailed, or 20 days if it was mailed to an address outside California.⁸⁷

8.2 The Employer's Appeal Bond

An employer that appeals faces a requirement that does not apply to an employee: before the appeal can be filed, the employer must post an undertaking with the superior court in the full amount of the DLSE's order.⁸⁸ The undertaking can take the form of an appeal bond issued by a licensed surety or a cash deposit with the court, in each case equal to the amount of the order, and the employer must notify the other parties and the Labor Commissioner that it has been posted.⁸⁹ Its purpose is to secure the employee's recovery and to discourage employers from filing frivolous appeals or hiding assets to avoid paying a judgment.⁹⁰

The bond requirement is a meaningful barrier to employer appeals. Courts treat the deadline for posting the undertaking as mandatory and jurisdictional, so an employer that fails to post a proper undertaking on time will have its appeal dismissed, and the

court has no power to extend the deadline.⁹¹ The only recognized exception is for an employer that establishes it is financially unable to post the bond, which may apply to the court for a waiver within the same deadline.⁹²

8.3 Employee Appeals

An employee who appeals is entitled to a new hearing in the superior court. This is known as a *de novo* hearing, which is a Latin phrase that means “new hearing.”⁹³ Rather than reviewing the DLSE’s order to determine whether it is correct, the court will make its own decision based on the evidence presented to it.⁹⁴

8.4 Court Authority

The court has discretion to decide the entire wage dispute, including related wage claims that were not raised in the DLSE proceeding and those over which the DLSE has no jurisdiction.⁹⁵ Employees should consider being represented by counsel in a *de novo* court proceeding to maximize their opportunity to raise claims successfully.

8.5 Attorney Fees on Appeal

An employee who appeals and wins nothing may be ordered to pay the reasonable attorneys’ fees and costs incurred by the employer. If, however, the court awards the employee any amount of compensation, the employee cannot be required to pay the employer’s attorneys’ fees or costs.⁹⁶

If an employer appeals, the employee is entitled to an award of costs and attorneys’ fees if the employee is awarded any amount of compensation by the court.⁹⁷ That provision of the law provides employees with an incentive to hire a lawyer if an employer appeals from the DLSE’s order. At the same time, that provision discourages employers from appealing.

8.6 Representation on Appeal

An employee who cannot afford a lawyer is not necessarily left to handle an appeal alone. Under the Labor Code, the Labor Commissioner may represent a claimant who is financially unable to afford counsel in the *de novo* proceedings, and must do so when the claimant is simply trying to uphold the DLSE’s award and is not objecting to any part of it.⁹⁸ Because that is the usual posture when an employer appeals, an

employee who prevailed before the DLSE and only wants to defend the award will often qualify for representation by a Labor Commissioner attorney.⁹⁹

In practice, when an employer appeals, the DLSE notifies the employee of this option and provides forms for requesting representation and reporting the employee's financial circumstances.¹⁰⁰ An employee who wants the DLSE to represent them should return those forms promptly, because the appeal proceeds on the short timeline set by the Labor Code.

8.7 Finality of the DLSE's Opinion

If no appeal is taken, the DLSE's order becomes final.¹⁰¹ The DLSE must file a certified copy of the order with the court. The court then enters judgment according to the terms of the order.¹⁰²

An employee has the right to enforce the judgment using any of the procedures that are available to enforce court judgments. The court is required to give priority to the enforcement of a judgment arising out of wage proceedings.¹⁰³

References

-
- 1 *Post v. Palo/Haklar & Associates* (2000) 23 Cal.4th 942, 946 [“[I]f an employer fails to pay wages in the amount, time, or manner required by contract or statute, the employee may seek administrative relief by filing a wage claim with the commissioner or, in the alternative, may seek judicial relief by filing an ordinary civil action for breach of contract and/or for the wages prescribed by statute.”].
 - 2 The Division of Labor Standards Enforcement (the “DLSE”) is an administrative agency run by the State of California’s Labor Commissioner’s Office. (Labor Code, §§ 21, 61, 79.) As the name implies, the DLSE’s primary function is to enforce labor laws. It does this, in part, by overseeing wage claims. (See Labor Code, § 1193.5; *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 236 [“California’s Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE), is empowered to enforce California’s labor laws, including IWC wage orders.”].)
 - 3 Cal. Code of Regs., tit. 8, § 13501; Labor Commissioner’s Office, *How to File a Wage Claim*, <https://www.dir.ca.gov/dlse/howtofilewageclaim.htm>  [wage claims may be filed online, by email, mail, or in person].
 - 4 Labor Code, §§ 98–98.2.
 - 5 This guide does *not* cover the process of filing administrative claims with a federal agency.
 - 6 See *Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1084 [“The employee may seek judicial relief by filing an ordinary civil action against the employer for breach of contract and/or for the wages prescribed by statute. [Citations.] Or the employee may seek administrative relief by filing a wage claim with the commissioner pursuant to a special statutory scheme codified in [Labor Code] sections 98 to 98.8.”].
-

- 7 There is no requirement that a wage and hour claim be filed with a state or federal agency before a lawsuit is filed. (29 U.S.C. § 216(b) [“An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.”]; *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1117 [“An employee need not administratively exhaust his claim before filing a civil action. [Citation.] Our previous decisions suggest that a trial court’s power to hear a wage dispute extends to the consideration of related issues not reached by the Labor Commissioner.”].)
-
- 8 Code Civ. Proc., § 395.
-
- 9 See *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1155 [“[T]he Legislature enacted the Berman protections ‘as a means of affording an employee with a meritorious wage claim certain advantages, chiefly designed to reduce the costs and risks of pursuing a wage claim, recognizing that such costs and risks could prevent a theoretical right from becoming a reality’ [citation].”].
-
- 10 And, with many types of wage disputes, the employee may be entitled to attorney fees and court costs, so filing a lawsuit might not actually be more costly to them than a wage claim with the DLSE. (See, e.g., Labor Code, §§ 218.5, 1194.)
-
- 11 29 U.S.C. §§ 201–219.
-
- 12 29 U.S.C. § 216(b) [minimum wage].
-
- 13 See 29 U.S.C. § 218.
-
- 14 *Aguilar v. Association for Retarded Citizens* (1991) 234 Cal.App.3d 21, 34 [“[F]ederal law does not control unless it is more beneficial to employees than the state law.”].
-
- 15 29 U.S.C. § 211.
-
- 16 *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 945 [“It is well established that states may adopt wage and hour laws that are more protective of workers than the FLSA, and California has done so.”].
-

17	Compare 29 U.S.C. § 206(a)(1)(C) with Labor Code, § 1182.12, subd. (a).
18	29 U.S.C. § 207; Labor Code, § 510.
19	In certain industries, minimum wages and overtime pay are controlled by administrative regulations known as <i>wage orders</i> , issued by the Industrial Welfare Commission (the “IWC”). (<i>Cuadra v. Millan</i> (1998) 17 Cal.4th 855, 858.)
20	<i>Cuadra v. Millan</i> (1998) 17 Cal.4th 855, 858.
21	Labor Code, §§ 61, 74, 98, subd. (a).
22	Labor Code, § 98, subd. (a).
23	<i>Noble v. Draper</i> (2008) 160 Cal.App.4th 1, 11 [claimant is barred from raising claim in lawsuit after the claim was, or could have been, determined in the claimant’s administrative proceeding].
24	<i>Sonic-Calabasas A, Inc. v. Moreno</i> (2013) 57 Cal.4th 1109, 1155.
25	Labor Code, § 74.
26	Labor Code, § 74.
27	Labor Code, §§ 203, 1197.1.
28	Cal. Code of Regs., tit. 8, § 13507 [“Any party to a proceedings conducted hereunder may, but need not, be represented by counsel.”]; Labor Code, § 98.8.
29	See, e.g., Labor Code, §§ 218.5, 1194.
30	Labor Code, § 98, subd. (a).
31	Cal. Code of Regs., tit. 8, § 13501.
32	Labor Code, §§ 204–204c, 207.
33	Labor Code, § 200, subd. (a) [defining wages as including commissions].
34	Labor Code, § 227.3.
35	Labor Code, §§ 1182.12, 1197.
36	Labor Code, § 510.
37	Labor Code, § 227.
38	Labor Code, §§ 201–202.

39	Labor Code, § 226.7, subd. (c).
40	Cal. Code of Regs., tit. 8, §§ 11040, 11070, subd. 4(C).
41	Cal. Code of Regs., tit. 8, §§ 11040, 11070, subd. 5.
42	Labor Code, § 221.
43	Labor Code, § 2802.
44	Labor Code, §§ 201–203.
45	Labor Code, § 98, subd. (a) [“It is within the jurisdiction of the Labor Commissioner to accept and determine claims from holders of payroll checks or payroll drafts returned unpaid because of insufficient funds, if, after a diligent search, the holder is unable to return the dishonored check or draft to the payee and recover the sums paid out.”].
46	<i>Noble v. Draper</i> (2008) 160 Cal.App.4th 1, 12 [Labor Commissioner lacked jurisdiction “to adjudicate the claims plaintiffs allege in this lawsuit—fraud, negligent misrepresentation, false advertising, and a statutory claim of unfair business practices under the Business and Professions Code, all arising from defendants allegedly inducing plaintiffs to enter an employment contract.”].
47	<i>Noble v. Draper</i> (2008) 160 Cal.App.4th 1, 11 [“res judicata bars claims that <i>could have been</i> raised in the first proceeding regardless of whether or not they were raised”].
48	See Labor Code, § 2810.5 [requiring employer to give employee a written notice at the time of hiring describing, among other information, the rate and basis of the employee’s pay].
49	Labor Commissioner’s Office, <i>How to File a Wage Claim</i> , https://www.dir.ca.gov/dlse/howtofilewageclaim.htm ² [wage claims may be filed online, by email, mail, or in person]. The online portal is for wage claims only; it cannot be used to file a retaliation, PAGA, or public works claim.
50	Cal. Code of Regs., tit. 8, § 13501.
51	<i>Cuadra v. Millan</i> (1998) 17 Cal.4th 855, 861, disapproved on other grounds by <i>Samuels v. Mix</i> (1999) 22 Cal.4th 1.

- 52 Labor Code, § 98, subd. (a) [“Within 30 days of the filing of the complaint, the Labor Commissioner shall notify the parties as to whether a hearing will be held, whether action will be taken in accordance with Section 98.3, or whether no further action will be taken on the complaint.”].
-
- 53 The statutory notice options in Labor Code section 98, subdivision (a) (a hearing, action under Section 98.3, or no action) do not expressly mention a settlement conference. In its current practice materials, however, the DLSE describes the 30-day notice as announcing one of three paths: referral to a conference, referral to a hearing, or dismissal of the claim. (*Wage Claim Processing*, *supra*.) The conference is a voluntary investigative step, and the DLSE’s position is that its decision to hold a hearing under section 98, subdivision (a), is not made until after the conference is held. (See *Cuadra v. Millan* (1998) 17 Cal.4th 855, 861, disapproved on other grounds by *Samuels v. Mix* (1999) 22 Cal.4th 1.)
-
- 54 Cal. Labor Comm’r, *Policies and Procedures for Wage Claim Processing* (July 2018), <https://www.dir.ca.gov/dlse/policies.htm> [hereafter *Wage Claim Processing*].
-
- 55 *Cuadra v. Millan* (1998) 17 Cal.4th 855, 861 [“[T]he DLSE ordinarily holds a settlement conference on the initial claim, requiring all parties to appear with their evidence. The commissioner’s policy is to hold the settlement conference within 30 days after sending the parties notice thereof, but in practice the delay may be greater.”] disapproved on other grounds by *Samuels v. Mix* (1999) 22 Cal.4th 1.
-
- 56 *Wage Claim Processing*, *supra*.
-
- 57 See Cal. Code of Regs., tit. 8, § 13501.5 [specifying form of complaint].
-
- 58 *Cuadra v. Millan* (1998) 17 Cal.4th 855, 858, disapproved on other grounds by *Samuels v. Mix* (1999) 22 Cal.4th 1.
-
- 59 Labor Code, § 98, subd. (a) [“If the determination is made by the Labor Commissioner to hold a hearing, the hearing shall be held within 90 days of the date of that determination.”].
-
- 60 See Labor Code, § 98, subd. (a) [“[T]he Labor Commissioner may postpone or grant additional time before setting a hearing if the Labor

Commissioner finds that it would lead to an equitable and just resolution of the dispute.”].

-
- 61 *Cuadra v. Millan* (1998) 17 Cal.4th 855, 861–862, disapproved on other grounds by *Samuels v. Mix* (1999) 22 Cal.4th 1. This 150-day aggregate reflects the DLSE’s policy as described in *Cuadra*; the agency’s current wage-claim process materials describe only the 30-day notice and 90-day hearing windows. (See *Wage Claim Processing*, *supra*.)
-
- 62 Labor Code, § 98, subd. (b).
-
- 63 Labor Code, § 98, subd. (b).
-
- 64 Labor Code, § 98, subd. (b).
-
- 65 Labor Code, § 98, subd. (c) [“Within 10 days after service of the notice and the complaint, a defendant may file an answer with the Labor Commissioner in any form as the Labor Commissioner may prescribe, setting forth the particulars in which the complaint is inaccurate or incomplete and the facts upon which the defendant intends to rely.”]. The form of the answer is specified in Cal. Code of Regs., tit. 8, § 13501.7.
-
- 66 Labor Code, § 98, subd. (e) [“Evidence on matters not pleaded in the answer shall be allowed only on terms and conditions the Labor Commissioner shall impose.”].
-
- 67 Labor Code, § 98, subd. (d) [“No pleading other than the complaint and answer of the defendant or defendants shall be required. Both shall be in writing and shall conform to the form and the rules of practice and procedure adopted by the Labor Commissioner.”].
-
- 68 Cal. Code of Regs., tit. 8, § 13508 [“Continuance of hearing ordinarily will not be granted. The Deputy Labor Commissioner, in the exercise of his (her) sound discretion, may grant a continuance of hearing upon a showing of extraordinary circumstances and good cause for continuance by the party requesting same.”].
-
- 69 Labor Code, § 98, subd. (e) [“In all these cases, the claimant shall be entitled to a continuance for purposes of review of the new evidence.”].
-
- 70 Labor Code, § 98, subd. (a).
-
- 71 Cal. Code of Regs., tit. 8, § 13502 [“Proceedings need not be conducted according to technical rules relating to evidence and witnesses.”].
-

72	Cal. Code of Regs., tit. 8, § 13505 [“Oral evidence shall be taken only on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him (her) to testify; and to rebut the evidence against him (her).”].
73	Cal. Code of Regs., tit. 8, § 13507.
74	Cal. Code of Regs., tit. 8, § 13502.
75	Cal. Code of Regs., tit. 8, § 13502.
76	Cal. Code of Regs., tit. 8, § 13506.
77	Labor Code, § 98, subd. (f) [“If the defendant fails to appear or answer within the time allowed under this chapter, no default shall be taken against him or her, but the Labor Commissioner shall hear the evidence offered and shall issue an order, decision, or award in accordance with the evidence.”].
78	<i>Wage Claim Processing, supra.</i>
79	Cal. Code of Regs., tit. 8, § 13506 [“Prior to a hearing, upon the application of any party to the proceedings, the Deputy Labor Commissioner may issue subpoenas to compel the attendance of necessary witnesses and the production of books and documents.”].
80	Cal. Code of Regs., tit. 8, § 13506.
81	Cal. Code of Regs., tit. 8, § 13506 [“In the exercise of his (her) sound discretion, the Deputy Labor Commissioner may limit the number of witnesses subpoenaed either for the purpose of corroboration or establishing a single material fact in issue, or where the party requesting the subpoena has not furnished satisfactory evidence that the witness will be able to give necessary and competent testimony, material to the issues, at the hearing.”].
82	Labor Code, § 98.1, subd. (a) [“Within 15 days after the hearing is concluded, the Labor Commissioner shall file in the office of the division a copy of the order, decision, or award. The order, decision, or award shall include a summary of the hearing and the reasons for the decision. Upon

filing of the order, decision, or award, the Labor Commissioner shall serve a copy of the decision personally, by first-class mail, or in the manner specified in Section 415.20 of the Code of Civil Procedure on the parties. The notice shall also advise the parties of their right to appeal the decision or award and further advise the parties that failure to do so within the period prescribed by this chapter shall result in the decision or award becoming final and enforceable as a judgment by the superior court.”].

83 Labor Code, § 98.1, subd. (b).

84 Labor Code, § 98.1, subd. (c).

85 *Post v. Palo/Haklar & Associates* (2000) 23 Cal.4th 942, 947 [“The timely filing of a notice of appeal forestalls the commissioner’s decision, terminates his or her jurisdiction, and vests jurisdiction to conduct a hearing de novo in the appropriate court.”].

86 Labor Code, § 98.2, subd. (a).

87 Code Civ. Proc., § 1013; Labor Code, § 98.2, subd. (a) [making Code Civ. Proc., § 1013, applicable to computing the 10-day appeal period]; Labor Commissioner’s Office, *After the Hearing*, <https://www.dir.ca.gov/dlse/dlseAfterHearing.html> ¹³.

88 Labor Code, § 98.2, subd. (b) [“As a condition to filing an appeal pursuant to this section, an employer shall first post an undertaking with the reviewing court in the amount of the order, decision, or award.”].

89 Labor Code, § 98.2, subd. (b).

90 *Burkes v. Robertson* (2018) 26 Cal.App.5th 334, 341–342.

91 *Palagin v. Paniagua Construction, Inc.* (2013) 222 Cal.App.4th 124, 140 [undertaking requirement of § 98.2, subd. (b), is “mandatory and jurisdictional,” and the court has no authority to extend the deadline for posting it].

92 Code Civ. Proc., § 995.240; see *Burkes v. Robertson* (2018) 26 Cal.App.5th 334, 344.

93 *Collier & Wallis v. Astor* (1937) 9 Cal.2d 202, 205 [“A hearing de novo literally means a new hearing, or a hearing the second time. [Citation.]

Such a hearing contemplates an entire trial of the controversial matter in the same manner in which the same was originally heard.”].

-
- 94 *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1116.
-
- 95 *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1116–1120.
-
- 96 Labor Code, § 98.2, subd. (c) [“If the party seeking review by filing an appeal to the superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorney’s fees incurred by the other parties to the appeal, and assess that amount as a cost upon the party filing the appeal. An employee is successful if the court awards an amount greater than zero.”].
-
- 97 Labor Code, § 98.2, subd. (c).
-
- 98 Labor Code, § 98.4, subd. (a) [“The Labor Commissioner may, upon the request of a claimant financially unable to afford counsel, represent such claimant in the de novo proceedings provided for in Section 98.2.... In the event that such claimant is attempting to uphold the amount awarded by the Labor Commissioner and is not objecting to any part of the Labor Commissioner’s final order, the Labor Commissioner shall represent the claimant.”].
-
- 99 See *Wage Claim Processing*, *supra* [“DLSE may represent a plaintiff who is financially unable to afford counsel in the appeal proceedings.”].
-
- 100 Labor Commissioner’s Office, *After the Hearing*, <https://www.dir.ca.gov/dlse/dlseAfterHearing.html> ².
-
- 101 *Post v. Palo/Haklar & Associates* (2000) 23 Cal.4th 942, 947 [“If no party takes an appeal, the commissioner’s decision will be deemed a judgment, final immediately and enforceable as a judgment in a civil action.”].
-
- 102 Labor Code, § 98.2, subd. (e) [“The Labor Commissioner shall file, within 10 days of the order becoming final pursuant to subdivision (d), a certified copy of the final order with the clerk of the superior court of the appropriate county unless a settlement has been reached by the parties and approved by the Labor Commissioner. Judgment shall be entered immediately by the court clerk in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all of the

provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. Enforcement of the judgment shall receive court priority.”].

103 Labor Code, § 98.2, subd. (e).
