

# IMMIGRANT WORKERS' RIGHTS

## THE RIGHT TO BE PAID

### **Facts for Documented and Undocumented Workers Helping to Clean-up and Rebuild the Gulf Coast Region**

All workers, including documented and undocumented immigrant workers, have the right to be paid for the hours they have worked. Federal and state wage and hour laws protect this right.

#### **What the law provides:**

The Fair Labor Standards Act (FLSA) is the federal law that establishes minimum wage, overtime pay, record keeping, and child labor standards.

**Employees Right to Minimum Wage.** The federal minimum wage is \$5.15 an hour. This is the minimum (or least) amount that your employer must pay you per hour. (There are exceptions to the minimum wage rate, including tipped employees and some agricultural workers.)

Many states have their own minimum wage rate. For instance, Florida's minimum wage rate is \$6.15 an hour. However, Alabama, Louisiana, and Mississippi have no separate minimum wage rates. If you work in one of these states, your employer must pay you at least the federal rate -- \$5.15 an hour.

**Employee's Right Overtime Pay.** If you work over 40 hours in one workweek, under most circumstances, you are entitled to overtime pay. Overtime pay is usually a rate of not less than one and one-half times an employee's regular rate of pay. For example, if your regular rate of pay is \$10.00 dollars an hour and you work over 40 hours in a workweek, the employer owes you \$15.00 (\$10.00 + \$5.00) for every hour you work over 40 hours.

#### **What Constitutes Work:**

To determine if your employer is complying with the law, you must know what constitutes work. Generally, you are paid for the time you spend on principal duties that make up your job. For instance, if you are a painter that paints the interior of houses and works for a builder, you most likely will be paid for preparing the area to be painted, mixing the paint, actually painting the area, and cleaning up the area that was painted.

Below is information about "times" in your day that you may or may not get paid for.

Waiting Time: If you are waiting for the job to begin and you are free to stay or go as you wish, it is unlikely that you will be able to be paid for this "waiting time." However, if you are required to report for work at a specified time, you should be paid for the time you wait for the work to begin.

Travel Time: In general, you are not entitled to be paid for the time you spend traveling from lodging-to-work and from work-to-lodging. However, you are entitled to be paid for travel from a central location to an outlying work site if you perform duties at the central location before the

travel. For instance, if you paint one house and then travel to another house that is located 20 minutes away, you should be paid for the 20 minutes of travel time.

Rest Periods: No federal law requires employers to grant rest periods. If your employer chooses to grant rest periods to you and others, periods of a short duration (5-20 minutes) are work time.

Meal Periods: Nothing in the law requires employers to provide meal periods to their employees. However, meal periods are normal at most workplaces. Generally, you will not get paid for lunch or meal periods if they last at least 30 minutes and if you are free from duties.

Work Before and After a Shift: In general, you will not be paid for nonessential activities that you do before or after your main shift. For example, your employer may choose not to pay you for putting on a painting hat or apron before you work. However, activities you perform before or after your regular work shifts that are important to your main duties are considered work time and you should be paid for them. For instance, you should be paid for loading the equipment and ladders on the company truck at the end of your shift.

### **Allowable and Disallowable Deductions from Paychecks:**

**There are a few deductions that employers may take** from your paycheck even if these deductions bring your pay below the minimum wage. These include: social security payments, taxes, and health insurance. Also, depending on the circumstance, employers can deduct the “reasonable costs” of meals, housing as well as merchandise available at company stores even if these costs bring your pay below the minimum wage.

**Employers may not deduct** required uniforms, necessary equipment, cash or merchandise shortages, or employer provided transportation costs if these costs bring your pay below minimum wage.

### **Employees vs. Independent Contractors:**

Often employers will try to label you as an “independent contractors” or they might ask you to sign a contract stating that you are an “independent contractor” so that your employer does not have to pay minimum wage, overtime pay, or comply with other employment laws.

However, labeling you an “independent contractor” or making you sign a contract stating that you are an “independent contractor” does not make you one. Courts look at a host of factors to determine whether an individual is an “employee” or an “independent contractor.”

For instance, if you use the builders tools (ladders, paint brushes, mixing pans), arrive and leave work according to a schedule set by the builder, and receive wages based on a pay rate set out by the builder, chances are you are an “employee” and not an independent contractor and the minimum wage, overtime and other laws apply.

### **What to Do When Your Employer Fails to Pay You or Violates the Law:**

An employer violates the law when it classifies you as an independent contractor when you are not one, fails to pay you or fails to pay you for all the work that you performed, and makes illegal deductions. If you think your rights have been violated, contact the Southern Poverty Law Center at 1-800-613-0342. This organization will do its best to review your situation and advise you on the best way to respond.