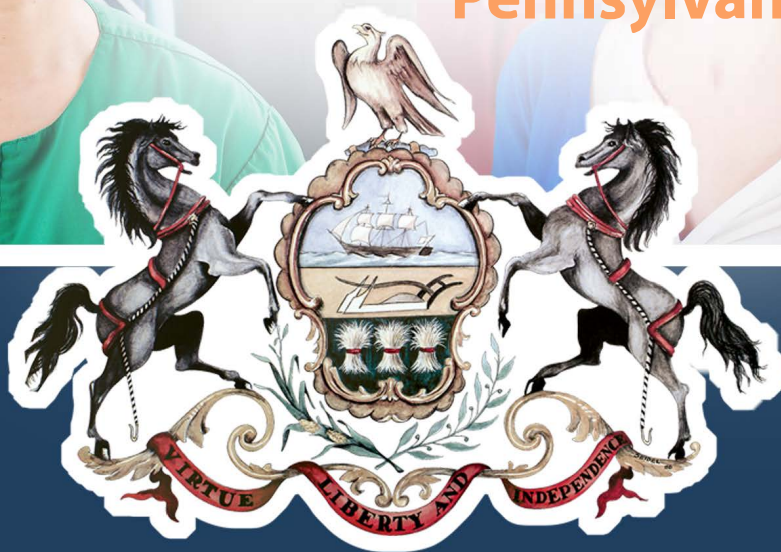


KNOW YOUR RIGHTS AT WORK

Pennsylvania



Michelle A. Henry

Pennsylvania Attorney General



In order to protect themselves and ensure they are being treated fairly, workers must first be informed about their rights. This knowledge is an essential component in the ongoing fight for better wages and treatment.

The Fair Labor Section was established to promote and enforce lawful labor practices. If you believe you are experiencing an unlawful work-related issue, you should contact this office, the appropriate agency listed below, or private counsel. Specific contact information appears at the end of this booklet.

Algunas partes de esta guía están disponibles en español. Consulte los títulos de las secciones para traducciones al español o use los recursos en español al final de la guía. Casi todos de los servicios en esta guía pueden ayudar en español.

The information provided here is intended to be an informative resource for Pennsylvania workers and is not legal advice.

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YOUR RIGHTS

Protection from Retaliation *Protección contra Represalias*

- It is illegal for an employer to fire you, cut your hours, or otherwise penalize you for taking legal action asserting your rights.
- If you believe you have been retaliated against, please contact the Fair labor Section at wagetheft@attorneygeneral.gov or report it to the agency where you filed your complaint.



Wage and Hour Laws *Leyes de Salario y Horas*

Workers have the right to be paid a certain wage, to be paid overtime, and to work a limited number of hours each week.

Minimum wage and overtime: *Salario mínimo y las horas extras:*

- The minimum wage for workers in Pennsylvania is \$7.25 per hour.
- Most workers are entitled to overtime pay: for each hour worked over 40 per week, you earn 1.5 times your normal pay ("time and one half").



- You must be paid on either a regularly scheduled payday, within the length of time that is standard for the industry you are in, or 15 days from the end of the pay period.
- Tipped employees: your employer must pay you \$2.83 per hour in addition to what you make in tips. If the tips you receive on top of the \$2.83 per hour do not total \$7.25 per hour, your employer must make up the difference.

Paid Breaks

Descansos Pagados

Your employer must pay you for breaks that are less than 20 minutes. Your employer may not force you to conduct any work activities during an unpaid break.

- Healthcare workers: may not be forced to work more



than the agreed to, predetermined, and regularly scheduled shift, and are entitled to 10 consecutive hours off when working more than 12 consecutive hours.

Wage Theft

Robo de Salarios

Workers experience wage theft when an employer pays them less than they are owed. Wage theft can take many forms, including a complete failure to pay, paying employees for fewer hours than worked, paying employees (except for tipped employees) an amount less than minimum wage, paying an employee “under the table,” or forcing a worker to give tips to the employer.

- You can file a complaint with the Pennsylvania Department of Labor and Industry, the U.S. Department of Labor, or the City of Philadelphia.



Philadelphia Fair Workweek Law

Semana de Trabajo Justo

As of January 1, 2020, workers in Philadelphia will have the right to:

- A posted work schedule 10 days before the first day on the schedule (after January 1, 2021 this is extended to 14 days in advance);
- Predictability pay, at no less than one-half times the employee’s regular rate of pay per hour, if the employer changes the schedule after the required posting date;
- Not be scheduled for a shift less than 9 hours after the last shift ended; and
- Have work offered to them before it is offered to an external applicant pool or subcontractors.

Review Your Personnel File

Revisa Su Archivo Personal

Upon request, both public and private employees have the right to review their personnel file to ensure it contains accurate information.

Am I an Employee or Independent Contractor?

¿Soy un Empleado o Contratista Independiente?

Employers misclassify workers as independent contractors to avoid paying for workers' compensation insurance and providing other legal benefits employees are entitled to receive.

Generally, an employee is someone who is told what to do, when to do it, how to do it, is supervised while working, and provided with the tools for doing the job. An independent contractor has more freedom in doing its work and can control when and how the work is done. Independent contractors usually have their own separate business, own the tools for their work, and will enter into their own contracts.

- Construction Workers: Misclassification is especially common in the construction industry. Construction workers that are correctly classified as independent contractors should generally: 1) have their own tools; 2) realize a profit or suffer a loss after completing the job; 3) have ownership in their own business; 4) have a business located separately from the person or business that hired them; 5) be available to work other jobs as an independent contractor; and 6) carry liability insurance of at least \$50,000.
- It may be a criminal offense to misclassify an employee as an independent contractor.
- You can file a complaint with the Pennsylvania Department of Labor and Industry if you have been misclassified. Construction workers can file a complaint with the Fair Labor Section at wagetheft@attorneygeneral.gov.



Right to Organize

El Derecho a Organizar

You have a right to organize with your coworkers and form a union. It is illegal for your employer to fire you for trying to organize.

You also have a right to engage in “concerted activity,” even if you do not belong to a union. That means two or more employees may ask about improved pay, safety concerns, or other conditions of your employment.

- If you would like to hold an election to form a union or report a violation of your rights, contact your regional office of the National Labor Relations Board (Philadelphia is Region 4, Adams, Cumberland, Franklin, and York Counties are Region 5, and Pittsburgh is Region 6).



Workplace Safety *Seguridad Ocupacional*

Under federal law, you are entitled to a safe workplace, including the right to:

- Be trained in a language you understand;
- Work on machines that are safe;
- Be provided required safety gear;
- Be protected from toxic chemicals;
- Request an Occupational Safety and Health Administration (OSHA) inspection and speak to the inspector;
- Report an injury or illness;
- Review records and copies of information about work-related injuries, illnesses, and test results done to find hazards in the workplace; and
- Not be retaliated against for speaking up about safety issues.

If you have questions or want to file a complaint about an unsafe workplace, contact your local OSHA office.

Discrimination

Discriminación

The law protects workers from experiencing discrimination in the workplace, including harassment or prejudicial treatment. Discrimination can occur any time in the employment process, from the recruiting and hiring stage, to being fired, and anything in between.

It is illegal to discriminate based on race, color, sex, pregnancy, sexual orientation, gender identity, age, ancestry, national origin, religious creed, having a GED rather than a high school diploma, a handicap or disability, use of a guide or support animal, or a relationship with a person with a disability.

Sexual harassment comes in many forms including unwelcome advances, requests for sexual favors, other offensive words, images, or physical conduct.

For people with disabilities, you are generally entitled to reasonable accommodations from your employer. An accommodation is reasonable if it does not impose an undue hardship on the employer (it is not too expensive and does not disrupt the employer's business). It is illegal to discriminate based on having a disability or requesting an accommodation.

If you have been the victim of workplace discrimination, you should contact the Pennsylvania Human Relations Commission (PHRC). Additionally, the Pittsburgh Commission on Human Relations and the Philadelphia Commission on Human Relations cover people working in those cities. You can also file a complaint with the Pennsylvania Office of Attorney General and the federal Equal Employment Opportunity Commission.

Criminal Records

Antecedentes Criminales

Felony and misdemeanor convictions may be considered by an employer during the hiring process only to the extent to which they relate to the applicant's suitability for employment in the position for which he or she has applied. Arrests without convictions may not be considered by employers. If an employer decides not to hire an applicant based on his or her criminal record, the employer must notify the applicant in writing.

Criminal Records in Philadelphia

Antecedentes Criminales en Philadelphia

If you have a criminal record and are seeking a job in Philadelphia, employers may only use that information under limited circumstances during the hiring process.

- Criminal convictions can be considered only if they happened less than 7 years before you applied and arrests that did not lead to convictions may not be considered.
- Employers may not ask about your criminal background on applications or during interviews.
- Employers may only run a background check after they give you a conditional offer of employment.
- If the employer illegally considers your criminal record during hiring, you can contact the Philadelphia Commission on Human Relations at pchr@phila.gov and file a complaint.



Medical Leave

Licencia Médica

If you need to take time off work because of a serious medical issue or to take care of your parent, spouse, or child, you may be entitled to take unpaid time off without fear of losing your job.

Family and Medical Leave Act (FMLA)

Ley de Licencia Familiar y Médica

- You are likely eligible if you work for a private employer with 50 or more employees, the government, or at an elementary or secondary school and have worked there for at least one year with at least 1,250 hours worked in that year.
- The FMLA generally covers leave when: 1) you, your spouse, child, or parent has a serious medical issue; 2) you are pregnant; or 3) you have or adopt a child.
- You must notify your employer when you need to use leave. You may need to provide a note from your doctor, and you must follow your employer's policies for leave.

- When you return to work, your employer must give you the same job you had or a nearly identical one.
- Complaints about violations of the FMLA can be filed at a local U.S. Department of Labor, Wage and Hour Division office.

Philadelphia Paid Sick Leave

Licencia de Enfermedad Pagada de Philadelphia

- If you work in Philadelphia more than 40 hours per year and your employer has 10 or more employees or is a chain location, you are entitled to paid sick leave after you work 90 days for your employer.
- Your paid sick leave can be used for your own health needs or those of your immediate family.
- You have the right to at least one hour of paid sick time for every 40 hours you work, up to 40 hours of paid sick time per year, and the time will carry over at the end of the year.
- Report violations to the City of Philadelphia.

Immigration and Work Visas

Inmigración y Visas de Trabajo

In general, citizens of other countries must get a visa before entering the United States. Temporary worker visas are available for people who want to work in the country for a fixed time; they are not permanent or indefinite. Temporary visa types include:

- H-1B: person in a specialty occupation who has a higher education degree or equivalent;
- H-2A: temporary agricultural worker; and
- H-2B: temporary non-agricultural worker.

Labor Trafficking

Tráfico Laboral

Labor trafficking occurs when a person uses violence, threats, or lies to force people to work against their will.

Most victims (71%) enter the United States on a lawful visa, but are forced to overstay and become unauthorized. Those who do not enter with a lawful visa are typically smuggled into the country under threat. Trafficking occurs most often in the domestic services, restaurants and hospitality, construction and agricultural industries. It may include prostitution or other sexual exploitation, but can be other forced work in a broad range of industries.



Child Labor

Regulaciones del Trabajo Infantil

Most children under the age of 18 may not work without a work permit, unless they have already graduated from high school. For children under 16, the employer must also have a written statement from the parent or legal guardian.

- Children who are 11 can deliver newspapers and children who are 12 may work as golf caddies.
- Children who are 14 or 15 may only work from 7 a.m. to 7 p.m. During school vacations they may work until 9 p.m. On a school day, they may only work 3 hours, and on a day without school, they may only work 8 hours. They may work up to 18 hours per school week, as long as work does not interfere with school attendance.
- 16 and 17 year olds may work from 6 a.m. to midnight, but no more than 28 hours between Monday and Friday. They may work 8 additional hours on Saturday and Sunday. When school is out, they may work a maximum of 48 hours per week, and are limited to 10 hour days. A minor may refuse to work more than 44 hours per week.
- No minor may work more than 6 consecutive days except for newspaper delivery. A 30-minute meal is required for every 5 hours worked.

Complaints can be filed with your local Bureau of Labor Law Compliance office and the U.S. Department of Labor.

LEGAL ASSISTANCE

ASISTENCIA LEGAL

Government Resources

Recursos Gubernamental

Pennsylvania Office of Attorney General, Fair Labor Section:

- For information about wage theft, misclassification as an independent contractor or employee, labor trafficking, farmworker rights you may contact wagetheft@attorneygeneral.gov
- For information regarding harassment and discrimination, contact harassment@attorneygeneral.gov

Pennsylvania Department of Labor and Industry:

- www.dli.pa.gov

Pennsylvania Human Relations Commission:

- www.phrc.pa.gov

U.S. Department of Labor (www.dol.gov)

- Wage and Hour Division: www.dol.gov/whd
- Occupational Safety and Health Division: www.osha.gov

U.S. Equal Employment Opportunity Commission:

- www.eeoc.gov

City of Philadelphia (Wage Theft):

- <https://www.phila.gov/services/business-self-employment/report-wage-theft/>

Free Legal Services

Servicios Legales Gratis

Immigration/Inmigración:

- Justice at Work:
<https://www.justiceatworklegalaid.org/>
- HIAS Pennsylvania:
<http://www.hiaspa.org/>
- Immigration Advocates:
<https://www.immigrationadvocates.org/nonprofit/legaldirectory/>
- Pennsylvania Immigration Resource Center:
<https://www.pirclaw.org/>

Statewide legal services:

- Pennsylvania Legal Aid:
<https://palegalaid.net/>
- Department of Human Services:
<http://www.dhs.pa.gov/citizens/legalservicesinpennsylvania/>
- PA Law Help:
<https://www.palawhelp.org/find-legal-help/directory>

Allegheny County:

- Allegheny County Bar Association:
<https://www.getapittsburghlawyer.com/affording-an-attorney-1>
- Neighborhood Legal Services:
<https://nlsa.us/>

Philadelphia:

- Philadelphia Bar Association:
<http://www.philadelphiabar.org/WebObjects/PBAReadOnly.woa/Contents/WebServerResources/CMSResources/PublicInterestDirectory061.pdf>
- Community Legal Services:
<https://clsphila.org/>

Si necesita ayuda en español con problemas de salario mínimo, discriminación, u otros problemas de trabajo, puede comunicarse con los siguientes recursos:

- Asistencia Legal de Philadelphia:
<https://www.philalegal.org/>
- Community Legal Services of Philadelphia:
<https://clsphila.org/language-access/spanish>
- Pennsylvania Legal Aid Network (haga clic y busque servicios por condado):
<https://palegalaid.net/legal-aid-providers-in-pa>

NOTES:



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