

FILING A NOTICE OF APPEAL OF A LABOR COMMISSIONER DECISION

How to Request a Court Hearing after a Labor Commissioner Decision

This Guide includes instructions and sample forms. Links to download the fillable forms are at the end of this Guide. Additional copies of this Guide can be downloaded from:

saclaw.org/appeal-labor-comm

BACKGROUND

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.

Disclaimer: This Guide is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in the Sacramento County Superior Court. Please keep in mind that each court may have different requirements. If you need further assistance consult a lawyer.

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STEP-BY-STEP INSTRUCTIONS

Step 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 \(CM-010\)](#)
- [Notice of Appeal \(DSLE-537\)](#)

Important: The *Notice of Appeal* (DSLE-537) cannot be filed without a copy of your ODA, and in Sacramento should also include a copy of the complaint and any answer filed with the Labor Commissioner.

Step 2: Make Copies

Make four (4) copies of each:

- Civil Case Cover Sheet (CM-010)
- Notice of Appeal (DSLE-537) (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.

Step 3: Have Your Documents Served

The person who is serving your Notice of Appeal (DSLE-537) for you must complete a proof of service form, typically a Proof of Service by First Class Mail (POS-030). For more information, see the Step-by-Step guide to Serving Documents by Mail on our website at [Serving Documents by Mail](#) (saclaw.org/service-mail).

The Proof of Service by First Class Mail (POS-030) 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 Notice of Appeal (DSLE-537) (with attached ODA), Civil Case Cover Sheet (CM-010), and an unsigned copy of the Proof of Service by First Class Mail (POS-030).

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 by First Class Mail (POS-030) (<http://www.courts.ca.gov/documents/pos030.pdf>), and gives the signed Proof of Service back to you.

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Step 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 [Civil Document Drop-Off Sheet](http://www.saccourt.ca.gov/forms/docs/cv-drop-off-sheet.pdf) (www.saccourt.ca.gov/forms/docs/cv-drop-off-sheet.pdf), and date stamp the back of the original packet. A supply of Civil Document Drop-Off Sheets, Credit Card Authorization Forms (www.saccourt.ca.gov/forms/docs/cv-201.pdf), and a date stamp are located near the drop box. Following the instructions posted at the drop box, place the unstapled original document packet plus (2) copies of the packet in the drop box, along with a check or Credit Card Authorization Form 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.

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

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. For more information, see the Step-by-Step guide on fee waivers on our website at saclaw.org/fee-waiver-guide.

Step 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

On the Web:

California Department of Industrial Relations

www.dir.ca.gov/dlse/Policies.htm

IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.

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ATTACHMENTS: FORMS AND INSTRUCTIONS

The Judicial Council form required in this procedure is:

- [Civil Case Cover Sheet \(CM-010\)](#)

Download the blank form from this link or www.courts.ca.gov/documents/cm010.pdf.

The California Department of Industrial Relations, Division of Labor Standards Enforcement, form required in this procedure is:

- [Notice of Appeal \(DSLE-537\)](#)

Download the blank form from this link or www.dir.ca.gov/dlse/DLSE-537.pdf

Sample filled-in forms with instructions are at the end of this Guide.

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Edward Employer
123 Any Street
Sacramento, CA 95814

TELEPHONE NO.: **916-555-9876** FAX NO.:
 ATTORNEY FOR (Name): **In Pro Per**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **Sacramento**
 STREET ADDRESS: **720 Ninth Street**
 MAILING ADDRESS: **720 Ninth Street**
 CITY AND ZIP CODE: **Sacramento, CA 95814**
 BRANCH NAME: **Civil**

CASE NAME: **Worker v. Employer**

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
 JUDGE:
 DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Other P/IPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/WD (23)	Other: Writ Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)
Non-P/IPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business p <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/WD tort (35)	Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02)	Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<input checked="" type="checkbox"/> Other judicial review (39)	Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
 a. Large number of separately represented parties. d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve. e. Coordination with related actions pending in one or more courts in other counties, s
 c. Substantial amount of documentary evidence. f. Substantial postjudgment relief sought.
 3. Remedies sought (check all that apply): a. monetary b. non-monetary declaratory relief
 4. Number of causes of action (specify): **1**
 5. This case is is not a class action suit.
 6. If there are any known related cases, file and serve a notice of related case. (You may use Form CM-010.)

Date: **10/7/2014**
Edward Employer (TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

• Plaintiff must file this cover sheet with the court in small claims cases or cases filed under the Probate Code, Family Code, or Code of Civil Procedure, rule 3.220.) Failure to file may result in sanctions.
 • File this cover sheet in addition to any cover sheet required by local court rule.
 • If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
 • Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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Form Adopted for Mandatory Use by the Judicial Council of California CM-010 (Rev. July 1, 2007)

ESSENTIAL FORMS™

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400-3.403, 3.740; Cal. Standards of Judicial Administration, std. 3.10 www.courtinfo.ca.gov

Check the box for "Superior Court of the State of California" (the other two courts were eliminated after the creation of this form).

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 MUNICIPAL COURT OF THE STATE OF CALIFORNIA
 JUSTICE COURT OF THE STATE OF CALIFORNIA

Write the name of the county in which you are filing.

COUNTY OF Sacramento

Write the name of the plaintiff in the Labor Commissioner case (typically the employee)

JUDICIAL DISTRICT _____

PLAINTIFF Waldo Worker

Write the name of the defendant in the Labor Commissioner case (typically the employer)

DEFENDANT Edward Employer

COURT NUMBER _____

Write the date of the ODA

NOTICE OF APPEAL

NOTICE OF APPEAL of the Order, Decision or award of the Labor Commissioner in State Case Number 14-01324

Dated 9/19/2014 and served upon the undersigned appellant, Edward Employer

Write the case number from the Labor Commissioner case.

on 9/22/2014 is given and filed pursuant to Labor Code Section 98.2

Write your name

Write the ODA was mailed to you (this date is on the ODA)

Appellant attached as Exhibit "A" a copy of the Order, Decision or Award appealed and requests that the Clerk of the Court set the cause for hearing before the above-entitled court, where it shall be heard *de novo* in accordance with Labor Code Section 98.2, and that the Clerk of the Court give Notice of time, date and place of the new trial to each of the following parties and the Labor Commissioner's office at the places listed below. Appellant certifies that a copy of this Notice of Appeal has been served upon the Labor Commissioner and a copy has been mailed to the Respondent, as shown below.

APPELLANT (OR ATTORNEY) (NAME, ADDRESS, TELEPHONE NUMBER)

Edward Employer 916-555-9876
 123 Any Street
 Sacramento, CA 95814

Write your name, address, and telephone number.

OFFICE OF THE LABOR COMMISSIONER (ADDRESS AND TELEPHONE NUMBER)

STATE LABOR COMMISSIONER
 2031 Howe Avenue, Suite 100
 Sacramento, CA 95825

Write the address and phone number of the State Labor Commissioner.

RESPONDENT (OR ATTORNEY) (NAME, ADDRESS, TELEPHONE NUMBER)

Waldo Worker 916-555-1234
 321 Another Street
 Sacramento, CA 95815

Write the other side's name, address, and telephone number.

Dated 10/7/2014

Date and sign

Signature of Appellant _____

State of California
 Department of Industrial Relations

Attach a copy of the ODA. In Sacramento, also attach a copy of the complaint and any answers filed in the Labor Commissioner case.