

Process Overview

- 1) Wage claims may be filed for unpaid wages for hours worked, nonpayment of overtime wages for hours worked, payment of wages at a rate of pay less than the minimum wage, and unlawful deductions from wages. A separate claim for payment from the Wage Security Fund (WSF) may be filed for unpaid wages related to the closure of a business.
- 2) A screening specialist verifies that claims are complete, meet the division's acceptance policy, and are within the division's jurisdiction [BOLI's performance measure is to complete the screening process within 12 days]. For a completed claim, a notice of claim is sent to the employer. If a claim is not complete and more information is required, division staff will provide the claimant with an opportunity to correct any deficiencies or submit additional information. Failure to respond promptly to communication from the division may result in closure of the claim.
- 3) The employer generally has 10 business days to respond to the claim. If the employer submits payment of the claim in full, the payment is forwarded to the claimant and, generally, the claim is closed. If an employer disputes a claim or fails to respond to the notice, the claim is assigned to a compliance specialist for investigation.
- 4) During the investigation the compliance specialist, as needed, requests additional documentation from the claimant or employer, interviews witnesses, and gathers other types of evidence in order to evaluate the validity of a claim. In many cases, a wage claim investigation is concluded within 35 days. If substantial evidence in favor of the claimant is found, the compliance specialist attempts to collect the amount of unpaid wages determined to be owed. If the employer fails to pay the wages determined to be owed, an order of determination is issued. In cases where it is determined that the employer has gone out of business, a payout from the WSF may be issued. If there is not sufficient evidence to demonstrate that a violation of the wage and hour laws has occurred, the claim is closed.
- 5) A compliance specialist determines eligibility for WSF payouts [BOLI's performance measure is to process WSF claims within 31 days]. Workers may qualify for payments in the amount of wages they earned during the 60 days preceding the closure date of the business or the amount of unpaid wages earned within 60 days of the last day of employment up to a maximum of \$4,000 per claimant. The fund pays amounts equal to unpaid wages only. It does not cover vacation, sick leave or other accrued compensatory time or benefits. If wages are paid out, BOLI may pursue employers for reimbursement of amounts paid from the fund, in addition to penalties.
- 6) The order of determination is a legal order setting out the amount of unpaid wages and any penalty wages or civil penalties owed. The employer has 20 days to request a contested case hearing or trial in court. If the employer does not respond, BOLI will issue a final order of default based on the order and the information contained within the agency file.
- 7) Contested Case Hearings are conducted before an Administrative Law Judge (ALJ): The Administrative Prosecution Unit (APU) prosecutes cases on behalf of BOLI after the division has concluded its investigation. Contested cases may involve hearings, but often involve written discovery, motions, and summary judgement. If no settlement is reached, the ALJ issues a written proposed order.
- 8) Any participant may file written exceptions to the proposed order. Exceptions must contain allegations of error. Exceptions must be filed within 10 days after the proposed order is issued.
- 9) On the basis of the record considered as a whole, the Commissioner will issue a written final order. Judgments for unpaid wages and penalties obtained by the agency are referred to the state's Department of Revenue for collection. A respondent may appeal a Commissioner's Final Order to the Oregon Court of Appeals within 60 days.

