

HOW TO USE SMALL CLAIMS COURT TO RECOVER UNPAID WAGES

THE SMALL CLAIMS COURT PROCESS

1. Try to resolve the dispute with your employer.
2. Determine the exact amount of unpaid wages.
3. Go to the courthouse of the county where your employer lives.
4. Complete the form “Notice of Small Claim.”
5. Give the form to the Court Clerk and pay the filing fee.
6. Make sure that a copy of the “Notice of Small Claim” is served on your employer at least **10** days before the first hearing (using one of the permitted methods of service.)
7. Give the form “Certificate of Service” to the Court Clerk after serving your employer with the “Notice of Small Claim.”
8. Prepare for court (organize your thoughts, gather evidence, speak to witnesses.)
9. (In Yakima) Go to the pre-trial mandatory mediation conference.
10. If mediation fails, go to the trial.
11. If you win at trial and your employer pays you, sign the form “Satisfaction of Judgment” and give it to the Court Clerk.
12. If you win at trial and your employer does not pay you, see below for more information on how to collect from your employer.

***If no more than 40 days has passed since your last day of work, contact the Northwest Justice Project or Columbia Legal Services to see if you can file a lien.**

OUTLINE OF FARM WORKER WAGE LAW IN WASHINGTON STATE

MINIMUM WAGE

- I. As of January 1, 2009, the minimum wage in Washington State for workers 16 years old and older **\$8.55** per hour. For workers 14 and 15 years old, the minimum wage is \$7.27 per hour. The minimum wage is increased annually. So, on January 1, 2010 it will be increased again. RCW 49.46.020 & WAC 296-126-020.

Piece rate Work: Generally, even if a worker is paid on a piece rate basis, his or her or her total weekly wages should average at least the minimum wage for all hours worked in the week. WAC 296-126-021.

Undocumented workers (workers without legal work permits): All workers, including undocumented workers, have the right to receive at least the minimum wage for hours worked. Patel v. Quality Inn, 846 F.2d 700 (11th Cir. 1988).

Accepting Less: An employer may not pay less than the minimum wage, even if the worker agreed to accept less. RCW 49.46.010(1).

Hours Included: Workers must receive the minimum wage for all hours worked including time that the employer requires them to spend waiting. For example, time spent waiting for boxes, pick-up, weigh-in, and time spent traveling between fields during the day. 29 CFR § 785.14 et. seq & 29 CFR 790.13 et seq.

Hand Harvester Exception: Non-migrant farm workers who performed piece-rate work in employment that is customarily paid at a piece rate, and who worked less than 13 weeks in agriculture in the preceding calendar year are not covered by Washington State minimum wage law. RCW 49.46.010(5)(a).

Retaliation: It is illegal for an employer to fire or discriminate against a worker makes a complaint about wages, files an action in court, or testifies regarding a wage claim. RCW 49.46.100(2).

Damages for Failure to Pay Minimum Wage

I. A worker has the right to recover wages owed plus the costs involved in going to court and attorneys' fees. RCW 49.46.090(1).

II. An employer who willfully fails to pay minimum wage must pay *twice* the amount of wages owed minus the amount paid plus the costs of going to court and attorney's fees. RCW 49.52.070. Financial inability to pay is not an exception to this law. The only exceptions are (1) if the employer made a genuine mistake or (2) if the employer has a bona fide dispute about the amount of wages owed. Shilling v. Radio Holdings, 136 Wn.2d 152 (1998).

III. Farm workers have special protections if their employer does not pay minimum wage or the wage that was promised. As of July 1, 2001, a worker can put a lien on the employer's crop and/or on the employer's orchard by filing the correct paperwork within **40 days** after he or she stops working. The lien requires the packing shed to pay the worker before paying the worker's employer. RCW 60.11.040(1) and RCW 60.16.010 & 020.

If a farm worker does not receive his or her wages, it is very important to see an attorney immediately for assistance with liens (because of the paperwork required.)

OVERTIME

Overtime laws cover some agricultural work. This means that the worker must receive one and one half times the usual pay rate for any hours worked over 40 hours in one week. RCW 49.46.130(1).

Farm Workers: Generally, farm workers do **not** have the right to overtime. RCW 49.46.130(2)(g) & RCW 49.46.130(2)(a).

Packing shed workers: Generally, packing shed workers have the right to overtime. See Farmers Reservoir v McComb, 337 US 755 (1949).

Damages for the Failure to pay Overtime

A worker has the right to recover wages owed plus the costs of going to court and attorney' fees. RCW 49.46.090 (1).

DEDUCTIONS

- I. All salary deductions must be listed and explained on the worker's pay stubs. WAC 296-131-015.
- II. Deductions for Social Security and taxes are legally permitted. 29 CFR 531.38.
- III. All deductions not legally permitted have to be authorized by the worker, either orally or in writing. RCW 49.48.010.

- IV. If an employer deducts for housing, transportation, tools, or other items and these deductions lower the worker's wages to below the minimum wage, these deductions may be illegal. 29 CFR Part 531.
- V. An employer cannot deduct money that the worker owes him without the worker's permission. For example, if the worker damages the employer's equipment, the employer has to sue the worker in court to collect the money. See *Cameron v. Neon Sky*, 41 Wn. App. 219 (1985).

Damages for making Illegal Deductions

A worker has the right to recover wages owed plus the costs of going to court and attorneys' fees. RCW 49.46.090 (1).

PAYMENT OF WAGES

- I. Generally, farm workers must be paid on a regular basis and every two weeks. WAC 296-131-010 & 29 CFR § 500.81.
- II. When a worker leaves his or her job, his or her employer must pay for all unpaid wages by the next regular pay day. RCW 49.48.010.
- III. If the employer willfully fails to pay the worker's wages on the regular payday, he or she must pay *twice* the wages owed minus the amount paid, plus costs of going to court and attorney's fees. RCW 49.52.070. Financial inability to pay is not an exception to this rule. *Shilling v. Radio Holdings*, 136 Wn.2d 152 (1998).

SMALL CLAIMS COURT

In Small Claims Court, a person may sue for up to \$5000. This court is meant to be a relatively quick and inexpensive way to resolve disputes that you are unable to settle. Lawyers generally cannot participate and there are no juries, motions, or objections. There is only a small charge for filing the lawsuit. A trial may be obtained much sooner than in other courts, and most trials are short, lasting about 20 minutes.

What kind of disputes may I take to Small Claims Court?

If you have a dispute with a person, business, or government agency involving **\$5,000 or less**, you may use the Small Claims Court. If you want to sue for more, you must go to a different court or drop some of your claim to bring it within the \$5,000 limit.

In Small Claims Court you can only sue for money. You may not sue someone to perform a service or return property. For example, you may not sue to be rehired, but you may sue for unpaid wages.

You may sue for all the expenses that resulted directly from the dispute. Generally, however, you may not include the costs involved in preparing the case, such as travel expenses. You may include the costs of filing the suit and having it served on the other side.

If you are suing a business or corporation it will not be allowed to have a lawyer represent it. For this reason, it may try to get the case moved to a regular courtroom. If the business plans to ask the judge to move the case, it will have to notify you of a hearing date. You should go to the hearing and object to moving the case for the sake of fairness, since you will be unrepresented if the case is transferred.

Should I settle out of court?

Before filing a claim you should attempt to settle with the other side. If you cannot arrange to speak with your opponent, you should write a letter requesting the sum you think you are entitled to receive and

stating your intent to sue in Small Claims Court. Bring a copy of the letter to court if you cannot reach a settlement.

If you do settle after filing the suit, you and your opponent should sign a written agreement. It is a good idea to file a copy of this with the Court Clerk. The person who filed the suit should tell the clerk to dismiss the case.

What if I don't speak English?

Non-United States citizens may use the court. If you don't speak English, you should request an interpreter at the time you file your claim. The court usually provides one for free. When you go to court for your trial and the judge calls your case, be sure to say again that you need an interpreter.

Your interpreter is your way of presenting your side of the case and understanding what the other participants say. Make sure that your interpreter is translating everything word for word. Remember that details are important; the interpreter should not summarize anything. Speak clearly and slowly, and don't hesitate to tell the judge or your interpreter if there is anything you don't understand.

Where do I file a claim?

Small Claims Court is a department of the District Court. A claim generally must be filed in the district where your opponent lives, or where the business or agency you are suing is located. The District Court Clerk will be able to tell you whether a particular address is within the boundaries of the court you have contacted.

If you cannot find out your opponent's address, you may sue them in the district where they work using their work address.

You may be able to sue a business that has headquarters out of state by suing the business in the district where you worked for them. [See the section titled "What if the Defendant is out-of-state?"]

How do I file a claim?

The person filing the suit is called the "plaintiff." The other side is the "defendant." The case starts when the plaintiff files a Notice of Small Claim in the Small Claims Department of the appropriate District Court. The form may be obtained from the District Court Clerk. The Court Clerk will explain the appropriate procedure and provide you with the basic forms, but is not allowed to complete the forms, give legal advice, or predict how the judge might rule in a case.

In filling out the Notice of Small Claim, the plaintiff must accurately identify the defendant by name, street address, and phone number, if available. A post office box number is not acceptable. More than one person may be sued. If you are suing a married person, it is usually best to name both the husband and wife. If you are suing as the result of a business transaction, name both the business and the appropriate company employee or salesperson as defendants.

The Notice of Small Claim form has a space where you should briefly describe what your claim is about and the amount of your claim. At the time of filing, you must pay a small fee. In most counties, the clerk will give you a trial date, a copy of the claim form for your records and a copy of the claim form to be served upon the defendant.

What if the defendant is out-of-state?

If the opponent in your case is a corporation you worked for, but has headquarters in another state, you may still be able to sue them in Small Claims Court in Washington. Washington State's "Long Arm Statute" is the law that allows you to do this. That law is RCW 4.28.185.

If you have trouble with a clerk of the Small Claims court understanding the statutes cited above you should **INSIST ON SEEING A JUDGE AS THE CLERK MAY NOT MAKE ANY INTERPRETATIONS OF THE LAW!**

How do I notify the defendant?

It is the plaintiff's responsibility to see that a copy of the Notice of Small Claim form is delivered to the defendant. This is called service of the claim. The plaintiff **MAY NOT** be the one to serve the claim. The claim form must be served on the defendant or given to an adult who resides permanently with the defendant. In the case of a business or agency, it must be served on the designated agent, such as an executive secretary. Service may be done by:

- The Sheriff's office;
- A professional process server (see the yellow pages);
- Any person of legal age (18 years) who is not a witness or otherwise connected with the case; or
- Registered or certified mail with a return receipt requested. With mail service, you must file with the court the postal receipt bearing the defendant's signature. Allow 5 extra days for the mail to reach the defendant.

The claim must be served on the defendant at least **10** days before the first hearing. If you cannot have the claim delivered within the required time limits, you must return to the clerk and get another claim form to serve on the defendant.

After the claim is served, the server must file an Affidavit or Certificate of Service with the court. The Court Clerk should have this form. An affidavit or certificate of service should state the following:

1. Name of the defendant;
2. Address where served;
3. Person who was served;
4. Date the claim was served;
5. Small Claims Court case number;
6. Name, signature, address, and telephone number of the server; and
7. Fee charged by the server.

If the claim is improperly served, or the affidavit or certificate is improperly completed, the case may be dismissed or delayed. It is recommended, therefore, that service be done by the Sheriff's office or by a professional process server. The fee may be added to the judgment if you win.

How do I prepare for trial?

First, you should gather all the important papers and documents you may need to prove your case. Bring originals, not photocopies, whenever possible. Evidence must be submitted during the trial; therefore when in doubt, bring it with you to court. The evidence must be identified in court and explained by someone personally familiar with it.

Second, contact any witnesses who would be able to support your case and ask them to appear at the trial. Witnesses must have personal knowledge of the facts they are asked to testify about. Personal knowledge means, for example, that they saw you work and not that you only told them about it. Live testimony goes a long way. It carries a greater impact than letters or written statements. In Washington, however, you cannot order (subpoena) a witness to come to Small Claims Court.

If you want to see how the system works before your trial, ask the Court Clerk when other Small Claims Court trials will be held.

Before trial, you should practice presenting your case. Your presentation should be organized and short. You may want to write a list of important points you don't want to forget. These could include questions to your witnesses.

How do I change the date of my trial?

To change the date of your trial, you must notify the Court Clerk. If your trial is at least 7 days away, the clerk may change the date. However, if your trial is within 7 days, the judge will have to consider whether you have a good reason for not showing up to the scheduled trial.

What happens in mediation?

In some counties, before the trial there is a mandatory mediation conference. In mediation, the two parties sit down with a neutral third party, the mediator. The mediator listens to both sides to find out how they would like to resolve the dispute. Then the mediator tries to help them reach an agreement. No one imposes a solution on the parties. Mediation lasts about 30-40 minutes and there are interpreters provided.

Try to compromise. Ask yourself whether you really want to go to court and risk losing.

What happens at trial?

When you go to your trial, dress as if you were going to church. Also, do not bring your children unless they are going to speak to the judge. If you have worked for your employer before, bring check stubs to show the wage rate you earned before. If you had a written contract with your employer, you should bring it also.

Notify the Court Clerk when you arrive at the courthouse on the trial day. You will be directed to the appropriate courtroom. The list of cases to be heard that day may be posted outside the courtroom or read aloud at the start of the session. If your case is not listed or read, see the Court Clerk.

The judge will usually begin by describing the court's procedure. Wait for the judge to announce your case, then go forward. The judge will ask you to present your side of the case. At this time, present your documents or evidence and any witnesses. If you cannot speak English and you do not have an interpreter, try to notify the judge immediately that you need an interpreter.

As the plaintiff, the burden of proving your claim is on you. The defendant does not have to prove that he or she does not owe the money. If it ends up your word against the defendant's, you may lose. Don't take your case for granted. You must show that the defendant was served with the Notice of Small Claim (if the defendant does not show up), prove your case and show how you arrived at the amount you are seeking.

The judge may ask you and your witnesses' questions. Do not insult the other side or become too emotional. Next, the judge will ask the defendant to present his or her side of the story. **DO NOT INTERRUPT.** Wait for the judge to allow you to ask questions. After hearing both sides, the judge may announce a decision immediately or inform you in writing within a few weeks.

After you receive payment, you should notify the District Court Clerk in writing that you have been paid.

What happens if I do not show up for trial?

If the plaintiff does not show up, the case will be dismissed and may not be allowed to be rescheduled. If the defendant does not show up, the defendant may lose by default if the plaintiff proves that the defendant was served with the Notice of Small Claim.

If I win, how do I collect?

A judgment in your favor does not necessarily mean that the money will be paid. **THE COURT DOES NOT COLLECT THE MONEY FOR YOU.** You will need to take additional steps if the judgment is not paid within 30 days of the decision or according to the payment plan set by the court:

First, you should ask the court to “certify” the judgment, using a form that is available from the District Court Clerk. Next, you may file papers to have the defendant’s bank account “garnished,” which is where money is withheld and paid to you or some property is seized and sold to pay the debt. Unfortunately, there are no forms readily available for these collection procedures. You may need to hire a lawyer for assistance. Your attorney’s fees and the cost of certifying the judgment may be added to the Small Claims Court judgment.

Alternatively, you may put a “lien” on your opponent’s real estate. First, purchase a transcript of the certified judgment from the District Court Clerk. Then, for a small fee, file it in Superior Court. This puts a “lien” on your opponent’s real estate located in the county of that Superior Court. File the certified judgment in as many counties as you think your opponent owns real estate. The lien makes a sale of the real property more difficult and remains on the property even after it is sold, but it does not guarantee payment of the judgment to you.

If your claim is for unpaid wages and you won the case but have not been paid, send a certified copy of the judgment to the Department of Labor and Industries and they will enforce it for you, though it may take a long time.

Finally, you may consider going to a collection agency for help in collecting your judgment, but keep in mind that the agency will keep a percentage (usually 50%) of any money it collects for you. Similarly, debt collection lawyers will often charge a large fee for collecting your judgment. The fee will depend upon how large your judgment is and how easy it will be to collect from the losing side.

Not all property or wages may be taken to enforce a judgment. If the losing side does not have many possessions or much money, he or she may file a form to protect a certain minimum value of possessions, possibly including a house, furniture, car, clothes and some wages.

If I lose, may I appeal?

A plaintiff may appeal only if the amount in dispute is \$250 or more. If you appeal, you will get a new trial in Superior Court. The Small Claims Court judgment cannot be enforced during the appeal.

If you wish to appeal, you must take the following steps **within 30 days** of the judge’s decision:

1. Prepare a written Notice of Appeal (the form may be available from the District Court Clerk);
2. File the original Notice of Appeal in the District Court and pay the filing fee;
3. Serve the other side with a copy of the Notice and file an affidavit of service or certified or registered mail return receipt within 30 days;
4. Pay the District Court \$40 for a transcript of the Small Claims Court judgment;
5. Post a bond at the District Court. The bond is to be executed with two or more personal sureties, or a surety company as surety (if court approves), for twice the amount of the judgment plus costs or twice the amount of your claim (whichever is more money);

6. Within 14 days the clerk will file the transcript at the Superior Court, which will assign you a new case number. Once you know your Superior Court case number, you should contact the Superior Court for further instructions.

You may have a lawyer help you in filing the appeal or represent you in court for the appeal or assist with the collection procedures described earlier. You will probably have to pay a lawyer up front for this assistance.

How can I get more legal advice?

If you are a farm worker seeking to back wages, you may contact the following offices:

NORTHWEST JUSTICE PROJECT

Yakima	Wenatchee
304 Larson Bldg.	300 Okanogan Avenue, Suite 3-A
6 South 2 nd St.	Wenatchee, WA 98801
Yakima, WA 98901	(509) 664-5101
(509) 574-4234	1-888-201-1021
1-888-201-1018	

COLUMBIA LEGAL SERVICES

Yakima	Wenatchee	Tri-Cities
510 Larson Bldg.	300 Okanogan Avenue, Ste 2-A 418 - F	North Kellogg
6 South 2 nd St.	Wenatchee, WA 98801	Kennewick, WA 99336
Yakima, WA 98901	(509) 662-9681	(509) 374-9855
(509) 575-5590	1-800-572-9615	1-888-201-9735
1-800-572-8716		

THE DEPARTMENT OF LABOR AND INDUSTRIES

Yakima	Kennewick	Moses Lake
15 W. Yakima Ave. Suite 100	500 N. Moran St. Suite 1110	3001 W. Broadway
Yakima, WA 98902	Kennewick, WA 99336	Moses Lake, WA 98837
(509) 454-3700	(509) 735-0100	(800) 574-2285
1-800-354-5423	1-800-547-9411	

Walla Walla	Wenatchee
1815 Portland Ave.	519 Grant Road
Walla Walla, WA 99362	East Wenatchee, WA 98802
(509) 527-4437	(800) 292-5920

If you think you need a lawyer and your local legal services office cannot help, you may find a lawyer who will charge a reduced fee for your first meeting.

YAKIMA COUNTY SMALL CLAIMS COURT

ADDRESS: 128 N. 2nd Street Room 212

Yakima, WA 98901

HOURS: 8:30 a.m. to 4:30 p.m.

DIRECTIONS: The court is on the corner of Lincoln Ave. and South 2nd Street in Yakima. From I-82, take the exit for Yakima Ave. Turn right onto South 2nd. The court is on the corner of 2nd and Lincoln, on the left.

TELEPHONE: (509) 574-1820

FAX: (509) 574-1851

FILING FEE:

PRE-TRIAL MEDIATION: Mandatory

SERVICE OF PROCESS: Must serve the defendant with the Notice of Small Claim *and a copy of instructions provided by the court clerk* at least 10 days before the mediation conference.

INTERPRETERS: Free

TIME SPAN: Mediation is scheduled about 2 to 4 weeks after filing the claim. The trial occurs about 3 weeks after mediation.

SATISFACTION OF JUDGMENT: Must sign the bottom part of the Judgment form and file it with the court clerk when the judgment is paid.

FRANKLIN COUNTY SMALL CLAIMS COURT

ADDRESS: 1016 N. 4th Ave.
Pasco, WA 99301-5019

HOURS: 8:30 a.m. to 5 p.m.

DIRECTIONS: The court is near the corner of 4th Ave. and Margaret Street. From 182, take the exit for Cort Street. Turn left onto Cort Street. Continue on Cort until 4th Ave. Take a right onto 4th Ave. The court is a big building on the right.

TELEPHONE: (509) 545-3591

FAX: (509) 545-3588

FILING FEE:

PRE-TRIAL MEDIATION: None

INTERPRETERS: Free

TIME SPAN: Trial is set about 6 weeks after filing the claim.

SATISFACTION OF JUDGMENT: Must sign and file the form called Satisfaction of Judgment when the judgment is paid.

BENTON COUNTY SMALL CLAIMS COURT

ADDRESS: 7320 W. Quinault
Kennewick, WA 99336

HOURS: 8 a.m. to 4 p.m.

DIRECTIONS: The court is behind the store "Target." From 240, take the exit for Columbia Center Boulevard. Go left at the light. Then go left onto Quinault Street. The court is on this street behind Target.

TELEPHONE: (509) 735-8476

FAX: (509) 736-3069

FILING FEE:

PRE-TRIAL MEDIATION: No

INTERPRETERS: Free

TIME SPAN: Trial is set about 4 to 6 weeks after filing the claim.

SATISFACTION OF JUDGMENT: Must sign and file the form called Satisfaction of Judgment with the clerk once the judgment is paid.

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, January 2009.

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IMPORTANT INFORMATION THAT YOU NEED:

EMPLOYER

NAME _____

ADDRESS _____

TELEPHONE _____

TYPE OF WORK _____

PLACE OF WORK _____

DATE WORK BEGAN _____

DATE WORK FINISHED _____

NUMBER OF HOURS WORKED PER DAY _____

PIECE WORK COMPLETED _____

WAGES PROMISED _____

WAGES RECEIVED _____

NAMES OF WITNESSES _____
