

Commissioner Representing Labor Frequently Asked Questions

Overview

The Texas Workforce Commission (TWC) Commissioner Representing Labor's office represents the interests of workers with respect to TWC services. The office receives many inquiries from workers with questions about their employment. The content on this page presents answers to some of the questions most frequently received by this office.

Disclaimer

The information found on this webpage is not intended as legal advice and is not a substitute for individual consultation with an attorney. This information is provided as a form of assistance to the employees of Texas by the Office of the Commissioner Representing Labor of the Texas Workforce Commission (TWC). The information and views expressed below do not constitute in any way an official position, policy, or pronouncement of TWC. As interpretation of the law is not uniform, and because each situation must be decided on an individual basis, it is not always safe to assume that a particular situation will result in a particular outcome. There is no substitute for individual consultation with an attorney. For assistance finding an attorney, you can contact the [State Bar of Texas' Lawyer Referral & Information Service](#) at 800-252-9690.

Can I get unemployment benefits?

In order to receive unemployment benefits, a person needs to be financially eligible for benefits, have a qualifying employment separation, and meet continuing eligibility requirements. More details can be found on the TWC [Eligibility & Benefit Amounts](#) webpage. A person needs to earn at least \$2,405 in earnings and have earnings in at least two quarters during their base period to be financially eligible for benefits. [Ongoing eligibility requirements for receiving unemployment benefits](#) include being able and available for full-time work, performing an adequate number of work searches, filing payment requests, participating in required reemployment activities and calling or reporting as instructed.

Most of the questions we receive concern whether a particular situation will constitute a qualifying separation. Unfortunately, we are not able to provide people with an advisory opinion regarding whether the reason they were fired or they quit will affect their eligibility for benefits. However, TWC does maintain a collection of past cases that are used as a reference in making decisions, which can be found on the [Unemployment Benefits Appeals Policy and Precedent Manual](#) webpage.

Employees may also be eligible to receive partial unemployment benefits while they continue to work part-time if their employer has reduced their hours and they earn less than 125% of the weekly benefit amount at the time they file their claim.

A person who is totally or partially unemployed can file a claim for unemployment insurance benefits by telephone by calling a TWC tele-center at 800-939-6631 or by filing online using the account they create from TWC's [Unemployment Benefits Services](#) webpage.

What can I do if I am denied benefits?

The instructions for filing an appeal can be found on TWC's [How to Appeal a Decision](#) webpage. Appeals can be mailed, faxed, or filed online. Please remember that the appeal deadline is 14 calendar days from the date of mailing. The appeal deadline should appear on the document.

Appeals can be filed online through the [Notice of Unemployment Benefits Appeal Form](#).

What should I do if my employer isn't paying me correctly?

If an employer does not pay all the wages owed to an employee in a timely manner, the employee can file a wage claim with TWC. More information about the wage claim process and an electronic copy of the wage claim form is available on TWC's [How to Submit a Wage Claim Under Texas Payday Law](#) webpage. Once you complete the form, you can fax it to 512-475-3025. A wage claim must be filed within 180 days of when payment was due. You can contact TWC's Wage and Hour Department at 800-832-9243 for further assistance.

A complaint can also be filed with the U.S. Department of Labor's Wage & Hour Division (DOL). A complaint with DOL differs from a wage claim filed with TWC in that it covers more time – up to two years – and all complaints are kept confidential, so the employer would not know you had filed the complaint. In addition, DOL has the authority to investigate the employer's entire payroll procedures for all employees, while a wage claim with TWC covers only the individual who files the wage claim. The DOL Wage & Hour Division can provide you with information as to what sorts of claims or complaints they accept and how their process works. They can be contacted at 866-487-9243. They also have a webpage with information that might be helpful at [United States Department of Labor](#).

You can also contact an attorney to pursue other legal recourse. If you need help finding an attorney, you can contact the [State Bar of Texas' Lawyer Referral & Information Service](#) at 800-252-9690.

Can my employer make deductions from my paycheck?

An employer is allowed to deduct court-order child support and alimony; guaranteed student loan wage attachment; IRS tax levies; withholding tax; FICA tax; and any garnishments mandated by a federal court from an employee's paycheck.

With a written deduction authorization, an employer may deduct child and spousal support administrative fees; student loan wage attachment fees; meals, lodging, and other facility costs; voluntary wage assignments; loans; wage and salary advances; vacation pay advances; wage overpayments; uniform and uniform cleaning costs; union dues; misappropriated cash; and any other deduction for a lawful purpose, which can include store inventory sold on credit; personal use of company equipment or accounts; damage or loss caused by the employee; employee physicals and drug screens; non-work related training paid for by the employer; and employee's traffic tickets, bail,

and court costs paid by the employer. Some of these deductions are not allowed if it takes an employees pay below minimum wage.

Under Texas Payday Law Rule 821.28(b) a written authorization for deductions shall be specific as to the lawful purpose for which the employee has accepted the responsibility or liability. Written authorizations shall be: (1) sufficient to give the employee a reasonable expectation of the amount to be withheld from pay; and (2) a clear indication that the deduction is to be withheld from wages.

For additional information contact TWC's Wage and Hour Department at 800-832-9243 or the U.S. Department of Labor's Wage & Hour Division at 866-487-9243.

Can my employer force me to be on call? Am I entitled to additional pay for being on call?

An employer can require an employee to be on call.

The U.S. Department of Labor has laid out the following general rules regarding on/off duty time and on-call time:

- Employees who are temporarily idle while waiting for further work in such a way that they are not able to use the time effectively for their own purposes must still be regarded as working, according to 29 C.F.R. 785.15. Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own purposes are not hours worked. He is not completely relieved from duty and cannot use the time effectively for his own purposes unless he is definitely told in advance that he may leave the job and that he will not have to commence work until a definitely specified hour has arrived. Whether the time is long enough to enable him to use the time effectively for his own purposes depends upon all of the facts and circumstances of the case. 29 C.F.R. 785.16.
- An employee who is required to remain on call on the employer's premises or so close thereto that he cannot use the time effectively for his own purposes is working while "on call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his home or with company officials where he may be reached is not working while on call. 29 C.F.R. 785.17.

If an employee is required to perform work while on call, this time would be considered compensable time and it is possible that the employee would be entitled to additional pay for this time unless the employee is salaried exempt under the Fair Labor Standards Act (FLSA).

Is my employer required to give me breaks?

Currently, in most situations, Texas law does not require employers to give employees break times.

Where can I report workplace safety concerns?

Under the Occupational Safety and Health Act (OSHA) of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit the [OSHA](#) website or call 800-321-6742.

Who can I contact if I am injured at work?

You may contact the Office of Injured Employee Counsel at 866-393-6432 or visit the [OIEC website](#).

Where can I report workplace harassment and discrimination?



If you believe that you may have been the victim of discrimination or harassment, you can contact the Equal Employment Opportunity Commission or the TWC's Civil Rights Division to file a complaint or to further discuss your issues:

- TWC Civil Rights Division toll free number 888-452-4778. Links to the Civil Rights Division may be found on TWC's web site at [Civil Rights Division](#).
- Equal Employment Opportunity Commission (a federal agency); toll free number: 800-669-4000; web site: [EEOC](#).

Who should I contact if I do not receive a W-2?

If an employer failed to provide you with a W-2, you can contact the Internal Revenue Service at 800-829-1040 or get more information from their webpage: [Missing Your W-2? Here's What To Do](#).

What can I do if I am being misclassified as an independent contractor?

First, the Internal Revenue Service (IRS) can make a ruling on this issue if you file a [Form SS-8](#) . You might also wish to file a [Form 8919](#) for Uncollected Social Security and Medicare Tax on Wages. [IRS Publication 1779](#)  has information about who may be considered an employee or an independent contractor. You can also call the IRS at 800-829-1040 for further assistance.

Second, misclassification of an employee can lead to an employee not being paid properly. In these situations, an employee could file a wage claim as explained under the "What should I do if my employer isn't paying me correctly?" section above. You can contact the TWC Wage and Hour Department at 800-832-9243 for further assistance. Additionally, you can also report an employer's misclassification to TWC's tax department. You can locate your local unemployment tax office from the TWC's [Unemployment Tax Contact Information](#) webpage; by calling 800-832-9394 (Option 1); or by emailing tax@twc.texas.gov.

Third, you can notify the U.S. Department of Labor's Wage & Hour Division (DOL) regarding the employer's possible misclassification of employees as independent contractors. DOL has the authority to investigate an employer's practices in this regard for all its employees as a whole. Their general toll free number is 866-487-9243. General information is available on the DOL [Wage and Hour Division –We Can Help](#) web site and information on how to file a complaint is available on their [How to File a Complaint](#) web page.