

16. Collecting Unpaid Wages

Immigrants in the United States, both with and without work authorization, are legally entitled to overtime pay and the minimum wage. Despite these rights, immigrants working in the United States must often respond to employers' violations of labor law. In the face of deportation, you may need to take steps to recover your last paycheck. Often, simply sending an updated address to an employer will resolve this issue, but sometimes you may need to take further steps to protect your rights to a last paycheck. This section provides concrete advice for recovering a final paycheck during and after deportation. The section will answer these questions:

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Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

What Are Your Rights to Wages for Work You Perform?

As an employee in the United States, you have the right to be paid for the work that you have done regardless of your legal status. An employer cannot refuse to pay wages for work performed simply because an employee does not have a work permit or a social security number.

You also have the right to be paid for the work that you have done regardless of whether you have signed an employment contract with your employer because such rights are provided under federal and state wage and hour laws. If you have signed an employment contract with your employment, such contract may define the underlying wages to which you are entitled.

How Long Does an Employer Have to Pay the Last Check?

The amount of time within which an employer must pay a last paycheck is established by state laws and varies from state to state. The amount of time also depends on whether an employee is discharged (is fired or laid off) or leaves employment for another reason (such as quitting, detention or deportation). If an employee is discharged, most states require the employer to pay the last paycheck immediately or within a few days of discharge. In Texas, for example, an employer must pay a discharged employee by the sixth day after discharge. California requires an employer to pay a discharged employee immediately upon discharge. New York requires that a discharged employee be paid on the next regular payday.

If an employee leaves employment for another reason, such as detention or deportation, most states, including Texas and New York, require the employer to pay the last paycheck on the next regularly scheduled payday. California requires an employer to pay within 72 hours in this situation unless the employee has given 72 hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. New York and California laws also specifically provide that if requested by the employee, such wages shall be paid by mail to the designated address.

A list of state final pay laws can be found at <http://smallbusiness.findlaw.com/employment-law-and-human-resources/final-paycheck-laws-by-state.html>. Please verify any information posted on the Web and consult a local lawyer with any legal questions.

How Can You Get Your Last Paycheck If You Are Detained or Deported?

If you have direct deposit set up, all payments should proceed as usual, as the detention or deportation would not affect the direct deposit process.

If you do not have direct deposit set up, most often, simply informing your employer of a change of address will be sufficient to receive a last paycheck. In addition to requesting the last paycheck be sent to the new address, if you are detained or deported, you can ask the employer to send the last paycheck to another person of your choice. You must make this designation in writing. There is a sample letter at the end of this chapter.

If you are detained or deported and you are unable to contact the employer personally, you may ask your emergency contact to reach out to the employer to provide information about the detention and request details regarding the final paycheck. An employee who anticipates the possibility of detention might consider proactively informing their employer and authorizing a trusted individual or individuals to manage employment-related communications on their behalf.

What If the Employer Does Not Pay the Last Paycheck?

If any employer does not pay the last paycheck, you may decide to send a letter demanding payment. There is a sample letter at the end of this chapter.

In addition to the demand letter, you may decide to make a complaint with the U.S. Department of Labor if your work affects interstate commerce (most work does). Complaints should be made to the nearest District Office of the U.S. Wage and Hour Division of the Department of Labor. A directory of Wage and Hour District Offices can be

found on the Department of Labor website at <http://www.dol.gov/dol/location.htm>. The Wage and Hour Division's toll-free help line can be reached at 1-866-487-9243.

You may also decide to file complaints with your state government. A list of state labor offices can be found on the Department of Labor website at https://www.dol.gov/whd/contacts/state_of.htm. There are often long delays in investigations by state labor offices.

The Consulado de Mexico in the area where the work was performed or where you lived in the United States may also be able to help.

Many nonprofit organizations provide support for immigrant workers.

Resources include:

- National Immigration Law Center: <https://www.nilc.org>
- National Employment Law Project: <http://www.nelp.org>
- Equal Justice Center: <http://www.equaljusticecenter.org>
- Texas RioGrande Legal Aid: <http://www.trla.org>

For Deported Immigrants in Mexico

Deported Mexican Immigrants can receive support for wage violations from the Centro de los Derechos del Migrante (<http://www.cdmigrante.org/>; toll-free from the United States at 1-855-234-9699 or toll free from Mexico at 01-800-590-1773) and Justice in Motion (<https://www.justiceinmotion.org>).

What If There Are Other Wage Problems Beyond the Last Paycheck?

Many immigrants experience violation of their employment rights beyond nonpayment of the last paycheck. A complaint made to the U.S. Department of Labor or state government agencies can also include complaints about other labor law violations, including unpaid overtime, workers' compensation abuses and minimum wage violations.

Many of the groups listed above under "What If the Employer Does Not Pay the Last Paycheck?" can also assist in addressing other labor law violations.

Note: It is illegal for an employer to retaliate against an immigrant employee for demanding his or her rights.

Retaliation occurs when an employer fires an employee or takes any other type of adverse action against an employee for engaging in protected activity, including:

- inquiring about their pay, hours of work or other rights;
- asserting their worker rights;
- filing a complaint about their worker rights or
- cooperating in an investigation by the U.S. Wage and Hour Division of the Department of Labor.

Your employer cannot terminate your employment or take other adverse action against you for exercising your rights. If an employer retaliates against you, you may make a complaint with the U.S. Wage and Hour Division of the Department of Labor. Complaints should be made to the nearest District Office of the U.S. Wage and Hour Division of the Department of Labor. A directory of Wage and Hour District Offices can be found on the Department of Labor website at <http://www.dol.gov/dol/location.htm>. The Wage and Hour Division's toll-free help line can be reached at 1-866-487-9243.

Sample Letter: Designating Method of Receiving Last Paycheck

Note: This sample letter conforms to Texas law. Check your state's laws to determine your employer's obligations to deliver paychecks to employees in the manners listed in this letter.

[Employer Name
Employer Address
City, State, Zip code]

[Date]

Dear [Employer],

Please deliver all of the remaining wages that I am owed to the following address:

[Worker's Name]
Care of [Relative's or Friend's Name]
Address
City, State, Zip code]

--OR--

I hereby designate [Name of Relative or Friend] to receive all of the remaining wages that I am owed. Please deliver my wages to [Designee] in person at my regular place of work during working hours, no later than the next regularly scheduled payday.

I would also remind you that if an employee is discharged or leaves employment for another reason, the employee has a right to fair wages for work performed and the employer must pay the last paycheck no later than provided by applicable state law.¹⁶

Thank you for your assistance.

Sincerely,
[Signature
Employee Name]

¹⁶ Most states require the employer to pay the last paycheck on the next regularly scheduled payday. Check your state's laws to determine your rights in your specific situation. A list of state final pay laws can be found at <http://smallbusiness.findlaw.com/employment-employer/employment-employer-ending-paycheck-final.html>. Please verify any information posted on the Web and consult a local lawyer with any legal questions.

Sample Letter: Demand Letter for Wages Owed

[Employer Name
Employer Address
City, State, Zip Code]

[Date]

Dear [Employer],

My name is [Employee's name] and I was employed by you from approximately [date] until [date]. I am owed [\$ amount] for [type of work, i.e. – gardening, landscaping, hauling] work I performed for you at [location] from [date] until [date]. Due to your failure to pay me for the work that I performed for you, you are in breach of contract, and could be in violation of federal and state minimum wage laws.

I would prefer to resolve this dispute through friendly negotiation. To resolve this matter immediately, please send a check for money order for [\$ amount] made payable to [Employee's Name] to: [Employee's Address]. If you have questions or would like to discuss this matter, please contact me immediately at: [Phone Number and/or Email Address].

If the [\$ amount] owed for my work is not paid in full before [date], an administrative complaint and/or lawsuit may be filed and you could become liable for additional damages available under law and costs of suit.

I would also remind you that it is against the law to retaliate against me for assertion of my claims and any retaliatory action could result in the assessment of additional damages.

Sincerely,
[Signature
Employee Name]