

A Guide for
Workers in Texas

KNOW YOUR RIGHTS TO



FAIR PAY

HOW DO I USE THIS BOOKLET?

This booklet tells you about some of your rights as a worker in Texas. It is not meant to be legal advice. If you want legal advice about your specific situation or want help with a problem at work, call one of the numbers on the next page.

WHO PREPARED THIS BOOKLET?

This booklet was prepared by Texas RioGrande Legal Aid, a non-profit law firm. We are dedicated to providing free legal representation and information to low-income workers.

This booklet was made possible by the generous support of the State Bar of Texas Labor & Employment Section. The artwork in this booklet is by Jesus “Cimi” Alvarado.

For legal help or information in Texas:

Texas RioGrande Legal Aid:

1-888-988-9996 (free lawyers)

Equal Justice Center:

1-800-853-4028 (free lawyers)

Texas Workforce Commission Labor Law Unit:

1-800-832-9243 (claims for wages due within last 180 days)

Texas State Bar Lawyer Referral Service:

1-877-983-9227 (referrals to private lawyers)

Across the U.S.:

U.S. Department of Labor, Wage & Hour Division:

1-866-487-9243 (wage claims)

Occupational Safety and Health Administration (OSHA):

1-800-321-6742 (workplace safety complaints)

Equal Employment Opportunity Commission (EEOC):

1-800-669-4000 (employment discrimination complaints)

WHAT ARE MY BASIC RIGHTS?

As an employee you have the right:

- To be paid for work that you've done. Your employer cannot deny you your wages because you don't have work authorization or a Social Security number.
- To be paid the amount of wages you were promised.
- To be paid at least the minimum wage of \$7.25 per hour.
- For most employees, to be paid overtime pay of 1½ times your normal wage for each hour you work over 40 in a week.
- To be paid on time, on your regular payday.
- To not be discriminated against because of your race, sex, age, national origin/ethnicity, disability, or religion.
- To work in safe conditions.



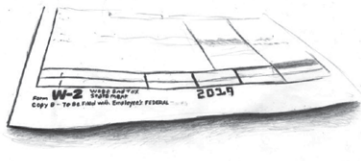
- To present a claim for workers' compensation if you are injured on the job and to not be discriminated against for presenting your claim. If your employer is not insured, you may have other legal options.
- To talk to your co-workers about wages and working conditions.*
- To complain in groups of two or more to your employer about working conditions or pay.*
- To organize into a union to improve your wages or working conditions.*

*These last 3 rights probably do not apply if you are working in agriculture.

All workers have the right to be paid for the work they perform, whether or not they have work authorization.

AM I AN EMPLOYEE?

- You are probably an “employee” even if your employer calls you an independent contractor (or treats you as one for tax purposes) and even if you sign something agreeing that you are an independent contractor. It is important that your employer treat you as an employee because you have many more rights as an employee.
- If you are truly an independent contractor, you do not automatically have the right to the minimum wage, overtime pay, workers’ compensation, unemployment compensation, and most workplace protections. Independent contractors have to pay more taxes, too.
- Your employer is treating you like an independent contractor if you get a 1099 instead of a W-2, or if you are paid in cash and your employer is not withholding taxes.





- **Example:** Joe works in construction and he regularly gets work from Sam Perez. Sam provides the materials and tools for Joe and tells him when to show up and when to stop working. Sam decides how much Joe will get paid, pays Joe in cash, and doesn't withhold taxes. Joe is an employee of Sam.

- A true independent contractor is someone like a licensed plumber who owns his own business, tools, and customers, and who advertises in the Yellow Pages.

***Your employer can't take away
your rights by calling you an
independent contractor!***

MINIMUM WAGE

In Texas, the minimum wage is \$7.25/hour (since July 24, 2009). Even if you agree to work for less, you have the right to be paid at least \$7.25/hour.

Tipped Employees

- If you are a tipped employee, your employer can pay you \$2.13/hour. However, your tips combined with your hourly wages have to add up to at least the minimum wage (\$7.25/hour), or else your employer has to pay you the difference.
- Your employer cannot take any of your tips, even if you sign an agreement saying s/he can. Generally, supervisors and cooks shouldn't either, even if tips are pooled. If the employer, managers, or non-tipped workers receive tips from the tip pool then your employer can't count tips you receive towards your minimum wage or overtime.
- Your employer must keep accurate records of the tips that you make.

OVERTIME

You have the right to be paid 1.5 times your normal wage for each hour worked over 40 hours per week.



For example, if you work 50 hours in a week, and you normally receive \$10/hour, you should calculate your pay like this:

40 Hours x \$10/hour	= \$400
+10 Hours of "Overtime" x \$15/hour	= \$150
(Overtime Hourly Rate = \$10 x 1.5 = \$15)	
TOTAL	<hr/> = \$550

Some workers DO NOT receive overtime!

Most agricultural workers and some other kinds of workers do not have the right to overtime pay.

TRAVEL AND WAITING TIME

You should be paid for all of the hours during which you are doing something for the benefit of your employer.

If your employer makes you wait at a worksite or you travel after arriving at work, you should generally be paid for that time.

Your employer generally does not have to pay you for:

- Time spent traveling between your home and work (commuting).
- Time spent on a meal break, if the break is at least 30 minutes and you don't have to work at all during that time.

You should generally be paid for any kind of break that is 20 minutes or less.

DEDUCTIONS

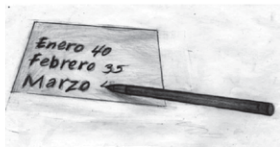
Your employer cannot withhold part of your wages (make deductions from them) unless:

- 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.



MAKE SURE THAT YOU GET PAID CORRECTLY

Keep your own notes of the hours and dates that you work. While it is the employer's duty to keep records, some don't keep records or make false records.



Keep all your pay stubs. If your employer pays you in cash, note the date and amount of each payment.

Always note:

- 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 employer's and supervisor's vehicles.

If you haven't been paid properly, you may be entitled to two times the wages you are owed.

WHAT SHOULD I DO IF MY EMPLOYER DOES NOT PAY ME WHAT I AM OWED?



If you think your employer won't retaliate against you, try to talk with your employer about why s/he has not paid you correctly. If possible, take a co-worker with you.

Contact the U.S. Department of Labor's Wage and Hour Division at 1-866-478-9243. All services are free and confidential, whether you are documented or not.

For wages due within the last 180 days, file a complaint with the Texas Workforce Commission at 1-800-832-9243.

File a claim with the Justice of the Peace for amounts less than \$10,000.

Contact a lawyer. *See page 2 for free legal services.*

You have the right to demand your rights. It is generally illegal for your employer to retaliate against you for demanding your rights.

RECORD YOUR HOURS WORKED

Write down and permanently keep a record of the dates and hours that you work in the following pages.

Why is this important?

This is the best way to remember and prove how many hours you worked!

It is very important to have this basic information available to protect yourself in case your employer does not pay you or abuses your employment rights.



***Don't work for free!
Protect your rights!
Write everything down!***

UNPAID PERSONAL LEAVE

The Family and Medical Leave Act (FMLA) may give you the right to take unpaid leave in certain situations, without risking being fired, demoted, or losing work benefits.

If you work for a larger private employer (50 or more employees within 75 miles of your workplace), a government, or a school, and have worked there for 12 months, you may have the right to take up to 12 weeks of unpaid leave:

- To care for your or your family member's serious health condition;
- For the birth or adoption of a child;
- When a family member in the military has been, or will soon be, deployed to a foreign country; or
- Up to 26 weeks of leave to care for a family member who is or was in the military (within 5 years) and who has a serious injury or illness.

You must give your employer notice before taking the leave. Generally, you must do this at least 30 days before taking leave. If you have to take leave in an emergency, then you must tell the employer as soon as possible, preferably the same day.

DISCRIMINATION & SEXUAL HARASSMENT

- It is generally illegal to treat someone differently in the conditions of their work because of their sex, race, national origin, ethnic background, age, religion, mental or physical disability, or pregnancy. Discrimination based on sexual orientation or gender status may also count as sex discrimination.
- Sexual harassment at work is also a type of discrimination. It includes unwanted behavior or actions, sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature.
- Not all discrimination is illegal. For example, it is not illegal for your employer to play favorites, to hire or promote family members or friends, or to be rude or yell, as long as the behavior is not because of one of the categories listed above.

The law gives you a very short time to make a complaint to the right government agency about discrimination. In some cases, you have only 180 days from the incident to file a complaint.



LABOR TRAFFICKING & RETALIATION

It is illegal to use threats to keep someone working. You should be free to leave your work when you want to.

- If you have been told that something bad will happen to you or another person if you leave work, or that you have to continue to work to pay a debt, or that immigration will be called if you leave work, you could be a victim of labor trafficking.
- It is also illegal for someone, including a boss, to force a worker to have sexual contact, or to hit or physically threaten a worker.
- And it is illegal for an employer to threaten to call immigration or the police in retaliation for complaints about unfair treatment or conditions at work.
- Whether you are documented or not, you have the right to be free from abuse at work and to sue in court. Many of these abuses can be considered crimes. In some cases, victims who cooperate with authorities may apply for visas and authorization to work in the United States. Victims can also bring civil claims against their employers to try to recover money.



YOU SHOULD NOTE HERE:

Name of your employer/company

Phone number of your employer/company

Address of your employer/company

Address of place where you worked

Names and phone numbers of co-workers

Name, address, and phone number of your supervisor

License plate numbers of your employer's and supervisor's vehicles

HOURS WORKED

DAY	DATE	START TIME	END TIME	BREAK	TIPS/PAY
Sun	10/1	7:30 am	6:00 pm	30 min.	\$300
Mon					
Tues					
Wed					
Thur					
Fri					
Sat					
Sun					
Mon					
Tues					
Wed					
Thur					
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HOURS WORKED

DAY	DATE	START TIME	END TIME	BREAK	TIPS/PAY
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