

TEXAS WORKFORCE COMMISSION, WAGE AND HOUR DEPARTMENT

OFFICE 800-832-9243 OR 512-475-2670 (HEARING IMPAIRED 800-735-2989), FAX 512-936-3364

wagehour.employerresponse@twc.texas.gov

INSTRUCTIONS FOR EMPLOYER RESPONSE TO WAGE CLAIM TEXAS PAYDAY LAW

Enclosed is a sworn wage claim alleging that you failed to pay earned wages. Please read the wage claim and respond by filling out the "employer response to wage claim" which is also enclosed. Your response should be filed by mail, fax, or email no later than the fourteenth (14th) day after the date that this investigation notice was mailed to you. After an investigation, a determination will be mailed notifying you of our decision.

Mail: **Texas Workforce Commission, Wage and Hour department, 101 East 15th Street, Rm. 514 Austin TX 78778-0001**

Email: wagehour.employerresponse@twc.texas.gov

For questions about the wage claim process or the Texas Payday Law in general, visit our web page
twc.texas.gov/businesses/how-respond-wage-claim-under-texas-payday-law

TEXAS PAYDAY LAW INFORMATION

Chapter 61 of the Texas Labor Code assigns the Texas Workforce Commission responsibility for administration of the Texas Payday Law. The law provides rules for the payment of wages, a process for determining liability for unpaid wages and avenues for the collection of those wages. Although filed wage claims are not always valid, you need to be aware that the law provides severe penalties for employers that do not deal in good faith with their employees.

1. After ordering payment of wages, the Commission may file an Administrative Lien to enforce collection of wages.
2. An employer commits a third-degree felony if at the time of hiring, the employer intends to avoid payment of wages, and if the employer fails, after a demand, to pay those wages.
3. If an employer acts in bad faith by not paying wages, in addition to ordering the payment of wages, the Commission may assess an administrative penalty in an amount not to exceed the amount of wages in question and not to exceed \$1,000.
4. If an employer is convicted of two violations of the Payday Law, or if a final order of the Commission against an employer for nonpayment of wages remains unsatisfied for 10 or more days after the date on which the time to appeal from that order has expired and an appeal is not pending, the Commission may require the employer to deposit a bond in an amount approved and considered by the Commission as sufficient and adequate under the circumstances.

TEXAS PAYDAY LAW REQUIREMENTS

1. Employers must pay their employees at least once a month if the employee is not subject to the overtime provisions of the Fair Labor Standards Act. All others must be paid at least semimonthly.
2. Employers must designate paydays and must post those paydays in conspicuous areas of the workplace.
3. Wages paid on a commission basis or bonuses are due in a timely manner, according to the terms of agreement between employee and employer.
4. Employees absent on payday are entitled to be paid upon request on a regular business day.
5. If separated from work for a reason other than discharge, an employee must be paid in full not later than the next regularly scheduled payday.
6. Discharged employees must be paid in full not later than the sixth day after termination.
7. Employees may be entitled to unused fringe benefits (vacation, holiday, sick leave, parental leave, or severance pay) only if the employer provides for these benefits in a written policy or agreement.
8. Employer wages may be withheld only if the employer:
 - (a) is ordered to do so by court;
 - (b) is authorized by state or federal law (e.g. payroll taxes); or
 - (c) has the employee's written authorization to make deductions.

Completed forms, inquiries, or corrections to the individual information contained in this form shall be sent to the TWC Labor Law Section, 101 E. 15th St., Rm. 514, Austin, TX 78778-0001, (512) 475-2670. Individuals may receive information that TWC collects about the individual by emailing to open.records@twc.state.tx.us or writing to TWC Open Records, 101 E. 15th St., Rm. 266, Austin, TX 78778-0001.

TEXAS PAYDAY LAW
Chapter 61, Texas Labor Code
FREQUENTLY ASKED QUESTIONS

Q: How long does an employer have to keep a paycheck active, if it has been properly delivered, but the employee does not cash it?

A: The Payday Law does not specifically address this issue, however, it does state that an employee has the right to file a claim for unpaid wages up to 180 days from the date the wages were due to be paid (Sec. 61.051 (c)). In addition, the employee might be able to pursue action through other venues such as a lawsuit, or through the U.S. Department of Labor (DOL).

Q: Do employees have to be provided with a check stub?

A: The Texas Minimum Wage Act (Sec. 62.003) requires employers to provide an earnings statement to their employees which includes hours worked, rate of pay, total amount of pay for the period and any deductions made from the check and their purpose. However, there is no agency currently charged with enforcement of this provision.

Q: If employees are required to work on a holiday are they entitled to 'premium' pay?

A: Premium pay is generally set by individual company policy. There are no state or federal laws affecting Texas which require an employer to pay additional wages for working on any day of the year (holidays) or week (weekends).

Q: Do employees have to be paid for attending meetings or training sessions?

A: The Payday Law requires that employees be paid for all time worked. Although the Payday Law does not specifically address this issue, the U.S. Department of Labor (DOL) does address the issue of 'compensable time.' Compensable time is normally defined as "all the time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place." Generally, these are hours for which the employer must pay an employee. For additional information on this topic, contact DOL at 866-487-2365.

Q: An employee has quit and is due a final paycheck. He/she is currently in possession of company property. Can an employer hold the paycheck until the property is returned?

A: Even if an employee is in possession of company property, the Texas Payday Law provides that in such a case, wages may be withheld only when the employer is authorized to do so by law, required to do so by a court or has written authorization from the employee for the deduction. Otherwise, the employer would need to attempt to recoup the property by some other means, such as civil remedies (i.e. lawsuit, small claims court, police report) or arrangements with the employee outside of a wage deduction.

Q: Can an employer make deductions from severance pay, commissions, bonuses or amounts paid in lieu of vacation time which are due to an employee under a written company policy or agreement?

A: The Texas Payday Law provides that wages may be withheld only when the employer is authorized to do so by law, required to do so by a court or has written authorization from the employee for the deduction. In addition, under Texas Family Code §158.214 and §158.215, an employer who has received an income withholding order is required to withhold from these types of pay an amount equal to the amount the employer would have withheld under the order for income withholding. For example, if the severance pay is equal to three months of the employee's wages, then the employer would have to deduct three times the amount of the obligation in the income withholding order.

Q: An employee has handed in his/her '2-weeks notice' resignation. Does an employer need to let the employee work until that time and pay them for it?

A: The Texas Payday Law does not address the issue of termination. There is no provision in the Payday Law that requires an employer to maintain an individual's employment status until the date indicated on a resignation or which automatically requires an employer to pay that individual beyond the time they actually work.

Q: Does an employer need to provide an employee with the reason for terminating him/her?

A: The Texas Payday Law does not address the issue of termination. Texas, however, is as an "employment at will" state. This means that the employment relationship between employer and employee exists by the agreement of both parties. This gives the employee the right to quit at any time or for the employer to terminate the employee at any time and for any legal reason.

Q: After what length of time does an employer need to provide its employees with a break/lunch period? Do these times need to be paid?

A: The Texas Payday Law does not address the issue of rest breaks or meal breaks. There is no current legislation in the state of Texas requiring an employer to provide breaks - they are optional. Work schedules, including breaks, regular hours and overtime hours, are left to the discretion of the employer and are usually based on the needs of the business. However, if breaks are given, the U.S. Department of Labor (DOL) has guidelines on this issue. If "coffee breaks/rest breaks," consisting of 20 minutes or less are given, they must be paid. They are paid because they are considered to be beneficial to the employer since they generally promote productivity and efficiency on the part of the employee. "Lunch breaks," defined as a break of 30 minutes or longer for the purpose of eating a meal, where the employee is fully relieved of duties (performing no work), do not have to be paid. For additional information on this topic, you can contact DOL at 1-866-487-2365.

Q: Does an employer have to offer its employees vacation pay? If so, what are the guidelines?

A: Under the Texas Payday Law an employer is not required to offer fringe benefits such as vacation pay, holiday pay or other pay for hours not worked. However, if the employer offers these benefits in writing, the employer would be obligated to comply with their own policy or employment agreement. The employer has the right to establish policy on how these benefits are earned, accrued, used and if they are paid out when not used, barring any policy which might be considered discriminatory as defined by law.

IT SHOULD BE NOTED THAT THIS DOCUMENT IS NOT THE COMPLETE TEXT OF THE TEXAS PAYDAY LAW AND PAYDAY RULES, NOR IS IT WRITTEN IN THE EXACT LANGUAGE OF THAT LAW OR RULES. IT IS INTENDED AS AN INFORMAL EDUCATIONAL TOOL FOR THE BENEFIT OF EMPLOYERS IN TEXAS.

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101 EAST 15TH STREET RM. 514, AUSTIN, TEXAS 78778-0001

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EMPLOYER RESPONSE TO WAGE CLAIM

DATE MAILED

Claimant:
Identification No:
Wage Claim No:

Your written response should be filed no later than fourteen (14) days after the date this notice was mailed (see postmark).

* Please use the above Wage Claim Number for all inquiries regarding this wage claim.

In accordance with the Texas Labor Code, Chapter 61, the individual named above has filed a sworn wage claim for unpaid wages (copy enclosed). This notice is an opportunity for you to respond. Failure to respond may result in a decision favorable to the claimant ordering you to pay the amount claimed. Please complete all sections of the form (SSN's are optional). By responding to this form, you are not filing an appeal. Please submit relevant supporting documents such as true copies of related pay records, copies of canceled checks (front and back), employment agreements, contracts, signed authorizations, job descriptions, and handbooks or written policies relevant to the wages or benefits during the period(s) claimed. Information sent may be made available to the claimant so don't send private information (SSN's) belonging to other employees. This claim examination will result in a Determination Order being issued to both parties. If you disagree with the Determination Order you receive, you may file an appeal by following the instructions on the reverse side of the Order.

If subsequent to the wage claim being filed, you paid this individual all of the claimed wages, complete the EMPLOYER INFORMATION section and use question 16 to write the gross amount paid, the date(s) paid, and check number(s). Enclose copies of endorsed checks (front and back), cash receipts, etc.

EMPLOYER INFORMATION

- 1. What is your TWC (TEC) Account Number? What is your Federal Tax ID Number?
2. If other than the above address, to what address do you want correspondence mailed concerning this claim?

- 3. What is the full legal name and address of your business?

Name Address
City State Zip

- 4. If business is a Sole Proprietorship, provide your full legal name and last 4 digits SSN

a) Is your business a Partnership? ()Yes () No If yes, specify type of partnership
Go to 5c below and list the General Partners' Names, Social Security Numbers, Phone Numbers and Addresses (omit the Service Dates field).
b) Is your business Incorporated? () Yes () No If yes, incorporated in what state?
Corporate Charter Number Qualified to do business in Texas? ()Yes ()No
List below Directors' / Officers' Names, Social Security Numbers, Addresses and Service Dates.
c) Name Last 4 digits SSN Phone()
Address Service Dates
Name Last 4 digits SSN Phone()
Address Service Dates
Name Last 4 digits SSN Phone()
Address Service Dates
Name Last 4 digits SSN Phone()
Address Service Dates

(If necessary, use additional sheets)

- 5. Is the business still operating? ()Yes ()No Is the business in Bankruptcy? ()Yes ()No
If in Bankruptcy: Bankruptcy Filing Date Case No. Where Filed?
Bankruptcy Attorney's Name, Address and Phone Number
7. List any other businesses operated by the employer

EMPLOYMENT AGREEMENT

8. Beginning date of claimant's employment _____ Job title and duties _____
Current employment status (complete one): Still employed ___ Quit Date _____ Termination Date _____
9. Claimant's Pay Schedule () Daily () Weekly () Biweekly () Semi-Monthly () Monthly () Other _____
Scheduled Payday(s) _____ Claimant's rate of pay _____
_____ Paid by () Check () Cash () Other _____
10. Did you deduct Social Security and Withholding taxes from the claimant's paycheck(s)? () Yes () No
11. Was claimant's employment covered under the overtime provisions of the Fair Labor Standards Act? () Yes () No () Don't Know.
If you don't know:
 - a. Does your business have an annual gross volume of sales or business equal to or greater than \$500,000? () Yes () No () Don't Know
 - b. Is your business or this employee engaged in interstate commerce, producing goods for interstate commerce, or otherwise working on goods or materials that have been moved in or produced for such commerce? Please explain. _____

WAGES CLAIMED

The claimant provided a breakdown of the types of wages claimed. Please fill in the items below, giving the gross wage amounts you believe are currently due and owing to the claimant for each wage type claimed.

Regular \$ _____ Commissions \$ _____ *Fringe Benefits \$ _____ Pay Deductions \$ _____
Overtime \$ _____ Unpaid Bonus \$ _____ Paid Below Minimum Wage \$ _____ Miscellaneous \$ _____

TOTAL UNPAID WAGES DUE TO THE CLAIMANT \$ _____

* The only fringe benefits that can be claimed are vacation pay, holiday pay, severance, sick leave or parental leave (these benefits cannot be claimed unless provided for in a written agreement or a written policy of the employer).

12. If a fringe benefit was claimed, do you have a written benefits policy/agreement? () Yes () No **If yes, please attach a copy.**
13. If a commission or bonus was claimed, was the bonus based on performance, or was it a gift? _____ **Please attach a copy of the bonus agreement.**
14. If wages were deducted or withheld, did the claimant sign any documents authorizing the deduction? () Yes () No **If yes, please attach a copy of the authorization.**
15. Are you aware of any agreement that exists that would preempt the Commission from ruling on this wage claim (e.g. arbitration, collective bargaining agreement, union contract, ERISA, Service Contract Act)? **If yes, please attach a copy of the agreement.**
16. The section below is for your explanation of why you believe the Wage Claim is incorrect. Please be specific. For instance, if you are disputing vacation pay, label your response "vacation pay", and indicate why you disagree with the claim. Use this space to explain copies of records (payroll, written policies, etc.) that you are submitting to support your response. If necessary use additional sheets. **If subsequent to the wage claim being filed, you paid this individual all of the claimed wages:**

Complete the EMPLOYER INFORMATION section and use the space below to write the gross amount paid, the date(s) paid, and check number(s). Enclose copies of endorsed checks (front and back), cash receipts, etc.

UNDER PENALTIES OF PERJURY, I HEREBY CERTIFY THAT THIS IS A COMPLETE, TRUE, AND ACCURATE STATEMENT OF THE FACTS RELATING TO THE CLAIM TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Date	Print Employer Representative's Name	Employer Representative's Signature	Title
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What is your direct Phone Number? (____) _____ EXT. _____ Fax Number? (____) _____

THIS DOCUMENT IS AN INQUIRY AND IS NOT REQUESTING PAYMENT. HOWEVER, IF YOU AGREE THAT WAGES ARE DUE, PAYMENT TO THE TEXAS WORKFORCE COMMISSION CONSTITUTES PAYMENT TO THE EMPLOYEE FOR ALL INTENTS AND PURPOSES.

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