

Important Notice

The department has been granted the authority to process unpaid wage claims under §109.09 of Wisconsin Statutes. The statute authorizes the department to investigate complaints, to attempt to mediate unpaid wage disputes and, when parties cannot agree upon resolution of unpaid wage disputes, the department may issue a determination concerning the wages the department believes are owed, if any. If wages are found due, the employer may choose to pay the wages. If the employer elects not to voluntarily pay the wages the department may refer the wage claim for litigation. If a claim is litigated in court the court will decide the claim based upon the merits of the case without considering the department's determination. Similarly, if the department determines that a wage claim is invalid or decides not to refer a claim for litigation the wage claimant retains the right to litigate the case on their own in civil or small claims court. Since neither party to a department-filed wage claim has a proprietary right impacted by the department's determination in a wage claim, the claim process does not include any formal Chapter 227 appeal of the initial department determination.

Filing a Complaint

Any current or former employee may file a complaint against a place of employment alleging the employee has not been paid all agreed upon wages. The department may also receive complaints from anyone alleging a place of employment has violated one or more state labor standards requirements (i.e. overtime, minimum wage, child labor, etc.). On Plant Closing/Mass Lay-Off Notification law complaints, the filing party must be affected by the action in order to file a complaint with the department. Claims for unpaid wages must be filed either with the department or in court within two years of the date when the wages were earned and payable. The department may not accept claims for wages earned more than two years before the department receives the complaint.

Retaliation Protection

Wisconsin law prohibits an employer or person from retaliating against an individual for the following reasons.

- 1) The individual defends a right s/he has under state labor standards laws.
- 2) The employer or person thinks the employee may defend her/his rights under state labor standards laws.
- 3) The individual participates in a labor standards investigation by the department.

Persons who believe an employer or person may have retaliated against them for one of these reasons may file a complaint with the department.

Complaint Investigations

The person assigned to investigate a labor standards complaint will mail the employer a letter informing the employer of the complaint, who filed the complaint and what will happen next. With child labor and plant closing notification cases, the department will investigate the place of employment on behalf of all affected parties employed there. The investigator when commencing an investigation will seek access to the employer's time and payroll records for all employees. The investigator's primary goal in the investigation is to determine if the employer complied with the law and, if not, to document violations discovered.

On minimum wage, overtime and other unpaid wage complaints, the department limits its investigation to the persons listed in the complaint who potentially have unpaid wages due. Within fifteen days of receiving the complaint, the investigator will send a letter to the employer informing the employer of the complaint and who filed the complaint. In the letter, the investigator gives the employer the option of paying the disputed wages or for the employer to offer their position on the complaint and any information the employer may have to support its position. The investigator may also request the employer send the investigator information the investigator believes will be helpful in resolving the wage controversy.

In processing unpaid wage complaints, the investigator, where appropriate, will provide all parties with copies of correspondence received from or sent to other parties, to keep everyone informed of progress in the investigation.

The department strives to assist all parties to an unpaid wage complaint to reach a voluntary settlement of the complaint. Throughout the investigation of the complaint, the investigator remains willing to discuss settlement of the complaint with the parties. On minimum wage and overtime complaints, however neither the department, the employer nor the complainants have a legal right to settle the complaint for a lower wage than the wage required to be paid by state law.

The department does not represent employers or complainants in unpaid wage complaints. Both employers and complainants have a responsibility in unpaid wage complaints to present information that establishes the validity of their position on the complaint. Where settlement of the complaint does not occur, the investigator must render a written determination on the outcome of the complaint. In valid complaints, the determination will also advise the employer what amount of wages the investigator believes is due.

Administrative Review of Determinations

If either party disagrees with the initial determination, that party may submit a written request to the investigator to have the investigator's determination administratively reviewed by the department. The request for review should contain any written arguments the party wishes the reviewer to consider and any new information that has not been previously considered by the department. The reviewer assigned by the department will review the entire complaint record including all information previously submitted by all parties. The reviewer will issue a written final determination to all parties. If the complainant is not satisfied with the final determination, the complainant may elect to file suit against the employer in court on their own to pursue collection of the disputed wages. If an employer disagrees with the wages determined to be owed, the employer may elect not to pay those wages. The department then may forward the complaint to the district attorney to commence litigation in civil or criminal court to collect the disputed wages.

Litigation of Wage Complaints

State law permits the district attorney to request the court in civil cases to award employees an additional 50% increased wage beyond the wages found due by the court as compensation for the delayed payment. The district attorney may also elect to prosecute an employer criminally when the employer has the ability to pay wages and withholds payment to secure a discount on the wages owed or to hinder, harass, annoy or defraud the employee. Potential criminal penalties include a \$500.00 fine and up to 90 days in jail.

For more information, contact us.

**STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
EQUAL RIGHTS DIVISION**

**201 E WASHINGTON AVE ROOM A300
PO BOX 8928
MADISON WI 53708**

**819 N 6th ST
ROOM 255
MILWAUKEE WI 53203**

**TELEPHONE: (608) 266-6860
TTY: (608) 264-8752**

**TELEPHONE: (414) 227-4384
TTY: (414) 227-4081**

Website: <http://dwd.wisconsin.gov/er/>

The Department of Workforce Development is an equal opportunity employer and service provider. If you have a disability and need to access this information in an alternate format or need, it translated to another language, please contact us.