



UNDERSTANDING WORKERS' RIGHTS *and* RESPONSIBILITIES

INDIVIDUAL LICENSEE



KNOW YOUR WORKERS' RIGHTS AS A LICENSEE

There are several employment options for licensees in the barbering and cosmetology industry. A licensee may choose to be:

- An employee.
- An independent contractor (booth renter).
- An owner of their own establishment.

Regardless of the chosen path, it is important for licensees to understand their workers' rights. This brochure focuses on your rights as an individual licensee working as either an employee or an independent contractor. If you are an establishment owner, please see the "Know Your Workers' Rights as an Owner" brochure.

Workers have the right to:

- Minimum wage.
- Safe working conditions.
- Reasonable breaks.

Workers' rights ensure that all employees are treated lawfully, paid a minimum wage, and not subjected to any form of harassment within the workplace. This document provides information on basic workers' rights and guidance on what action to take if these rights are not being respected.

Please note that the materials provided in this document are not exhaustive.

KNOW YOUR WORKER CLASSIFICATIONS

Knowing the correct worker classification is crucial for determining the rights a person may have. For instance, rights of an employee of an establishment are much different than the rights of an independent contractor.

Employee

Employees provide services under the direct control of an employer (establishment owner). The establishment owner has the authority to tell employees what to do and how to do it. Employees:

- Receive a W-2 form from their employer for wages earned.
- Report tips to their employer.
- Follow a work schedule established by the establishment owner.
- Offer services in the establishment that have been set by the establishment owner.

EXAMPLE

Patricia works at Blaze Hair salon owned by Judy. Patricia is told to be at work Tuesday through Saturday 9 a.m.–5 p.m. Patricia does not purchase the products used on her clients, rather she uses the products supplied by the establishment. The establishment has a receptionist who books Patricia's appointments. Patricia would prefer to only do haircuts; however, the establishment is a full-service establishment and so Patricia must provide chemical services to her clients when requested. Judy observes the work that Patricia does and provides technical direction when needed. Patricia reports all her tips to Judy. Patricia is Judy's employee.



Employees follow a work schedule established by the establishment owner and offer services in the establishment that have been determined by the establishment owner.



An independent contractor (booth renter) may work inside of an establishment owned by an establishment owner but maintains a separate identity.

Independent Contractor (Booth Renter)

Independent contractors (booth renters) are licensees who rent or lease a workstation in someone else's establishment but maintains a separate business identity. They are typically self-employed and responsible for:

- Recordkeeping.
- Scheduling their own appointments.
- Setting their menu of services.
- Collecting client payments.
- Filing their tax returns.
- Paying business taxes.
- Obtaining their own city/county business permit.

Independent contractors are financially responsible for their own business profits and losses and receive all income generated from their work. They work independently and are not subject to the establishment owner's control.

EXAMPLE

Marisol, an esthetician, contracts with two large establishments where she rents workstations for \$600 per month each. She manages her own appointment book, sets her own hours, and has created her own menu of services. Marisol provides her own tools and products and handles all payments and tax responsibilities herself. As an independent contractor (booth renter), she is not controlled by the owner.



Note: If Marisol's contract specifies that she must:

- Work four days a week from 9 a.m. – 5 p.m.
- Use only the products provided by the establishment.
- Offer only the services listed on the establishment's menu.
- Charge prices set by the establishment owner.

Then Marisol would no longer qualify as an independent contractor but could be considered an employee, as the establishment owner would have control over her work.

Manicurists

In 2020, Assembly Bill 5 amended the Labor Code to address employment classification, introducing an exemption specifically for licensees of the Board of Barbering and Cosmetology. The amendment set forth criteria for these licensees to be classified as independent contractors rather than employees. To qualify, licensees needed to set their own rates, handle their own payments, receive direct payment from clients, and maintain their own business licenses. However, this provision for manicurists expired on January 1, 2029. If the provision is not extended again by the Legislature or removed indefinitely, the employment status of Board-licensed

manicurists will be governed by the “ABC” test established by the Dynamex court decision.

According to the ABC test, a worker is considered an employee rather than an independent contractor unless the hiring entity can demonstrate that the worker:

- A. Operates free from the hiring entity’s control and direction in performing their work.
- B. Performs work that is outside the usual course of the hiring entity’s business.
- C. Is engaged in an independently established trade, occupation, or business.

For resources and information on the Employment Status Law, or AB 5, please visit

www.labor.ca.gov/EmploymentStatus/.





TAX OBLIGATIONS

Employees and independent contractors are responsible for paying income taxes, including on tips. The summary provided below is a guideline. Contact the Internal Revenue Service (IRS), legal counsel, or a tax accountant for detailed information regarding specific tax obligations.



Employees and independent contractors are responsible for paying income taxes, including on tips.

Employees:

- Receive a W-2 form from each employer.
- Federal taxes are withheld throughout the year.

Independent contractors:

- Pay their own sales taxes and income taxes.
- May also complete a W-9 form (request for Taxpayer Identification Number and certification).

INCOME

Employees can earn income in three different ways: wages (salary), tips, and commission on product sales.

Minimum Wage

- Employers are expected to pay employees the **minimum hourly wage**.
- Tips belong to employees and do not count toward minimum wage.

In California, some cities and counties have established a higher minimum wage than the state's standard, and employers must comply with these local requirements.

To find the minimum wage rate for your specific city or county, visit: www.minimum-wage.org/wage-by-state.asp or search online for: *City/County, California + minimum wage amount*.

If an employee is not paid the required minimum wage and the issue is not resolved by the establishment owner, the employee may file a wage claim with the **Division of Labor Standards Enforcement** or pursue legal action for lost wages.

Overtime

- Paid at 1.5 times the regular rate for hours over 8 in a day or 40 in a week.
- Cannot be waived by agreement.

For more information, visit the **Division of Labor Standards Enforcement** website: www.dir.ca.gov/dlse/dlse.html.



An employer cannot withhold tips or refuse to pay overtime.

Tips

- Belong to the service provider.

Tips are not considered gifts. When a customer pays more than the stated fee for a service, the additional amount is classified as a tip. Tips are taxable and must be reported to the employer. For guidance on reporting tips, refer to "Reporting Tip Income" at: www.irs.gov/uac/About-Publication-531.



Tips are taxable and must be reported to the employer.

Piece Rate vs. Commission Wages

A piece rate paid employee is a person paid on a piece rate basis for any work performed during a pay period, which differs from traditional commission wages. On January 1, 2016, Assembly Bill 1513 went into effect that added section 226.2 to the California Labor Code, which no longer permits an establishment employer to only pay a flat commission or percentage wage without a base wage amount for both productive time and rest periods. This section of law pertains to the piece rate wage model and establishes compensation and wage statement requirements for rest and recovery periods and “other nonproductive time” for piece rate employees.

View the Piece Rate Compensation Requirements at: www.dir.ca.gov/pieceratebackpayelection/piecerate.html.



An employee may be able to file a wage claim if they were not provided a meal and/or rest period in accordance with the applicable Industrial Welfare Commission Order.

Filing a Wage Claim

What can be done if an employer withholds an employee’s tips or refuses to pay minimum wage or overtime? Employees have legal options if an employer withholds wages or tips. They have the right to file a wage claim or file a lawsuit against the employer for lost wages.

An employee or former employee may file a wage claim to recover:

- Unpaid wages, including overtime, commissions, and bonuses.
- Wages paid by check issued with insufficient funds.
- Final paycheck not received.
- Unused vacation hours that were not paid upon termination of the employment relationship, e.g., left job, discharge, or layoff.
- Unauthorized deductions from paychecks.
- Unpaid business expenses.

For detailed information on how to file a wage claim, including procedures and forms, visit: www.dir.ca.gov/dlse/faq_minimumwage.htm.



Discrimination or Retaliation

Employees have the right to speak to any government or law enforcement agency about issues affecting working conditions. Employers cannot fire, demote, suspend, or discipline employees for answering questions or providing information to a government agency.

What if an employee tells an employer that they are going to report them to the Labor Commissioner's Office and the owner fires the employee? If an employer retaliates against an

employee (for example, they fire an employee because the employee asked why they weren't being paid the minimum wage), the employee can file a retaliation complaint with the Labor Commissioner's Office (also called the **Division of Labor Standards Enforcement**).

Filing a Lawsuit

If an employee decides to file a lawsuit for lost wages, they may choose to consult with legal representation on how to proceed.





Workers' Compensation

Workers' compensation benefits are designed to:

- Provide medical treatment necessary for recovery from work-related injuries or illnesses.
- Partially replace wages lost while recovering.
- Assist the employee in returning to work.

However, workers' compensation benefits do not include damages for pain and suffering or punitive damages. The Division of Workers' Compensation (DWC) monitors the administration of workers' compensation claims and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits.

In California, employers are legally required to have workers' compensation insurance, regardless of whether they employ one employee or 100 employees. If employees get hurt or sick because

of work, employers are required to pay for workers' compensation benefits. Workers' compensation insurance provides six basic benefits:

- Medical care.
- Temporary disability benefit.
- Permanent disability benefit.
- Supplemental job displacement benefit.
- Vocational rehabilitation.
- Death benefits.

DWC's mission is to minimize the adverse impact of work-related injuries on both employees and employers. The DWC operates several offices throughout the state to support these efforts. For assistance, you can contact the Benefits Assistance and Enforcement at: (800) 736-7401.

- DWC contact information: <https://www.dir.ca.gov/dwc/contactdwc.htm>.
- For locations: <https://www.dir.ca.gov/dwc/dir2.htm>.

The Family Medical Leave Act

The Family Medical Leave Act (FMLA) applies to employers who employ 50 or more employees. Employees may be eligible for this benefit if working for a large chain establishment. Eligible employees are entitled to take unpaid, job-protected leave with continuation of group health insurance coverage for up to 12 work weeks in a 12-month period for:

- The birth of a newborn child.
- The placement and care of a child for adoption or foster care.
- The serious health condition of the employee or the employee's spouse, child, or parent.
- Qualifying needs arising out of a covered military member's active-duty status and 26 work weeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness.

For information regarding FMLA, visit:
www.dol.gov/whd/fmla/index.htm.



Immigrant Workers

The Department of Labor's Wage and Hour Division enforces the Fair Labor Standards Act without regard to whether an employee is documented or undocumented. Regardless of citizenship status, employees have the right to work for a minimum wage, keep their tips, and have a safe, healthy workplace.



Right to Refuse Service

Employees and establishment owners have the right to refuse service to a client if there is a justifiable reason that does not discriminate against a protected class and if they are applying the refusal of service evenly to all clients. In general, refusal of service is justified in cases where a client's presence interferes with the safety and well-being of other clients, staff, and the establishment itself. The most basic examples of this include clients who have an infection or parasitic infestation, clients causing a disturbance or being unreasonably rowdy, or clients lacking adequate hygiene.

The California Code of Regulations, Article 12, section 984 provides state-mandated conditions when it is necessary to refuse service to a client. This would include clients with an infection or parasitic infestation capable of being transmitted to the service provider, other staff, or clients. Examples include, but are not limited to, skin that is broken or cut, open wounds; or cold or other respiratory illness accompanied by a fever.

Employees and establishment owners cannot refuse service based on a protected class. In California, protected classes include:

- Race or color.
- National origin or citizenship status.
- Religion or creed.
- Sex.
- Age.
- Disability, pregnancy, or genetic information.
- Veteran status.
- Marital status.
- Sexual orientation or gender identity.
- Medical condition or AIDS/HIV status.
- Political affiliations or activities.
- Status as a victim of domestic violence, assault, or stalking.

Please consult with a legal representative for details on how California handles its anti-discrimination law as pertaining to refusal of service.



Employees and establishment owners cannot refuse service based on race, religion, sex, or age.



AGENCY CONTACT INFORMATION

FEDERAL CONTACTS

U.S. DEPARTMENT OF LABOR (WAGE AND HOUR DIVISION)

www.dol.gov/agencies/whd
(866) 487-9243

INTERNAL REVENUE SERVICE (IRS)

www.irs.gov/

To locate the closest Taxpayer Assistance Center to you:
www.irs.gov/help/contact-your-local-irs-office

IRS Small Business and Self-Employed Tax Center:
<https://www.irs.gov/businesses/small-businesses-self-employed>

STATE OF CALIFORNIA CONTACTS

GOVERNOR'S OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT (GO-BIZ)

Go-Biz provides regulatory guidance and support for small businesses.
<https://business.ca.gov/>
(877) 345-4633

FRANCHISE TAX BOARD

FTB helps taxpayers file timely and accurate tax returns.
www.ftb.ca.gov/
(800) 852-5711

DEPARTMENT OF TAX AND FEE ADMINISTRATION

CDTFA administers California's sales and use taxes
<https://www.cdtfa.ca.gov/>
(800) 400-7115

EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)

EDD provides benefit services to California employers and employees.
https://edd.ca.gov/en/About_EDD/Contact_EDD

Ask EDD can help you find answers about EDD programs and services. Ask EDD: <https://askedd.edd.ca.gov/s/>

LABOR COMMISSIONER'S OFFICE

The Labor Commissioner's Office ensures a just day's pay in the workplace and enforces labor laws.
<https://www.dir.ca.gov/dlse/dlse.html>

Locations and contact information:
<https://www.dir.ca.gov/dlse/DistrictOffices.htm>

REFERENCE PUBLICATIONS

Click on a document title to be redirected to the online version of that publication.

1. Independent Contractor or Employee: www.irs.gov/pub/irs-pdf/p1779.pdf
2. Tax Tips for the Cosmetology and Barber Industry: <https://www.irs.gov/pub/irs-pdf/p4902.pdf>
3. Tips on Tips: <https://www.irs.gov/pub/irs-pdf/p3144.pdf>
4. OSHA's Workers' Rights: www.osha.gov/sites/default/files/publications/osh3021.pdf
5. Nail Salon Workers' Wage and Hour Rights: www.osha.gov/sites/default/files/publications/OSHA3796.pdf
6. Recover Your Unpaid Wages with the California Labor Commissioner's Office: www.dir.ca.gov/dlse/PubsTemp/DLSE%20Brochures/Recover%20your%20unpaid%20wages%20with%20the%20Labor%20Commissioner%27s%20Office/Brochure-WCA_WEB-English.pdf
7. Health and Safety Rights: Facts for California Workers: www.dir.ca.gov/dosh/documents/health-and-safety-rights-for-workers.pdf
8. All Workers Have Rights in California: www.dir.ca.gov/letf/What_are_your_rights_as_a_worker.pdf
9. DIR Required Workplace Posting for All California Barbering and Cosmetology Licensees: https://www.dir.ca.gov/dlse/publications/LCO_Required-Workplace-Posting-Board-of-Barbering-and-Cosmetology.pdf

This publication highlighted some basic workers' rights, what to do, and whom to contact if those rights are not being provided.

Take a moment and review the materials located in the Reference Publications section. Simply click on the publication name and you will be directed to the online document.

While the Board of Barbering and Cosmetology does not regulate employment status and workers' rights, we hope this information serves as a useful starting point. It is important to stay informed about your basic rights by regularly contacting the agencies listed on this page.

Thank you for working with the Board of Barbering and Cosmetology to ensure the health and safety of all California workers and consumers.



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