

Is Your Employer Cheating?

10 Facts to Know About Your Paycheck.



PROTECTING EMPLOYEES & CONSUMERS





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A professional portrait of Eric A. Grover, a middle-aged man with short dark hair, wearing a dark suit, white shirt, and patterned tie. He is standing in front of a background of light-colored, classical-style columns. His hands are clasped in front of him.

Eric A. Grover

Partner

Eric A. Grover is a founding member of Keller Grover LLP. As an active litigator for more than 23 years, Mr. Grover has extensive experience in all areas of labor and employment law including harassment, discrimination, disability, wage and hour matters, and class actions. Mr. Grover was a partner at the nation's largest specialty labor and employment firm Littler Mendelson, P.C., before joining with Jeffrey Keller to create Keller Grover LLP.

Since creating Keller Grover LLP, Mr. Grover has represented hundreds of thousands of class members who have

collectively received tens of millions of dollars in relief. For these efforts, Mr. Grover has been consistently recognized as a Northern California Super Lawyer in 2007, 2008, 2009, 2010, 2011 and 2012.

Mr. Grover is a graduate of Boston University (BS, Business Administration, 1985 and JD 1988).

Eric A. Grover's Mr. Grover is admitted to practice before all state and federal courts in California. §



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Have you been the victim of wage theft?

What is wage theft? Simply put it is the illegal non-payment or underpayment of a worker's wages. Wage theft is rampant in this country and can take many forms:

Wage theft can result from the failure to properly pay for all time worked because you're paid by the piece. Or when you work more than 8-hours per day without overtime.

Wage theft also can result from the failure to reimburse you fully for using your vehicle for work or for expenses you incur working out of a home office.

Sometimes it can be the result of the forced sharing of tips or the holding back of tips paid on a credit card. If you have been asked to work off the clock by starting work and clocking in later or having to clock out and keep working, you have been the victim of wage theft.

When you are required to work through lunch or without breaks or if your employer fails to timely give you a final paycheck when you leave a job it is also a form of wage theft.

There are many other examples of wage theft. The common theme in all cases is

that you are not being paid for all of the work you are doing, either deliberately or because your employer just doesn't know any better. It doesn't matter whether your employer is trying to keep costs down, keep more money for itself or has mistakenly misclassified your position to avoid paying overtime; it all amounts to the same thing- your employer not paying you for all of your work.

Wage theft is common in all industries, including the construction industry, food service, day labor, and retail.

If you feel that you have been the victim of any form of wage theft, there are several different ways that you can get the money that is owed to you. You may also be entitled to penalties, interest, and the costs you incurred in recovering the money owed to you. The law is on your side and the best first step is to contact a wage and hour employment law firm to answer your questions, determine whether you have a valid claim and help you navigate the legal system.



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What is wage theft?

When you work, you are owed wages in exchange for your time or work product. If your employer does not pay you everything that you are owed, your employer is stealing from you. Wage theft by employers can occur in many ways, including, but not limited to: (1) when your employer encourages you to work off the clock; (2) when your employer refuses to pay you properly for overtime; (3) when your employer improperly calls you a salaried employee and does not pay you for time worked over eight hours in a day; (4) when your employer forces you to work through your meal and rest breaks; (5) when your employer changes your commission plan and applies it retroactively; or, (6) when your employer pays you a non-discretionary bonus, but does not include a retroactive overtime payment to compensate for the corresponding increased value of your “regular rate.”

When do the wage and hour laws require overtime pay in California?

While Federal Law provides for overtime only after an employee has worked 40 hours in a week, in California, an employee is owed overtime for all time worked over eight hours in a day. An employee is also owed overtime for all time worked over 40 “regular rate” hours in a week.

How do I prove that that I actually worked the hours that I spent working overtime?

It is your employer’s duty to track all of your hours worked. If your employer failed to do this, you can prove your hours in many different ways. For example, you might know your typical schedule because you went straight to work after dropping your child off at a specific time at school. Or, as another example, you might know that on an average day, you had to work a certain amount of time after your store closed. Sometimes work hours can be proven by computer records, email records, alarm keypads, etc. There are many different ways to recreate a schedule even if the employer failed to track it. Additionally, an employee is allowed to give a “best estimate” of his/her hours worked, and it then becomes the employer’s burden to disprove this best estimate.



Do CA wage and hour regulations require that an employee receive break time?

Yes. California law requires that an employee receive meal breaks and rest breaks at specific times. Late breaks do not satisfy the law, and an employee who is forced to take late breaks is owed a full hour of additional pay for a missed break. If your employer is not paying you for late or missed breaks. It is stealing from you.

California law requires meal breaks of 30 uninterrupted minutes for every five hours of work, and rest breaks of 10 uninterrupted minutes for every four hours of work. Recent case law interpreting these statutes found that meal breaks must start **BEFORE** the end of the fifth hour of work (or, tenth hour of work, in the case of a second meal period); and a rest break is actually owed for every "major fraction," of four hours worked. That means that you are owed a second rest break if you work more than six hours, and a third rest break if you work more than 10 hours. If your employer is not giving you these breaks at all, or is giving them to you late, you are owed an additional hour of pay. If you are not paid for that time, your employer is stealing wages from you.

What do I do if my employer mistreats me or fires me because I ask about overtime, meal breaks or rest breaks, other wage and hour issues, or file a claim about these or other wage and hour issues?

If your employer retaliates against you in this way, you should call an attorney to discuss your options. It is illegal for an employer to retaliate against an employee who is seeking to enforce his/her legal rights.

Am I entitled to reimbursement for expenses like using my own vehicle or home office?

Yes! An employee is entitled to reimbursement for all business expenses. If your employer requires you to work at home or off-site, and you incur expenses because of this, your employer probably owes you reimbursement for those expenses. If your employer requires you to use your own vehicle for work travel, you are likely owed reimbursement for the actual costs you paid to use your own vehicle. Generally, the law will assume that the IRS mileage rate is an appropriate manner of reimbursement, but an employee is entitled to reimbursement for his/her actual expenses even if they exceed the IRS rate.

What is a tip and can my employer force me to share my tips with managers or supervisors?

A tip is money a customer leaves for an employee over the amount due for the goods sold or services rendered. Tips belong to the employee, not to the employer. An employer cannot force you to share your tips with owners, managers, or supervisors. Also, an employer cannot deduct credit card processing fees from tips that are paid by your customer using a credit card.

Why do I need a wage and hour lawyer?

Most employees do not know all of the wage and hour laws that were written to protect them, even if they know some of those laws. In fact, many employers do not know all of the wage and hour laws that they are supposed to be following! A good rule of thumb is that if something seems unfair in the work place, there is a chance that the wage and hour laws are being broken, and employees are owed money. The best way to explore this is to call an attorney experienced with wage and hour laws.

How long do I have to file a wage and hour or overtime claim?

There are various time limits that apply to wage and hour claims, and it is best to speak with an attorney about your potential claims IMMEDIATELY to make sure that you do not miss any of the strict deadlines. That said, you should also never assume that you have missed deadlines. Generally speaking, there are various deadlines that apply to wage and hour claims. Some deadlines are as short as one year, and some are as long as four years. Again, always discuss time limits with an attorney as soon as possible. §

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