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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](http://www.publicjustice.org)

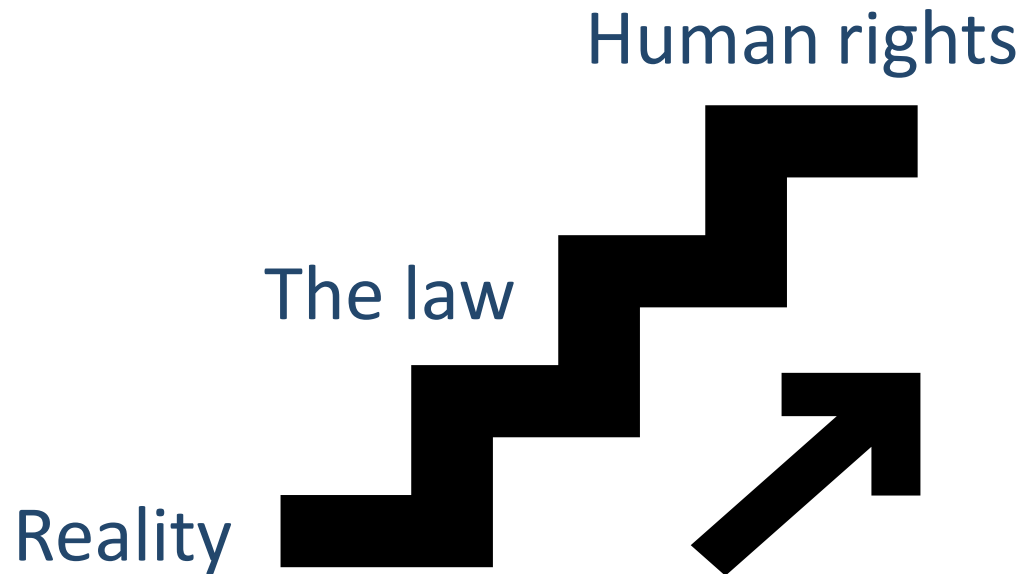
**October  
2024**

# 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. Sick and Safe Leave
4. Benefits Help
5. 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.***

# Rights, the Law, and the Real World



## 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.

# Protections Workers Do Not Have (yet)

- 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:
  - \$15/hour as of January 1, 2024
  - No new increases are scheduled
- Federal:
  - \$7.25/hour (*but MD's rate applies to work done in MD!*)
- Montgomery County (Starting July 1, 2024)
  - \$17.15/hour for employers with 51 or more employees,
  - \$15.50/hour for employers with 11 to 50 employees,
  - \$15/hour for employers with 10 or fewer employees.
- 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: Your wage is \$20/hour. You work 50 hours one week because your coworker didn’t show up for a shift.
  - You get \$20/hour for 40 hours (\$800)
  - $1.5 \times \$20 = \$30$
  - So you get \$30/hour for the 10 extra hours (\$300)



## Employee Wage Rights: Overtime

- Overtime is calculated by week (not by pay period!)
  - 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 next payday if employment had continued
- 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 min wage

# Employee Wage Rights: Wage and other information

- Notice from employer: At time of hire, employer must give written notice of pay rate, payday schedule, leave benefits
- Paystubs: Whether paid in cash or check, employer must give written paystubs (can be online) including:
  - Employer's name, address, and phone number
  - Date of payment and dates of pay period
  - Number of hours worked (unless you're OT exempt)
  - Pay rates
  - Gross and net pay
  - Amount and name of all deductions
  - Any other sources of pay
- If there's a violation: File a short complaint with Maryland Department of Labor and employer may have to pay a fine

# Wage Rights: Common Violations

- Failure to pay all hours (“hour shaving,” off-the-clock work, etc.): If you worked 40 hours, but you’re paid for only 37
- 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 spend 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”:
  - There are two kinds of workers: independent contractors and employees. Independent contractors are in business for themselves, while employees depend on their employer for work.
  - When you’re really an employee, but your employer pays you like an independent contractor, you’ve been “misclassified”
- Why is it bad: *Real* 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: To avoid paying workers all they’re owed and 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
  - 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 pay more taxes. Don't let it happen to you!

# 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 for having complained, sued, or testified in a wage suit.
- Remedies: Back pay, re-hiring, other court orders to stop and reverse the retaliation
- Limitations:
  - Employers sometimes argue they shouldn't have to re-hire undocumented immigrant workers
    - But to make this argument, they may have to admit they knowingly hired an undocumented worker...
  - Some other exceptions



# 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
- 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!

# 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
- Women's Law Center of Maryland: Serves any Maryland worker. Attorney volunteers staff employment law hotline Tuesdays 9:30am to 1pm and the first Thursday of the month 5pm to 7:30pm. Call 1-877-422-9500
- Maryland Courts Self-Help Centers: Call (410) 260-1392
- Maryland Department of Labor: Call 410-767-2357 or [www.dllr.state.md.us/labor/wages/essclaimform.shtml](http://www.dllr.state.md.us/labor/wages/essclaimform.shtml)
- U.S. Department of Labor: Call 866-487-9243 or visit <https://www.dol.gov/agencies/whd/contact/complaints>

# Sick and Safe Leave

- What it is:
  - Under Maryland law, most employees are entitled to sick and safe leave. The law is called the Maryland Healthy Working Families Act.
  - Covered employees earn 1 hour of leave per 30 hours worked.
  - Employers with 15 or more employees must give paid leave. Smaller employers must give unpaid leave.
  - Your earned leave should be on your paystubs.
- What to do if your rights are violated:
  - If you're not getting sick and safe leave as required, you can file a complaint with the state.
  - Go to [www.dllr.state.md.us/paidleave](http://www.dllr.state.md.us/paidleave) and click "file a complaint," or call the Maryland Department of Labor at 410-767-2357.

# Benefits Help

Go to [publicjustice.org/benefits](https://publicjustice.org/benefits) for all this in one place!

- Get a free benefits screening!
  - The **CASH Campaign of Maryland** can help you get all the benefits you're entitled to
  - CASH will screen you for 22 different programs – utilities, energy assistance, health, nutrition, tax credits, and more
  - CASH can also refer you to other services
  - To start the *free* and *confidential* benefits screening process, visit [cashmd.org/benefits-screening](https://cashmd.org/benefits-screening) and complete the intake form – it takes about 10 minutes
- 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](https://cashmd.org)