

Notification of Labor Standards Enforcement Process

Receipt and Review of Complaint:

When an individual communicates either in person, by phone or by mail with the **Division of Labor Standards** regarding an employment-related complaint, our first step is to determine whether we may have the legal authority to intervene - whether the issue involved may be within our "jurisdiction." If it clearly is not, we will make every attempt to direct you to the agency or organization which can best assist you.

If your complaint could be within Labor Standards jurisdiction, you will be asked to fill out a **Claim Form**. A "complaint" becomes a "claim" upon the completion of a Claim Form. You may be asked to furnish additional information at any time during our review of the claim or during the investigation. After we review the Claim Form you have submitted, you will be informed by mail of the claim number (**LCM#**) which has been assigned to it along with the status of the claim and whether your claim has been accepted for further investigation. Failure to provide additional information as requested will delay evaluation of the claim and/or may result in NYSDOL declining to take the claim for investigation.

By submitting a claim, you acknowledge and understand that the NYSDOL will, in the discretion of the Commissioner of Labor's authority, evaluate your claim for acceptance to investigate, determine the scope of investigation on any claim accepted, and resolve claims as expeditiously as possible. The disposition of complaints and resolution of violations shall be determined by the Commissioner of Labor.

Investigation of Claim:

If your claim is accepted for investigation, you will receive a case number (**LS#**) by mail. Cases will be assigned as staff are available to begin their investigative work. Once your case is assigned to an investigator, you will receive a letter notifying you of the assignment. As the facts and circumstances of each claim vary, the Division **may employ several enforcement techniques** during the course of its investigation. The amount of time required for an investigation also varies, depending primarily upon the degree of employer cooperation, the production of required information from either party, or the availability of persuasive evidence, e.g., records, witnesses, etc. An investigation begins with the **Division** contacting the employer either by telephone, by letter, or in person. If the employer fails to respond to our letter presenting the facts of a claim and asking for information or to make restitution, a second letter may be sent to the employer. We will write to you periodically to update you on the status of the investigation until it is concluded.

Field Investigation:

In some instances, a field visit/investigation may be necessary to remedy violations of labor law. This occurs if an employer does not respond to our attempts to resolve the violation or if the violations impact the entire workplace or are best investigated at the worksite.

Investigation Conferences:

Occasionally, the employer may be requested to attend a meeting to discuss the issues involved in the claim. Where a dispute or noncompliance exists, a **Compliance Conference** - to which you and the employer are invited - may be held to resolve the outstanding issues.

Conclusion of Investigation Presentation of Findings:

Once the investigation is concluded, and we have determined a violation occurred, the **Division** will remedy the violation including making arrangements for repayment of wages owed. However, if an employer fails to comply or provide restitution, an **Order to Comply** may be issued by the **Commissioner of Labor**. Finding a violation or issuing an Order to Comply does not guarantee collection in all cases. If an employer disagrees with the Division's findings, they may petition the **Industrial Board of Appeals** for a formal hearing. During this appeal proceeding, the New York State Department of Labor represents the employee(s). The Order to Comply process can take multiple years to resolve, as the employer is entitled to dispute our findings, present evidence to refute claims, and call witnesses.

Civil or Criminal Proceedings:

If no timely appeal of the **Order to Comply** is filed and the employer still has not submitted payment, the matter may be referred to a County Clerk, which entails the entry of a “**money judgment.**” **These judgments last for 10 years, and the Division will make an attempt to collect on the judgment entered through subpoenas or other means. Not all Orders will be referred for judgment. The Department cannot take collection action under certain circumstances. These conditions will be explained to you if it applies to your case. A judgment against the employer does not guarantee the Department will be able to collect.**

Assignment of Judgment:

If a person is owed wages on a money judgment, they may request that the Commissioner assign the judgment to them to undertake enforcement and collection actions themselves.

In addition, a **criminal prosecution** referral to the Attorney General may be an option - if the evidence is sufficient and certain other legal criteria (such as the whereabouts of the employer being known) exists for the case to be accepted. A criminal prosecution is instituted for violation of the New York State labor law and not for any monetary amounts that may be due affected parties.

Alternate Ways to Pursue a Claim:

You may pursue claims for unpaid wages, wage supplements, overtime pay, damages, etc. in **Small Claims Court**. Small Claims Court is an informal court where individuals can sue for money only, without a lawyer. You may sue for up to \$3,000 in Town or Village Courts, and \$5,000 in City Courts. If your claim is more than \$3,000, or \$5,000, you cannot separate it into two or more claims to avoid going over the maximum. If your claim is over the maximum, you may sue in Civil Court.

There is a Small Claims Court in every city, town, and village in New York State.

To file a claim, you must fill out forms and provide the correct business name, legal name, and business address. To find the business legal name, a County Clerk's office can help you. You will have to pay a maximum \$20.00 filing fee, depending on the amount of the claim, or where you live.

If you need an interpreter, the Court can provide one free of charge.

Direct questions to the New York State Unified Court System at 1-800-CourtNY (800) 268-7869 or question@nycourts.gov, or visit www.nycourts.gov.