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Filing A Notice of Appeal of a Labor Commissioner Decision

If an employee has a wage and hour dispute with his or her employer in California, the employee may file a claim with the California Department of Industrial Relations, Division of Labor Standards Enforcement. These matters are often settled or resolved without a hearing, or may be decided at an informal hearing. If the matter goes to hearing, the Labor Commissioner will issue an Order, Decision, or Award (ODA), which will be sent to each party.

A party disagreeing with the ODA may appeal this decision to the Superior Court. Unlike most appeals, where the court only reviews the evidence presented at the initial hearing and whether the applicable procedure was properly followed, the appeal of an ODA requests a new hearing in court. This new hearing is heard de novo (meaning "anew"), and the Superior Court considers nothing that took place at the prior Labor Commissioner hearing.

The appeal may be raised by either party; however, if the party raising the appeal is not successful, the court will assess and award costs and reasonably incurred attorney fees to the losing party. For purposes of this determination, an employee is considered successful if he or she is awarded any amount above \$0. California Labor Code § 98.2(c).

If an employer files the appeal, the employer must post a bond from a licensed surety, or deposit cash with the court in the amount awarded to the employee in the ODA. If the employer is found liable, and does not pay the employee within 10 days, the employee may claim the amount of the new award, up to the bond or deposit amount from the court.

If an employer files an appeal to the Superior Court, the Labor Commissioner may represent the employee at the hearing.

Step-by-Step Instructions

1. Complete the Required Forms

Instructions for completing the necessary forms are included at the end of this packet.

The forms needed to request a hearing de novo of a Labor Commissioner ODA are:

- Civil Case Cover Sheet (CM-010) (http://www.courts.ca.gov/documents/cm010.pdf)
- Notice of Appeal (DSLE-537) (http://www.dir.ca.gov/dlse/DLSE-537.pdf)

Important: The <u>Notice of Appeal (DSLE-537) (http://www.dir.ca.gov/dlse/DLSE-537.pdf)</u> cannot be filed without a copy of your ODA (Order, Decision, or Award). In Sacramento, you must also include a copy of the complaint and any answer filed with the Labor Commissioner.

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2. Make Copies

Make four (4) copies of each:

- Civil Case Cover Sheet (CM-010 (https://www.courts.ca.gov/documents/cm010.pdf))
- Notice of Appeal (DSLE-537) (http://www.dir.ca.gov/dlse/DLSE-537.pdf) (with attached ODA, complaint, and answers, if any)

In the Sacramento County Superior Court, because documents are scanned into a computer, any multiple page original documents are left unstapled, while each copy is stapled. In courts that do not electronically scan, all are stapled, and the original is two-hole punched at the top of the page for insertion into a folder.

3. Have Your Documents Served

The person who is serving your <u>Notice of Appeal (DSLE-537) (http://www.dir.ca.gov/dlse/DLSE-537.pdf)</u> for you must complete a proof of service form, typically a <u>Proof of Service by First Class Mail (POS-030)</u>. (https://www.courts.ca.gov/documents/pos030.pdf) For more information, see our guide on <u>Serving Documents by Mail.</u> (https://www.saclaw.org/resource_library/serving-documents-by-mail/)

The Proof of Service should be completely filled out, but not signed. **Make a copy of the unsigned Proof of Service before proceeding.**

The server must then mail a copy of the <u>Notice of Appeal (DSLE-537) (http://www.dir.ca.gov/dlse/DLSE-537.pdf)</u> (with attached ODA), <u>Civil Case Cover Sheet (CM-010) (https://www.courts.ca.gov/documents/cm010.pdf)</u>, and an unsigned copy of the <u>Proof of Service by First Class Mail (POS-030). (https://www.courts.ca.gov/documents/pos030.pdf)</u>

Both the Labor Commissioner, at the address shown on the ODA, and the other party (or the other party's attorney, if represented), must be served.

The person doing the serving then signs the Proof of Service and gives it back to you.

4. File Your Documents

The Appeal Packet is filed in the drop box in Room 102 in the Sacramento Superior Court at 720 Ninth Street. Fill out and attach the <u>Civil Document Drop-Off Sheet (http://www.saccourt.ca.gov/forms/docs/cv-drop-off-sheet.pdf)</u> and date stamp the back of the original packet. A supply of Civil Document Drop-Off Sheets and a date stamp machine are located near the drop box.

Following the instructions posted at the drop box, place the unstapled original document packet plus two (2) copies of the packet in the drop box, along with a check or money order for the filing fee. Provide the court with a self-addressed stamped envelope with sufficient postage to facilitate the return of your documents to you. The court will process the paperwork, and return the copies, stamped "Endorsed/Filed," to you. The court will retain the original papers for its file.

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At of the date of this Guide there is a \$435 filing fee, unless your fees were waived. The current fee schedule (http://www.saccourt.ca.gov/fees/docs/fee-schedule.pdf) is available on the Sacramento County Superior Court's website.

If you are the employer, you must deposit or post bond for the amount awarded on the ODA with the court. No bond is required for an employee.

The court will set and notify the parties and the labor commissioner of the new hearing.

Fee Waivers

If you qualify for a fee waiver, you may file a request with the court at the same time as filing your notice of appeal. For more information, see our Fee Waiver Guide (https://www.saclaw.org/resource_library/fee-waiver/).

5. Attend the Hearings

The hearing will be held at the date, time, and department indicated on the notice of hearing sent by the court. The hearing will be informal, just like the prior hearing, but will be heard by a judge of the Superior Court. Nothing that took place at the prior hearing will be considered by the court. At the end of the hearing the court will issue a judgment that supersedes the prior ODA.

For More Information

In the Law Library:

Wage and Hour Manual for California Employers, KFC 575 .S55 2023

On the Web:

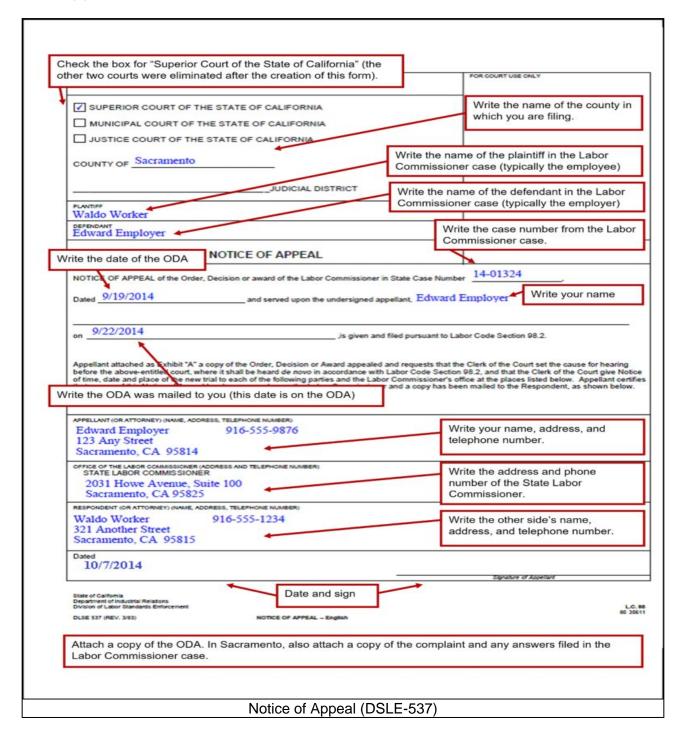
California Department of Industrial Relations

Policies and Procedures for Wage Claim Processing (https://www.dir.ca.gov/dlse/Policies.htm)



Samples

Notice of Appeal





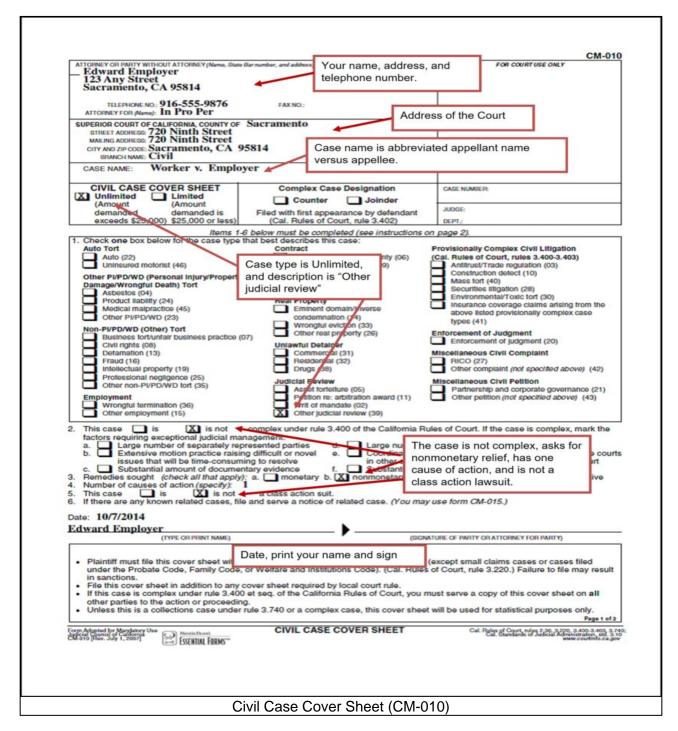


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8653655		Court	
Defendant:			
State Case Number	ORDER, DECISION OR A VA	RD C AF LABOR COMM	MISSIONER
incorporated herein by ref 4. The parties herein are enforceable as a judgmen ten (10) days of service a delivery and is effective t appeal period shall be ext of Civil Procedure Secti immediately upon filing a appeal is filed by a corpo the corporation must be re Section 98.2(c) provides t determine the costs and re	and that same shall not be subject to for penalties pursuant to Labor Code section other (specify): TOTAL AMOUNT OF AWARD section or Award is based upon the Finding erence. notified and advised that this Order, Decision is a court of law unless either or both partiof this document. Service of this document upon mailing or at the time of personal delight on 1013). In case of appeal, the necessary, in appeal with the appropriation, a non-lawyer aser is corresponded by finding hat if the party seeking voice of the original of the presented in any subject of the original of the presented in any subject of the original of the presented in any subject of the original of the presented in any subject of the original of the presented in any subject of the original of the presented in any subject of the original of the presented in any subject of the original of the presented of the pr	s) 98.1(c), 1194.2 and/or 2802(b), bor Code Section 203 as a penalty deductions. I whit chall not be subject to a complete or or Award of the commission or Award of the commission or Award of the commission or Award of the complete or of the complete or or or Award of the complete or or or Award of the commission of Commission or Award of the complete or or or or Award of the complete or	alon is longer (See Code ellant and appellant must, abor Commissioner. If an the appropriate court, but of California. Labor Code uch appeal, the court shall
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Civil Case Cover Sheet



(http://www.dir.ca.gov/dlse/DLSE-537.pdf)

Date Created

03/30/2023