

**ASSOCIATED BUILDERS AND CONTRACTORS  
NORTHERN CALIFORNIA CHAPTER  
TRAINING TRUST FUND**

**NOTICE TO APPRENTICES REGARDING EMPLOYMENT CLAIMS**

This bulletin is intended to answer basic questions you may have regarding your options if your employer: 1) Fails to pay your wages; 2) Fails to contribute to your pension or welfare plan; or 3) Discriminates against you on the basis of race, sex, religion, etc. This bulletin is not intended to provide specific legal advice, but is a general outline of an employee's options under the circumstances listed above.

**I. YOU HAVE OPTIONS IF YOUR EMPLOYER  
FAILS TO PAY YOUR WAGES**

This section of the bulletin addresses basic questions regarding your options if your employer fails to pay your wages. This section focuses on an employee's options enforced through the Division of Labor Standards Enforcement, small claims court, and Superior Court.

**A. DIVISION OF LABOR STANDARDS ENFORCEMENT**

**What is the Division of Labor Standards Enforcement ("DLSE")?**

The DLSE is a state run agency that enforces California's labor laws. The DLSE adjudicates wage claims, investigates certain types of claims and public work complaints, and enforces the Labor Code and Industrial Welfare Commission orders. There is no fee associated with utilizing the DLSE's services.

**When can the DLSE assist me?**

The DLSE may assist you if your employer has done any of the following:

- Failed to pay your wages;
- Failed to contribute fringe benefit payments;
- Paid your wages by check with insufficient funds;
- Failed to pay your final paycheck;
- Failed to pay your vacation pay upon discharge, layoff, or voluntary termination;
- Deducted unauthorized amounts from your paychecks;
- Failed to reimburse business expenses; or
- Failed to provide meal and/or rest periods in accordance with California law.

### **What should I do if I believe my employer has acted improperly?**

You can pick up a complaint form from your local DLSE branch office or submit a complaint on the internet. You should attach as much documentation regarding your complaint as possible and include the legal name, location, and status of your employer. There are time limits for bringing an action that range from 2 to 4 years, so employees are advised to file a claim as soon as possible after the alleged non-payment or Labor Code violation. An alphabetical list of the DLSE's office locations may be found at: [www.dir.ca.gov/dlse/DistrictOffices.htm](http://www.dir.ca.gov/dlse/DistrictOffices.htm).

### **What happens after I file a complaint?**

Within 30 days after filing a complaint, the DLSE may refer your case to an informal conference, a hearing or dismiss the claim. The process continues from there, but this should give employees a start. Additional information regarding the DLSE may be found at [www.dir.ca.gov/DLSE/dlse.html](http://www.dir.ca.gov/DLSE/dlse.html).

## **B. SMALL CLAIMS COURT**

### **What is small claims court?**

Small claims court is part of California's judicial system that deals with controversies not to exceed \$10,000. There are fees to file a small claims complaint ranging from \$30 to \$75.

### **How do I fill out a complaint in small claims court?**

Complaint forms can be found at your local small claims court or on the internet. After your complaint is filed with the court, you will need to serve the defendant with a copy of the complaint and other documents provided by the court. A small claims legal advisor can assist you with any questions you may have. There are time limits for bringing an action in small claims court, so employees are advised to file a complaint as soon as possible after the alleged non-payment.

### **Do I have to hire a lawyer to sue in small claims court?**

Generally not. Small claims hearings are intended to be less formal than Superior Court actions. An attorney may assist a party prior to appearing in small claims court, but the parties must represent themselves at a small claims hearing. A small claims legal advisor may assist you at no cost and may answer your questions. Employees are advised to speak with an attorney if they have a complicated issue. There are specific procedures that must be followed in small claims court and all directions given by the court should be carefully observed.

### **What are the downsides to filing a complaint in small claims court?**

You may recover a maximum of \$10,000 and there are filing and service fees. In addition, even if the hearing is decided in your favor, you still may have difficulty collecting on the judgment if the defendant is uncooperative or has no assets.

## **C. SUPERIOR COURT**

### **Will I need a lawyer if I want to pursue my employer in Superior Court?**

The requirements of litigation in Superior Court are very technical and hiring an attorney is strongly recommended.

### **What are the advantages / disadvantages of going to Superior Court?**

The obvious advantage to pursuing litigation in Superior Court is that there is no limit on recovery amounts. In addition, several additional causes of action may be asserted in Superior Court. To adequately explain the procedures and remedies available in Superior Court, it is strongly advised that an employee seek professional legal assistance.

On the downside, litigation in Superior Court is complicated and may require large expenditures of time and money. For example, there is a filing fee of about \$435.00 for just filing a complaint in Superior Court. Some plaintiff's attorneys are willing to work on a contingency basis which means they receive a portion of judgment instead of charging an hourly fee. In addition, even if you are successful it may be difficult to collect on your judgment.

### **How can I find an attorney?**

Most County Bar Associations have a free lawyer referral service that will help you locate an attorney to assist you with litigation in Superior Court. You can locate the number for your County Bar Association by looking in the phone book or searching on the internet.

## **II. YOU HAVE OPTIONS IF YOUR EMPLOYER FAILS TO CONTRIBUTE TO YOUR PENSION OR WELFARE BENEFIT PLAN**

This section of the bulletin addresses basic questions regarding your options if your employer fails to properly contribute to your pension or welfare benefit plan (your fringe benefits). This section focuses on an employee's options enforced through the Employee Benefit Security Administration ("EBSA") and federal court. This section of the bulletin is not intended to provide specific legal advice.

### **A. EMPLOYEE BENEFIT SECURITY ADMINISTRATION**

#### **What is the Employee Benefit Security Administration ("EBSA")?**

The EBSA is the division of the U.S. Department of Labor ("DOL") responsible for enforcing the provisions of the Employee Retirement Income Security Act ("ERISA"). ERISA is the federal law that protects employees that participate in pension and welfare benefit plans, including 401(k) plans. There is no fee associated with utilizing the EBSA's services. More information regarding the EBSA is available on its website at: [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

### **When can the EBSA assist me?**

The EBSA may assist you if your employer has failed to properly contribute to your pension or welfare benefit plan or violated ERISA. You can contact the EBSA office for Northern California at (415) 625-2481. The Southern California EBSA office can be reached at (626) 229-1000.

### **How can I tell if my employer has acted improperly or violated the terms of my plan?**

The first step is to examine your plan's summary plan description ("SPD") to determine if the plan has been administered in a manner inconsistent with the terms of the SPD. The SPD should outline the plan fiduciaries' duties, the plan's administrative requirements and list any administrative remedies you are required to exhaust prior to filing a complaint in state or federal court. If the plan is not administered in accordance with the SPD, a violation may be occurring. If you suspect a violation in plan administration is occurring, contact an attorney or the EBSA for assistance.

### **Where can I obtain a copy of my SPD?**

If you do not have a copy of your SPD, you may request a copy from your employer, the administrator of your plan or the EBSA Public Disclosure Room. When contacting the EBSA you should provide them with as much information as possible to locate your SPD, including: the name of your plan or multiple employer welfare arrangement, the city and state in which it is located, your employer's name, etc. The contact information for the EBSA Public Disclosure Room is:

U.S. Department of Labor  
Employee Benefits Security Administration  
Public Disclosure Room  
200 Constitution Avenue, NW, Room N-1513  
Washington, DC 20210

Telephone No.: (202) 693-8673

### **What is the procedure for making a complaint?**

You may call, write, or email the EBSA with any questions or concerns you have regarding your plan. You should provide the EBSA with the following information: your name; phone number; a brief explanation of the problem; any evidence that you have filed a claim for benefits; the contact information for your employer; your employment dates; birth date; social security number; policy number or other identification numbers; and your permission for the EBSA to inquire into the matter on your behalf. The main contact number for the EBSA is (866) 444-3272. When you contact the EBSA office, you will receive a prompt that directs you to the office that serves your geographical area. After you are connected, ask to speak with a benefits advisor regarding your situation. The northern and southern California office numbers are located above.

## **What happens after I discuss my situation with the EBSA?**

After discussing your complaint, the EBSA will either continue investigating the matter or conclude its enforcement activity. If the EBSA continues investigating the matter a representative from the EBSA should inform you as to their procedures. The process continues and becomes more complex, but this information should provide employees with a basic understanding of the EBSA's role in ERISA compliance regulation. If the EBSA concludes its enforcement activity, you may request that EBSA provide you with an understandable explanation of the outcome of its review and investigation of your situation.

### **B. FEDERAL COURT LITIGATION**

#### **May I file a complaint in federal court if my employer has violated ERISA?**

Yes. Even if the EBSA concludes its enforcement activity, you can file a complaint in federal court if ERISA has been violated. If you are interested in filing a complaint, you should consult an attorney who specializes in ERISA litigation and/or employee welfare benefit claims. There are time limits for bringing an action in federal court and employees are advised to act as quickly as possible.

#### **Do I have to contact EBSA prior to filing a complaint in federal court?**

No. There is no statutory requirement that you contact the EBSA prior to filing a complaint in federal court. Please note, however, that under ERISA employees are generally required to exhaust all administrative remedies prior to filing a complaint in state or federal court. The administrative remedies for your plan should be outlined in your SPD.

#### **Will I need a lawyer to pursue my complaint in federal court?**

Yes. Complaints alleging violations of ERISA are extremely complex and you should consult an attorney that specializes in ERISA litigation and/or employee welfare benefit claims. Once again, there are varying time limits within which you must file your complaint, so employees are advised to seek assistance as quickly as possible regarding any alleged violations.

### **III. YOU HAVE OPTIONS IF YOUR EMPLOYER DISCRIMINATES AGAINST YOU**

This section focuses on an employee's options enforced through the Department of Fair Employment and Housing and Superior Court. Please note that this bulletin does not address the procedures of the Equal Employment Opportunity Commission ("EEOC"). Information regarding the EEOC is available at its website at: [www.eeoc.gov](http://www.eeoc.gov). Once again, this section is intended as a general guide and is not intended to provide specific legal advice.

**A. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**

**What is the Department of Fair Employment and Housing (“DFEH”)?**

The DFEH is a state run agency established to enforce California’s employment, housing, public accommodations and public service non-discrimination laws. This bulletin concerns the DFEH’s enforcement of California’s Fair Employment and Housing Act (“FEHA”) as it pertains to employment discrimination. More information is available at the DFEH’s website at: [www.dfeh.ca.gov](http://www.dfeh.ca.gov).

**Can the DFEH assist me if my employer discriminates against me?**

Yes. FEHA protects against discrimination and the DFEH may assist you if your employer harasses or discriminates against you because of:

- Age (40 and over)
- Ancestry
- Color
- Creed
- Denial of family and medical care leave
- Disability - mental and physical, including HIV and AIDS
- Marital Status
- Medical Condition (cancer and genetic characteristics)
- National Origins
- Race
- Religion
- Sex
- Sexual Orientation

**What is the procedure for making a complaint?**

If you feel that your employer has violated FEHA, you should contact the DFEH office in your area. Contact information for the DFEH is available at [www.dfeh.ca.gov](http://www.dfeh.ca.gov). You will be required to complete a Pre-Complaint Questionnaire and may be interviewed regarding your complaint. Please note that a complaint to the DFEH must be filed within one year from the date of the alleged discriminatory act. After the interview, the DFEH will either accept your complaint for investigation or issue you a right to sue notice. Employees are required to have a right to sue notice before they can file a complaint in court.

**What happens if the DFEH investigates my complaint?**

A DFEH consultant will issue a formal complaint. The complaint will also be filed with the EEOC, which is the federal agency that handles employment discrimination. During the investigation, the DFEH may conduct interviews, take depositions or serve interrogatories (written questions). After the investigation, the DFEH will either continue to pursue the complaint or close its file and issue a right to sue notice. Please note that it may take up to a year for the DFEH to complete its investigation. The process continues from there, but this should give employees a basic understanding of the initial steps taken by the DFEH.

**What happens if my complaint is not investigated or if I am issued a right to sue notice?**

If the DFEH does not investigate your complaint or investigates your complaint but closes its file, it will issue you a right to sue notice. If you receive a right to sue notice, you may file a complaint in Superior Court. In fact, a right to sue notice is required prior to filing a complaint in Superior Court under FEHA. If you are interested in proceeding in Superior Court, you should seek the advice of an attorney regarding your options. Employees are urged to act quickly and have one year from date of the DFEH right to sue notice to file a lawsuit under FEHA.

**Will I need a lawyer to file a complaint in Superior Court?**

Yes. The requirements of litigation in Superior Court are very technical and employees are strongly urged to consult an attorney if they choose to proceed in court.