

# EXERCISING YOUR RIGHTS



## I. LEARNING ABOUT WORKERS' RIGHTS

### A. USING THIS BOOK

The body of law related to workers, employers, and the workplace in California is huge. This book focuses on selected areas: rights during the hiring process, investigations and police records, wages and hours, benefits, discrimination, health and safety, workers' compensation, union organizing, whistleblower protections, discharge and disciplinary actions, and personnel and medical files. To locate the section that addresses specific concerns, consult either the Table of Contents in the front of the book, the detailed list at the

top of each chapter, or the Index. In the relevant chapter and section, there will be a description of rights, the laws and regulations that protect those rights, and the agencies or courts responsible for enforcing particular rights. Many important exceptions to rights or coverage are noted. Sometimes the protections extend only to certain workers. Sometimes limits are imposed on how or when a worker can demand the protections. Some, but not all, of these exceptions are discussed in this book.

This book does not deal with special protections that California grants to certain limited groups of workers, such as the organizational protections given to farm workers or the many specific statutes protecting various groups of government workers. Very narrow laws or regulations that could not be covered in a book of this size affect almost every industry in California. To learn

all of the protections that apply to specific types of workers, it may be necessary to do additional research or contact an organization or agency that concerns itself with these issues.

The many special protections given to minors (workers under age 18) by both state and federal law are not within the scope of this book. All the protections and rights covered here apply to minors as well as adults, but minors have many additional rights.

At the end of the book, appendices provide the names, addresses, phone numbers, and websites of state and federal enforcement agencies, central labor councils, and regional labor organizations.

## B. OBTAINING INFORMATION FROM THE INTERNET

Armed with the information in relevant sections of this book, one can go to the Internet to obtain additional information. Many organizations, including unions, have websites. It is possible to locate the statutes, regulations, and decisions that apply to most situations by conducting Internet research.

Below are several of the most useful websites for researching workers' rights in California:

- California statutes: <http://leginfo.legislature.ca.gov/faces/codes.xhtml>. This government-sponsored website provides links to all California laws. Most laws related to workers' rights are found in the Labor Code (laws governing wages, vacations, workers' compensation, and many aspects of working conditions); the Government Code (laws providing protections against discrimination and family leave rights); or the Unemployment Insurance Code (laws covering Unemployment Insurance and State Disability Insurance).
- California regulations: <http://ccr.oal.ca.gov>. The website covers administrative rules that implement state laws.
- California Department of Industrial Relations: <http://www.dir.ca.gov>. This government website contains links to many of the laws protecting workers in California.
- California Labor Commissioner: <http://www.dir.ca.gov/DLSE/dlse.html>. This office is within the Department of Industrial Relations. The labor commissioner enforces many of the labor laws.
- Industrial Welfare Commission: <http://www.dir.ca.gov/iwc/WageOrderIndustries.htm>. The website covers specific rules for particular industries and occupations.
- The National Labor Relations Board: <http://www.nlr.gov>. See in particular the "Rights We Protect" section (<https://www.nlr.gov/rights-we-protect>), where there is information on employee rights, protected concerted

activity, and employer/union obligations, and the "Frequently Asked Questions" section (<https://www.nlr.gov/resources/faq>).

- The Department of Labor: <http://www.dol.gov>. This government website contains extensive information on national labor law and labor statistics. Additional websites are also referenced in the chapters that follow.

## C. OBTAINING INFORMATION FROM A LAW LIBRARY

Members of the public can go to a law library to examine (and copy) laws, regulations, court cases, books, legal encyclopedias, and articles on a wide variety of topics, including California employment rights. Every county maintains a public law library (usually in the courthouse). Most law schools maintain large law libraries. These libraries are often funded by the government and allow members of the general public to use their materials. Law librarians can be helpful in pointing people in the right direction. Lists of law libraries by county are available online at <http://www.library.ca.gov/lrs/docs/californiacountylawlibraries.pdf>.

## D. OBTAINING INFORMATION FROM ADMINISTRATIVE AGENCIES

California's administrative and governmental agencies have websites that are user-friendly and can provide valuable information on employment law issues. The websites of enforcement agencies often have guidelines that explain how to file claims or tips on how to interpret the laws. Generally, anyone without Internet access can visit the nearest office of the agency that enforces the rights in question and get help or guidance. An administrative agency's regulations are also available in law libraries. See Appendix B at the end of this book for addresses and websites of government agencies.

## E. OBTAINING INDUSTRIAL WELFARE COMMISSION ORDERS

The state Industrial Welfare Commission establishes rules related to wages, hours, and working conditions in a variety of occupations, trades, and industries. They issue rules called IWC Orders that apply to specific types of jobs and industries. There are 17 different IWC Orders. To find out which IWC Orders cover specific jobs, go to <http://www.dir.ca.gov/IndexOfBusinessAndOccupations.pdf>. Relevant IWC Orders should be posted in the workplace. They are also available at the offices of the California labor commissioner and online at <http://www.dir.ca.gov/iwc/WageOrderIndustries.htm>.

## II. CONFRONTING THE EMPLOYER

### A. THE IMPORTANCE OF GETTING HELP

It is usually best to avoid a one-on-one confrontation with the employer, particularly if workers are not covered by a collective bargaining agreement (union contract). If the employer makes an honest mistake in the computation of hours or any issue related to the rate of pay, in most instances it is appropriate to speak to the payroll or personnel office and work out the mistake informally. If, however, a violation of rights appears to be deliberate, it most likely is safest to let a third party confront the employer: a union steward, a staff member of the state labor commissioner's office, or a lawyer or other representative. If the issue is one that may interest coworkers, they might want to talk to the employer together.

Employees can gain protection in dealing with employers by taking action as a group. Group action for mutual aid or protection is known as “concerted activity.” One person's action is not considered concerted activity, but a group may be as few as two employees. A group of workers who take action, file a complaint, or take some other step to protect their wages, hours, or working conditions on their own behalf or on behalf of others are protected from retaliation by the National Labor Relations Act.

If many of the employees believe they need to take action to protect or improve working conditions, it is wise to contact a union. A union can help in several ways. It can deal directly and effectively with workers' rights enforcement agencies on behalf of the workers. An experienced union representative can help gather all the relevant facts to present to the agencies. And when the union is involved, agencies are more likely to conduct a timely and thorough investigation of the charges.

However, the most important way that a union can help is through a collective bargaining agreement. A collective bargaining agreement is a contract between the employer and the union that establishes wages, hours, and working conditions for the employees. Unions often can negotiate rights and protections more favorable than those required by law, and employers are legally obligated to abide by those provisions. The collective bargaining agreement includes its own methods for enforcing the rights it contains. Generally, this is called a grievance procedure. The final step in a grievance procedure is frequently a process called arbitration, in which a neutral third party hears the case and makes a decision. Using a grievance procedure and arbitration is generally faster and less costly than filing a lawsuit in court. For information on the right to join

and be represented by a union, see Chapter 9. For a list of labor councils, see Appendix C at the end of this book. Local labor councils serve as umbrella groups that include numerous unions in their areas. The local labor council can refer workers to the union best suited to represent them.

There are many anti-retaliation laws that protect groups of workers or individual workers who attempt to improve or change working conditions. These are described throughout the book.

### B. PREPARING TO DOCUMENT THE CLAIM

To enforce workers' rights and prove a claim against an employer, it is helpful, but not essential, to have relevant documents. It may be difficult for a worker to gather the necessary evidence after she realizes her rights have been violated. Therefore, throughout her entire period of employment, a worker should keep all records and documents related to that job, including:

- A calendar indicating the hours actually worked;
- All pay stubs;
- All documents and memos about benefits such as health and welfare, pension, vacation, sick leave, bonuses, severance pay, and insurance coverage of various kinds;
- All documents about work rules;
- Copies of all receipts and vouchers for work-related expenses;
- Work-related credit card records;
- Copies of electronic communications, emails, etc.;
- A daily log of incidents with notes about any conversations between the worker and supervisor or employer, particularly anything viewed as threatening or violating workers' rights. Keeping this log is especially important if workers are involved in a union organizing campaign, have been visibly enforcing their rights, are experiencing harassment, or are concerned about job issues.

The worker should store all of these logs, documents, and records at home; these records should not be left at work. Be careful not to copy or store trade secrets or proprietary (protected) information that an employer can lawfully keep secret.

Despite the value of good record keeping, workers who lack documentation should not be afraid to pursue a claim. If workers do not have documents or records, the law allows workers' rights enforcement agencies and courts to estimate damages based on the worker's testimony. Even if the worker did not keep records of overtime, missed lunches, or other details, he can still give an estimate. Courts will often accept those estimates, as long as they are reasonable and not contradicted by accurate employer records.

The worker should gather all the documents, facts,

and witness information before contacting the enforcement agency that handles the problem. The names, home phone numbers, and addresses of possible witnesses should be made available. If possible, the worker should obtain written statements from potential witnesses. The worker should also attempt to find out how other employees have been treated in similar situations.

To preserve their rights, workers should not sign any “waivers,” “releases,” or “settlements” offered by an employer during an exit interview (or at any other time) without advice from an attorney or their union. Under no circumstances—even if the worker signs a release—can the employer legally refuse to pay unpaid wages, pension contributions, or vacation pay.

### **III. WHERE TO PURSUE A CLAIM**

#### **A. UNION GRIEVANCE PROCEDURE**

For those who are covered by a collective bargaining

agreement (union contract), the grievance procedure often is the best choice for enforcing employment rights. (Union grievance procedures are not listed in the enforcement paragraphs of specific sections of this book because they are not available to all workers, only to those governed by union contracts.) Most contracts allow the union to grieve violations of the law, as well as other violations of the contract. The time period to file grievances can be very short.

Some union agreements provide that any violation of federal or state law is subject to the grievance and arbitration procedures of the union contract. For example, the contract may state: “The employer agrees to abide by all federal and state laws and regulations and all local ordinances.” These provisions are helpful. Using the contractual grievance procedures (i.e., rather than the court system) saves everyone time and money.

#### **B. COMPLAINTS TO THE LABOR COMMISSIONER**

The state labor commissioner has the authority to enforce most of the labor laws of California, including



the authority to investigate employee complaints and hold hearings on wage claims and related issues. Among the claims that the labor commissioner can hear are:

- Failure to pay proper wages, including minimum wage and overtime;
- Mechanics' liens (claims against owners of private buildings or land to cover debts owed to workers who improved the property);
- Misrepresentation of conditions of employment;
- Unreturned bond money;
- Unreturned worker tools;
- Unauthorized deductions from the workers' paychecks;
- Vacation pay and severance pay violations;
- Lost wages resulting from certain unlawful discharges;
- Failure to provide meal or rest breaks; and
- Retaliation for asserting rights under the Labor Code.

If the job is covered by a collective bargaining agreement with a binding arbitration clause, the labor commissioner generally will not hear wage claims that involve interpretation or application of the agreement. See Chapter 4 for more information on wage claims.

Many of the laws and regulations that are enforced by the labor commissioner do not apply to public employees. See Chapter 4 for more information.

### C. COMPLAINTS TO OTHER ENFORCEMENT AGENCIES

A worker with a complaint should be persistent when dealing with enforcement agencies. If an agency employee says there is no case, the worker should not be discouraged. Workers at these agencies, especially intake workers, may not know all the important legal principles affecting a particular case. A complaint should be filed anyway, and the complainant should push to have it investigated. The complainant should check what the agency employee says against what is learned from research, the union, and lawyers.

A complainant should keep in mind that the enforcement agency will contact the employer when it investigates the case. Often, the employer will have a reason or excuse that sounds convincing. Workers filing complaints must be prepared to counter employers' explanations promptly. For example, suppose a worker was denied a promotion illegally. When the enforcement agency inquires, the employer explains that the worker was tardy six times in the past year. The worker needs to be ready with evidence showing that other employees who were late more than six times got the types of promotions that she was denied. Then the employer's explanation will be revealed as false, and the agency will protect the worker's rights. If the worker does not have a union to collect this sort of information, she and

sympathetic coworkers have to do the job themselves.

The California Department of Fair Employment and Housing (DFEH) is the agency that deals with most of California's anti-discrimination laws. It can bring civil actions directly in court, but before doing so, the DFEH requires parties in all discrimination cases to participate in a dispute resolution process that is free of charge. See Chapter 6 for more information.

Contact information for the DFEH and other principal workers' rights enforcement agencies appear in Appendix B at the end of this book.

The U.S. Department of Labor, Wage and Hour Division, handles complaints involving failure to pay overtime under federal law or failure to meet the federal minimum wage. See Chapter 4 for more information.

## D. IN COURT

### 1. Small Claims Court Without an Attorney

Many sections of this book list "civil suit" as an enforcement mechanism. Filing a lawsuit to enforce rights nearly always requires a lawyer. However, those seeking a relatively small sum of money should consider going to small claims court. The limit in small claims court is \$10,000. Neither side can be represented by a lawyer in small claims court, so money is saved. There are several useful websites on small claims court including <http://www.courts.ca.gov/selfhelp-smallclaims.htm> and [http://www.dca.ca.gov/publications/small\\_claims/](http://www.dca.ca.gov/publications/small_claims/). The local small claims court should have a legal adviser to assist with filing and preparing cases, and there is no charge for their services. To find the small claims court advisors in your county, go to <http://www.courts.ca.gov/selfhelp-advisors.htm>.

Individuals going to small claims court should have copies of the laws and regulations relevant to the claim since it is likely the judge will have little experience with employment disputes. There are several widely available books with tips on how to win in small claims court. (A good resource is *Everybody's Guide to Small Claims Court*, by Ralph Warner, Nolo Press.)

### 2. Superior Court With an Attorney

Although this book is designed to help workers take action to enforce their rights without having to hire an attorney, in some instances an attorney's assistance is necessary. Workers who are represented by a union may be able to get help from the union representative, or the union can make a referral to an attorney. Some unions have special programs in which their members get reduced rates from particular attorneys.

Workers who seek lawyers on their own should look for attorneys with expertise in labor and employment law. This is a specialized field, and it is important to find

someone who knows the problem area thoroughly. A worker should not hesitate to ask two or three lawyers for their opinions. The worker should check with enforcement agencies and compare information received from various sources.

## E. CRIMINAL PROSECUTIONS

In numerous instances, this book indicates that a complaint should be filed with the state attorney general or local district attorney. In most cases, this means that an employer who violates the law in question may be guilty of a criminal offense.

Only a public prosecutor can make the decision to bring criminal charges. Public prosecutors are generally the county district attorney, state attorney general, or United States attorney for the local area, depending on the law that is alleged to have been broken. Very few employment issues become criminal matters, and, given how busy most district attorneys are, attempts to initiate criminal complaints will be effective only in the most serious cases.

In almost every instance, it is best to discuss the situation with a lawyer before making a criminal complaint. It is especially important not to publicize possible criminal charges or threaten criminal action before exploring the likely consequences and results.

## F. UNDER A CONTRACTUAL AGREEMENT TO ARBITRATE

Workers who are covered by a contractual agreement to arbitrate must submit many of their claims to arbitration (see section IV., below). The arbitration process is somewhat like a trial, but is less formal, has fewer procedural steps, and is faster. The case is decided by a neutral third party who decides arbitration cases as a profession.

There are two kinds of contractual agreements to arbitrate. The first is a collective bargaining agreement that provides for binding arbitration. These agreements are negotiated between the union and the employer. Workers who are represented by a union must discuss the problem with the union representatives before beginning an arbitration process. Individuals must ask their unions to process such grievances.

The second type of agreement to arbitrate is one that applies to individual employees who are not represented by a union. Many employers are asking workers to sign agreements to use arbitration procedures for all employment claims except workers' compensation and claims under the National Labor Relations Act. The courts generally have upheld these agreements, where they meet the following standards:

- The arbitration process cannot provide fewer or

more narrow remedies for workers than what the law makes available through a court procedure.

- The employee must not be required to pay for the arbitrator's services.
- It must be possible for the employee to gain access to information reasonably necessary to present the case.
- Both the employee and the employer must be bound by the agreement to arbitrate.

As a result of a U.S. Supreme Court decision, many employers now ask employees to sign agreements requiring them to arbitrate claims individually and prohibiting class actions or group claims. (*AT&T Mobility LLC v. Concepcion* (2011) 131 S.Ct. 1740.) Most courts have upheld these class action waivers. The National Labor Relations Board takes the position that these waivers are not valid. Workers who want to bring class actions need to consult an attorney.

## G. TIME LIMITS

There are time limits to bring claims to the appropriate authorities. The time to file a grievance under a union contract can be very short, in some cases a few days. The time to bring claims to agencies can be as short as 30 days or as long as a year. The time to bring claims in court can be anywhere from a year to four years or more. The time limits, called statutes of limitation, must be observed. Workers who have claims or disputes need to bring them within the applicable timelines to assure that their rights are not lost.

## IV. SPECIAL RULES FOR WAGE AND HOUR CLAIMS UNDER UNION CONTRACTS

In general, the labor commissioner will not enforce wage claims for workers covered by a union contract that contains binding arbitration if the claim is based on the collective bargaining agreement, rather than on state law. Binding arbitration clauses in collective bargaining agreements provide for an arbitration process in which the decision is binding on the employer. In other words, the employer must comply with the decision, unless it is overturned by a court. For workers covered by union contracts with binding arbitration, it will be necessary to work through the union and use the grievance procedure. However, there are the following exceptions to this rule:

- The labor commissioner will enforce a wage claim if the claim is based on state law and it is possible to determine how much is owed without interpreting the collective bargaining agreement. The difference lies in whether one needs to decide what the collective bargaining agreement requires, or whether

it is sufficient to simply consult it and the meaning is clear. For example, if the worker is paid late, the labor commissioner will enforce the penalty under Labor Code section 203 if all that is required is to consult the salary schedule under the collective bargaining agreement. However, if there is a dispute as to what the appropriate classification is for the worker under the union contract, the labor commissioner will not enforce that claim.

- The labor commissioner will enforce claims about issues other than wages even for workers who have arbitration rights under union contracts if the claims are based on state law and do not involve interpretation of the collective bargaining agreement.
- The labor commissioner will enforce wage claims even for workers who have union contracts if the contract does not have a binding arbitration procedure, or if wages are specifically excluded from the arbitration process.
- The labor commissioner will enforce wage or other claims concerning loss of pay due to unsafe working conditions. See Chapter 7. Workers who have lost wages or jobs because of unsafe conditions can go to the labor commissioner (and in some circumstances to the U.S. Department of Labor), even though they have arbitration rights.
- The labor commissioner will enforce wage claims even though workers have arbitration rights if they earned the money working for a private contractor on construction of “public works.”

## V. TYPES OF WORKERS NOT COVERED IN THIS BOOK

### A. INDEPENDENT CONTRACTORS

Individuals working as “independent contractors” are not “employees” and therefore are not covered by this book. A growing number of workers are being told by unscrupulous employers that they are independent contractors when in fact they are still employees. Sometimes they are forced to sign agreements stipulating that they are independent contractors when they are not. This kind of statement or agreement is invalid.

Employers inappropriately designate workers as independent contractors because they believe this benefits the company. The employer saves money because independent contractors are not covered by Workers’ Compensation, Unemployment Insurance, State Disability Insurance, or Social Security. Independent contractors do not receive benefits such as vacation, sick leave, family leave, medical coverage, or retirement. Independent contractors are not covered by state or federal wage and hour protections. Independent

contractors cannot organize a union. Employers do not pay payroll taxes or other taxes for independent contractors. Unless a worker is truly an independent contractor, it is always to his disadvantage to be designated as one. There is a general presumption that workers are employees, not independent contractors.

The Labor Code makes it unlawful for any employer to “willfully misclassify” an employee as an independent contractor. (Labor Code sections 226.8, 2753.) “Willful misclassification” means “avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.”

The California labor commissioner is the law’s chief enforcer, and may investigate complaints or conduct hearings or file a civil suit in court. The law imposes penalties for willful misclassification of an employee as an independent contractor. (Labor Code section 226.8 (b)(c).)

### 1. Tests

In separating bona fide independent contractors from employees, the key test concerns the right to control the work. (Labor Code sections 3353, 3357.) Does the employer have the right to control the methods and manner by which the work is carried out? Is the work supervised by the employer? If the employer has the right to control how the work is done, then the worker is almost certainly an employee, not an independent contractor.

The employer need not exercise the right of control. The fact that the employer has that right is sufficient, in most cases, to prove that the worker is an employee. The simplicity of the work itself may indicate that the employer does not need to exert much control but may still have the power to control. The amount of control exerted need not be extensive.

If the answer to the question of whether the employer has control of how the work is done does not settle the issue of the worker’s status, the courts will also look at other factors:

- Is the work being done by the worker separate and distinct from the primary business of the employer, or is it central to the business?
- Who furnishes the tools or equipment?
- Who furnishes the place where the work happens?
- Does the individual hold a professional or contractor’s license?
- Is the worker economically dependent on many businesses or just on a single business?
- Can the worker set prices charged to customers?
- Does the person providing the service have an opportunity to profit based on entrepreneurial skills?

Another set of factors, probably less important than those listed above, includes:

- How is the worker paid? Is payment for a specific project, rather than by the hour, week, or month?
- Does the employer have the right to discharge the person?
- How regular or permanent is the work?
- For how long is the individual employed?

No one test is determinative; one must look at the entire situation. The bias is in favor of finding that the worker is an employee, not an independent contractor, in order to carry out the purpose of laws protecting workers.

The federal government relies largely on the “economic reality test” for wage claims under the Fair Labor Standards Act. This focuses upon whether the employee is dependent upon the company or in business for himself.

Many workers who think they are independent contractors are not. They are actually employees, and all of the rights described in this book protect them. For more information, see the Department of Industrial Relations website at [http://www.dir.ca.gov/dlse/faq\\_independentcontractor.htm](http://www.dir.ca.gov/dlse/faq_independentcontractor.htm).

## 2. Remedies

If the employer wrongly treats an employee as if she were an independent contractor, there are important legal consequences. Workers found to meet the qualifications of employees are entitled to Unemployment Insurance, State Disability Insurance, and Social Security benefits, even though the proper taxes were not paid. They are entitled to receive full workers' compensation benefits. (Labor Code section 3351.) The employer may end up paying back Social Security and federal and state income taxes. An employer who fails to deduct and pay these taxes can be made to pay the worker's share, along with interest and penalties, as well as the employer's share. The worker is also entitled to reimbursement for expenses she incurred such as costs of supplies, insurance, gas, or equipment. She is entitled to overtime pay and minimum wage.

Workers who are being treated as independent contractors, but who think they actually may be employees, should keep accurate records. When it is time to act, workers should contact all the relevant enforcement agencies:

- File a wage claim with the Division of Labor Standards Enforcement. See general information at [http://www.dir.ca.gov/dlse/faq\\_independentcontractor.htm](http://www.dir.ca.gov/dlse/faq_independentcontractor.htm); see wage claim information at <http://www.dir.ca.gov/dlse/HowToFileWageClaim.htm>.
- File a claim with the Department of Labor. <http://www.dol.gov/wecanhelp/howtofilecomplaint.htm>
- File a claim with U.S. Internal Revenue Service. File form SS8 to request a determination regarding employee versus independent contractor status.

The form is available at <http://www.irs.gov/pub/irs-pdf/fss8.pdf>. If the IRS agrees that the worker is an employee, she may file a special form with the Social Security Administration to correct the records. See <http://www.irs.gov/pub/irs-pdf/f8919.pdf>.

- File a claim for Unemployment Insurance. See Chapter 5, section VIII. for more information.

Situations involving improper classification of employees as independent contractors frequently involve wage and hour violations (for instance, failure to pay minimum wage or overtime, or to reimburse for business expenses). See Chapter 4 for more information on wage claims.

Some government agencies and some federal laws apply different tests and may be concerned with different problems (back wages, overtime and other rules, unpaid federal and state taxes, unpaid Social Security contributions, etc.). Some legal rights may last for a long time. When a worker retires or becomes disabled and needs to maximize Social Security payments, he may be able to go back many years to count time worked under a false independent contractor arrangement. Workers who are laid off or fired and need to draw Unemployment Insurance can base eligibility on time worked as a so-called independent contractor. If there is a union at the workplace, the worker should contact it to discuss this issue.

Changing status from independent contractor to employee can have tax implications. Workers who have not paid taxes on income they receive as an independent contractor should seek legal advice before taking any of the steps outlined in this section.

**Enforcement:** File a complaint with the state labor commissioner, the Internal Revenue Service, the California Franchise Tax Board, the California Employment Development Department (which handles unemployment), the U.S. Social Security Administration, the Department of Labor, and the state Workers' Compensation Appeals Board. If the employer has a contractor's license issued by the California Contractors State License Board (CSLB), and is not providing workers' compensation to employees, or has falsely indicated it is not required to provide workers' compensation, report the problem to the CSLB at <http://www.cslb.ca.gov/>. File a civil suit.

## B. FEDERAL EMPLOYEES

This book focuses on California workers' rights. The state has no authority to control the federal government, so federal workers are not covered by the state laws outlined in this book. They will be covered by federal laws.



## VI. IMMIGRANT WORKERS

Some of the rights we describe in the rest of the book may depend on immigration status. Workers who assert rights under state or federal law may need to know how immigration status affects those rights.

California recognizes that undocumented immigrant workers may pursue claims for wages that are earned. (Labor Code section 1171.5.) If, for example, an undocumented worker did not receive overtime or did not receive her last paycheck, the labor commissioner is authorized to pursue that claim. The fact that a worker is undocumented may limit the remedies she is eligible to receive under federal law for an illegal termination or layoff; for example, lost pay and reinstatement may be unavailable where the immigration problems have not been resolved. (*Hoffman Plastic Compounds, Inc. v. NLRB* (2002) 535 U.S. 137.) Under some California laws, a wrongfully terminated undocumented worker may be eligible for back pay through the date that the employer discovered the employee is not authorized to work. (*Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407.)

Workers may be able to get orders of conditional reinstatement, which would require the employer to reinstate them once their immigration status has been worked out. California has adopted legislation permitting undocumented immigrants to pursue claims for unpaid wages in order to protect workers who are undocumented from exploitation. (Labor Code 1171.5.)

Undocumented workers are not entitled to all benefits. For example, they cannot collect Unemployment Insurance. They can, however, collect workers' compensation benefits. They may be eligible for State Disability Insurance. See Chapter 11 for information on protections available for workers who "blow the whistle" on violations of the law.

Many federal rights and protections are available to undocumented workers. See <http://www.dol.gov/dol/fact-sheet/immigration/RetaliationBasedExerciseWorkplaceRightsUnlawful.htm> for more information.

The hiring process and the related immigration enforcement procedures mandated by federal law are addressed in more detail in Chapter 2, section VIII.