

## How to Resolve Wage Disputes in New York State

### How to Decide: File a Complaint with the New York State Department of Labor (NYSDOL) or Go to Court?

If you believe your employer hasn't paid you all the wages you are owed, you can either file a complaint with NYSDOL or sue in court.

### What is a Wage Violation?

Your employer may have violated New York State Labor Law if they have:

- Paid you less than the minimum wage.
- Taken money from your tips.
- Not paid you for all the hours you worked.
- Failed to pay you the correct overtime rate.
- Not paid earned vacation pay, holiday pay, or bonuses they agreed to provide.
- Lowered your rate of pay without telling you beforehand.
- Made you pay for damages or shortages.

### Your Main Options to Recover Unpaid Wages

If you think your employer owes you wages, you can:

- [File a complaint](#) with the New York State Department of Labor (NYSDOL).
- Sue your employer in court.
- Try to negotiate a settlement directly with your employer.
- File a complaint with the New York State Attorney General or your local District Attorney.

This guide focuses on filing a complaint with NYSDOL and suing in court. There are a few things to think about when choosing. You cannot pursue both options for the same violation at the same time. If you start a court case, NYSDOL usually won't investigate your wage claim. Similarly, if NYSDOL starts an investigation, you might not be able to sue in court for the same issue and time period.

### Time Period to Take Action

You should be aware of deadlines for filing a complaint.

- You can sue in court generally within six years from when the work was performed.
- You can file a complaint with NYSDOL generally within three years from when the work was performed, though NYSDOL might accept complaints for up to six years depending on the details of your case.

### Restrictions and Limitations on Accepted Claims

Restrictions and Limitations on Accepted Claims NYSDOL cannot accept every type of wage claim. Here are some common reasons a complaint might not be accepted:

- Outside NYSDOL Jurisdiction: NYSDOL's power to investigate and recover unpaid wages is limited by New York State's Labor Law. For example, NYSDOL cannot accept claims from workers who:
  - Worked for a government agency, town, county, or city.
  - Were self-employed or an independent contractor.
  - Were an executive, administrative, or professional employee earning more than \$1,300 per week.

- **NYSDOL Discretion:** The Department might decline a wage claim after reviewing the specific details of each case and available resources. For instance, your claim might not be accepted if:
  - You are claiming commissions from sales.
  - You are claiming wages or benefits covered by a union's process.
  - You are equally protected by a federal wage and hour law.
  - Your claim cannot be pursued due to factors like its size, employer bankruptcy, or out-of-state business locations.
  - You already have a private attorney working on the matter.
  - You are claiming wages from a family member.
- **Length of Investigation:** If NYSDOL finds a pattern of wage violations at a workplace, they investigate them together as part of a larger case. This can take longer, and a single employee might find it faster to go through the courts.
- **Control of Investigation:** When NYSDOL investigates, the Commissioner of Labor decides how the case proceeds. If you want to control the direction of your case, you would need to file a civil suit in court instead.

### **The NYSDOL Complaint Process**

If you choose to file a complaint with NYSDOL, you will first need to fill out and submit a complaint form. Instructions on how to fill out the form are available. If you need more help, you can call 1-888-4-NYSDOL.

After receiving your complaint, NYSDOL's pre-investigation unit will decide if your complaint is within NYSDOL's power and has enough information to start an investigation. NYSDOL's decision to investigate depends on the information you provide, so be sure to include all details and answer questions fully. If your complaint is not within NYSDOL's power, they will try to direct you to another agency that can help.

**Important Note on Immigration Status:** NYSDOL makes sure all employers follow Labor Laws and protects all workers, including those who are undocumented or paid off the books. Your immigration status does not affect your ability to file a claim for wages owed.

### **The NYSDOL Investigation Process**

You will be notified by mail if NYSDOL investigates your claim. An investigator will then contact your employer. Sometimes, the investigator will visit your workplace.

Early on, an investigator might offer the employer a chance to have a mediation conference with you to try and resolve the dispute informally before a full investigation. Employers might also be asked to attend a meeting with NYSDOL investigators to discuss the claim details. A Compliance Conference may also be held, where you and your employer are invited to resolve any remaining issues.

Through the investigation, NYSDOL will determine if your employer violated New York State Labor Law. If a violation is found, your employer will be asked to repay any wages owed. If your employer doesn't repay these wages, the Commissioner may issue an "Order to Comply," which gives the employer a deadline to pay or face court action.

If an employer disagrees with NYSDOL's findings, they can appeal the Order to Comply within 60 days. If the order is not appealed, NYSDOL may then proceed to collect the money. Employers can also request a formal hearing where they can argue against NYSDOL's findings, call witnesses, and present evidence. While NYSDOL will do its best to get you your owed wages, we cannot guarantee collection.

### **Deciding to Go to Court**

If you decide to sue for unpaid wages in court, your first step is to figure out which court is right for your claim.

## Small Claims Court

If your wage claim is for a limited amount of money, you can sue your employer for unpaid wages in Small Claims Court. You should sue where your employer lives, works, or does business. The maximum claim amount varies by location in New York State:

- [New York City](#) : \$10,000
- [Nassau and Western Suffolk Counties](#): \$5,000
- [Eastern Suffolk Counties](#): \$3,000
- [Counties outside NYC, Nassau, and Suffolk \(City Court\)](#): \$5,000
- [Towns and Villages outside Suffolk and Nassau County \(Town and Village Courts\)](#): \$3,000

Small Claims Court is a simpler court designed to help people resolve disputes over smaller amounts of money. You do not need a lawyer, but you can have one if you choose. You must file your case where the person you are suing lives, works, or does business. If the person you are suing does not live, work, or do business within New York State, you cannot sue in New York State Small Claims Court.

The NYS Court system provides clear [guides](#) to the Small Claims Court process, including overviews, common questions, and important details. You can download these guides online.

## Civil Suits in District, City, County, and Supreme Courts

If your claim for unpaid wages is more than Small Claims Court allows, you can file a civil suit in a District, City, County, or Supreme Court. These courts handle disputes over money, property, or non-criminal harm. While a small claims case is a type of civil suit, there are key differences:

- **More Formal and Time-Consuming:** These courts have stricter procedures and generally take longer.
- **Higher Fees:** Filing fees are higher, but you can apply for a [fee waiver](#) if you can't afford them.
- **Need for a Lawyer:** Because these cases are more complex, you should consider having a lawyer represent you. You also have the option to represent yourself.
- **Serving the Defendant:** In Small Claims Court, the court notifies the defendant for you. In higher courts, you will have to serve the defendant yourself.
- **Additional Damages:** You may be able to recover additional damages, attorney's fees, and costs beside unpaid wages.

## Legal Services and Resources

There are free legal resources and services that can help you understand the legal process and filing a lawsuit:

- **Online Legal Resources:** The [New York Court system website](#), the [NYS Senate website](#) (for New York State Law), and the [Cornell Legal Information Institute](#) provide useful information.
- **Law Libraries:** Operated by the New York Court system in every county, legal librarians can help you find what you need.
- **Help Centers and Community Organizations:** Many courts have help centers that offer advice. Legal Hand is a community organization providing legal advice from trained non-lawyer volunteers.
- **Legal Representation:** Options for free and low-cost legal representation are available.

NYSDOL recommends you review the NYS Court System guidance and use available legal resources. The more you prepare your case and arguments, the more likely you are to succeed in court.

## NYSDOL Resources and Questions

The New York State Department of Labor is here to protect you. We ensure that every hardworking New Yorker is paid fairly, including those who are undocumented or paid off-the-books. Resources for employees explaining the laws we enforce are available on our website. For questions about Labor Standards, call 888-4-NYSDOL or [visit one of our offices](#).

*This guide provides general information and is not legal advice. Information is subject to change.*

## **Appendix 1: Understanding NYS Labor Law**

New York State Labor Law protects employees when they are not paid for all the wages, tips, and specific monetary benefits they are owed. It also protects employees who are not being paid on time or are not receiving the minimum wage.

Two sections of NYS Labor Law are particularly important for wage dispute cases:

### **Article 6 — The Payment of Wages**

Article 6 protects employees from not receiving all wages, tips, and fringe benefits owed, and from not being paid on time. It does not cover executive, administrative, or professional employees earning over \$1,300 per week, or government employees.

Violations of Article 6 include:

- Not paying for all hours worked (including on-the-job training).
- Bounced paychecks due to insufficient funds.
- Taking money from your tips.
- Lowering your pay rate without prior notice.
- Paying you less due to a protected status (like age, race, gender, etc.).
- Illegally taking money out of your pay.
- Charging you for damages.
- Failing to honor an agreement for earned vacation pay, expenses, holiday pay, or bonuses.

Article 6 also provides protections for specific types of employees, such as in the construction industry, where contractors can be responsible if subcontractors don't pay employees. It also has rules for sales representatives' commissions.

### **Article 19 — The Minimum Wage Act**

Article 19 ensures employees receive at least the legal minimum wage for their industry for every hour worked. It also sets rules for overtime pay and extra pay for specific situations, like call-in pay, working more than 10 hours from start to finish in a day, and uniform cleaning costs.

Article 19 does not apply to certain jobs, including: casual part-time babysitters, commissioned salespersons, taxicab drivers, or some executive, administrative, or professional employees.

Violations of Article 19 include:

- Paying less than minimum wage for your industry.
- Not paying the overtime rate for hours worked over forty in a single week.
- Not paying required extra pay for cleaning your own uniform or for working more than 10 hours from start to finish.
- Not paying call-in pay when you were asked to come to work but not needed.

### **Unpaid Wages, Liquidated Damages, and Attorney Fees**

If your employer violated Article 6 or Article 19 of NYS Labor Law, in addition to unpaid wages, you may be entitled to claim liquidated damages and/or attorney fees. Liquidated damages are a set amount of money owed if a law is violated. For most violations of Article 6 and Article 19, you may be entitled to up to 100% of wages owed in liquidated damages. For example, if your employer owes you \$1,000 in unpaid wages and you win your court case, you could receive the \$1,000 in wages owed plus up to an additional \$1,000 in liquidated damages.