



# Understanding Workers' Rights and Responsibilities



# Understanding Workers' Rights and Responsibilities

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

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

The purpose of workers' rights is to ensure that all employees are treated lawfully, paid a minimum wage, and not subjected to any form of harassment within the workplace. This document will present information on basic workers' rights and what action should be taken if those rights are not being provided.

Please note that the materials provided in this document are not all-inclusive.

# Workers' Rights and Responsibilities

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

## KNOW YOUR WORKER CLASSIFICATION

### • Establishment Owner

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



Establishment owners are responsible for the business and do not work for someone else. Many establishment owners are also workers.

## Example

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

- **Independent Contractor (Booth Renter)**

Independent contractors (booth renters) are licensees who rent or lease a workstation in someone else's establishment. They are typically self-employed and are often responsible for record keeping, setting their work hours, menu of services, and collecting their own client payments. They hold a key to the establishment and can come and go depending on workflow. They are financially responsible for the profit or loss in their own business and receive all income generated from their work. They are responsible for the timely filing of their tax returns and payment of taxes related to their business as well as getting their own municipal business permit. An independent contractor (booth renter) may work inside of an establishment owned by an establishment owner but maintains a separate identity. An independent contractor (booth renter) works for himself or herself and is not subject to the will or control of the establishment owner.



An independent contractor (booth renter) may work inside of an establishment owned by an establishment owner but maintains a separate identity.

## Example

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

**Note:** If the business contract specifies that Marisol must:

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

Then Marisol may no longer be an independent contractor booth renter but now may be considered an employee, as someone else has the right to control her work.

- **Employee**

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

## Example

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



Employees follow a work schedule established by the establishment owner and offer services in the establishment that have been determined by the establishment owner.

## TAX OBLIGATIONS

Contact the IRS, legal counsel, or a tax accountant for detailed information regarding specific tax obligations. The summary provided below is a guideline; it is not all-inclusive.

- **Establishment Owner**

An establishment owner with employees should consult with the proper regulatory entities regarding the following:

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

- **Independent Contractor (Booth Renter)**

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

- **Employee**

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

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



One of the ways income can be earned is through commission on product sales.

## INCOME

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

- **Minimum Wage**

If an employee works in a county or city in California that has adopted a higher mandated minimum wage, the employer is required to pay the higher mandated minimum wage.

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

[www.minimum-wage.org/wage-by-state.asp](http://www.minimum-wage.org/wage-by-state.asp)

or search online for:

**City/County, California+minimum wage amount**

The minimum wage requirement cannot be waived by any work agreement made between the employee and the establishment owner. In other words, an employee cannot agree to work for just tips and no minimum wage, nor can an employee just be paid a flat commission without a base minimum wage. Employers are expected to pay the minimum hourly wage, and the employee may keep his or her tips. Tips do not belong to the establishment owner. If an employee has not been paid the mandated minimum wage and the establishment owner has made no efforts to rectify the situation, the employee may file a wage claim with the Division of Labor Standards or file a lawsuit against the employer for lost wages.

- **Overtime**

An employer who requires or permits an employee to work overtime is generally required to pay the employee overtime at time and one half of the regular rate of pay for all hours worked in excess of 8 hours per day or

40 per week. The overtime requirement may not be waived by an agreement between the employer and employees. An announcement by the employer that no overtime work will be permitted or that overtime work will not be paid for unless authorized in advance also will not impair the employee's right to compensation. To gain additional information, call (866) 487-9243 or visit the U.S. Department of Labor Wage and Hour Division website: [www.wagehour.dol.gov](http://www.wagehour.dol.gov).

- **Tips**

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



Tips are taxable and must be reported to the employer.

Establishment owners will want to access the Reference Publications section of this document and review the IRS publication *Tips on Tips*.

Tips belong to the service provider. Unlike under federal regulations, in California an employer cannot use an employee's tips as a credit toward its obligation to pay the minimum wage. California law requires that employees receive the minimum wage plus any tips left for them by clients of the employer's business. See Labor Code section 351, which states:

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





An employer cannot withhold tips or refuse to pay overtime.

- **Piece Rate vs. Commission Wages**

A piece rate paid employee is a person paid on a piece-rate basis for any work performed during a pay period, which differs from traditional commission wages. On January 1, 2016, Assembly Bill 1513 went into effect that added section 226.2 to the California Labor Code, which no longer permits an establishment employer to only pay a flat commission or percentage wage without a base wage amount for both productive time and rest periods. This section of law pertains to the piece rate wage model and establishes:

- Compensation and wage statement requirements for rest and recovery periods and “other nonproductive time” for piece-rate employees.
- Establishes for certain employers and under certain circumstances, an “**affirmative defense**” to any claim or cause of action for damages or statutory penalties based on an employer’s alleged failure to pay compensation due for rest and recovery periods and other nonproductive time for time periods prior to the effective date of the statute.

For specifics on this method of compensation, please review the FAQs provided by the Department of Industrial Relations found at: [www.dir.ca.gov/pieceratebackpayelection/AB\\_1513\\_FAQs.htm](http://www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm).

## Filing a Wage Claim

What can be done if an employer withholds an employee’s tips or refuses to pay minimum wage or overtime? What if an employee tells an employer that they are going to report him or her to the Labor Commissioner’s Office and the owner fires the employee? Is there anything that can be done?

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

An employee or former employee may file a wage claim to recover:

- Unpaid wages, including overtime, commissions, and bonuses



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

- Wages paid by check issued with insufficient funds
- Final paycheck not received
- Unused vacation hours that were not paid upon termination of the employment relationship, e.g., left job, discharge, or layoff
- Unauthorized deductions from paychecks
- Unpaid/nonreimbursed business expenses
- Failure to provide a meal and/or rest period in accordance with the applicable Industrial Welfare Commission Order
- Liquidated damages for failure to receive minimum wage for each hour worked, including rest periods
- Waiting time penalties for failure to receive final wages in a timely manner upon separation of employment
- Penalties for paycheck(s) that have bounced or are not negotiable within 30 days of receipt. Penalties for employer's failure to allow inspection or copying of payroll records within 21 days of request
- Sick Leave Pay for time accrued and used for which you were not paid (effective July 1, 2015)

For an in-depth review on how to file a wage claim and the procedures and forms involved, visit: [www.dir.ca.gov/dlse/faq\\_minimumwage.htm](http://www.dir.ca.gov/dlse/faq_minimumwage.htm).

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

## Discrimination or Retaliation

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

Employees in California have the right to speak to representatives of the office of the California Labor Commissioner or any other government or law enforcement agency about any issues affecting working conditions. Employers cannot fire, demote, suspend, or discipline employees for answering questions or providing information to a government agency.



If an employer discriminates or retaliates against an employee, he or she can file a discrimination/retaliation complaint.

## Filing a Lawsuit

If an employee decides to file a lawsuit for lost wages, they may choose to consult with legal representation on how to proceed.

## Workers' Compensation

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

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

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

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

- DWC contact information:  
[www.dir.ca.gov/dwc/ContactDWC.htm](http://www.dir.ca.gov/dwc/ContactDWC.htm).
- For locations: [www.dir.ca.gov/dwc/dir2.htm](http://www.dir.ca.gov/dwc/dir2.htm).



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

## The Family Medical Leave Act

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

- The birth of a newborn child
- The placement and care of a child for adoption or foster care
- The serious health condition of the employee or the employee's spouse, child, or parent
- Qualifying needs arising out of a covered military member's active-duty status and 26 work weeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness.

For information regarding FMLA, visit:  
[www.dol.gov/whd/fmla/index.htm](http://www.dol.gov/whd/fmla/index.htm).

## Immigrant Workers

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



Regardless of citizenship status, employees have the right to work for a minimum wage, keep their tips, and have a safe, healthy workplace.

## Right to Refuse Service

Employees and establishment owners have the right to refuse service to a client if there is a justifiable reason that does not discriminate against a protected class and if they are applying the refusal of service evenly to all clients. In general, refusal of service is justified in cases where a client's presence interferes with the safety and well-being of other clients, staff, and the establishment itself. The most basic examples of this include clients who have an infection or parasitic infestation, clients causing a disturbance or being unreasonably rowdy, or clients lacking adequate hygiene.

The California Code of Regulations, Article 12, Section 984 provides state-mandated conditions when it is necessary to refuse service to a client. This would include clients with an infection or parasitic infestation capable of being transmitted to the service provider, other staff, or clients. The infection or parasitic infestation includes, but is not limited to:

- Cold, influenza or other respiratory illness accompanied by a fever
- Strep throat
- Pink eye
- Whooping cough
- Chicken pox
- Mumps
- Tuberculosis
- Impetigo
- Head lice
- Scabies
- Skin or scalp that is broken, abraded or cut
- Skin or scalp that is inflamed or an eruption is present



Employees and establishment owners have the right to refuse service to a client who has an infection or parasitic infestation such as head lice.



Employees and establishment owners cannot refuse service based on race, religion, sex, or age.

Employees and establishment owners *cannot* refuse service based on a protected class. In California, protected classes include:

- Race or color
- National origin or citizenship status
- Religion or creed
- Sex
- Age
- Disability, pregnancy, or genetic information
- Veteran status
- Marital status
- Sexual orientation or gender identity
- Medical condition, or AIDS/HIV status
- Military or veteran status
- Political affiliations or activities
- Status as a victim of domestic violence, assault, or stalking

Please consult with a legal representative for details on how California handles its anti-discrimination law as pertaining to refusal of service.

## Local, State, and Federal Requirements for Establishment Ownership

The California Governor's Office of Business and Economic Development (Go-Biz) provides an abundance of information for business owners in California, including a list of local, state, and federal requirements for owners opening a business in the barbering and beauty industry. When considering opening a new establishment, review the information provided on the *Quick Start Guide for Beauty and Barber Shops*: [www.businessportal.ca.gov/Portals/0/Documents/QuickStartGuides/Barber%20Shops%20and%20Beauty%20Salons%20-%20Quick%20Start%20Guide.pdf](http://www.businessportal.ca.gov/Portals/0/Documents/QuickStartGuides/Barber%20Shops%20and%20Beauty%20Salons%20-%20Quick%20Start%20Guide.pdf).

- In addition, since different **municipalities** may have different requirements, make sure to visit the CalGold site for assistance in permit requirements and fees at [www.calgold.ca.gov](http://www.calgold.ca.gov).

# Agency Contact Information

## FEDERAL CONTACTS

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

Website: [www.wagehour.dol.gov](http://www.wagehour.dol.gov)

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

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

TTY (877) 889-5627

### INTERNAL REVENUE SERVICE

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

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

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

### IRS SMALL BUSINESS AND SELF-EMPLOYED TAX CENTER

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

## STATE OF CALIFORNIA CONTACTS

### CALIFORNIA BUSINESS PORTAL

Website: <http://businessportal.ca.gov>

E-mail: [support@go-biz.desk-mail.com](mailto:support@go-biz.desk-mail.com)

Monday-Friday, 9 a.m. to 5 p.m.

Phone (877) 345-4633

### STATE OF CALIFORNIA FRANCHISE TAX BOARD

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

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

24/7 Automated Support (800) 338-0505

Outside the United States (916) 845-6500

TTY/TDD (800) 822-6268

## BOARD OF EQUALIZATION

General Tax Questions (800) 400-7115  
(Toll-free)

Outside the United States (916) 445-6362

California Relay Service (CRS) 711

(for hearing and speech disabilities)

## EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)

Website: [www.edd.ca.gov/About\\_EDD/Contact\\_EDD.htm](http://www.edd.ca.gov/About_EDD/Contact_EDD.htm)

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

Department Directory: [www.edd.ca.gov/About\\_EDD/Department\\_Directory.htm](http://www.edd.ca.gov/About_EDD/Department_Directory.htm)

## LABOR COMMISSIONER'S OFFICE (ALSO KNOWN AS THE DIVISION OF LABOR STANDARDS ENFORCEMENT [DLSE])

The Labor Commissioner provides information about employment rights, discrimination, and wrongful firings. The Labor Commissioner's Office also takes worker complaints about discrimination for health and safety activity and will investigate them. There are several locations throughout the state. The *Required Workplace Posting for All California Barbering and Cosmetology Licensees* has been provided in the Reference Publications section of this document.

Website: [www.dir.ca.gov/dlse/dlse.html](http://www.dir.ca.gov/dlse/dlse.html)

For locations and contact information:  
[www.dir.ca.gov/dlse/DistrictOffices.htm](http://www.dir.ca.gov/dlse/DistrictOffices.htm)

E-mail: [dlse2@dir.ca.gov](mailto:dlse2@dir.ca.gov)

## In Conclusion

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

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

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

Thank you for working with the Board of Barbering and Cosmetology to ensure the health and safety of all California workers and consumers.

## Reference Publications

- 1 **Independent Contractor or Employee**  
[https://www.irs.gov/pub/irs\\_pdf/p1779.pdf](https://www.irs.gov/pub/irs_pdf/p1779.pdf)
- 2 **Tax Tips for the Cosmetology and Barber Industry**  
[https://www.irs.gov/pub/irs\\_pdf/p4902.pdf](https://www.irs.gov/pub/irs_pdf/p4902.pdf)
- 3 **Tips on Tips**  
[https://www.irs.gov/pub/irs\\_pdf/p3144.pdf](https://www.irs.gov/pub/irs_pdf/p3144.pdf)
- 4 **OSHA's Workers' Rights**  
<https://www.osha.gov/Publications/osha3021.pdf>
- 5 **Nail Salon Workers' Wage and Hour Rights**  
<https://www.dol.gov/whd/FLSAEmployeeCard/NailSalonFlyer.pdf>
- 6 **Recover Your Unpaid Wages with the California Labor Commissioner's Office**  
[www.dir.ca.gov/dlse/PubsTemp/DLSE%20Brochures/Recover%20your%20unpaid%20wages%20with%20the%20Labor%20Commissioner%27s%20Office/BrochureWCA WEB English.pdf](http://www.dir.ca.gov/dlse/PubsTemp/DLSE%20Brochures/Recover%20your%20unpaid%20wages%20with%20the%20Labor%20Commissioner%27s%20Office/BrochureWCA_WEB_English.pdf)
- 7 **Health and Safety Rights: Facts for California Workers**  
<http://www.dir.ca.gov/dosh/documents/health-and-safety-rights-for-workers.pdf>
- 8 **All Workers Have Rights in California**  
<http://lohp.org/wp-content/uploads/2015/06/English.pdf>
- 9 **DIR Required Workplace Posting for All California Barbering and Cosmetology Licensees**  
[www.dir.ca.gov/dlse/publications/Barbering%20and%20cosmetology%20posting%20notice.pdf](http://www.dir.ca.gov/dlse/publications/Barbering%20and%20cosmetology%20posting%20notice.pdf)

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



**COPYRIGHT 2018**

California Board of Barbering and Cosmetology

P.O. Box 944226, Sacramento, CA 94244-2260

(800) 952-5210

[www.barbercosmo.ca.gov](http://www.barbercosmo.ca.gov)

**All rights reserved.**

**Resale of the *Understanding Workers' Rights and Responsibilities* document is prohibited.**