

The department has been granted the authority to process unpaid wage claims under Wisconsin Statute §109.09. The statute authorizes the department to investigate complaints, to attempt to settle unpaid wage disputes and, when parties cannot agree upon resolution, the department may issue a determination regarding the wage claim. If wages are found due, the employer may choose to pay the wages. If the employer instead chooses not to pay the wages, the department may refer the wage claim for litigation. If a claim is litigated, the court will decide the matter based upon evidence presented in court 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 himself/herself in court. Since neither party to a wage claim filed with the department has a proprietary right impacted by the department's determination in a wage claim, the claim process does not include a formal appeal of the initial department determination under Wisconsin Statutes Chapter 227.

Filing a Complaint

Current or former employees may file complaints against a place of employment alleging the employer has not paid all wages due. The department may also receive complaints from anyone alleging a place of employment has violated one or more state labor standards requirements (e.g., overtime, minimum wage, child labor, etc.). In complaints under the Wisconsin Business Closing and Mass Layoff Law (WBCL), the filing party must be "affected" by the failure to give notice 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 the wages were payable. The department may not accept wage claims if payment was due more than two years before the complaint is received.

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 believes the individual has defended or may defend her/his rights under state labor standards laws; and (3) The individual participates in a labor standards investigation by the department. Persons who believe they have been victims of unlawful retaliation may file a discrimination complaint with the department.

Complaint Investigations

The investigator assigned to investigate a labor standards complaint will mail the employer a letter regarding the complaint, and will request the employer either pay the claim or provide a written response to the allegations. With child labor and plant closing notification cases, the department will investigate the place of employment on behalf of all affected parties employed there. When commencing an investigation, the investigator 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.

In minimum wage, overtime, and other unpaid wage complaints, the department limits its investigation to the persons listed on the complaint form 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, who filed it, and will give the employer the option of paying the disputed wages or to offer its position regarding the validity of the complaint, including any information the employer may have to

support its position. The investigator may seek other information that will be helpful in resolving the wage controversy.

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. In minimum wage and overtime disputes, however, the department cannot 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 to present information that establishes the validity of their respective positions regarding the complaint. Where settlement of the complaint does not occur, the investigator must issue a written decision on the merits of the complaint. In valid complaints, the decision will also advise the employer what amount of wages the investigator believes is due.

Administrative Review of Decisions

If either party disagrees with the initial decision, that party may request that the decision be reviewed by the department. The request for review should contain any written arguments the party wishes considered 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 still pursue collection of the disputed wages in court. If the employer disagrees with the final determination, 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 to award employees an additional 100 % 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/>

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