

How to Use Small Claims Court to Recover Unpaid Wages

Farm Worker Wage Law in Washington State: The Basics:

What is the minimum wage law?

In 2011, the minimum wage in Washington State for workers 16 years and older is **\$8.67** per hour. For workers 14 and 15 years old, the minimum wage is \$7.37 per hour. The minimum wage usually goes up every year. [RCW 49.46.020](#); [WAC 296-126-020](#).

- **Piece Rate Work:** Generally, if you get paid on a piece rate basis, your 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):** also have the right to 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 you agreed to accept less. [RCW 49.46.010\(1\)](#).
- **Hours Included:** You must get the minimum wage for all hours worked including time that the employer makes you spend waiting. Examples: time spent waiting for boxes, pick-up, weigh-in, and time spent traveling between fields during the day. [29 CFR § 785.14](#) and following; [29 CFR 790.13](#) and following.
- **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 state minimum wage law. [RCW 49.46.010\(5\)\(a\)](#).
- **Retaliation:** It is illegal for an employer to fire you or discriminate against you for making a complaint about wages, filing an action in court, or testifying regarding a wage claim. [RCW 49.46.100\(2\)](#).

What can I do if my employer does not pay me the minimum wage?

You have the right to recover wages owed, plus the costs involved in going to court and attorneys' fees. [RCW 49.46.090\(1\)](#).

An employer who willfully fails to pay you 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](#).

The employer's financial inability to pay is no defense to the law. The only defenses are

- the employer made a genuine mistake or

- the employer has a bona fide dispute about the amount of wages owed you. *Shilling v. Radio Holdings*, 136 Wn.2d 152 (1998).

Farm workers have special protections if your employer does not pay minimum wage or the wage that was promised. You can put a lien on the employer's crop and/or on the employer's orchard by filing the right paperwork within 40 days after you stop working. The lien requires the packing shed to pay you before paying your employer. [RCW 60.11.040\(1\)](#) and [RCW 60.16.010 & 020](#).

◆ If you are a farm worker and you do not get your wages, see an attorney *immediately* for help with liens (because of the paperwork required). **Contact information is below.**

Can I get paid extra for overtime work?

For only some agricultural work. This means that you must get one and a half times the usual pay rate for any hours you 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).

What happens if my employer does not pay me the overtime that I am entitled to?

You have the right to recover wages owed, plus the costs of going to court and attorney' fees. [RCW 49.46.090 \(1\)](#).

Are the deductions on my paycheck legal?

◆ Your pay stubs must list and explain all salary deductions. [WAC 296-131-015](#).

- Deductions for Social Security and taxes are legal [29 CFR 531.38](#).
- All deductions not legally permitted have to be authorized by you, either orally or in writing. [RCW 49.48.010](#).
- If an employer deducts for housing, transportation, tools, or other items and these deductions lower your wages to below the minimum wage, these deductions may be illegal. [29 CFR Part 531](#).

- An employer cannot deduct money that you owe him without your permission. Example: if you damage the employer's equipment, the employer must sue you in court to collect the money. See *Cameron v. Neon Sky*, 41 Wn. App. 219 (1985).

My employer has made illegal deductions to my paycheck. What can I do?

You have the right to recover wages owed, plus the costs of going to court and attorneys' fees. [RCW 49.46.090 \(1\)](#).

How must the employer pay my wages?

- Generally, farm workers must be paid on a regular basis and every two weeks. [WAC 296-131-010](#); [29 CFR § 500.81](#).
- When you leave your job, your employer must pay for all unpaid wages by the next regular pay day. [RCW 49.48.010](#).
- If the employer willfully fails to pay your wages on the regular payday, you 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 no defense to this rule. [Shilling v. Radio Holdings](#), 136 Wn.2d 152 (1998).

Should I Sue My Employer In Small Claims Court?

This court should be a quicker and cheaper way to resolve disputes that you are unable to settle than going to Superior Court, because:

- Lawyers generally cannot appear in Small Claims Court.
- There are no juries, motions, or objections.
- There is only a small charge for filing the lawsuit.
- You may get a trial much sooner than in other courts.
- 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 either 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.

◆ Examples:

- You may not sue your past employer to rehire you.
- 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.

A business or corporation that you sue in Small Claims Court may not have a lawyer represent it in that court. 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. If the case is transferred, you will be unrepresented.

Should I settle out of court?

Yes. You should try to settle with the other side before filing a claim in court. If you cannot speak with your opponent, write a letter ask for:

- the sum you think you are entitled to get 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. You should 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 do not speak English?

Non-U.S. citizens may use the court. If you do not speak English, ask for an interpreter at the time you file your claim. The court should give you one for free. When you go to court for your trial and the judge calls your case, 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. Details are important. The interpreter should not summarize anything. Speak clearly and slowly. Do not hesitate to tell the judge or your interpreter if there is anything you do not understand.

Where do I file a claim?

Small Claims Court is a department of the District Court. You must file a claim generally in the district where the other side 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 below called "What if the Defendant is out-of-state?")

How do I file a claim?

The person filing the suit is the “plaintiff.” The other side is the “defendant.” The case starts when you file a Notice of Small Claim in the Small Claims Department of the appropriate District Court. You may get the form from the District Court Clerk. The Court Clerk will explain the procedure and give you the basic forms. The clerk cannot fill the forms out for you, give legal advice, or guess for you how the judge might rule in a case.

In filling out the Notice of Small Claim, you must accurately identify the defendant by name, street address, and phone number, if available. A post office box number is not acceptable. You may sue more than one person. If you are suing a married person, you should 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.

On the Notice of Small Claim form, there is a space for you to explain your claim 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 other side 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 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, **INSIST ON SEEING A JUDGE. THE CLERK MAY NOT MAKE ANY INTERPRETATIONS OF THE LAW!**

How do I let the defendant know about the court case?

You must make sure 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, return receipt requested. With mail service, you must file with the court the postal receipt bearing the defendant’s signature. Allow five extra days for the mail to reach the defendant.

You must have the claim served on the defendant at least **ten** 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 has been served, the server must file an Affidavit or Certificate of Service with the court. Get this form from the Court Clerk.

An affidavit or certificate of service should state the following:

- Name of the defendant;
- Address where served;
- Person who was served;
- Date the claim was served;
- Small Claims Court case number;
- Name, signature, address, and telephone number of the server; and
- Fee charged by the server.

If the claim is improperly served, or the affidavit or certificate is improperly filled out, the case may be dismissed or delayed. We recommend that you have service done by the Sheriff's office or by a professional process server. You may have the fee added to the judgment if you win.

How do I get ready for trial?

- Get together 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. When in doubt, bring it with you to court. The evidence must be identified in court and explained by someone personally familiar with it.
- Contact any witnesses who could support your case. Ask them to testify 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 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 happening. Go watch one of those trials.
- Before trial, practice presenting your case. Your presentation should be organized and short.
- Write a list of important points you want to remember. These could include questions to your witnesses.

How do I change the date of my trial?

To change the date of your trial, notify the Court Clerk. If your trial is at least seven days away, the clerk may change the date. However, if your trial is seven or fewer days away, the judge will want to know if you have a good reason for not showing up to the scheduled trial.

What is mediation?

In some counties, before 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 forces a solution on the parties. Mediation lasts about 30-40 minutes. You can get an interpreter.

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, bring it also.

Let the Court Clerk know when you arrive at the courthouse on the trial day. You will be directed to the right courtroom. The list of cases to be scheduled for 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 let the judge know right away that you need an interpreter.

As the plaintiff, you must prove your claim. The defendant does not have to prove that s/he does not owe the money. If it ends up your word against the defendant's, you may lose. Do not 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/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 right away, or may let you know in writing within a few weeks.

What happens if I do not show up for trial?

If you do not show up, the case will be dismissed. You may not be allowed to reschedule it.

If the defendant does not show up, the defendant may lose by default if you prove that the defendant was served with the Notice of Small Claim.

When The Case Is Over:

If I win, how do I collect?

A judgment in your favor does not necessarily mean that you will get your money quickly. **THE COURT DOES NOT COLLECT THE MONEY FOR YOU.** You will need to take other steps if

the judgment is not paid within 30 days of the decision or according to the payment plan set by the court:

First, ask the court to “certify” the judgment. Get the form to do this from the District Court Clerk. Next, file papers to have the defendant’s bank account “garnished.” That 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. You can have your attorney’s fees and the cost of certifying the judgment added to the Small Claims Court judgment.

Or you may put a “lien” on your opponent’s real estate. First, pay for 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 harder. It remains on the property even after it is sold. It still does not guarantee payment of the judgment to you.

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

You may want to go to a collection agency for help in collecting your judgment. The agency will keep a percentage (usually 50%) of any money it collects for you. Debt collection lawyers will also 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.

You may not take all property or wages to enforce your judgment. If the losing side does not have many belongings or much money, s/he may file something with the court to protect the value of some of his/her things, possibly including a house, furniture, car, clothes and some wages.

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

If I lose, may I appeal?

You may appeal only if the amount you asked for is \$250 or more. If you appeal, you will get a new trial in Superior Court. You cannot collect on the Small Claims Court judgment during the appeal.

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

- Fill out a written Notice of Appeal (the form may be available from the District Court Clerk);
- File the original Notice of Appeal in the District Court, and pay the filing fee;
- 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;
- Pay the District Court for a transcript of the Small Claims Court judgment;

- 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);
- Within fourteen days, the clerk will file the transcript at the Superior Court. Superior Court will assign you a new case number. Once you know your Superior Court case number, contact the Superior Court for further instructions.

A lawyer can help you in filing the appeal, represent you in court for the appeal, or help with the collection procedures described above. You will probably have to pay a lawyer up front for this help.

I need more legal advice. What can I do?

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

NORTHWEST JUSTICE PROJECT:

Yakima

304 Larson Bldg.
6 South 2nd St.
Yakima, WA 98901
(509) 574-4234
1-888-201-1018

Wenatchee

300 Okanogan Avenue, Suite 3-A
Wenatchee, WA 98801
(509) 664-5101
1-888-201-1021

COLUMBIA LEGAL SERVICES:

Yakima

510 Larson Bldg.
6 South 2nd St.
Yakima, WA 98901
(509) 575-5590
1-800-572-8716

Wenatchee

300 Okanogan Avenue, Ste 2-A
Wenatchee, WA 98801
(509) 662-9681
1-800-572-9615

Tri-Cities

418 - F North Kellogg
Kennewick, WA 99336
(509) 374-9855
1-888-201-9735

DEPARTMENT OF LABOR AND INDUSTRIES:

Yakima

15 W. Yakima Ave. Ste 100
Yakima, WA 98902
(509) 454-3700
1-800-354-5423

Kennewick

500 N. Moran St. Ste 1110
Kennewick, WA 99336
(509) 735-0100
1-800-547-9411

Moses Lake

3001 W. Broadway
Moses Lake, WA 98837
(800) 574-2285

Walla Walla

1815 Portland Ave.
Walla Walla, WA 99362
(509) 527-4437

Wenatchee

519 Grant Road
East Wenatchee, WA 98802
(800) 292-5920

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

APPENDIX: COURT LISTING

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

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 week 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

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

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.

2200EN

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, October 2011.

© 2011 Northwest Justice Project — 1-888-201-1014

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)

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 GETD _____

NAMES OF WITNESSES _____
