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Building a Just Society



Workers' Rights and Benefits

A training on workers' wage rights (and how to assert them) and benefits (and how to get them)

THE PUBLIC JUSTICE CENTER

www.publicjustice.org


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TRAINING OVERVIEW

1. Protections workers do not have (yet)
2. Wage Rights
 - 1) Minimum wage
 - 2) Overtime
 - 3) When and how you should be paid
 - 4) Common violations
 -  5) Misclassification (it's red because it's extra important!)
 - 6) Asserting your rights
 - 7) Protection from retaliation
3. Benefits Help
4. Survey

Note: There are some exceptions to the rules set out in this training. If you think something you've experienced might be illegal, ***talk with a lawyer.***

Protections Workers Do Not Have (yet)

- Job Security: In Maryland, employment is “at will.” Generally, the law allows employees to be fired for any reason or no reason, UNLESS an exception applies: (1) personal or union contract with a “just cause” requirement, (2) illegal discrimination, or (3) illegal retaliation.
- Fair Schedules: There’s still no law requiring predictable schedules or pay when a shift is cancelled.
- Vacation/Breaks: There’s still no law requiring vacation, holiday pay, or even rest breaks (except for some retail workers).
- A Living Wage: There’s still no law requiring a minimum wage that’s high enough to live on.

*But work with dignity is a human right we all have.
And the law can change when people demand it.*

Employee Wage Rights: Minimum Wage

- Maryland:
 - \$12.50: for employers with 15 or more employees
 - \$12.20: for employers with 14 or fewer employees
 - It will increase to \$15 over the next 4 years
- Federal:
 - \$7.25 per hour (*but MD's rate applies to work done in MD!*)
- Montgomery County:
 - Now \$15.65/hour for employers with 50 or more employees, \$14.50 for employers with 11 to 50 employees, and \$14.00 for employers with 10 or fewer employees.
- Howard County:
 - \$14 for employers with 15 or more employees. Will increase.
- Exceptions: Some types of workers aren't covered by minimum wage laws, and there are special rules for tipped workers.

Employee Wage Rights: Overtime

- Overtime pay: 1.5 times regular hourly rate for hours worked over 40 in a week (sometimes called “time and a half”)
- Example: You work 45 hours one week, 35 hours the next → you’re entitled to 5 hours at the overtime rate, even though you worked 80 hours in the pay period
- Exceptions: Some types of workers aren’t covered by overtime laws

Employee Wage Rights: When and How to Be Paid

- Biweekly pay periods: Must be paid every 2 weeks or twice a month
- Pay on termination: You should get paid all you're owed on the date that would have been your last payday if employment had continued
- Paystubs: Whether you're paid in cash or check, you should get a written paystub with gross wages and deductions
- Deductions: No deductions for things like uniforms unless (1) you give written consent, (2) amount deducted is the fair market value of the thing, and (3) deduction doesn't bring wage below minimum wage

Wage Rights: Common Violations

- Failure to pay all hours (“hour shaving”): If you worked 40 hours, but you’re paid for only 37 (for example, if employer requires off-the-clock work, or just shaves off a few hours)
- Failure to pay overtime: If you worked 45 hours, but you’re paid at the regular “straight time” rate for all hours
- Failure to pay travel time: If employer doesn’t pay for time you spent traveling between work sites (commute time to/from home doesn’t count)
- Agreements not to pay all wages: If employer requires worker to sign a document giving up wage rights → agreement is void/illegal
- Tip violations: If employer pays only \$3.63/hour without giving required notice, or breaks another tip rule
- Misclassification: If employer calls employee an “independent contractor” to avoid paying wages, workers’ comp, unemployment insurance, etc.



Common Violations – Misclassification

- What is “misclassification”: When you’re really an employee, but your employer pays and treats you like an independent contractor, you’ve been “misclassified”
- Why is it bad: True independent contractors aren’t entitled to minimum wage, overtime, workers’ compensation, unemployment insurance, sick leave, or other benefits – *and* they have a higher self-employment tax at the end of the year
- Why some employers do it: The reason is usually to avoid paying employment taxes and benefits – and increase profits
- What if you signed an “independent contractor agreement”: You can still be an employee. It’s the *reality* of the situation that matters, not a piece of paper!

How to Tell if You've Been Misclassified

- Step one: Figure out how you've been classified. If any of these are true, your employer is probably classifying you as an independent contractor, not an employee:
 - You get paid "under the table," whether in cash or by check
 - Your paystubs don't show taxes taken out or earned sick leave
 - You're asked to sign a "contractor agreement"
 - You get a 1099 instead of a W-2
- Step two: If you've been classified as an independent contractor, *talk to a lawyer*. If some of these are true, you may be an employee who's been misclassified:
 - Employer sets your pay rate and schedule, and tells you how to work
 - Your pay depends on how much you work, not your skill as an entrepreneur or manager
 - If the work requires tools or equipment, the employer supplies the tools
 - The work doesn't require specialized skills (like a plumber has)
 - You're a long-term worker, not just doing a job for a few hours/days
 - The work you do is a key part of the employer's business

Misclassification Examples

- Home care agency sets personal care aide's wage rate and schedule → worker is probably an employee
- Assisted living facility pays caregiver under the table for 12-hour shifts → worker is probably an employee
- Cleaning company tells workers where to clean and how long to spend cleaning → workers are probably employees

BUT if...

- Homeowner calls plumber to unclog sink → plumber is independent contractor, not homeowner's employee

BEWARE: When employees are misclassified, they lose rights and have added tax burdens. Don't let it happen to you!

Wage Rights: Asserting Your Rights

- Suit under state or federal law:
 - Statute of Limitations: usually 3 years
 - Can recover lost wages, plus damages, and attorney's fees
- File complaint with Maryland Department of Labor:
<https://www.dllr.state.md.us/labor/wagepay/wpremedies.shtml> or call 410-396-4835
- File complaint with U.S. Department of Labor:
<https://www.dol.gov/agencies/whd/contact/complaints> or call 1-866-487-9243
- Call the Public Justice Center: 410-625-9409
- How to strengthen your claims:
 - Keep your own time records – “DOL Timesheet” app helps
 - Keep ALL work-related documents and paystubs – take photos of anything you sign
 - Talk to your coworkers. There's strength in numbers!

Wage Rights: Retaliation

- State and federal law prohibit retaliation: Usually, employer cannot fire, demote, threaten to fire or demote, or take other action against an employee who has complained, sued, or testified in a wage suit.
- Remedies: Back pay, re-hiring, other court orders to stop and reverse the retaliation
- Limitations:
 - Undocumented immigrant workers cannot be re-hired after retaliatory firing
 - Some other exceptions

Resources for Wage Theft

- Public Justice Center: PJC represents low-wage workers who have experienced wage theft. If we can't take your case, we'll refer you to attorneys or organizations that might be able to help. Call (410) 625-9409
- Maryland Courts Self-Help Centers: Call (410) 260-1392
- Baltimore City Office of Civil Rights and Wage Enforcement: Call (410) 396-4835

Benefits Help

Go to publicjustice.org/benefits for all this in one place!

- Get a free benefits screening!
 - You may be entitled to more benefits than you're getting
 - The **CASH Campaign of Maryland** can help you get all the benefits you're entitled to – from housing to food to Medicaid, and more
 - To start the benefits screening process visit:
cashmd.org/benefits-screening
- Get help with SNAP: For free help with SNAP (food stamps) benefits, call **Maryland Hunger Solutions** at 1-866-821-5552 for an appointment
- Get help with taxes: For information about the CASH Campaign's free tax preparation help, visit cashmd.org

Short Survey

Please take a short online survey about this training

- Why take it:
 - It takes less than 2 minutes
 - We want your opinion on how useful this training was
 - We want to be able to follow up with you to help make sure you're getting all the benefits you're entitled to
- How to take it:
 - Click the link in the Zoom chat
 - The link will also be emailed to you

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