



UNDERSTANDING WORKERS' RIGHTS *and* RESPONSIBILITIES

ESTABLISHMENT OWNERS



In California, all workers are protected by labor laws. As an establishment owner, you are responsible for understanding workers' rights, classifying workers correctly, and ensuring workers are treated fairly at your workplace.

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 workers may take if these rights are not being respected. Read this information carefully as the establishment application requires you to certify that you have read and understand this information.

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



Establishment owners are responsible for the business and do not work for someone else. Many establishment owners are also workers.

WORKER CLASSIFICATIONS

Understanding the correct worker classification is crucial for determining an individual's rights. For example, rights of an establishment owner differ significantly from those of an employee or an independent contractor.

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

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

Establishment Owner

Establishment owners operate their own businesses. They are responsible for managing the establishment and are not employed by someone else. An establishment owner may be a sole proprietor, a partnership, or a corporation officer. Many owners also provide services as licensees.

Establishment owners are responsible for reporting all income and expenses to the Internal Revenue Service (IRS), withholding employment taxes (if they have employees), securing county/city business permits, and paying all taxes due. Owners are also responsible for correctly classifying workers as employees or independent contractors (booth renters).

EXAMPLE

Tiffany owns Clips Barbershop. She purchases all supplies, sets the shop's hours, determines service costs and menu, and maintains the lease agreement. She enforces a strict dress code and manages a schedule for her six barbers. Tiffany provides regular training and technical assistance to her team. She issues W-2 forms to her employees because she is the owner of the establishment.



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

Employee

Employees work under the direct control of an employer (the establishment owner). The employer has authority over what tasks employees perform and how they are completed. Employees:

- Receive a W-2 form from their employer for wages earned.
- Report their tips to their employer.
- Follow a work schedule set by the establishment owner.
- Provide services as defined by the establishment owner.

EXAMPLE

Patricia works at Blaze Hair Salon, owned by Judy. Patricia's work hours are Tuesday through Saturday, 9 a.m. to 5 p.m. She uses products provided by the salon and follows the service menu set by Judy. Despite preferring to only perform haircuts, Patricia must offer chemical services as requested by clients. Judy observes Patricia's work and provides technical direction as needed. Patricia reports all tips to Judy and is therefore considered an employee.

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. This provision for manicurists will expire 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/.



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 maintain a separate business identity. They are typically self-employed and responsible for:

- Record-keeping.
- Scheduling their own appointments.
- Setting their menu of services.
- Collecting client payments.
- Filing 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

Mark, a barber and esthetician, has contracts with two large establishments where he rents workstations for \$600 per month each. He manages his own appointment book, sets his own hours, and has created his own menu of services. Mark provides his own tools and products and handles all payments and tax responsibilities himself. As an independent contractor (booth renter), he is not controlled by the establishments.



Note: If Mark's contract specifies that he must adhere to any of the following, then Mark might no longer qualify as an independent contractor (booth renter) and could be considered an employee, as the establishment owner would have control over his work:

- Work four days a week from 9 a.m. to 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.

TAX OBLIGATIONS

For detailed information regarding your specific tax obligations, please contact the IRS, legal counsel, or a tax accountant. Establishment owners with employees should consult the appropriate regulatory entities about the following responsibilities:

- File employment taxes for all employees.
- Prepare and file W-2 forms to report wages, tips, and other compensation to the IRS for all employees.
- Submit Social Security and Medicare tax withholdings for all employees.
- Maintain workers' compensation insurance for all employees.

- Provide unemployment insurance for all employees.
- Collect and pay sales taxes as required.
- Ensure compliance with state and local taxes and obtain necessary business permits.



For detailed information regarding your specific tax obligations, please contact the IRS, legal counsel, or a tax accountant.



One of the ways income can be earned is through commission on product sales.

INCOME

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

Minimum Wage

- Employers must 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 eight 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 Service Providers

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.



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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 and 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

If you withhold an employee’s tips, refuse to pay the minimum wage, or fail to pay overtime, employees may file a wage claim or lawsuit to recover 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

In California, employees have the right to report issues affecting their working conditions to any government or law enforcement agency. Employers are prohibited from firing, demoting, suspending, or disciplining employees for providing information or answering questions from a government agency.

If you discriminate or retaliate against an employee (for example, fire an employee because the employee asked why they weren't being paid the minimum wage, or because the employee files a claim or threatens to file a claim with the Labor Commissioner's Office), the employee can file a discrimination/retaliation complaint with the Labor Commissioner's Office (also called the Division of Labor Standards Enforcement). For more details, please see the booklets located in the **Reference Publications section** of this document—*Health and Safety Rights: Facts for California Workers* and *All Workers Have Rights in California*.

Workers' Compensation

Workers' compensation benefits are designed to:

- Provide employees with the medical treatment necessary to recover from work-related injuries or illness.
- Partially replace wages that are lost while recovering.
- Help employees return to work.

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 benefits.
- Permanent disability benefits.
- Supplemental job displacement benefits.
- 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 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 up to 26 work weeks of leave during a single 12-month period for:

- Care for a covered service member with a serious injury or illness.

For information regarding FMLA, visit:

www.dol.gov/agencies/whd/fmla.



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 for justifiable reasons, provided the refusal is not discriminatory and is applied consistently to all clients. Generally, refusal of service is justified when a client's presence threatens the safety and well-being of other clients, staff, or the establishment itself. Examples include clients with infections or parasitic infestations, clients causing disturbances or being unreasonably rowdy, or clients with poor hygiene.

The California Code of Regulations, article 12, section 984 provides state-mandated conditions for 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 a cold or other respiratory illness accompanied by a fever.

Service cannot be refused based on a client's membership in 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 pertaining to refusal of service.



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



Employees and establishment owners have the right to refuse service to a client who has an infection or parasitic infestation such as head lice.

Local, State, and Federal Requirements for Establishment Ownership

The California Governor's Office of Business and Economic Development (Go-Biz) provides an abundance of information for business owners in California, including a list of local, state, and federal requirements for owners opening a business in the barbering and beauty industry. When considering opening a new establishment, review the information provided on the *Quick Start Guide for Beauty and Barber Shops*: https://calosba.ca.gov/wp-content/uploads/BQSG_BARBER-SHOPS-BEAUTY-SALONS.pdf.

In addition, since different cities/counties may have different requirements, make sure to visit the Governor's Office of Business and Economic Development website for assistance in permit requirements and fees at <https://business.ca.gov/>.



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 nearest Taxpayer Assistance Center, visit:
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/osha3021.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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