

# Wage Theft

## What is Wage Theft?

Wage theft is when an employer does not pay you what you are owed for your work. This includes:

- Paying less than the minimum wage
- Avoiding payment of overtime
- Making you work “off the clock,” forcing you to clock in after you already started work, or clocking out and forcing you to continue working.
- Making illegal deductions from paychecks. Your employer cannot deduct or withhold your wages or make you pay for fines, damage charges, cash shortages, or defective workmanship.
- Stealing tips
- Not paying for all hours worked
- Not paying a worker at all
- Issuing a paycheck that bounces
- Failing to issue a final check
- Misclassifying workers as independent contractors

## What are your rights as an employee in Hawai‘i?

- You have a right to be paid a Minimum Wage, even if you are paid per day, per job, or by piece rate. The minimum wage in Hawai‘i was \$8.50/hour in 2016, \$9.25/hour in 2017, and as of January 1, 2018, is currently \$10.10.
- If you were promised a higher pay rate, you have a right to receive the pay you were promised.
- You have a right to Overtime Pay. If you work over 40 hours a week, you must be paid 1.5 times your hourly wage for every hour worked over 40 hours.
- You have a right to be paid 2 times a month on Regular Pay Days.
- You have a right to receive a Pay Stub that shows your hours worked, rate of pay, total pay, pay period, deductions, and your employer’s name.
- If fired: you have a right to be paid in full at the time of discharge (fired, termination), or not later than the next working day.

- If you quit: you have a right to be paid in full no later than the next regular pay day, except that if the employee gives at least one pay period's notice of intention to quit, the employer shall pay all wages earned at the time of quitting.

## What can you do if you've experienced wage theft?

Depending on your circumstances, you can file a wage claim to collect your unpaid wages with the State of Hawai'i and/or the Federal government.

### In the State of Hawai'i:

- You have a right to file a wage claim with the Hawai'i Department of Labor and Industrial Relations (DLIR) Wage Standards Division for unpaid wages.
- You have a right to file a private lawsuit for wage theft in state court.
- Under state law, you generally have 6 years to file a minimum wage or overtime claim and 1 year to file an unpaid wages claim.

### With the Federal government:

- You have a right to file a wage claim with the U.S. Department of Labor (USDOL) Wage and Hour Division for unpaid wages.
- You have a right to file a private lawsuit for wage theft in federal court.
- Under federal law, you have 2 years to file a wage claim. For willful violations, a 3 year statute of limitations applies.

## How do I file a complaint with the Hawai'i Department of Labor and Industrial Relations (DLIR) Wage Standards Division?

- Currently, a person could file a complaint with the DLIR using the attached forms.
- Keep good records to help support your wage theft claim:
- When you are hired for a job, write down the agreement you have with your boss regarding your job title, rate of pay, and work schedule.
- Keep a personal calendar of your work schedule, make note of the time you started and finished each work shift each day.
- USDOL has a time sheet app you can download onto your phone to record the hours that you work and calculate the wages you may be owed by your employer.
- Keep your pay stubs and review them to make sure they accurately reflect your hours and pay.
- Keep all contracts, letters, or notices you receive from your employer.
- Take photos of your job site and employer's license plate number, if needed.
- Always bring a co-worker with you as a witness when you speak to your boss about wage theft or other issues on the job.

- Take screenshots of conversations you've had with your employer via email or text message. If the screenshot is of a text message conversation, be sure the screenshot shows the employer's number and not just their name.
- A person can file a complaint by mail or in person and dropping it off at the nearest DLIR office location. For more information, refer to the attached complaint form and call the number for the DLIR office in your county. For TDD/TTY, dial 711 and ask for (808) 586 - 8866.

## What happens after I file my complaint with the DLIR?

Currently, the DLIR's website states the following information regarding complaint processing:

- A complaint must be filed in writing and signed. An appointment is not needed to file, however individuals may contact the Wage Standards Division on Oahu or the nearest district office, either by phone, mail, or in person at the phone numbers and locations listed under "Contact" for information.
- A specialist will conduct a preliminary interview with the individual to determine which of the six laws would be applicable to the individual's situation; whether the individual is covered or exempt; and whether the complaint is timely. Chapters 388, 398, and parts II and III of Chapter 378, HRS, have time limits for filing.
- If a possible violation is indicated, the individual is given a complaint form to complete and sign. After the completed complaint is submitted, a specialist will review the complaint. If it is properly completed, the complaint will be accepted for processing.

## After A Complaint is Filed:

- The complaint is then referred for either investigation or hearing as follows:
- Investigation – Chapters 104, part II of Chapter 378, 387, 388, 390, and 398, HRS
- Hearing – Part III of Chapter 378, HRS
- Complaints are usually investigated or heard in the order they are received, so the notification time will vary depending on the workload. Generally, a complainant will hear from the specialist or hearings officer assigned to the case within six weeks from the date filed. If no notification is received by then, the complainant should contact the Wage Standards Division for the status of the case.

## How and when would I file a complaint with the U.S. Department of Labor, Wage and Hour Division (USDOL)?

Currently, the DLIR's website states the following on how and when to file with the USDOL:

"Generally, retail or service businesses which gross more than \$500,000 annually are subject to the federal law. Also businesses having workers engaged in interstate commerce, producing



goods for interstate commerce, or handling or otherwise working on goods of materials that have been moved in or produced for commerce are subject to the federal law. It also depends on whether the state law has a higher minimum wage or higher overtime standard than the federal law. Consult with the U.S. Department of Labor, Wage and Hour Division, to determine if you are covered by the federal Fair Labor Standards Act. You may reach their Honolulu office at (808) 541-1361.”

### **What if I am an independent contractor?**

Sometimes misclassification of an employee as an independent contractor does occur. We recommend that you file a complaint anyway, and let the DLIR or USDOL make the determination whether they can assist you. DLIR and USDOL are not able to assist independent contractors since they are not paid wages.

### **What if the DLIR and USDOL won't take my case?**

You can always contact a private attorney or file an assumpsit claim on your own (“pro se”) in small claims court (max: \$5,000) or district court. For a private attorney, contact the Lawyer Referral Service at (808) 537 – 9140. For assistance with filing an assumpsit claim, visit the Self-Help Center/Access to Justice Room at your local district courthouse. \*please note that not all district courts offer this service.

For more information on wage theft or your rights as an employee, visit [labor.hawaii.gov/wsd/](http://labor.hawaii.gov/wsd/) or call the Hawai'i State Department of Labor and Industrial Relations, Wage Standards Division at (808) 586-8777.

REMEMBER: This pamphlet is meant to give you general information and not to give you specific legal advice about your case. The law often changes. Each case is different.

**For more information, please call Legal Aid's Intake Hotline at (808) 536-4302 or (800) 499-4302. For seniors, please call the Senior Legal Hotline at (808) 536-0011 or toll free at (888) 536-0011.**



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
WAGE STANDARDS DIVISION

Princess Keelikolani Building, 830 Punchbowl Street, Room 340, Honolulu, Hawaii 96813

**INSTRUCTION SHEET FOR WSD-1.387-388 Complaint Form**

Chapter 387, Wage and Hour Law

Chapter 388, Payment of Wages and Other Compensation Law

### Instructions

Please completely fill out the WSD-1.387-388 Complaint Form.

The Delivery Information section below lists various delivery options. Please select the most convenient method and submit the completed form accordingly.

Please remember to sign and date the form before submitting it.

If available, attach a copy of your most recent pay statement. If we do not receive the required forms, the processing of your complaint may be delayed. You may include copies of any documents, records, pay statements, checks, etc. to support your complaint.

### Delivery Information

Delivery by U.S. Mail or In Person. Complaints may not be filed by fax.  
Department of Labor and Industrial Relations, Wage Standards Division

Oahu	830 Punchbowl Street, Rm. 340; Honolulu, HI 96813	Phone: (808) 586-8777
Hilo	State Building, 75 Aupuni Street; Rm. 108; Hilo, HI 96720	Phone: (808) 974-6464
Kauai	3060 Eiwa Street, Rm. 202; Lihue, HI 96766	Phone: (808) 274-3351
Maui	2264 Aupuni Street; Wailuku, HI 96793	Phone: (808) 984-2075
West Hawaii (Kona)	Post Office Building; P.O. Box 49; Kealahou, HI 96750	Phone: (808) 322-4808

Visit our Website at [www.labor.hawaii.gov](http://www.labor.hawaii.gov) for ALL interactive and downloadable forms.

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STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
WAGE STANDARDS DIVISION  
**WSD-1.387 388 COMPLAINT FORM**  
Chapter 387, Wages and Hour Law  
Chapter 388, Payment of Wages and Other Compensation Law

**Complainant Information: Please print or type**

1. Name (Last, First Middle Initial) <input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms.		2. Last four digits of Social Security No. XXX - XX -	
3. Address		City	State
		Zip Code	
4. Phone ( )	Cell Phone ( )	Email Address	
5. Type and Title of Work Performed			
6. Employment Status <input type="checkbox"/> Current Employee of Employer Named Below <input type="checkbox"/> Quit <input type="checkbox"/> Discharged			
7. If No Longer Employed, Reason			
8. Date(s)/Period of Employment		From	To
9. Union Membership <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, Name of Union:			

**Employer Information:**

10. Business Name			
11. Address		City	State
		Zip Code	
12. Phone ( )	Fax ( )	Cell ( )	
13. Name and Title of Owner or Person in Charge			
14. Nature of Business			

FOR OFFICE USE ONLY		Law				
Date Received		ICB				
		CS				
Taken by		DOL #:	IS1	IS2		
	H K M WH		HB		No.	

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WSD-1.387-388 COMPLAINT FORM

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**Complaint Information:**

15. Alleged violation(s)	
<input type="checkbox"/> Minimum Wage	<input type="checkbox"/> Overtime
<input type="checkbox"/> Pay Statement	<input type="checkbox"/> Illegal Deduction
<input type="checkbox"/> Unpaid Vacation, Holiday, Sick Leave Pay	
16. a. Have you made a demand for back wages? <input type="checkbox"/> Yes <input type="checkbox"/> No	b. If yes, the name of the person you asked?
c. Date you asked for the wages:	d. Reason given for non-payment:
17. a. Rate of pay:	b. If tipped occupation, did employer use tip credit?
18. Pay period (for example, 15th and end of month):	19. Paydays (for example, 20th and 5th):
20. a. Normally scheduled hours and days of work:	b. Actual hours worked each work week:
21. a. What is the employer's approximate annual gross revenue?	b. If annual revenue not known, how many locations and workers does the employer have?
22. Give a brief statement of the wages owed: (e.g. If overtime, "Paid straight time for all hours" or "No pay for overtime hours worked":	
23. Period of unpaid wages:	24. Rate(s) of pay during period of claim:
25. Total hours claimed:	26. Total wages claimed:
27. Less payments and recognized offsets against wages (other than taxes):	28. Balance claimed:

I swear or affirm that I have read this complaint, and that the information and statements are true to the best of my knowledge and belief. I authorize the Director of Labor and Industrial Relations or a departmental representative to collect and receive, on my behalf, payments made on my claim.

Date: \_\_\_\_\_ Signature of Complainant: \_\_\_\_\_

☐ Check if under 18 years old

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