

# **YOUR RIGHT TO BE PAID<sup>1</sup>**

## **How much must my employer pay me?**

Employers and workers are free to bargain for a pay rate so long as it meets minimum wage and overtime requirements. Most Florida workers have a right to a minimum wage of \$7.25 per hour. (The Florida minimum wage may change each January.) Employers can pay tipped and agricultural workers less, and some employees do not qualify for minimum wage.

## **When am I entitled to overtime?**

Most workers are entitled to overtime pay of time and a half for all hours worked over 40 per work week. Non-government employers cannot make you take “comp time” instead of overtime pay. No employer can require you to work “off the clock” to avoid overtime. Simply being paid a salary does not make you ineligible for overtime pay. Other job-related requirements must apply before a salaried worker loses the right to overtime pay. Some employees do not qualify for overtime and are called “exempt employees.” In addition, independent contractors do not qualify for overtime. However, employers sometimes misclassify workers as exempt employees or independent contractors. Seek legal advice if unsure about your status or rights.

## **Is there a limit to the number of hours I can be required to work?**

Generally, no, unless you are a minor, have an employment or union contract limiting hours or limited because of the type of work you do, such as long-haul driving.

## **When must my employer pay me?**

Regular pay periods can be set by your employer, but the employer cannot vary from the pay schedule. If you leave a job, your final pay is due at the next regularly scheduled payday.

## **Should I be concerned if I am not asked to complete a W-4 form by my employer when I start employment?**

Yes. Form W-4 (see a copy at [www.irs.gov](http://www.irs.gov)) is completed so that an employer knows how much federal income tax to withhold from your paycheck. If you do not complete the form, you will be responsible for paying the entire amount of taxes due with your annual tax return. In addition, failure to complete Form W-4 may indicate that your employer considers you an independent contractor instead of an employee. Independent contractors are not protected by federal and state wage laws, anti-discrimination laws, workers' compensation insurance, unemployment compensation benefits, social security, and a host of other workplace rights available to employees.

Sometimes employers purposely misclassify workers to save on taxes, workers' compensation, unemployment compensation and to reduce their risk of liability. The employer's determination of whether a worker is an employee or independent contractor is not final. Many factors are considered to make such a determination, including what type of work is performed, how much supervision the employer has over how the work is performed, whether workers can profit or lose money based on decisions they make about how to perform the work, whether the workers bear their own expenses, etc. Seek

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<sup>1</sup> The information provided here is general in nature and not intended as legal advice. The laws discussed are subject to change without notice. Seek legal advice for more information.

legal advice promptly if you believe you have been misclassified as an independent contractor instead of an employee.

### **What deductions can my employer make from my paycheck?**

Employers must deduct fixed amounts for taxes and may deduct for employee benefits you authorized, child support, union dues, and garnishments. Employers may not make other deductions unless you agree. Be sure to read all new hire and other documents you receive from your employer. They may contain language saying that by signing the documents or accepting the job, you agree to pay deductions if you break company property or fail to return uniforms or other property. They may also say that you agree to a reduction in pay to minimum wage if you leave without giving notice. Seek legal advice if unsure of your rights.

### **Is my employer required to provide paid vacation and paid sick leave?**

No. Some employers provide such benefits *voluntarily*. Employers that voluntarily provide paid vacation and sick leave generally are not required to pay for accrued, unused vacation or leave when you leave employment. You may qualify for *unpaid* family and medical leave if (1) your employer has at least 50 employees or is a government agency and (2) you have worked there at least 12 months and 1,250 hours.

### **My employer didn't pay me (or my paycheck bounced). What can I do?**

First, try to remedy the problem through your employer. If that fails, you can bring a lawsuit for unpaid wages or ask the State Attorney to bring a criminal charge of civil theft on your behalf. (The Department of Labor only enforces the federal minimum wage of \$7.25 per hour and overtime claims.) Be careful about agreeing to wait for your pay if your employer requests it, especially if your employer is having financial problems. Do not delay in seeking legal advice when you experience pay problems that cannot be resolved quickly with your employer. Florida workers are entitled to recover attorneys' fees and costs if they win their civil lawsuit for unpaid wages. Under Florida law, an employer must keep sufficient funds in its account to cover pay checks presented for payment within 30 days. It is also a violation of Florida criminal law for employers to issue bad checks.

### **What should I do to protect my rights?**

Keep records to help prove your claim by noting your hours worked each day and wages paid. An easy way to keep such a record is to hang a calendar in an area you see daily, such as on the refrigerator. At the end of each work day, record the actual hours you worked (not the hours you were scheduled to work). Each payday, check to be sure that you were properly paid for all hours worked. Promptly report errors to your employer. Keep a record of the full name of the person to whom you reported the error, the date of your conversation, and the result of your inquiry. Retain your pay stub. If not paid by check, make a note on your calendar of wages paid. If unable to resolve with your employer, seek legal advice promptly. It is unlawful for your employer to retaliate against you for asserting your pay rights. You can pursue a claim without the written record suggested above, but the record is extremely helpful.

Also, watch for red flags that suggest you may not have been paid properly, such as no payroll taxes being withheld, changes in pay periods, unauthorized pay deductions, employer requests to delay payment, being misclassified as ineligible for overtime or misclassified as an independent contractor instead of an employee. You lose significant

legal rights if misclassified as an independent contractor. Do not delay in seeking legal advice if unsure of your status or rights.

**What if my employer won't provide a W-2 form for use in my tax return?**

Employers must provide a W-2 form to all employees and former employees by January 31 of each year. If unable to obtain a W-2 from your employer, contact the Internal Revenue Service at 1-800-829-1040. If your employer provides a 1099 form instead of a W-2, it has classified you as an independent contractor instead of an employee. Seek legal advice if unsure of your status.

**Where can I get help?**

**Call Jacksonville Area Legal Aid at 356-8371 for information on applying for help.**

**JACKSONVILLE AREA LEGAL AID, INC.  
Employment Law Project**