

**Assisting New York
Small Claims Court Plaintiffs:
A Guide for Worker Advocates**



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PART XIII: Terms and Definitions (cont'd)

- ❖ **Notice** – notification of the lawsuit that must be sent or delivered to the defendant.
- ❖ **Serve** – to have court documents such as a subpoena or notice of a lawsuit delivered to the defendant in person or by mail.
- ❖ **Settlement** – an agreement made between the parties that cancels the need to go to court. A settlement can be made solely between the parties or can be made with the help of a mediator, free of charge.
- ❖ **Settlement Agreement** – is signed when the parties have come to an agreement on the damages and have worked the problem out between themselves. The agreement is a binding contract where the defendant promises to pay the amount settled for.
- ❖ **Subpoena** – a court document used to compel a witness to testify at the hearing or produce records.
- ❖ **Third-party Action** – if a defendant believes someone else is responsible for the damages, he may file a third-party action and bring that person into the lawsuit.
- ❖ **Transcript of the Record** – a written record of the hearing that allows an appellate court to review the history of the case.
- ❖ **Vacate** – to set aside a judgment or render void. For example, a judge may vacate a default judgment against a party after re-opening the case.

Introduction

The National Employment Law Project (NELP) has advocated for over 30 years on behalf of low-wage workers, the poor, the unemployed, and other groups that face significant barriers to employment and government systems of support.

MFY's Workplace Justice Project, launched in 2002, is bridging the gap in employment-related legal services for low-wage workers who would be unable to access justice without our help.

This plaintiff's guide was created with employee problems in mind. The most common issue workers face for which they go to small claims court is the recovery of wages. The plaintiff's guide also has its counterpart - the defendant's guide.

This guide intends to be a comprehensive and easily accessible guide for non-lawyer advocates assisting workers in representing themselves in small claims court.

This guide was created using several resources already available at the Small Claims Court, including the booklet *A Guide To Small Claims Court* by Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman. The booklet contains information that applies to New York City, Nassau County, and Suffolk County and is available at the Clerk's window.

This particular guide was developed for people utilizing the New York County Small Claims Court located at 111 Centre Street in Manhattan.

Overview To This Guide

This guide attempts to assist worker advocates with a potential claim from start to finish, covering the following main issues:

- ▶ **Basic Information on Small Claims Court**
- ▶ **Out of Court Issues**
- ▶ **Issues for Undocumented and Non-English Speaking Workers**
- ▶ **Preparing for Court**
- ▶ **Filing a Claim**
- ▶ **Preparing a Case**
- ▶ **The Court Date**
- ▶ **The Decision**
- ▶ **Collecting a Judgment**
- ▶ **Appeals**

This guide also includes an Appendix with sample forms and letters which we hope will serve as helpful guides and provide necessary information to assist workers.

Finally, there is a “Terms and Definitions” section highlighting the meanings of certain relevant terms.

PART XIII: Terms and Definitions

- ❖ **Adjournment** – a request to postpone the date of the hearing.
- ❖ **Appeal** – You may ask the court to reconsider its decision in an appeal. You may only appeal a Judge’s ruling, not an Arbitrator’s ruling.
- ❖ **Arbitrator** – usually a lawyer who hears small claims cases and renders a decision. Arbitrator’s decisions can not be appealed
- ❖ **Calendar Call** – the calling out of the names of the claimants and defendants in a small claims courtroom in order to determine if they are present at the hearing.
- ❖ **Claimant (Plaintiff)** – the one suing
- ❖ **Counterclaim** – a defendant may file a counterclaim against the claimant if the defendant believes it is the claimant that owes him or her money damages.
- ❖ **Damages** – the money the claimant sues the defendant for.
- ❖ **Default Judgment** – a decision rendered in favor of the claimant when a defendant does not appear at the hearing.
- ❖ **Defendant** – the one being sued
- ❖ **Mediation** – where a third impartial party helps to facilitate discussion and arrive at a settlement between the parties. The results of a mediation are not binding unless the parties have signed a settlement agreement.

Appendix 13 Poor Person's Application

Civil Court of the City of New York
County of _____ Part _____ Index Number _____

Claimant(s)/Plaintiff(s)/Petitioner(s)
against
Respondent(s)/Defendant(s)

AFFIDAVIT IN SUPPORT OF
AN APPLICATION TO PROCEED
AS A POOR PERSON
AND AUTHORIZING THE STATE
TO PAY THE COSTS
FOR THE PRODUCTION OF
A STENOGRAPHIC TRANSCRIPT

State of New York, County of _____ ss.: _____, being duly sworn, deposes and says:

1. I am the party named as _____ in the above titled action.

2. The case was tried before Judge _____.

3. I request that an Order be granted:
AUTHORIZING THE STATE TO PAY THE COSTS FOR THE STENOGRAPHIC TRANSCRIPT.

The estimate* of the cost for the production of the transcript is \$ _____.
[*Attach estimate(s) and total them if more than one.]

[If no Notice of Appeal is to be filed, but a request for the State to pay the costs for the production of a transcript is being submitted,
please state why the transcript is needed _____.]

4. I make this application based on CPLR §1101. I do not have, nor am I able to obtain, the funds needed to file a Notice of Appeal and/or to pay for the stenographic transcript. I will be unable to proceed unless the Order is granted.

5. I am/am not a recipient of Public Assistance from the Department of Social Services of the City of New York.
(strike one)

6. I have no income other than the sum of \$ _____ per _____ from _____.

7. I own no property of any kind except necessary personal wearing apparel and _____.

[Indicate other property and the value of such property]

8. No other person is beneficially interested in the recovery sought.

9. _____ a) I have not made a previous application for this or similar relief
_____ b) I have made previous application(s) for this or similar relief, but I am making this further application because _____.

Sworn to before me this _____ day of _____, 19 _____

Sign your name _____
Print your address _____
Telephone Number _____

SIGNATURE OF COURT EMPLOYEE AND TITLE _____

CIV-GP-16 (September, 1995)

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Appendix 12 Sheriffs' Contact Information

New York: 253 Broadway, New York, NY 10007
(212) 240-6715

Bronx: 322 East 149 St., Bronx, NY 10452
(718) 585-1551

Kings: 210 Joralemon St., Brooklyn, NY 11201
(718) 803-3091

Queens: 42-71 65 Place, Woodside, NY 11377
(718) 815-8407

Richmond: 350 St. Marks Pl., Staten Isl., NY 10301
(718) 815-8407

Nassau County: County Office Building,
240 Old Country Rd., Mineola, NY 11501
(516) 571-2113

Suffolk County: 112 Old Country Rd.,
Westhampton, NY 11977

Appendix 11 Information Subpoena Form

Civil Court of the City of New York
County of _____ Part _____ Index Number _____

**INFORMATION SUBPOENA
AND
RESTRAINING NOTICE**

Claimant(s)/Plaintiff(s)/Petitioner(s)
against _____
Defendant(s)/Respondent(s) _____
(Judgment Debtor)
(Address)
(City, State, Zip Code)
(Social Security Number)

THE PEOPLE OF THE STATE OF NEW YORK

TO: _____, the person to be examined and/or restrained:

A Judgment was entered in this court on _____, in favor of _____ and
against _____ in the amount of \$ _____, together with interest,
costs and disbursements for a total of \$ _____, of which \$ _____ remains due and unpaid.

INFORMATION SUBPOENA

Because you, the person to whom this subpoena is directed, either reside, are regularly employed or have an office for the regular transaction of business in _____ County of the State of New York, you must answer, in writing under oath, separately and fully, each question in the questionnaire accompanying this subpoena. You must return the answers, together with the original of the questions, within seven (7) days after your receipt of the questions and this subpoena, to _____ at _____

False swearing, or failure to comply with this Subpoena, is punishable as a contempt of court.

RESTRAINING NOTICE

Be advised that in accordance with Section 5222(b) of the Civil Practice Law and Rules (which is printed in full on the reverse) you are hereby forbidden to make or permit any sale, assignment or transfer of, or any interference with any property in which you have an interest, except as provided for in that Section. This notice also covers all property which may in the future come into your possession or custody.

Following CPLR §5222(a) a restraining notice is not effective against the employer of a Judgment Debtor where the property sought to be recovered or restrained consists of wages or salary due to the Judgment Debtor.

Disobedience of this Restraining Notice is punishable as a contempt of court.

Date _____ Chief Clerk, Civil Court

- SEE REVERSE SIDE -

CIV-SC-60 (Revised June, 2000)

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PART I: Checklist of What You Need to Know

- ✓ A small claims action is limited to \$5000 or less.
- ✓ If the worker is disabled, over 65, or works at night, you may request a daytime hearing.
- ✓ The Clerk's office in New York City on Centre Street closes promptly at 4:30 p.m. and is open late only on Thursdays from 5:00 p.m. – 8:00 p.m.
- ✓ If the worker does not speak English or is in need of a translator, the Clerk will assist you in obtaining a translator free of charge.
- ✓ The Clerk is NOT responsible for helping to fill out forms.
- ✓ You should arrive at least 30 minutes before the scheduled hearing.
- ✓ Remember that this pamphlet is based primarily upon the Small Claims Court of New York County which is located on 111 Centre Street. Other courts may vary and you should sit in on a session in that court to familiarize yourself with how it works.

Appendix 10 Sample Post-Judgment Letter

Appendix 9 Notice of Judgment

Civil Court of the City of New York Index No. S.C. _____
COUNTY OF _____

Small Claims / Commercial Claims Part

against } Claimant(s),
Defendant(s), }

NOTICE OF JUDGMENT

DECISION: After Trial / Inquest, the decision in the above action is as follows:

A. ☐ Judgment and Award in favor of _____

SAMPLE

Award amount.....\$ _____ When an Award has been granted,
Interest.....\$ _____ information below the bold line and
Disbursements.....\$ _____ on the reverse side applies to all parties.
TOTAL JUDGMENT.....\$ _____

B. ☐ Judgment in favor of Defendant, dismissing claim. No monetary award.
Information below the bold line and on the reverse side of this form does not apply to Dismissed Claims

Date _____ Judge, Civil Court / Arbitrator _____

INFORMATION FOR THE JUDGMENT DEBTOR
(the party against whom a money judgment has been entered)

**YOU HAVE A LEGAL OBLIGATION TO PAY THIS JUDGMENT TO THE JUDGMENT CREDITOR.
YOU MUST PRESENT PROOF TO THE COURT UPON SATISFACTION OF THE JUDGMENT.**

Your failure to pay the judgment may subject you to any one or any combination of the following:

- garnishment of wage(s) and / or bank account(s);
- lien, seizure and / or sale of real property and / or personal property, including automobile(s);
- suspension of motor vehicle registration, and / or drivers license, if the underlying claim is based on judgment debtor's ownership or operation of a motor vehicle;
- revocation, suspension, or denial of renewal of any applicable business license or permit;
- investigation and prosecution by the State Attorney General for fraudulent or illegal business practices;
- a penalty equal to three times the amount of the unsatisfied judgment plus attorney's fees, if there are unpaid claims.

If you did not appear in court on the day the Hearing was held, you are a defaulting party. A judgment may have been taken against you even though you were not in court. If that is so, you may come to the court and apply in writing to have the default judgment opened. You must give the judge a reasonable excuse for your failure to appear in court and show that you have a meritorious defense. The Judge will review your request and may vacate your default judgment and give you another chance to go to court.

("Information for the Judgment Creditor" is on the reverse side.)

THE JUDGMENT IS VALID FOR A PERIOD OF 20 YEARS. IF THE JUDGMENT IS NOT COLLECTED UPON THE FIRST ATTEMPT, FURTHER ATTEMPTS TO COLLECT MAY BE MADE AT A LATER DATE.

CIV-9C-92 (Revised 1997)

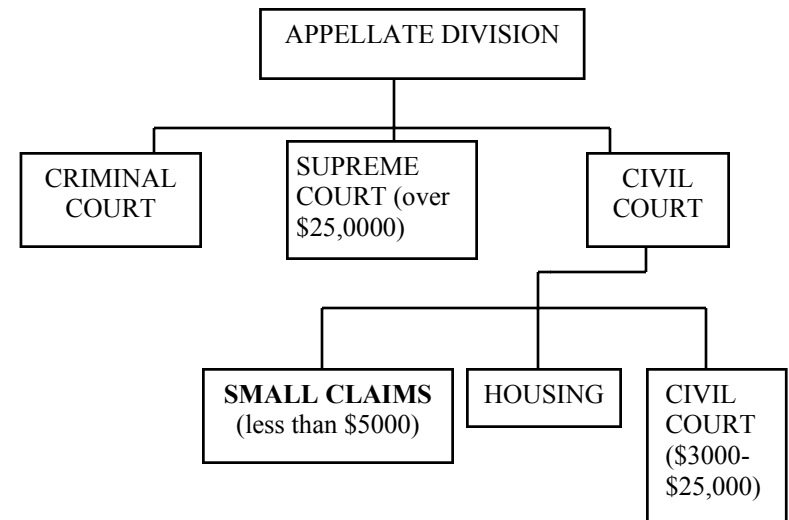
PART II: Introduction to Small Claims Court

I. Background on New York Courts



The New York State court system is made up of multiple divisions. Among these are the Appellate Division (New York's highest court) and the lower trial level courts, which includes the Supreme Court. Also on the trial level, New York City has a Criminal Court and a Civil Court.

The Civil Court hears any civil matter (i.e. not criminal) in which amounts up to \$25,000 are at issue. (Any case involving more than \$25,000 is heard in the New York Supreme Court). The Civil Court has three parts: the Small Claims part, which hears claims involving \$5000 or less; the Housing part, involving landlord-tenant disputes; and the Civil Court, which generally hears cases between \$3000 and \$25,000.



II. What Is Small Claims Court?

The Small Claims part of the New York City Civil Court is a more informal court that hears cases involving claims for \$5000 or less. Although parties are allowed to have a lawyer present if they wish, this court is especially set up to be friendly to those who represent themselves.

III. Who Can Bring a Case?

To bring a case in small claims court, one must 18 or older. If the worker is under 18 year old, a parent or guardian can sue on his or her behalf. Only individuals, not corporations or other business associations, can bring cases in small claims court.

The person bringing a case is called a “claimant” (or “plaintiff” in other courts).

IV. Who Can Be Sued?

The person who is sued is called the “defendant.” There can be more than one defendant in a claim.

Any individual who lives in New York can be sued here. Corporations and businesses can also be sued in small claims court (but they cannot bring claims in small claims court).

Appendix 8 Subpoena to Testify

Civil Court of the City of New York

COUNTY OF _____ Index No. _____

Part _____

Claimant(s)/Plaintiff(s)/Petitioner(s),
against
Defendant(s)/Respondent(s),

SUBPOENA TO TESTIFY
(SUBPOENA AD TESTIFICANDUM)

THE PEOPLE OF THE STATE OF NEW YORK

To: _____

We Command that you lay aside all business and excuses and appear and attend
before Hon. _____, in Part _____, Room _____,
at _____ AM/PM, on the _____ day of _____, 19____,
at _____
(Address of Court)

to testify and give evidence in the action now pending in this Court, to be tried between the parties indicated above, on the
part of _____.

If you fail to attend you may be deemed guilty of Contempt of Court, and be liable to pay to the party aggrieved
ALL LOSS AND DAMAGES SUSTAINED and, in addition, FORFEIT FIFTY DOLLARS.

Chief Clerk, Civil Court

If required, So Ordered: _____
Judge, Civil/Housing Court

CIV-GP-71 (3/91) (Replaces 43-2047)

Appendix 7 Subpoena for Records

Civil Court of the City of New York
County of _____ Index Number _____

Part _____

Claimant(s)/Complainant(s)/Petitioner(s)
against
Defendant(s)/Respondent(s)

SUBPOENA FOR RECORDS
(SUBPOENA DUCES TECUM)

THE PEOPLE OF THE STATE OF NEW YORK

SAMPLE

To: _____

We Command that you or someone on your behalf provide and produce the following item(s):

at _____ AM/PM, on _____ Date

Time _____ Address of Court _____

☐ to the Records Section of this Court, located in Room _____.

☐ Hon. _____ in Part _____, Room _____.

If you fail to provide and produce such information you may be deemed guilty of Contempt of Court, and be liable to pay to the party aggrieved ALL LOSS AND DAMAGES SUSTAINED and, in addition, FORFEIT FIFTY DOLLARS.

Chief Clerk, Civil Court

If required, So Ordered:

Judge, Civil/Housing Court

CIV-GP-70 (Revised, February, 2000)

- If a worker owns a corporation, partnership, or business association and wants to bring a claim on behalf of the business for up to \$5000, he or she must go to the Commercial Claims Court. The clerk at the small claims court can give you a pamphlet on the Commercial Claims Court.

If the worker wants to sue a government agency, different rules apply. Go to the clerk at the Civil Court (either small claims or civil court part) and ask for the pamphlet of instructions for filing actions against government agencies.

- If a worker want to sue a government agency—city, state, or federal—there are specific rules for what you have to do and when you have to do it. You have to give the agency “notice,” and the rules vary on how and when to do so.
- For a New York City agency, you have to give it notice of the claim within 90 days after the time the claim arises. If you do not notify the City within 90 days, the claim may be dismissed.
- Be sure to pick up the instructional pamphlet for more details.

Appendix 6 General Affidavit Form

V. What Kinds of Cases Can Be Brought?

Only cases for money can be brought in small claims court, and only those which are for \$5000 or less. If a worker wants to recover more than \$5000, or if he or she is seeking other kinds of relief (e.g. to have the court force someone to take an action or stop an action), then he or she must proceed in a different court.

➤ See Page 9, Background on the New York Court System.

- Civil Court: 111 Centre Street. The clerk's office is located in Room 118. Civil Court takes cases for amounts over \$5000 and up to \$25,000.
- Supreme Court: 60 Centre Street. Ask the guard for directions to the Office for the Self-Represented. This is the "pro se" office to assist those who are representing themselves in Supreme Court.

If the worker's claim is for more than \$5000 but he or she does not want to go to a different court, he or she may decide to forego the amount over \$5000 and just sue for \$5000 in small claims court. If the worker does this, he or she must know that he or she gives up forever his or her right for that additional amount over \$5000.

Civil Court of the City of New York

Index No. SC _____

COUNTY OF NEW YORK

Small Claims Part

against

Claimant(s),

Defendant(s)

AFFIDAVIT
SMALL CLAIMS

State of New York }
County of _____ } ss.:

_____, being duly sworn, deposes and says:

SAMPLE

(Sign) _____

(Print) _____

Name _____

Address _____

City, State & Zip Code _____

Sworn to before me this _____ day of _____, 19____

Appendix 5 Court Fee Schedule (as of 7/14/03)

Small Claims up to \$1000	\$15.00
Small Claims over \$1000	\$20.00
Commercial Claims	\$29.79
Additional mailings for commercial claims (adding another defendant)	\$4.79
Wage Claim (\$300 or less, wages only)	\$4.79
Counterclaims (with postage)	\$5.37
Transcript of Judgment	\$15.00 (plus \$25.00 at 60 Centre Street)
Certificate of Disposition or Certified Copy	\$6.00
Information Subpoena	\$2.00
Exemplification (to file judgment in another state)	\$10.00 in room 118
Jury Demand	\$70.00
Notice of Appeal	\$30.00
Undertaking on Jury Demand*	\$50.00
Undertaking on Appeal*	Full amount of judgment

* All undertakings to be paid by certified check or money order made to the 'NYC Dept. of Finance

VI. Advantages and Disadvantages

Advantages to Small Claims Court

The main advantage to small claims court is that it is **less formal** than other courts. The Court is not bound by as many of the rigid and complicated rules of procedure or evidence that apply in other courts. New York law says that the small claims court must conduct hearings in order to “do **substantial justice** between the parties according to the rules of substantive law,” and therefore is not bound by all of the rules that apply in other courts. This means that while some rules apply, one is not expected to know or follow all the complicated rules with which lawyers are more familiar.

Disadvantages to Small Claims Court

One disadvantage is the **dollar limitation** (\$5000).

Another is that cases can only be brought for **money**, not any other kind of relief.

In bringing a small claims case, the claimant **waives his or her right to a jury**. Any party other than the claimant, such as the defendant, can demand a trial by jury.

The claimant also waives **his or her right to appeal**, except on the ground that substantial justice was not done between the parties.

➤ See Page 59, Appeals.

PART III: Issues to Consider Outside of Court

Filing a claim can be time-consuming and costs money, therefore it should be a last resort. A worker may be able to resolve his or her dispute informally. The following are steps one should take before suing, in order to resolve one's dispute or to prepare for one's case if one does file a claim.

I. Alternatives to Going to Court

Make a Demand and Try to Settle

If a worker has a problem with his or her employer, you should consider writing a letter to the employer that puts into writing the issues raised. For example, if the employer owes wages, you could write a simple letter stating how much the worker is owed and why he or she is owed that amount (e.g. explain dates and hours worked, how much money received so far, how much still owed, etc.).

➤ Attached as **Appendix 1, p. 63**, is a **sample demand letter for wages**. You may adjust it to suit the facts of the case. In the letter you can ask to resolve the matter informally, so that all parties may avoid going to court.

Similarly, if a worker is sued or about to be sued, you might consider writing a letter to the employer, explaining the worker's side of the issue and stating that he or she is interested in resolving the matter without having to go to court.

Appendix 4 Claim Form

**CIVIL COURT OF THE CITY OF NEW YORK
SMALL CLAIMS PART
STATEMENT OF CLAIM**

I CLAIMANT'S INFORMATION

(Your)
LAST NAME FIRST NAME MIDDLE INITIAL
ADDRESS
BOROUGH, CITY, TOWN OR VILL. STATE ZIP
OTHER INFO (Doing Business As or In Case Of)
PHONE NO. ()

II DEFENDANT'S INFORMATION*

(Their)
LAST NAME FIRST NAME MIDDLE INITIAL
ADDRESS
BOROUGH, CITY, TOWN OR VILL. STATE ZIP
OTHER INFO (Doing Business As or In Case Of)
PHONE NO. ()

III CLAIM

Amount Claimed: \$ (Maximum \$3,000) Date of Occurrence or Transaction: _____

Place of occurrence, if Auto Accident

PRIMARY REASON FOR CLAIM (Check One):

Damage caused to: ☐ automobile ☐ other personal property ☐ real property ☐ person
Failure to provide: ☐ proper repairs ☐ proper services ☐ goods paid for
Failure to return: ☐ security ☐ property ☐ deposit ☐ money loaned
Failure to pay: ☐ salary ☐ for services rendered ☐ insurance claim ☐ for goods sold and delivered
Breach of: ☐ contract ☐ lease ☐ agreement ☐ use of property
Loss of: ☐ wages ☐ property ☐ time from work
Returned: ☐ check (bounced) ☐ check (stopped)
Other: (Be brief)

IDENTIFYING NUMBER(S) - (Receipt #, Claim #, Account #, Policy #, Ticket #, License #, Plate #'(s))

Today's Date _____ Signature of Claimant or Agent _____

*DEFENDANT'S NAME: The legal name will be required in order to obtain an enforceable judgment. If the Defendant is a business, its full and correct business name should be obtained from the Office of the County Clerk in the county in which the business is located.
DEFENDANT'S ADDRESS: You must indicate the proper street address of the Defendant. A Post Office Box is not acceptable.
NOTE: If the Claim is as a result of an automobile accident, the Claim must be OWNER against OWNER.
CIV-SC-30 (Revised 11/99)

(FOR OFFICE USE ONLY)

CERTD. # _____ COA CODE _____ CLAIM AMT. \$ _____ FEE \$ _____
STANDARD FEE PLUS POSTAGE
☐ CLAIMANT V. DEFENDANT
☐ DEFENDANT V. THIRD PARTY
NO FEE: POSTAGE ONLY
☐ CLAIMANT V. ADD'L DEFENDANT
☐ WAGE CLAIM TO \$300
LANGUAGE _____ DATE DATA ENTERED _____ DATE NOTICES MAILED _____
CASE TYPE: ☐ MULTI DFT ☐ CTRCLM ☐ 3 PARTY ☐ CRSCMPLT ☐ FIRST DATE _____ DAY COURT ☐ STATUTORY ☐ OTHER _____

Appendix 3 (Cont'd) **Street Map, Directions, Locations**

Other Court Locations

- **Harlem** – 170 East 121st St., New York, NY 10035; (212) 828-7558
- **Midtown Court** – 314 West 54th St., New York, NY 10019 ; (212) 484-2711
- **Bronx** – 851 Grand Concourse, Bronx, NY 1120; (718) 590-2694
- **Kings** – 141 Livingston St., Brooklyn NY 11201; (718) 643-7914
- **Queens** - 89-17 Sutphin Blvd., Jamaica NY 11435; (718)262-7123
- **Richmond** – 927 Castleton Ave., Staten Island NY 10310; (718) 390-5421

If you are not able to resolve the matter informally, having a letter clearly stating the worker's side of the story is always helpful in court.

Negotiating a Settlement

You may wish to negotiate a settlement in order to resolve the problem without having to take the time and pay the expense of going to court. If you discuss the problem with the employer, you may find that he is willing to pay part of the amount of money the worker is owed. If they discuss the matter, the employer may be willing to pay more or the worker may be willing to accept less, in order to resolve the problem. You can also set up a payment plan, for example \$1000 per month for three months, that may make it easier for the employer to pay.

If the parties come to an agreement, they should sign a "settlement agreement," which is a binding contract. That means that if the employer does not pay the amount he promises to pay, the worker has a contract that can be enforced in court. If the amount promised is for \$5000 or less, then the worker can enforce the contract in small claims court.

➤ Attached as **Appendix 2, p. 64, is a sample settlement agreement** that can be adjusted to suit the facts of a case.

Mediation

What Is Mediation?

Another option to resolve a case informally is mediation, in which the worker and employer meet with a neutral third party, the mediator, who helps them try to negotiate an agreement. These individuals are professionally trained in how to facilitate negotiation between parties, by helping each side discuss his or her story and identify his or her needs or desired outcomes.

Where To Go

There are free mediation services provided throughout New York, including the following:

Manhattan Mediation Center:

(212) 577-1740

Washington Heights-Inwood Coalition:

(212) 781-6722

Brooklyn Mediation Center (downtown)

210 Joralemon Street

(718) 834-6671

Mediation Center - Redhook

88 Visitation Place

(718) 923-8200

Appendix 3 Street Map, Directions, Locations

New York County

- 111 Centre St. Room 322, New York, NY 10013
- (212) 374 -5779

▪ Subway Directions: Take the JMZ, 6 or NRQW to Canal Street. From the JMZ walk south on Centre Street to 111. From the 6, walk south on Lafayette Street to the other entrance of the Small Claims Court at 75 Lafayette. From the NRQW walk south on Broadway to White and walk east to Lafayette. Continue south to 75 Lafayette. The building is located between Franklin and Leonard.

▪ Bus Directions: Take the M1 which goes East on Worth and then north on Centre Street and get out between Franklin and Leonard Street. Coming south on the B51 down Lafayette, get out at Franklin Street and walk south.



Appendix 2 Sample Settlement Agreement

Information on Mediation Services

Costs: There are no costs or fees for engaging in mediation. A plaintiff or defendant can contact the mediation center who will then make a request to appear at the mediation to the other party. Both parties may also go to the center as walk-ins.

Confidentiality : The entire process is confidential and records are kept sealed.

Immigration Status: There is no inquiry into a person's immigration status, nor is there any request for identification.

Translators: If you require a translator, the mediation center will arrange for one to be present at the mediation for you, free of charge.

Mediation & Mediators: The mediation process is **not binding**; however, if both parties agree to a binding written agreement, it will be enforceable.

The person handling the mediation is often not a lawyer, but is trained in mediation intensively by the center.

Mediation services in Manhattan and Redhook deal with many employment and labor issues. The Manhattan center is designated as the mediator for the New York Department of Labor.

Disadvantages of Settlement/Mediation

Trying informal resolution before filing a claim does let the employer know that the worker is considering filing a claim against him or her. Sometimes workers are afraid that their employers will retaliate (take negative action) against them for asserting their rights.

Although it is illegal for an employer to do, there is always a risk, however small, especially if the worker is undocumented.

- If one is fairly sure that his or her employer may retaliate against him or her, one may not want to try mediation or informal settlement, but instead file in court right away. That way, one has an official court record that one tried to assert his or her legal rights, if the employer does end up trying to retaliate.

Appendix 1 Sample Demand Letter for Wages

PART XII: APPENDIX

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Note About the Appendix

Please note that these forms have been scanned from the originals and are available at the Small Claims Court.

These forms can be found in the Clerk's office at 111 Centre Street, in room 322.

Please also be aware that these forms are subject to change and may differ depending on your location.

II. Issues Involved in Whether to Go to Court

One should think seriously about whether or not to pursue a case in court. Unfortunately, even if the worker knows he or she is right, there is no guarantee he or she will win his or her case. And, even if one does win, there is no guarantee that the employer will pay up.

Here are some issues to think about when deciding whether it is worth it to go to court:

- **Time** involved in preparing a case, filing a claim, and going to court
- **Money** involved (court fees, etc.)
- How **strong** the case is
- Whether the employer is **solvent** - in other words, does the employer have money to pay up if the worker wins?
- Would the employer **obey** a judgment and pay, or would the worker have to put in the time, effort, and money into enforcing a judgment?

These issues are not meant to discourage anyone from going to court, but rather to encourage one to think about them in deciding what to do and in thinking about alternatives to court.

PART IV: Issues for Undocumented or Non-English Speaking Workers

I. Undocumented Workers

Legal Rights

An undocumented worker is still entitled to assert his or her legal rights. Under New York law, an undocumented immigrant has every right to access the court system. There has been a lot of misinformation about Hoffman Plastics, the Supreme Court's decision which restricted back pay recovery under the National Labor Relations Act (the law that protect workers' union activity). However, that case does not affect an undocumented immigrant's right to recover wages for work already performed. Liu v. Donna Karen Int'l, Inc., 207 F. Supp. 2d 191 (S.D.N.Y. 2002).

If either the employer or the judge tries to ask about immigration status, tell them that it is irrelevant! You can cite the above case – Liu v. Donna Karen International – and explain that courts in New York have found that immigration status is irrelevant to whether one can use the courts and whether one can recover wages for work performed. Never disclose immigration status.

Employer Appeals

If the employer appeals, he or she is required as a defendant to pay the court a “bond” or “undertaking,” (money paid to the court to guarantee payment of the judgment if he or she loses the appeal).

If the employer does not pay that money to the court when he or she appeals, then you can start collecting the judgment right away.

If you receive notice that the employer has filed an appeal, you can call the clerk to find out if a bond or undertaking was paid. If it hasn't, then you can start collecting.

Be advised that if you collect and the employer wins on appeal, the worker may have to return the money and possibly other damages. You and/or the worker should speak with an attorney before pursuing such a matter.

Filing the Appeal

If the worker decides to appeal, he or she must file within 30 days after the judgment is entered.

He or she must file a Notice of Appeal and pay a fee of \$30. The worker must also pay \$15 for a transcript, and then an additional \$25 at 60 Centre Street.

See the Small Claims Clerk for information and forms.

Applying for a Fee Waiver

If the worker cannot afford to pay the costs for appeal, he or she may apply to the court to have the court costs waived.

This is called “a poor person’s application.”

- See **Appendix 13, p. 76 for a sample “Affidavit in Support of an Application to Proceed as a Poor Person.”**

Identification

Do not be concerned about needing official identification to access the courts. One does not need to show I.D. Even though you will have to pass through security to get inside the court building, they will only check bags and will not ask for I.D.

Retaliation by An Employer

If you are concerned that the employer might try to retaliate against a worker for filing a claim against him or her, then you may want to think about whether to go forward with the case or not.

It is illegal for an employer to retaliate (take negative action) against a worker for having asserted one’s legal rights. Although employers often threaten calling the INS (now known as the Bureau of Citizenship and Immigration Services), they usually do not; if they call the INS to report an undocumented employee, then they might be admitting to the INS that they broke the law in hiring undocumented workers. However, the risk always exists.

One should not be discouraged from asserting one’s rights; just be aware of the potential advantages and disadvantages.

II. Non-English Speakers

Those who have limited English proficiency will face some challenges accessing services in small claims court. The court does provide translators for hearings. Nevertheless, a limited English speaker should bring an English speaker with him or her for the following reasons:

- **Court forms** and signs are all in English. The clerk's office can sometimes provide translation to Spanish, Cantonese, and Mandarin, but it is not guaranteed they can help fill out forms.
- Translators are not provided at court until the parties begin mediation, arbitration, or the hearing. Important **instructions** are given in the courtroom before the hearings, only in English.

Translators

The court does provide translators for hearings. Workers must request a translator when they file their claim. The court will then schedule the hearing for a night on which they have available a translator for whichever language is needed.

Translators can also be appointed for witnesses, if necessary.

PART XI: Appeals

Only a judge's decision, not an arbitrator's, can be appealed. Even where a party has the right to appeal, there are various factors to be considered before deciding to pursue an appeal:

- **Costs:** The worker will have to incur additional court fees, and possibly pay for an attorney. He or she may be able to have his or her fees waived (See Page 69 on applying for waiver), but will likely incur other costs anyway (attorney, time off work, etc.).
- **Likelihood of Success:** In reviewing a case, the court will only look at whether "substantial justice" was done between the parties. This is not a high standard to meet, and it means that the court will not overturn a case on a technical mistake.
- **Getting an attorney:** Because an appeal will take place in a more formal court, a worker may want to get an attorney to assist him or her in the appeal. Sometimes attorney fees can end up costing more than the small claims judgment.

Business License:

If the claim relates to the employer's business (e.g. he owes wages for work done for the business) and the business is licensed or certified by a state or city authority, you may be able to get his license suspended or revoked.

If the employer hasn't paid the judgment within 35 days after notice was received, then you can contact the licensing authority and see if they will take action.

Many kinds of businesses are required to be licensed by the NYC Department of Consumer Affairs (<http://home.nyc.gov/html/dca>). You can be connected to their office by dialing 3-1-1.

An operator will get your information and a complaint will be sent to your address. They can also provide you with information as to what kinds of businesses they license.

Their address is 41 Broadway, 9th Floor, NY, NY 10004.

Contacting the Attorney General

If the business is engaged in fraudulent or illegal conduct, the worker has the right to notify the Attorney General. Contact their office at (212) 416-8000 for more information.

PART V: Preparing to File a Claim

I. Gathering Employer Information

One should try to gather as much information on the employer's business as this stage as possible. Try to get the legal (official) name, address, and phone number. The legal name might be a little different than the name by which the workers know the business. For example, the legal name of "John Doe's Pizza" might be "John Doe's Pizza Company, Inc." You will not need to use the legal name in order to file a claim, but it will make collecting a judgment against the business easier in the end.

➤ See Page 52, Collecting The Money.

Finding the Legal Business Name

Every business in New York is supposed to register with the state and/or the city. Sole proprietorships (which means a small business owned by one person) are supposed to register their business names (if the person does business by any name besides his given name) with the County Clerk. Partnerships are also supposed to register with the County Clerk.

This means that you can contact the County Clerk to find out the legal name of a business, which will be helpful later on if you have to collect the judgment.

Below are addresses and phone numbers for the **County Clerk** in each county in New York City:

Manhattan: (212) 374-8314
Supreme Court Building,
60 Centre St., Room 109, New York, NY
10007

Bronx: (718) 590-3742
851 Grand Concourse, Room 108,
Bronx, NY 10451

Brooklyn: (718) 643-8012
Supreme Court Building,
360 Adams St., Brooklyn, NY 11201

Queens: (718) 520-3704
88-11 Sutphin Blvd., Room 189,
Queens, NY 11435

Staten Island: (718) 390-5389
18 Richmond Terrace, Room 103,
Staten Island, NY 10301

Other kinds of business, such as corporations, are required to file with the State of New York. You can search for their business records on-line at www.dos.state.ny.us or call 1-900-835-2677.

II. **Collection**

Once you have information on where the employer's assets are, you can get an enforcement officer to seize the assets to pay off the judgment.

You can hire either the Sheriff (who is employed by the county) or a City Marshal (who is independent).

➤ See **Appendix 12, p. 75 for contact information for the Sheriff of different counties.**

For a list of marshals, either check the telephone book or get a list available at the Small Claims Office.

III. **Other Ways to Get The Employer Pay**

There are other ways to influence the employer and get him or her to pay. This guide does not cover them all.

They include seizing real estate and suspending the employer's driver's license (if the judgment is based on his ownership or operation of a car).

See the [Guide to Small Claims Court](#) available in the court clerk's office for more details.

The following is some information on other ways to pressure an employer to pay.

Copying and Serving the Subpoena

Be sure to photocopy the first two pages of the Information Subpoena. You do not need to copy the third page.

You need to mail the Information Subpoena by certified mail, with return receipt requested. The worker cannot mail (or “serve”) the subpoena him or herself; rather, someone else who is 18 or older must mail it and fill out an Affidavit of Service.

The third page is the Affidavit of Service.

Instructions for the Person Serving

The person who mails the subpoena must send a photocopy of the top page, a photocopy of the second page, and the original second page.

Then, he or she must fill out the Affidavit of Service and get it notarized.

Then, he or she must give the Affidavit to the Judgment Creditor (the worker). You or the worker may wish to keep an extra copy of all the documents, but at the very least you or the worker should have in your or his possession the original top page and the Affidavit of Service.

Keep these documents in a safe place.

II. Gathering Evidence

It’s a good idea to start collecting evidence as soon as possible, rather than waiting until you file the case.

- See Page 35, Preparing Your Case - Evidence, for examples of the kinds of evidence you want to collect.

Start thinking of who you might want to be a witness, especially if you might have to subpoena them. Find out their addresses.

- See Page 36, Preparing Your Case - Witnesses

Also, trying to gather evidence now will give you a sense of how strong the case is, whether you think the employer would pay up even if the worker does win, and whether you should go ahead with the case.

III. Watching a Case

Advocates and workers should sit in on a court session prior to filing their case. The courtroom is open to the public, so one can sit in and watch how everything works before the hearing actually happens. It may help you figure out what kind of information and evidence you need prior to beginning your case.

PART VI: Filing a Claim

I. Where To Go

The following information applies specifically to the Manhattan Small Claims Court.

To file a claim in Manhattan, go to the clerk's office at the Small Claims Court, located at 111 Centre Street. There is an entrance at 111 Centre Street as well as at 75 Lafayette.

➤ See **Appendix 3, p. 65 for a street map**

In the area there are other court buildings, including the Supreme Court and the federal courthouse. Just make sure you go to 111 Centre Street.

When you enter, you will have to pass through a security check – a metal detector that you walk through and a baggage x-ray. You will not need to show I.D. or explain why you're there.

Filling Out the Subpoena Form (Cont'd)

If you know the name of the bank where the employer has money, you can put the name of the bank in the section where it says "TO:____," the person to be examined or restrained.

The bank will then have to "restrain" or withhold an amount of money in the account up to twice the amount of the judgment.

After the bank holds the money, then you must ask a Sheriff or Marshal to go collect the money for you.

➤ See **Appendix 12, p. 75 for a list of contact information for sheriffs.**

For a list of marshals, contact the court clerk or check your phone book.

The second page of the form is **Questions and Answers**.

Be sure the sections asking for information from you are complete (speak with the clerk for assistance). The recipient will have to answer the questions included and send the form back to you.

The answers may help give you more information about where the employer has money or other assets against which you can collect the money.

Information Subpoenas (Cont'd)

You have to get a separate subpoena for each party you wish to serve. There is a fee of \$2 per subpoena.

You must go to the court in which the trial was held (not necessarily where you filed) to get the information subpoena form.

Filling Out the Subpoena Form

➤ See **Appendix 11, p. 74, a sample Information Subpoena form.**

First, complete the top page of the form.

Where it says "To: _____," write in the name of the bank, company, person, etc. to which you are sending the form.

Look at the Notice of Judgment form to fill in the spaces for the date of the judgment, the parties, and the amount.

Although the clerk cannot advise you to whom to send the form or give you legal advice, he or she can assist you in filling out the form. Just be sure to bring your notice of judgment with you. He or she can answer questions about the form and what information is needed for you to complete it properly.

The clerk's office for small claims is located in Room 322, on the third floor. When you get off the elevators, take a right down the hall and the office is on your right hand side.

There are various signs in the clerk's office, some in Spanish, which can provide some information.

The clerk's window will be directly in front of you. Enter the line to the left. You will see the forms to file a claim in a wooden box to the left of the clerk's window.

Make sure you fill the forms out before you approach the clerk. They can only answer questions, but are not there to fill out the form for you.

II. In Which Court to File

In order to file a claim in the small claims court for New York City, the defendant must either live, work, or do business in New York City. Each county in New York City has its own small claims court.

If the worker **lives in New York City**, then he or she is allowed to bring his or her case in whichever borough he or she wants.

- This is a fairly new rule. The old rule was that one had to file one's case either where one lives or where the defendant lives, works, or does business.
- Because this rule is new, you might find that the court clerk still wants to follow the old rule. If you encounter that, you may wish to speak to the clerk's supervisor.

If the worker **does not live in New York City**, then you can only bring the case where the defendant lives, works, or does business.

- For example, if the worker lives in Brooklyn, and the employer lives in Queens and his business is in Manhattan, you can bring the case in any of the five boroughs. However, if the worker lives in Nassau, you can only bring the case in Queens (where the employer lives) or Manhattan (where he works).

I. Information Subpoenas

The first step in enforcing a judgment will be to get information on the employer's assets (anything of value that the employer owns, including bank accounts, property, etc.). If you do not have information on the assets, but believe that someone else may, you can get an "**information subpoena**" from the court requiring that individual or institution give you the information.

You can send an information subpoena to anyone you think may have information on the employer's assets. You especially should think of places that would receive checks from the employer since they would have information on where he or she banks and his or her checking account.

This may include

- utility companies
- landlords
- banks
- other companies with which he does business.

If the employer ever paid the worker by check, you should be able to find information on the employer's bank on the check itself.

PART X: Collecting The Money

If the defendant (Judgment Creditor) ignores the judgment and does not pay the money he or she owes, after 30 days you can try to “collect” the judgment.

This involves trying to get the money owed directly from the employer’s own money or possessions.

There is information on collecting the judgment on the Notice of Judgment received from the court.

The judgment is valid for twenty years, meaning that you have up to twenty years to try to collect on it while it is a legally enforceable document.

What follows is information on how to collect a judgment, focusing on the following:

- Information Subpoenas
- Collection
- Other Ways to Get the Employer to Pay

Community Courts in Manhattan:

There are two community courts in Manhattan, besides the main one at 111 Centre Street. There is one in Midtown and one in Harlem.

Midtown: 314 West 34th Street
(212) 484-2711

Harlem: 170 East 121 Street
(212) 828-7558

If you would like to have the case heard in one of those courts, you still need to go to 111 Centre Street to file the case.

When you file, tell the clerk you would like to have the hearing at the other court (either Midtown or Harlem).

III. What To Do

Statement of Claim

Once at the clerk's office, the worker needs to pick up and fill out a Statement of Claim form.

- See **Appendix 4, p. 65 for a sample form, "Small Claims Part, Statement of Claim"**

Fill out the Statement of Claim form completely. It asks for information about the claimant/worker (name, address, etc.) and the defendant/employer.

It is necessary to have the **employer's address** so that the court can send a notice of the claim to the employer. You cannot use a P.O. Box for the defendant's address. You must use a street address.

If a worker is suing the employer's business, you should try to use the **legal business name**.

- See Page 23 on finding the legal business name.

Make sure you list the employer's business as the defendant, not just the employer as an individual. One may list both, if one has a claim against the business and him or her as a person.

Canceling the Judgment

If the employer did not show up to the hearing and a default judgment is issued against him or her, he or she may still be able to reopen the case.

The defendant has to apply in writing to the court and give the judge a reasonable excuse for not showing up to the hearing. The judge reviews the request and might "vacate" (set aside) the judgment. Then, you will have to go through another hearing (retrial), as if the first never happened.

Paying the Judgment

The Judgment Debtor has 30 days after he or she received the judgment to pay.

If the defendant does not pay, you will have to "collect" the judgment.

- See Page 57, Collecting the Money

If You Win

If you win the claim for money, the worker is known as the “**Judgment Creditor.**” The defendant is known as the “**Judgment Debtor.**”

After the decision is issued, a **Notice of Judgment** is sent to the defendant letting the defendant know how much he or she owes the worker.

Hopefully, he or she will promptly pay the money the court has ordered him or her to pay. If not, he or she may try to cancel the judgment or just ignore it.

Write a letter to the defendant (or his attorney, if he has one) demanding he or she pay, and include with it a copy of the judgment. Keep a copy of your letter for yourself as well.

➤ See **Appendix 10, p. 73** for a **sample post-judgment letter**.

The form also includes a section on information about the claim. The worker needs to include the amount of the claim and the date of the “occurrence of the transaction.”

- For example, if the employer owed \$500 for work done on June 1-3, 2003, write those dates down.

You will also see boxes to check off the kind of claim the worker has, such as

- “Failure to pay salary”
- Failure to pay for services rendered
- Bounced checks

If the claim does not fit any of the listed categories on the form, there is a line for “Other.” You can write in a short description of your claim on that line.

Once you complete the Statement of Claim form, and date and sign it, bring it to the clerk.

- Be sure to tell the clerk then if you need a translator.

Filing By Mail

If the claimant does not live in New York City, he or she may file the claim by mail. Call the Small Claims Clerk and he or she can send the necessary forms.

IV. Fees

The filing fee depends on the amount and type of the claim:

- If the worker has a **wage claim** for **\$300 or less**, the fee is **\$4.79**. This fee applies only to wage claims, and only those that are \$300 or less.
- If the worker has a claim for **\$1000 or less**, the fee is **\$15**.
- If the worker has a claim for **\$1000-\$3000**, the fee is **\$20**.

The cashier closes promptly at 4:30 (even if you are still standing on line!), so be sure to get there early. In Manhattan, the cashier is also open on Thursdays from 5-8 p.m.

You can pay with cash (**exact change**), money order, or certified check.

- See **Appendix 5, p. 68 for the Court's Fee Schedule** (listing all court costs).

PART IX: The Decision

I. When and How Issued

After the hearing, the court will mail to the worker and the employer a "Notice of Judgment." The judgment is the court's decision on who won the case, and if the claimant won, how much the defendant owes him or her. The court may send this anytime within a few days to a few weeks after the hearing.

If the claimant wins, the judgment usually includes the amount owed, plus the costs for bringing the claim (the filing fees) and one collection attempt by a sheriff or marshal. (See Page ___ on Collecting Your Money).

- See **Appendix 9, p. 72, for an example of a Notice of Judgment Form.**

II.

Judgments

If You Lose

If you lose the case, the worker may have a right to appeal. If the case was heard by an arbitrator, the worker cannot appeal. If the case was heard by a judge, he or she does have the right to appeal.

- See Page 59, Appeals.

Evidence

It is the employer's responsibility to keep records of the worker's hours and wages paid.

If you can show that the employer did not keep proper records, then the law says that if you show approximately the hours worked and the wages owed, then the burden on the employer is greater. He or she has to show either the hours actually worked (which is hard, without records) or that the judge should not believe the worker's testimony.

Basically, what this all means is that if the employer did not keep proper records of the worker's hours and wages, then the court should believe what the worker says he or she worked and is owed, unless the employer can prove that the worker is wrong.

- This rule comes from a Supreme Court case, Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).

Other Trial Details

The trial will go by quickly, as the whole thing may only take 15 minutes depending on how complicated it is.

Be advised that the judge will not give you her decision that night but rather will mail it later.

V. Requesting a Daytime Hearing

Small Claims Court sessions usually occur in the evening, starting at 6:30 p.m. If the worker is a senior citizen (65 years or older), disabled, or works during the evening, you can have the clerk schedule the case for a daytime session.

If the worker works in the evening, then let the clerk know this and she will give you a form – "Affidavit in Support of an Order to Show Cause." The clerk will likely ask for an affidavit (which means a sworn statement) to prove he or she works in the evening.

The clerk has a general affidavit form in which the worker writes his or her name, where he or she works, and what schedule he or she works, and swears to the truth of the statement. Ask the clerk what further information she needs.



See Appendix 6, p. 69 for a sample General Affidavit Form.

VI. Waiting For Your Hearing Date

Once you have filed, you have to wait to receive the notice of the hearing date. You should get the date within about a month.

The court will send the notice to the defendant (the employer) by mail.

If the post office cannot deliver the notice (e.g. defendant moved without giving a forwarding address) after 21 days, then the clerk will give the worker another hearing date and the worker will have to “serve” the notice personally.

- This means that someone must personally deliver the notice to the defendant.
- This person cannot be a party to the claim (e.g. the worker) and must be 18 or older. A friend, relative, or advocate can deliver it for the worker.

The worker has four months to deliver the notice before the claim will be dismissed.

- If after four months you were not able to serve the notice, then you can file the claim again when you learn where the defendant is.

VII. The Trial

If you requested to have the case heard by the court and were unable to settle the case through mediation, you are given another court date in the future.

The parties must return on that date. You need to show up on time (court starts at 6:30, but you’re recommended to arrive at 6:00) to ensure you are there for calendar call, but you will have to wait while the court first hears motions.

Once the case is called, follow the bailiff’s instructions as to where to sit. The bailiff will direct the parties to a table in front of the judge.

First the bailiff will have the worker and the employer stand to “swear them in.” Then, parties are asked to give their names and addresses

Presenting the Case

The worker/claimant will be asked to present his or her story first.

Be concise and focus on the most relevant and important details. You will only have a few minutes to explain the worker’s side, so you want to be as clear as possible. The judge may ask questions along the way to clarify or get more information.

If you have any documents to hand to the judge, you need to hand them to the bailiff (not to the judge directly).

Mediation By The Court (Cont'd)

A worker should not feel intimidated to try mediation if he or she does not have an attorney but the employer does. Mediators are used to working with parties who do not have attorneys and are trained to conduct mediations so that both sides feel they are being heard. The whole process is very informal. In fact, in Manhattan parties are likely to meet with the mediator just in the courthouse hallway. If a party has any questions about the mediation process, he or she should feel free to ask the mediator.

If a worker needs a **translator**, the court will provide one for mediation. Parties must be patient where a translator is involved, as the process is likely to take longer.

Parties do not have to accept any outcome of mediation. The mediator will take the time – whether a few minutes or a few hours – to try to settle the case. However, if both parties do agree to a final solution, each of you is bound legally to comply with the agreement.

Note: Many of the mediators are law students. Therefore, mediation does not occur as frequently during the summer months.

PART VII: Preparing A Case

It is very important to prepare for the hearing. The hearing will be short, so you want to make sure you have all the information and papers you need, ready to go.

I. Evidence

Both the worker/claimant and the employer/defendant will be put “under oath,” meaning that both parties swear to tell the truth. This means that the judge will be faced with two people, telling different stories, both of whom swear they are telling the truth. That is why it is so important to try to have any additional evidence (documents and witnesses) that will support the worker’s story.

II. Documents

Make copies of all documents. Bring an extra copy for the court and for the defendant. Just in case, you may want to bring 2-3 copies of all papers.

Example: If a worker is bringing a claim against his or her employer, then examples of the kinds of documents one should bring (if possible) are

- **pay stubs, pay checks**, or anything that would show how much the worker was paid
- **time cards, calendars** or anything on which a worker may have noted his or her hours
- **receipts or invoices**, or anything that shows that the worker did work for this employer

III. Witnesses

Witnesses can also be helpful to support a case, especially if the worker does not have any documents to support his or her case.

Example: If the worker is bringing a wage claim, you could bring a co-worker to testify that the worker did work there and testify to the hours worked.

- Note: Co-workers, especially if they still work for the employer, may be nervous about testifying. You should let them know that the law prohibits an employer from retaliating against an employee for testifying on behalf of a co-worker.
- See e.g. 29 U.S.C.A. § 215(a)(3) (Fair Labor Standards Act prohibits retaliation against employee who testified or is about to testify in a case related to a violation of the FLSA - the federal wage payment law).

VI. Mediation By The Court

If you request that a case be heard “by the court,” in most instances the judge will ask both parties to try mediation. The parties immediately will meet with a trained mediator that night.

Parties are not required to go through court mediation. However, it is advisable to try mediation for many reasons:

- Parties will not receive a court date to see the judge for a while - at least a month or two - so if parties go through with mediation, they may be able to resolve their case that night and avoid returning.
- Mediators focus on trying to resolve the case so the parties can avoid going through a hearing and so that both sides come out with a solution they agree with (whereas with a trial there is only one winner).
- Mediation can provide for more creative solutions to the problem, whereas a judge might stick more to the law or a more traditional solution.

Getting A Judge Or An Arbitrator (Cont'd):

- An arbitrator is even less formal than being in front of a judge in her courtroom.
- Arbitrators are lawyers. Sometimes people who do not have lawyers might feel more intimidated presenting his case to a lawyer, especially if the employer is there with his own lawyer.

V. Inquests and Default Judgments

If the defendant does not show up to the hearing, the claimant does not automatically win. The court will direct an “inquest.” This means that the judge or arbitrator will hear the case, without the defendant.

The claimant is still expected to explain what happened and prove his or her case. If the claimant proves his or her case, then he or she will be awarded a “default judgment,” meaning a judgment in his or her favor without the defendant having been present.

When a default judgment is awarded, a defendant may be able to reopen the case.

- See Page 51 on how a defendant may reopen a case

IV. Subpoenas

Subpoenas for Documents

You can require an individual to produce records by having the court issue a “subpoena,” which is a legal document that orders the person to bring the documents to the court.

- For example, in a wage claim for overtime, if the employer maintained accurate time records that would prove the worker did work overtime, you could have the court order the employer to bring those records. The court clerk can assist you in preparing the necessary forms to issue a subpoena.

- See **Appendix 7, p. 70, a sample “Subpoena for Records.”**

Subpoenas for Witnesses

You can also have the court issue a subpoena to order an individual to come to court to testify.

You have to pay a witness fee of \$15, plus travel expenses, to the witness. The court clerk can help you with the papers and information you will need.

➤ See **Appendix 8, p. 71, a sample “Subpoena to Testify.”**

You will have to “serve” the person, meaning having someone 18 or older who is not a party to the case deliver the papers personally.

You must give the witness a “reasonable” amount of notice. Try to serve the subpoena at least five days before the hearing.

V. Suing For Damage to Property

If the worker is suing because of damage to property (e.g. a car), the work must bring **two** estimates of how much it will cost to fix the damage.

IV. Getting A Judge Or An Arbitrator

An arbitrator is a lawyer who is trained to hear cases and apply the same law that the judges apply. Because there are so many small claims court cases and so few judges, arbitrators volunteer their time to help out the court system.

Whether one wants a judge or arbitrator may depend on a few factors:

- An arbitrator’s decision cannot be appealed. This means that both the worker and the employer are stuck with the decision you get. A judge’s decision can be appealed. However, appeals can be difficult, costly, and time-consuming.

➤ See Page 59, Appeals.

- Some judges might feel a little more free to look not only at the strict law and evidence but also at the fairness of a situation. It depends on the judge and on the arbitrator, but it is possible that an arbitrator might feel a little more bound to look strictly at the law and the evidence.
- An arbitrator can hear your case that night, whereas if you want a judge to hear your case, you will have to get another hearing date. This means coming back on another night and spending another few hours at court.

What To Say

What the worker should say when his or her name is called depends on a few things. Regardless of what he or she says, make sure he or she stands up when he or she speaks, after they call his or her name.

- If you want to ask for an adjournment (See Page 39), the worker must say “**Application**” when they call his or her name.
- If you want a judge to hear the case (instead of an arbitrator), the worker says “**By the Court.**”
- If you agree to have an arbitrator hear the case instead of a judge, the worker just repeats **his or her name**.

The court will then tell the worker what to do - either sit back down and they will call his or her name again later or they will tell him or her to come forward then.

Motions

The court will hear motions first. This includes anybody who says “Application,” meaning they want to ask the court to do something, such as postpone their hearing. Motions are heard at the bench, which means that the parties, when called up, go up to the judge’s bench and speak with her there. Trials happen after motions are done.

PART VIII: The Court Date

I. Getting An Adjournment

An “adjournment” is a postponement of the hearing date. One cannot get one’s hearing date postponed by telephone. The judge is the only one who can grant a postponement.

If you know ahead of time that you are going to ask for an adjournment, you should send a letter to the court, and a copy of it to the employer, stating that you are going to do so. You and the worker still need to show up to the hearing to explain why you are not ready for trial.

On the date of the hearing, either party can request an adjournment, which the judge can decide to give if the person has a good excuse.

During the calendar call (See Page 41), after the worker’s name is called, he or she must stand up and say “**Application**” if you want to request an adjournment.

When you are called to speak to the judge, you will go up to the bench and explain that you want an adjournment and explain why.

If you get a postponement, the worker is given a new hearing date, which will probably be at least one month later.

II. **Practical Information**

The Small Claims Court hearing room is Room 353, which is on the third floor. The room is quite large, and there likely will be lots of other people waiting for their cases.

Before you go into the room, look at the list of cases on the board on the left (immediately before you enter the double doors into the courtroom). The cases will be grouped and each group will have a number. Cases are called by groups, so the number just indicates the order in which the cases will be called. You still need to show up on time and should sit in the courtroom so you don't miss anything.

There is no food or drinks allowed, except water.

Be prepared to be in the courtroom for a while – there are many other cases that will also be going on.

III. **What Will Happen**

Calendar Call

Calendar call is when the bailiff (court officer) or the clerk (sitting next to the judge at the front of the room) will call out the case names. It is a “roll call” to make sure everyone is there.

As a claimant, the worker must be sure to answer when his or her name is called.

- If the worker does not, or her or she is not there, the court will dismiss the case.
- If the employer (the defendant) does not answer, they may wait and try calling his or her name again later.

Note: The calendar call and instructions are in English.