

# **SALARY AND HOLIDAY PAY**

**A brochure on employment law**



**Jussbuss**

## FOREWORD

This brochure is published by the legal aid service Jussbuss.

The brochure is one of a series of four brochures on labour law.

The others are:

1. Holidays and leave
2. The employment contract and workplace environment
3. Termination of employment, resignation and redundancy

These are available in electronic form on our website [www.jussbuss.no](http://www.jussbuss.no).

You can also contact us to obtain the brochures in printed form.

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# TABLE OF CONTENTS

<b>1 INTRODUCTION</b>	<b>4</b>
<b>2 WHAT ARE YOU ENTITLED TO?</b>	<b>5</b>
2.1 Wages in accordance with the employment contract	5
2.1.1 Breaks during working hours	6
2.1.2 When your employer does not need manpower	6
2.1.3 Wages during redundancy	7
2.1.4 Wages during the notice period	7
2.1.5 Brief information about dismissal	8
2.2 Overtime supplement	8
2.3 Holiday pay	9
2.4 Interest on late payment	10
2.5 Other entitlements	10
2.5.1 Collective agreements	11
2.5.2 Special legislation	11
Generalised collective agreements	11
Public holiday supplement	11
<b>3 PAY DEDUCTIONS</b>	<b>13</b>
3.1 Introduction	13
3.2 Legal grounds for pay deductions and holiday pay deductions	13
3.2.1 Law	13
3.2.2 Contributions to an occupational pension scheme	13
3.2.3 A written agreement about deductions	13
3.2.4 Collective agreement	14
3.2.5 Compensation	14
3.2.6 Overpayment of wages in the event of a strike or lockout	14
3.2.7 Restrictions regarding the size of the deduction	15
3.3 Procedure in the event of illegal deductions	15
3.4 Consequences of illegal deductions	15
<b>4 IS THE CLAIM OUT OF TIME?</b>	<b>16</b>
<b>5 WHEN YOUR WAGES ARE NOT PAID</b>	<b>17</b>

5.1 Introduction	17
5.1.1 General advice	17
5.1.2 There are various ways of collecting pay	18
5.2 If the employer is not willing to pay	18
5.2.1 Introduction	18
5.2.2 First step: Statutory demand	18
5.2.3 Second step: conciliation board	21
5.2.4 Third step: Writ of execution	26
5.2.5 Fourth step: Securing of your wage demand	28
5.2.6 Fifth step: Implementation of your garnishment	30
5.3 If the employer is unable to pay	31
5.3.1 Introduction	31
5.3.2 How likely is it that your employer is unable to pay?	32
5.3.2.1 First step: Statutory demand	34
5.3.2.2 Second step: Notification of bankruptcy	34
5.3.2.3 Third step: Petition for bankruptcy	37
5.3.2.4 Fourth step: The hearing	40
5.3.2.5 Fifth step: Bankruptcy proceedings are opened	41
5.3.3 Are all or parts of your claim covered by the NAV Wage Guarantee Scheme?	42
5.4 If your claim is well documented and your employer agrees with the claim	44
5.5 To whom should the claim be addressed, and where?	45
<b>6 IS YOUR EMPLOYER ENTITLED TO CLAIM BACK ANY OVERPAYMENT?</b>	<b>47</b>
<b>7 GLOSSARY</b>	<b>48</b>
<b>8 USEFUL LINKS</b>	<b>49</b>

## ***1 INTRODUCTION***

This brochure provides an introduction on the remuneration you are entitled to from your employer. We will also be looking at what conditions have to be met for your employer to be able to make deductions from your pay.

This brochure also provides an overview of how you can proceed if your employer fails to pay your wages or holiday pay or make the payments as a consequence of your work. The templates presented in the brochure are intended to be advisory only.

A number of agencies can assist if you need help with matters relating to pay. If you are a member of a trade union, you can get in touch with the staff there. The free student-run legal aid services Jussbuss, Jussformidlingen i Bergen, Juridisk rådgivning for kvinner, Jusshjelpa i Midt-Norge and Jusshjelpa i Nord-Norge can provide assistance on matters relating to pay. Lawyers can also assist, but they will charge fees.

Other agencies such as enforcement officers, the Norwegian Labour Inspection Authority, the conciliation boards, the Norwegian Mediation Service and the district court can provide information and advice. A list of the Internet addresses and telephone numbers of these agencies can be found at the end of this brochure. Please note that this information may have been amended since the brochure went to print.

References to applicable legislation are provided in the margins below. The statutory provisions can be searched at [www.lovdata.no](http://www.lovdata.no).

## ***2 WHAT ARE YOU ENTITLED TO?***

### ***2.1 Wages in accordance with the employment contract***

**Written contract**  
Work Environment  
Act, Section 14-5  
and Section 14-6

The primary rule is that you are entitled to pay in accordance with what has been agreed with your employer, either verbally or in writing. According to the Work Environment Act, in your capacity as an employee you are entitled to a written contract which must include your wage conditions. As an employee, you can demand a written contract from your employer. If you do not receive a written contract, you can get in touch with the Norwegian Labour Inspection Authority for information and assistance.

Work Environment  
Act, Section 18-6 ,  
first paragraph

As well as your contract, your wage conditions can also be agreed verbally, or they can be stated on your timesheets or payslips. You are entitled to have your wage conditions specified in your written contract, and we recommend this.

Your employer cannot make changes to your wage conditions without your agreement. The last wage conditions agreed are applicable. A verbal agreement will be binding to exactly the same extent as a written agreement, but it may be more difficult to prove what was actually agreed.

**Invariability to  
the detriment of  
the employee**

See, for example,  
Work Environment  
Act  
Section 1-9,  
Holidays Act,  
Section 3, cf.  
Labour Disputes  
Act, Section 6.

There are no general rules on minimum wage in Norway, but if a law gives you better rights than what has been agreed in your work contract, the provisions of the law must generally be used as a basis. You can find out more about this in section 2.5.2. If your working conditions are regulated by a collective agreement, the working conditions specified in the collective agreement must initially be applied in the event of a conflict with the work contract. Section 2.5 about other entitlements includes more information about this. If you are not sure whether your working conditions are regulated by a collective agreement, you can talk to your employer, an employee representative or a colleague. The Norwegian

Labour Inspection Authority can also give you an answer on this in some cases.

The contract does not generally provide answers to all questions about wage conditions. Below are some answers to typical questions that are often not covered in the work contract.

### *2.1.1 Breaks during working hours*

As an employee, you must have at least one break if your daily working hours are in excess of five and a half hours. You are entitled to a 30-minute break in total if you work at least eight hours over the course of the working day. Your breaks are not part of your working hours, unless agreed otherwise.

If you do not have a satisfactory break room and do not have the opportunity to leave the workplace, or if you have to be available for your employer, your break is counted as part of your working hours. You are then initially entitled to receive pay for your break as well.

### *2.1.2 When your employer does not need manpower*

You may be entitled to wages even if your employer does not have enough work for you. A situation of this kind may occur, for example, if there is no need for manpower as a result of insufficient product orders. Your wages must nevertheless be calculated in accordance with how much you would have worked in accordance with your work contract.

Your employer's obligation to pay wages in situations as described above assumes that you make your labour available to your employer. This means being available for your employer and having the opportunity to turn up at work at the agreed time if your employer needs you to work. If you feel that your employer is always sending you home when you turn up at work, it may be a good idea to send a registered letter, email or text message in which you specify that you wish to work. This gives you more proof to indicate that you have made your labour available in case a dispute arises at a later date.

If your employer does not need manpower for a length of time, he may – under certain conditions – decide to terminate your employment or lay you off. For more information on conditions for dismissal and redundancy, see the Jussbuss brochure “Termination of employment, resignation and redundancy”. This brochure can be found at [www.jussbuss.no](http://www.jussbuss.no).

### *2.1.3 Wages during redundancy*

**Obligation to pay wages when you are made redundant**  
Mandatory redundancy Pay Act, Section 3 (1)

When you are made redundant, you are essentially entitled to wages during the employer period. The employer period currently stands at 10 working days. After this, NAV will under certain conditions allow you to claim unemployment benefits until another employer is obliged to pay you wages again.

**Unemployment benefits when you are made redundant**  
National Insurance Act, Section 4-7

For more information on the conditions for unemployment benefits during redundancy, get in touch with NAV or visit their website at [www.nav.no](http://www.nav.no).

### *2.1.4 Wages during the notice period*

**Resignation**  
Work Environment Act Chap. 15

If you terminate your own employment or have your employment terminated by your employer, you will be entitled to wages during your notice period, provided that you make your labour available to your employer.

Occasionally employers will tell employees that they do not want them to work the notice periods. If your employer does not wish to use your labour, you must nevertheless make it available to the employer in order to retain your entitlement to wages. If you are not allowed to work, you should send a registered letter, email or text message in which you explain that you would like to work your notice period. This will give you better proof in the event of a conflict relating to your entitlement to wages during your notice period.

Working your notice period is not necessarily a condition for entitlement to wages. If both you and your employer so wish, you can agree for you not to work your notice period but still receive your wages. This is known as



being “put on gardening leave”. Jussbuss recommends concluding any such agreement in writing. This will then allow you to avoid conflicts later on with regard to your entitlement to wages. In this case, it will not be necessary for you to make your labour available to your employer.

### *2.1.5 Brief information about dismissal*

Dismissal means that the rights and obligations in respect of your employment cease with immediate effect. Your employer’s obligation to pay you wages and your obligation to work will therefore cease simultaneously.

**Dismissal**  
Work Environment  
Act, Section 15-14

For more information about conditions for termination of employment, resignation and redundancy, see our brochure “Termination of employment, resignation and redundancy”. This brochure can be found at [www.jussbuss.no](http://www.jussbuss.no).

## *2.2 Overtime supplement*

The clear general rule is that everyone is entitled to overtime if they work more than the statutory regular working hours. Essentially, regular working hours are 9 hours over a 24-hour period and 40 hours over a period of 7 days. For each individual week, you yourself can choose the option that gives you the most overtime. You are entitled to an overtime supplement of at least 40% of your agreed wages. In other words, if you earn NOK 100 per hour, you are entitled to receive an extra NOK 40 for every hour you work in addition to your regular working hours. Your overtime supplement must be paid in addition to your standard hourly wages.

**Overtime pay**  
Work Environment  
Act Sections 10-4  
(1), 10-6 (2) and  
10-6 (11)

It is possible to conclude an agreement on a higher overtime rate than that specified in law.

There are individual special rules on and exceptions to the rules on general overtime and overtime supplements. This is applicable to employees in leading or particularly independent positions, for example. A great deal is

**Exceptions**  
Work Environment  
Act, Sections 10-12  
and 10-5

required for a position to be considered as leading or particularly independent. Another exception is if an average calculation of regular working hours has been agreed. This may also apply to exceptions if you are covered by a collective agreement.

Work Environment  
Act, Section 10-6  
(12)

It is important to note that your overtime hours can be taken as time off in lieu if this has been agreed in writing beforehand. However, the employer and employee cannot arrange not to apply the overtime supplement. The employer must pay the overtime supplement. However, you will not be entitled to your basic pay if you take time off in lieu. For example, if you normally earn NOK 100 per hour and you work 10 hours of overtime, you can take 10 hours off in lieu of this time at a later date if this has been agreed in writing. If you choose to take time off in lieu, you will still be entitled to receive payment of your overtime supplement, which is equivalent to NOK 40 per hour or a total of NOK 400 in this example. You will not be entitled to be paid for the 10 hours that you take off in lieu. It is important to differentiate between overtime and additional work. Additional work is when you work for longer than was originally agreed, but nevertheless for no longer than the statutory regular working hours. If, for example, you are contracted to work 37.5 hours per week but work 39 hours instead, you will not be entitled to overtime for the additional hours you have worked (unless you have worked for more than 9 hours on any of the days – see the first part of section 2.2). You are entitled to your standard hourly pay for the additional hours you have worked.

### ***2.3 Holiday pay***

**Calculation and  
payment of  
holiday pay**  
Holidays Act,  
Sections 10 and 11

Employees are entitled to holiday pay equivalent to at least 10.2% of the holiday pay basis. The holiday pay basis is all your income before tax earned in the previous year. Your holiday pay basis will be indicated in the wage and tax statement from your employer. Essentially, this

amount will be paid before the holiday begins. In practice, holiday pay is often paid in June. However, you can always ask for your payment to be made at the latest one week before your holiday begins. If you fail to take holiday, in contravention of the law, both your entitlement to holiday and your entitlement to holiday pay will be transferred automatically to the next year. Be aware that your work contract or collective agreement may specify better holiday pay entitlements.

If your employment is terminated, your holiday pay must be paid on your last payday.

#### ***2.4 Interest on late payment***

Act relating to  
Interest on Overdue  
Payments Section 2

If you do not receive your wages or holiday pay by the agreed time, you will be entitled to interest on late payment until the payment is made. If the due date is specified in advance, you can generally claim late payment interest from the due date up to the date on which your employer makes the payment. The due date for your wage entitlement will be the date for which your wage payment is agreed. As a general rule, this will generally be specified in your work contract. It can also be regarded as agreed if you have received your wages on approximately the same date every month. Late payment interest on holiday pay is calculated according to the specifications of the Holidays Act, unless agreed otherwise.

Act relating to  
Interest on  
Overdue Payments  
Section 3

The interest rate for interest on late payments is adjusted every six months. Interest on late payments can be calculated using the late payment interest calculator at [www.regjeringen.no](http://www.regjeringen.no).

#### ***2.5 Other entitlements***

Other entitlements may be specified in a collective agreement or special legislation.

### *2.5.1 Collective agreements*

If you are bound by a collective agreement, rules other than the ones specified in the Work Environment Act may apply. Whether your employment is regulated by a collective agreement will normally be stated in your work contract. You can also get in touch with your employer, colleagues, trade union or the Norwegian Labour Inspection Authority for information on this.

### *2.5.2 Special legislation*

Act concerning  
Generalisation of  
Collective  
Agreements

#### ***Generalised collective agreements***

Some collective agreements are also applicable to companies and employees even if they are not bound by a collective agreement through membership of a trade union. These collective agreements are generally applicable through laws and regulations and are applicable to everyone working in the industry in question. A generalised collective agreement may give you better working conditions than those specified in the Work Environment Act. As at January 2016, generalised collective agreements are applicable to employees who carry out building work on construction sites, employees in the agricultural sector, employees in the fishing industry, employees who carry out cleaning, employees in the maritime construction industry, employees in the electrical trades (not applicable to offshore), employees who transport goods by road and employees who drive tour buses.

Get in touch with the Norwegian Labour Inspection Authority or trade union in question to find out whether you are covered by a collective agreement.

Act concerning 1  
and 17 May as  
Public Holidays  
Section 3

#### ***Public holiday supplement***

If 1 and/or 17 May fall on a working day, you must receive pay as if this were a standard working day, even

if you do not work. This is applicable if these dates do not fall on a Sunday or other public holiday and assumes that the person has been or will be in employment for at least 30 days.

If you work on 1 and/or 17 May, you must have the same wage supplement as the supplement to which you are entitled for Sundays pursuant to your work contract or other rules. If your work contract or other rules do not specify a wage supplement of this kind, you will be entitled to supplement corresponding to at least 50% of your standard pay.

## ***3 PAY DEDUCTIONS***

### ***3.1 Introduction***

**General rule**  
Work Environment  
Act Section 14-15

The primary rule is that your employer is not entitled to deduct anything from your wages or holiday pay.

That said, there are some exceptions that may allow your employer to do this. We will be looking at these in greater detail below. One thing these exceptions have in common is the fact that you must be notified of the deduction when your wages are paid or when you have an entitlement to this. The deduction must also be indicated on your payslip. You should always check that you have received the correct pay.

### ***3.2 Legal grounds for pay deductions and holiday pay deductions***

**Basis in law**  
Work Environment  
Act  
Section 14-15(2 a)

#### ***3.2.1 Law***

Your employer can make deductions from your wages and holiday pay if a law permits this directly. Tax deductions and social security deductions are examples of this.

**Occupational pension**  
Work Environment  
Act Section 14-15  
(2 b), see, for  
example, the Public  
Service Pension  
Fund Act,  
Section 17

#### ***3.2.2 Contributions to an occupational pension scheme***

Deposits to private and public occupational pension schemes can be deducted from your wages. Deductions according to this exception are often described in the work contract.

#### ***3.2.3 A written agreement about deductions***

**Written contract**  
Work Environment  
Act  
Section 14-15(2 c)

Deductions can be made if you have entered into a written agreement with your employer *in advance* indicating that this is fine. In other words, the agreement must have been entered into before the situation in question occurs. The agreement must indicate the reason for the deduction and how much is to be deducted. It is not sufficient to generally decide this for the workplace –

it must be agreed specifically between you and your employer. There may be instances in which your employer is unable to make deductions from your wages, even if you have entered into a written agreement. If you are not sure of anything, you can get in touch with one of the student-run legal aid initiatives, see section 8.

### *3.2.4 Collective agreement*

**Collective agreement**  
Work Environment Act, Section 14-15  
(2 d)

Deductions can be made from your wages for your trade union dues or for collective insurance linked with your membership of a trade union. Please consult your trade union on this.

### *3.2.5 Compensation*

**Compensation**  
Work Environment Act, Section 14-15  
(2 e)

Under certain conditions, your employer can deduct money from your wages for any damage or loss that you have caused to the employer's business.

The rules relating to this are strict and complicated. Although your employer may perhaps demand that you pay for the damage, this does not mean that he can automatically deduct the money from your wages. In addition, you have to have acknowledged in writing that you are liable to pay for the damage that has been sustained, or your employer has to have received judgement on the claim against you.

The requirement for a written acknowledgement and judgement on the claim are not applicable if you have left your job without being entitled to do so.

### *3.2.6 Overpayment of wages in the event of a strike or lockout*

**Overpayment of wages**  
Work Environment Act, Section 14-15  
(2 f)

Your employer may deduct money from your wages if it has not been possible to take into account absence when calculating your wages due to a strike OR lockout.

Your employer must claim back any overpaid wages due to circumstances other than strike or lockout in some other way, and this is usually done by sending an invoice. See also section 3.2.3.

### *3.2.7 Restrictions regarding the size of the deduction*

**Living expenses**  
Work Environment  
Act, Section 14-15  
(3)

As regards deductions according to section 3.2.3, 3.2.5 or 3.2.6, it is not possible to deduct more from your wages or holiday pay than the amount you reasonably need to support yourself and your household.

Therefore, your situation must be assessed in specific terms before any deductions are made from your wages or holiday pay.

### *3.3 Procedure in the event of illegal deductions*

If your employer notifies you of a deduction from your wages or deducts money from your wages, you can – for example – get in touch with one of the student-run legal aid initiatives, see section 8. If the deduction is illegal, the amount deducted from your wages will be regarded as unpaid wages. Outstanding wages may be recovered according to the process described in section 5 below.

### *3.4 Consequences of illegal deductions*

**Criminal liability**  
Work Environment  
Act, Section 19-1

Failure to comply with the provisions of the Work Environment Act with regard to wage and holiday pay deductions may render your employer liable to prosecution. Get in touch with the police if you wish to report your employer or have any queries about your employer's criminal liability.



#### ***4 IS THE CLAIM OUT OF TIME?***

Statute of  
Limitations  
Section 3 cf.  
Section 24

**The claim is out  
of time after three  
years**

Statute of  
Limitations  
Section 2

If the claim is out of time, this means that the person owing the money is no longer obliged to pay it. The limitation period for claims relating to wages and holiday pay is initially three years from the due date. The due date for claims relating to wages is the date on which you should have received your wages in accordance with the contract with your employer. The due dates for payment holiday pay are regulated in greater detail in the Holidays Act, see section 2.3.

**Interruption of  
deadline**

Statute of  
Limitations  
Sections 14 and 15

The limitation period is discontinued if, for example, your employer admits that he owes the money before the claim is out of time. Jussbuss recommends that you attempt to get such an admission in writing, as it may be difficult to prove a verbal admission in retrospect.

If your employer does not admit that he is obliged to pay, you must take legal steps to discontinue the limitation period. “Legal steps” means either that you make a complaint about your employer to the conciliation board or that you request your employer be made bankrupt. A statutory demand or negotiations relating to the claim are, in themselves, not sufficient to discontinue the limitation period.

The limitation period of three years is also applicable to your employer if he wishes to claim back overpaid wages or holiday pay.

## ***5 WHEN YOUR WAGES ARE NOT PAID***

### ***5.1 Introduction***

#### ***5.1.1 General advice***

There may be several reasons as to why your wages are not paid. This may be due to a misunderstanding between you and your employer. It may also be due to the fact that your employer does not *wish* to pay, or that your employer is *unable* to pay. It is important to clarify as early as possible why your wages have not been paid, as this is of significance to how you should proceed when collecting your wages.

First, you should clarify whether there has been a misunderstanding or a mistake made before you attempt to collect your wages. This will increase the chances of you getting the problem resolved quickly and with little conflict. Therefore, you should ask your employer for an explanation as to why your wages not been paid. If you cannot agree on when you should be paid or how much you should be paid, you should get a written explanation of why your wages have not been paid. This explanation may help you if you have to attempt to collect your wages. To find out what you are entitled to, see section 2.

When collecting your wages, it is important for you to act quickly as deadlines are applicable. There may be a risk of your wage claim not being covered by the NAV Wage Guarantee Scheme if you fail to recover your wages in time. See further details about the NAV Wage Guarantee Scheme in section 5.3.3.

**Make copies of the letters**

In general, it is important for you to retain or make copies of all communications between your employer and yourself. All letters from you should be sent by both registered and regular post.

**Check whether your employer has been declared bankrupt**

When you are undergoing the wage recovery process, it is important for you to search for your employer on the Brønnøysund Register Centre website, [www.brreg.no](http://www.brreg.no), at regular intervals, e.g. once a week. You can find out here whether your employer has been declared bankrupt. If your employer is bankrupt, information on this must be provided and announcements on the company's pages on the Brønnøysund

Register Centre website. If you discover that your employer has been declared bankrupt at some point during the wage recovery process, you must act quickly. In this case, you must follow the procedure described in section 5.3.2.5.

### *5.1.2 There are various ways of collecting pay*

**The difference between willingness to pay and ability to pay**

How you should proceed in order to get your wages paid depends on the reason as to why your employer has not paid. The first alternative is that your employer has money but does not want to pay you – he is unwilling to pay; see section 5.2. The second alternative is that your employer has no money to pay you – he is unable to pay; see section 5.3.

As the procedure is dependent on whether your employer is unwilling or unable to pay your wages, it is important to clarify first of all the reason as to why your wages are not being paid.

You can find out whether your employer is unable or unwilling to pay by asking him or an employee representative. The Brønnøysund Register Centre website at [www.brreg.no](http://www.brreg.no) only announces the opening of bankruptcy proceedings if this has taken place. If you know of several other employees who have not been paid either, this may be a sign that the company's finances are poor. The same is true if the company has shut down its day-to-day operations.

## *5.2 If the employer is not willing to pay*

### *5.2.1 Introduction*

If your employer is not willing to pay, this means that he is refusing to pay your wages even if he has enough money to do so. We will look below at the process for collecting your wages in such cases.

### *5.2.2 First step: Statutory demand*

The first step is to send a letter to your employer stating that you have not been paid the wages to which you are entitled.

**Remember  
documentation!**

In this letter, you should explain to your employer why you think you are entitled to wages. This entitlement should also be documented. This can be done by enclosing a copy of your contract, a calculation of your entitlement, timesheets, bank account statements and payslips, for example. You can ask your employer to give you such documentation.

You can try to claim your wages yourself if you have no documentation. The disadvantage is that it may be more difficult for you to prove that you are actually entitled to the money.

In your letter, you must give your employer a reasonable amount of time in which to pay. It is usual to give employers a payment deadline of two weeks from the time he receives the claim.

**Registered**

Your claim for wages must be sent to your employer by both regular and registered post. When you send your letter by registered post, you will receive a receipt from the post office stating that the letter has been sent. You can therefore prove that you have actually sent the letter should this be queried later on in the process.

If the company you work for is an AS (limited company), the statutory demand must be sent to the company's address. If the company you work for is a sole proprietorship, the statutory demand must be sent to your employer's private address. If you are not sure which form of organisation applies to your employer, you can check this with the Brønnøysund Register Centre at [www.brreg.no](http://www.brreg.no).

Tax Payment  
Regulations  
Sections 5-6-1 and 5-  
7-1

It may be wise to note that your wages have to be taxed in the usual way. If you want to claim holiday pay, this must be taxed if it was earned in the same year as the year in which the statutory demand was written. No tax should be deducted from your holiday pay if it was earned in previous years.

See section 2.4 for information on how to calculate interest on late payment.

The next page shows a suggestion for a statutory demand.

[Your name]  
[Your address]

[Employer's name]  
[Employer's address]

[Location, today's date]

*Entitlement to wages*

I was employed at [employer] from [date] to [date]; see the enclosed copy of my work contract (Appendix 1). I worked [number of] hours in [month]; see the enclosed copy of my timesheet (Appendix 2). I have not been paid for these working hours. Nor have I received any overtime payment or holiday pay; see the enclosed calculation of the amount outstanding (Appendix 3).

I hereby claim wages for the work I have done.

*As at [today's date], this claim totals:*

Wages claimed for [number of] working hours	NOK 10,000
Late payment interest on wages, from [due date] to [today's date], see section 2.4	NOK 200
Overtime payment of 40% for [number of] hours of overtime, see section 2.2	NOK 1,000
Late payment interest on overtime, from [due date] to [today's date]	NOK 50
Holiday pay, see section 2.3	NOK 1,000
+ Late payment interest from [due date] to [today's date]	NOK 50

---

≡ **Claim as at [date]** **NOK 12,300**

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Please make this payment to account number [your account number] as soon as possible, and at the latest within two weeks after receipt of this letter. If no payment is made, the claim will be pursued through legal channels and further interest and expenses will be incurred.

Please be advised that tax must be deducted from the wages in the usual way, with the exception of the holiday pay.

Please assess the claim and the basis for it, cf. the Disputes Act, Section 5-2.

This letter is being sent by registered post and the regular postal service.

---

[Your name]

Enclosures: 1) Work contract, 2) Timesheet, 3) Calculation of the amount outstanding

### *5.2.3 Second step: conciliation board*

If your employer does not agree with your claim or does not wish to pay for some other reason, the next stage will usually be to take the matter to the conciliation board.

The conciliation board is a public mediation authority. The purpose of the conciliation board is to mediate between parties so that they can come to an agreement. In some cases, the conciliation board can pass judgement if the parties are unable to agree.

#### **Requirements for application for conciliation proceedings**

Disputes Act,  
Section 6-3

To bring a case before the conciliation board, you must submit an application for conciliation proceedings. In this application for conciliation proceedings, it is important for you to explain to the conciliation board the facts necessary to help them understand your side of the story. You must state how much you want your employer to be ordered to pay you. You must include your name and address and your employer's name and address. If the company is a limited company, you must state the company name and address. If the company is a sole proprietorship, you must state the employer's own name and private address. If a form of organisation different to those specified above is involved, you can phone your local conciliation board for further advice on which name and address you should state. If you are not sure which form of organisation applies to your employer, you can check this with the Brønnøysund Register Centre at [www.brreg.no](http://www.brreg.no).

As of 1 January 2016, intervention by a conciliation board will cost NOK 1025. The person submitting the application for conciliation proceedings must cover this fee. However, you can claim a refund of this cost from your employer in the application for conciliation proceedings. There is no guarantee that your employer will have to pay the fee even if you request it. When bringing a case to the conciliation board, there is a risk of you having to pay the court fees yourself.

If your employer runs a limited company, the application for conciliation proceedings must be sent to the conciliation board in the location where the company has its head office. If your

**Legal venue**

Disputes Act, Sections 4-4 and 4-5 (4)

employer runs a sole proprietorship, the application for conciliation proceedings must be sent to the conciliation board where the employer lives. It can also be sent to the conciliation board where the company's head office is located if the company is registered in the Register of Business Enterprises. Your application for conciliation proceedings can also be sent to the conciliation board in the place where you normally work. Your local conciliation boards can help you if you have any questions about which conciliation board is to deal with your application for conciliation proceedings.

Occasionally the postal address of the conciliation board will not be the same as the street address. Get in touch with the conciliation board in question to confirm that you are sending the application for conciliation proceedings to the right address. You can deliver your application for conciliation proceedings verbally or in writing by turning up at the conciliation board's offices.

When the conciliation board receives the application for conciliation proceedings and decides to intervene, your employer will be served with the application for conciliation proceedings. This means that the conciliation board will contact your employer and notify him of the application for conciliation proceedings. The conciliation board will also order your employer to submit a statement on the case, also known as a response, normally within two weeks.

**Response**

Disputes Act, Section 6-4

You and your employer will then be asked to attend a hearing with the conciliation board. A meeting of this kind should be held within 3 months of you submitting the application for conciliation proceedings. However, some conciliation boards allow more time than this for processing cases.

**Notice to attend a meeting**

Disputes Act, Section 6-5

If you live in the municipality or neighbouring municipality to the conciliation board dealing with the case, you must initially turn up in person. Get in touch with your local conciliation board for more information about compulsory attendance.

**Mandatory meeting attendance**

Disputes Act, Section 6-6

The conciliation board may pass a default judgement if you request this in your application for conciliation proceedings. A default judgement is the judgement passed even if the employer does not submit a response or does not turn up at the meeting

**Default judgement**

Disputes Act, Sections 6-10 and 16-10

with the conciliation board. Your application for conciliation proceedings will be upheld fully or partly in the event of a default judgement. The conciliation board can only pass a default judgement when sufficient information is provided on the case. Therefore, it is important for you to provide all the evidence you have for your claim.

**Court settlement**

Disputes Act, Sections 6-8 (6), 19-11, 19-12 and 19-15

If you and your employer come up with a resolution to the matter during the hearing, the conciliation board will help you to write down the agreement that you have arrived at. This agreement can be concluded as what is known as a court settlement. A court settlement is binding and cannot be taken further in the legal system initially. You can get in touch with the conciliation board or district court for more information on what a court settlement involves.

**Conciliation board judgement**

Disputes Act, Section 6-10

If your negotiations are unsuccessful, the conciliation board may pass judgement in some cases. This is applicable when one of the parties requests this and the claim is for less than NOK 125,000. If the claim is for more than NOK 125,000, the parties must agree that the conciliation board should pass judgement, or the conditions for a default judgement must be met (see the section on default judgement above). Regardless of the size of the claim, you will be able to request judgement when your employer has no valid objections to the claim or simply claims not to have the money.

Disputes Act, Section 6-12 (5)

Disputes Act, Section 6-14

Judgement must be passed within one week. If you or your employer disagrees with the judgement, the decision may be submitted to the district court for review. Be aware that there is a one-month deadline for sending a writ to the district court. The judgement will be legally enforceable if is not brought before the district court before the deadline. This means that the decision is final and no further appeal is possible. We recommend that you seek legal assistance before deciding to take the matter to the district court. If you would like more information about the appeals procedure, you can get in touch with the conciliation board or district court for general information. For more detailed legal assistance, you can get in touch with one of the student-run legal aid initiatives – see section 8 – or a lawyer.



The conciliation board may also refrain from passing judgement. In such cases, you must initially take the case further to the district court if you want your claim to be settled. Court proceedings may be time-consuming and costly. To avoid this, it is important for you either to request judgement from the conciliation board or to come up with an acceptable solution with your employer during the conciliation board hearing.

If the judgement is upheld or you reach an amicable settlement on the matter, your employer will be given a new deadline by which to pay your wages.

Note: If your employer disagrees with the judgement from the conciliation board, he will have the opportunity to take the case up with the district court. If your employer wins at the district court, you may be ordered to pay your employer's legal expenses. It is important to bear this risk in mind before deciding to bring a case to the conciliation board.

#### **Enforceability**

Disputes Act, Section 19-13 Enforcement of Claims Act, Sections 4-4, 4-12 and 4-16

If the payment deadline has passed and the judgement or court settlement is upheld, you have *enforceable grounds for enforcement*. This means that except can appoint enforcement officers to help you recover the money owing to you. More information on how to enforce payment of your claim can be found in section 5.2.4.

It may take a long time for a case to be dealt with by the conciliation board. Therefore, it is possible that your employer will no longer have the ability to pay on time while you await the conciliation board hearing, or at the time when judgement is passed or the settlement is concluded by the conciliation board. Therefore, we recommend that you check the company on the Brønnøysund Register Centre website, [www.brreg.no](http://www.brreg.no), while the process is ongoing. If you see signs indicating that your employer has financial problems, you must assess whether you should petition for the bankruptcy of your employer. If so, the next step in the process will be to send a notification of bankruptcy; see section 5.3.2.2.

An example of an application for conciliation proceedings is shown below and on the next page. You can also find a template for an application for conciliation proceedings at [www.forliksraadet.no](http://www.forliksraadet.no).

[Your name]  
[Your address]

[Name of conciliation board]  
[Address of conciliation board]

[Location, today's date]

### CONCILIATION PROCEEDINGS

**Applicant:** [Your name]  
[Your address]  
[Your personal ID number]

**Respondent:** [Employer's name]  
[Employer's address]  
[Employer's ID number or company registration number]

**The case concerns:** Claim for the payment of wages, overtime and holiday pay.

*Basis for the application for conciliation proceedings*

I was employed at [employer] from [date]; see the enclosed copy of my work contract (Appendix 1). My employment was terminated on [date]; see the enclosed copy of the termination of my employment (Appendix 2). I worked [number of] hours in [month]; see the enclosed timesheet (Appendix 3). I have not received any wages, overtime payment or holiday pay for parts of my employment; see the enclosed calculation of the amount outstanding (Appendix 4).

[Employer] is required to pay the debt – see the enclosed statutory demand (Appendix 5) [see section 5.2.2] – but has failed to do so. In accordance with the Work Environment Act, Section 10-6, I am entitled to overtime pay [see section 2.2]. In accordance with the Holidays Act, I am also entitled to 10.2% of the holiday pay basis [see section 2.3]; see the enclosed calculation of the amount outstanding (Appendix 4).

If the respondent fails to attend or no response is submitted, a default judgement will be required.

*Statement of claim*

1. The respondent is ordered to pay [Your name] NOK 10,000 in wages, with the addition of late payment interest from [due date] until the time payment is made.
2. The respondent is ordered to pay [Your name] NOK 1,000 in overtime, with the addition of late payment interest from [due date] until the time payment is made.
3. The respondent is ordered to pay [Your name] NOK 1,000 in holiday pay, with the addition of late payment interest from [due date] until the time payment is made.

The respondent is ordered to pay costs relating to the case, amounting to NOK 1,025.

---

[Your name]

Enclosures: 1) Work contract, 2) Termination of employment, 3) Timesheet, 4) Calculation of the amount outstanding, 5) Statutory demand

### 5.2.4 Third step: Writ of execution

Enforcement of Claims Act, Sections 4-12(2) and 4-16

The employer will be given a deadline for payment when a judgement is given or an amicable settlement is concluded with the conciliation board. If the claim is not paid before the deadline, the next step will be to send a writ of execution to the enforcement officer.

The enforcement officer is a public authority which has enforcement authority to seize and sell the employer's assets in order to recover the wages owing to you.

Enforcement of Claims Act, Section 3-1

As of 1 January 2016, a writ of execution will cost NOK 1,742. You must pay this fee. The fee can be added to your claim against your employer. You *may* then receive a refund if your employer pays or if the debt is covered by enforcement. However, there is no guarantee that this fee will be covered for you.

Enforcement of Claims Act, Sections 5-4 and 7-6

When the enforcement officer has received a writ of execution, the authority will examine whether the formalities of the request are in order, e.g. whether you have enclosed the judgement from the conciliation board. If there are any errors or defects in the request that can be rectified, you will receive a deadline for rectification of these. If your request is approved, the enforcement officer will ensure that the request is submitted to your employer. Your employer will then be given two weeks in which to make a statement on the matter.

Enforcement of Claims Act, Sections 5-2 and 7-5

A request must meet specific requirements for it to be processed. These requirements will be met if you follow the template below. You can also get in touch with your local enforcement officer for information on how you should compile a request for taking control of goods.

Four copies of the request and enclosures must be sent to the enforcement officer in the municipality in which your employer is based.

An example of a writ of execution can be seen below and on the next page.

[Your name]  
[Your address]

[Enforcement officer's name]  
[Enforcement officer's address]

[Location, today's date]

## REQUEST FOR TAKING CONTROL OF GOODS PROCEEDINGS

**Claimant:** [Your name]  
[Your address]  
[Your ID number]

**Defendant:** [Employer's name]  
[Employer's address]  
[Employer's ID number or company registration number]

### The case concerns:

Writ of execution pursuant to the Enforcement of Claims Act, Section 4-1.

### Writ of execution

The grounds for enforcement are the [judgement or court settlement] pursuant to the Enforcement of Claims Act, Section 4-1; see the enclosed copy of the [judgement or court settlement] (Appendix 1). The claim will not be settled before the [judgement's or court settlement's] payment deadline. This requests that control of goods be taken pursuant to the Enforcement of Claims Act, Chapter 7.

*The defendant owes the claimant the following amount:*

Wages claimed for [number of] working hours	NOK	10,000
Late payment interest on wages, from [due date] to [today's date], see section 2.4	NOK	300
Overtime payment of 40% for [number of] hours of overtime, see section 2.2	NOK	1,000
Late payment interest on overtime, from [due date] to [today's date]	NOK	60
Holiday pay	NOK	1,000
Late payment interest on holiday pay, from [due date] to [today's date]	NOK	60
Legal expenses before this enterprise	NOK	1,025
+ Fee for taking control of goods proceedings	NOK	1,742

---

**= Claim as at [today's date] NOK 15,187**

---

It is requested that control of goods be taken [e.g. assets of value that you may be aware that your employer has]\*

\_\_\_\_\_  
[Your name]

Enclosures: 1) [Judgement/court settlement] – certified copy

\*This can be included if you are actually aware of such assets.

### 5.2.5 *Fourth step: Securing of your wage demand*

Securing of your claim means that you will receive entitlement to resources held by your employer.

When your employer has made a statement on the request for taking control of goods, or when the deadline for making such a statement has passed, the enforcement officer will determine whether taking control of goods proceedings now to be implemented. The purpose of taking control of goods proceedings is to secure your wage demand by garnishing something your employer owns.

There are three potential outcomes of taking control of goods proceedings:

- 1) taking of goods
- 2) deduction from wages/social security benefits
- 3) nothing to take

We will look at the three different results in more detail below.

#### *1) Taking of goods*

If you are to take goods, we say that you have a lien on this property. A lien means that your claim can be covered by demanding the enforced sale of the goods. If the enforcement of the sale is successful, your funds may be paid to you. Therefore, a lien will give you more chances of receiving the money if your employer is declared bankrupt. If you have a lien on something which your employer owns, such as a machine, you can demand the enforced sale of it; see section 5.2.6.

Taking of goods can be requested in respect of all types of *company*; limited company (AS), sole proprietorship, etc. If your employer is a public authority, we recommend that you get in touch with the enforcement officer or one of the student-run legal aid initiatives for advice.

You can appeal the choice of goods for seizure. For example, you should consider appealing the choice of goods for seizure if a number of liens have already been registered for these goods but

## Appeals

Enforcement of Claims  
Act, Section 7-26

the value of the goods in total is not guaranteed to be high enough to cover your liens when sold. If, for example, your wage claim is for NOK 50,000 and you have a lien for a machine worth NOK 100,000, it may be wise to appeal if someone already has a lien of NOK 80,000 on the same machine. You have one month from the time you receive the letter about the lien in which to submit your appeal. The enforcement officer is the appeals authority. If the enforcement officer does not accept your appeal, it will subsequently be forwarded to the district court. A cost equivalent to court fees will then accrue. As of 1 January 2016, court fees will amount to NOK 1,025. Get in touch with the enforcement officer if you have any questions about appealing the selection of goods for seizure and possible expenses in connection with this. See section 5.2.6 for more information on how you can proceed in order to find out whether anyone else also has a lien on the same goods.

### 2) *Deduction from wages/social security benefits*

Enforcement of Claims  
Act, Section 7-21

Deduction from wages/social security benefits means that deductions will be made from your employer's wages or social security benefits. The amount deducted will be transferred to your account so that your wage claim will be covered on an ongoing basis.

Deduction from wages/social security benefits can only be requested in respect of an employer running a sole proprietorship.

The period for deduction from wages/social security benefits cannot normally exceed two years. The deduction period is calculated from the date on which the taking control of goods proceedings took place.

Enforcement of Claims  
Act, Section 7-26

You can also appeal against the deduction from wages/social security benefits. You can appeal as long as the deduction period is still running. Firstly, you can appeal against the size of the deduction from wages/social security benefits. Secondly, you can appeal against the fact that the enforcement officer has chosen deduction from wages/social security benefits instead of seizure of goods.

If your employer is made bankrupt, there is no guarantee that the bankruptcy estate will uphold the deduction from wages/social security benefits. If your employer has financial problems and there is a risk of him being declared bankrupt, you should therefore consider appealing against the deduction from wages/social security benefits. Get in touch with the enforcement officer for more information. In such cases, you should also consider whether you yourself should petition for the bankruptcy of your employer; see section 5.3.

### 3) *Nothing to take*

When taking control of goods proceedings end with an outcome of nothing to take, this means that the enforcement officer has found that your employer has no resources that can be seized or wages/social security benefits from which monies can be deducted.

You can appeal the result of the taking control of goods proceedings if you disagree. Firstly, you can appeal if you know that your employer has an income and that deduction of wages/social security benefits is therefore possible. Secondly, you can appeal if you know that your employer has goods that can be seized.

When the taking control of goods proceedings result in nothing to take, this is an indicator that your employer is unable to pay. You have two choices in such situations. You can either present a petition for the bankruptcy of your employer – see section 5.3 below – or you can send a new request for seizure of goods to the enforcement officer at a later date. The latter may be relevant you find out that your employer's finances have improved.

### 5.2.6 *Fifth step: Implementation of your garnishment*

When your wage claim has been guaranteed by means of seizure of goods, you can assess whether you wish to demand the enforced sale of the goods.

Registered liens on the goods will be covered in the order in which they were registered. Therefore, the chances of your claim being covered will be dependent on the size of the liens

registered *before* your claim and the amount for which the seized goods sell.

You can only demand in forced sale of goods if the sales total is high enough to cover any previously registered liens as well. Therefore, it is a good idea to find out whether there are any other registered liens on the goods. If, for example, you have a lien on a car, you can search for the car's registration number on the Brønnøysund Register Centre website, [www.brreg.no](http://www.brreg.no). You can get in touch with the Norwegian Mapping Authority for liens on residential property. Their website is [www.kartverket.no](http://www.kartverket.no).

Whether you should request the enforced sale of assets is a difficult decision to make. If you are considering requesting the enforced sale of assets, you should get in touch with the enforcement officer or one of the student-run legal aid initiatives for more detailed information and advice on the procedure. Information and templates relating to the enforced sale of assets can also be found at [www.politi.no](http://www.politi.no).

### ***5.3 If the employer is unable to pay***

#### *5.3.1 Introduction*

If your employer is unable to pay, this means that he has neither funds nor assets that can be sold in order to pay your wages. In such cases, you may have to present a petition for the bankruptcy of your employer in order to have your wages paid.

In simple terms, bankruptcy involves collecting together everything your employer has – assets and resources – in a single “pot” known as the bankruptcy estate. This “pot” is then distributed in a specific sequence among everyone to whom your employer owes money, also known as the creditors. As a rule, the “pot” will not be large enough to cover all the claims against your employer. Before attempting to petition for the bankruptcy of your employer, therefore, you should find out whether your claim will be covered by the NAV Wage Guarantee Scheme; see section 5.3.3.

More information about bankruptcy can be found on the Norwegian Advisory Council on Bankruptcy website at [www.konkursradet.no](http://www.konkursradet.no).



Whether you should petition for the bankruptcy of your employer is dependent on factors such as:

- ***How sure you are that your employer is unable to pay (see section 5.3.2)***
- ***Whether all or parts of your claim will be covered by the wage guarantee scheme in the event of bankruptcy (see section 5.3.3)***

### 5.3.2 How likely is it that your employer is unable to pay?

**Insolvency**  
Bankruptcy Act,  
Sections 60 and 61

To be able to petition for the bankruptcy of your employer, your employer must be unable to pay you. Being unable to pay is known in law as *insolvency*. Your employer is insolvent when he is both *illiquid and in negative equity*. Being illiquid means that your employer does not have enough money to pay his bills when they fall due and that this situation is not expected to improve in the near future. When your employer is in negative equity, this means that he has more debt than wealth.

The likelihood of a petition for bankruptcy leading to bankruptcy is greatest if there is a *presumption of insolvency*. To put it simply, a presumption means that something is likely to happen. Therefore, you have to attempt to substantiate the fact that your employer is insolvent. If you are able to substantiate the fact that your employer is insolvent, it will be up to your employer prove otherwise. Below are some examples of what you can do to substantiate the fact that your employer is insolvent (create presumption of insolvency).

**Liability for damages**  
Bankruptcy Act,  
Section 76

Note: If you attempt to petition for the bankruptcy of your employer and it turns out that your employer is not insolvent, no bankruptcy proceedings will be opened. There is a risk in such cases of you having to pay compensation to. In practice, employees are very rarely ordered to pay compensation to employers in such cases. This is particularly true if there is a presumption of insolvency. There is also a risk of you having to pay your employer's legal expenses if no bankruptcy proceedings are opened.

**Payment of the employer's legal expenses**  
Disputes Act,  
Section 20-2

**The assessments below can be difficult. Jussbuss therefore recommends that you get in touch with one of the student-run legal aid initiatives, Advokatvakten or a lawyer for advice as to whether you should petition for your employer's bankruptcy.** See section 8 at the end of the brochure for contact details.

We will look more closely at various presumptions of insolvency below.

*Presumption no. 1: Your employer provides notification that he is insolvent*

There is a presumption of insolvency if your employer tells you that he has no money or is unable to cover your wages as they fall due.

If you receive such notification from your employer, you should ask him to confirm this in writing. If you do not receive written confirmation, it will be difficult to prove to a judge that your employer has said that he is insolvent. A verbal confirmation alone is a poor presumption, and you should attempt to acquire better grounds for your claim before you petition for the bankruptcy of your employer.

If there is a presumption of insolvency for your employer in accordance with this section, you can proceed to section 5.3.2.3 in this brochure to find out what to do next.

*Presumption no. 2: Your employer has stopped his payments*

There is a presumption of insolvency if your employer has stopped paying bills or debts.

This may, for example, be reflected in the fact that your employer has sent out letters to everyone to whom he owes money, stating that he has stopped paying his debts.

Even if you know that several other employees have not been paid either, this in itself does not constitute a strong presumption. You should therefore have a written confirmation from your employer stating that he has stopped paying debts and suchlike.

If there is a presumption of insolvency for your employer in accordance with this section, you can proceed to section 5.3.2.3 in this brochure to find out what to do next.

**The employer's acknowledgement**  
Bankruptcy Act,  
Section 62

**Stopping payments**  
Bankruptcy Act,  
Section 62

**Nothing to take**  
Bankruptcy Act,  
Section 62

*Presumption no. 3: Taking control of goods proceedings have been held, with a verdict of nothing to take*

There is a presumption of insolvency if taking control of goods proceedings have been held with a verdict of nothing to take at some point during the last three months before you submit a petition for bankruptcy; see section 5.3.2.3. For more information on taking control of goods proceedings; see section 5.2.5. This presumption is strongest on the date on which the taking control of goods proceedings were held. This is because the more time that passes, the greater the chances of your employer's financial situation changing.

You do not necessarily have to be the party that has requested seizure of goods. If you have a colleague or know anyone else who has requested taking control of goods proceedings relating to your employer and the taking control of goods proceedings resulted in a verdict of nothing to take, you can use this result as a presumption of insolvency.

If there is a presumption of insolvency for your employer in accordance with this section, you can proceed to section 5.3.2.3 in this brochure to find out what to do next.

*Presumption no. 4: Notification of bankruptcy*

**Notification of  
bankruptcy**  
Bankruptcy Act,  
Section 63

If there is no presumption of insolvency pursuant to the points specified above (no. 1 to 3) but you still believe your employer is insolvent, you can send a notification of bankruptcy. In this way, you yourself create a presumption of insolvency for your employer. In this case, you must follow the bankruptcy process from section 5.3.2.1.

*5.3.2.1 First step: Statutory demand*

The first step is to send a statutory demand to your employer stating that you have not been paid the wages to which you are entitled. How to do this is described above in section 5.2.2.

*5.3.2.2 Second step: Notification of bankruptcy*

**Notification of  
bankruptcy as a  
presumption**  
Bankruptcy Act,  
Section 63

If your employer fails to pay before the deadline you have the specified in your statutory demand and you still have reason to believe that he is insolvent, the next step is to send your employer a notification of bankruptcy.

A notification of bankruptcy can be sent for weeks after the sending of the statutory demand *at the earliest* if presumption of insolvency is to result.

Accounting Act,  
Section 1-2

For a notification of bankruptcy to count as the presumption of insolvency, your employer must have a statutory duty to keep accounts. Most companies have such a duty, but sole proprietorships may be exempt. You can find out whether your employer has a duty to keep accounts by getting in touch with the Brønnøysund Register Centre. See contact details in section 8.

**The claim must be clear and overdue**  
Bankruptcy Act,  
Section 63

Another condition is that your claim must be *clear* and *overdue*. For example, your claim is *clear* if there is a judgement on it (from the conciliation board, for example; see section 5.2.3), or if you have documented the circumstances well in your statutory demand by including payslips, your contract and account statements, for example. Your claim is *overdue* when your wages are not been paid by the agreed time. Here, for example, you can refer to your contract if this specifies what your agreed payday is. See section 2.4 for information on when claims for wages and holiday pay fall due.

In your notification of bankruptcy, you *must* give your employer a new *payment deadline of two weeks*. In your notification, you must also inform your employer that if the funds are not paid before the deadline, you will send a petition for bankruptcy. You must also inform him that failure to pay will be regarded as a presumption of insolvency.

**Two copies sent**  
Courts of Justice Act,  
Sections 160 and 177

**The notification of bankruptcy is not to be sent to your employer, but two copies must be sent to your employer's local chief bailiff.** The chief bailiff is the enforcement officer or bailiff in the municipality if there is no enforcement officer.

The chief bailiff will ensure that your employer is served with the notification of bankruptcy. This means that your employer will be informed of the notification of bankruptcy and receive a copy of the notification of bankruptcy. You will receive a confirmation from the chief bailiff when the notification of bankruptcy has been served.

## Fees

The chief bailiff will demand a fee for informing your employer of the notification of bankruptcy. As of 1 January 2016, this fee will be NOK 512. You have to pay this fee. You can add the fee to your claim against your employer.

An example of a notification of bankruptcy is shown below and on the next page. You can also find a notification of bankruptcy template on the Norwegian Advisory Council on Bankruptcy website at [www.konkursradet.no](http://www.konkursradet.no).

[Enforcement officer/Bailiff]

[Enforcement officer's/Bailiff's address]

[Your name]

[Your address]

[Company name, see section 5.5]

[Location, today's date]

[Company address, see section 5.5]

### Notification of bankruptcy

With reference to my letter concerning entitlement to wages, which was sent on [date]; see the enclosed copy of the statutory demand (Appendix 1) [see section 5.2.2]. The claim has not been paid before the payment deadline.

*As at [today's date], this claim totals:*

Wages claimed for [number of] working hours	NOK	10,000
Late payment interest on wages, from [due date] to [today's date]	NOK	400
Overtime payment of 40% for [number of] hours of overtime, see section 2.2	NOK	1,000
Late payment interest on overtime, from [due date] to [today's date]	NOK	100
Holiday pay	NOK	1,000
Late payment interest on holiday pay, from [due date] to [today's date]	NOK	100
+ Service fee	NOK	512
<hr/>		
<b>= Claim as at [date]</b>	<b>NOK</b>	<b>13,112</b>

Interest on late payment will also be claimed from [today's date] until payment takes place (see section 2.4).

[Employer's name] is urged to pay within 14 days of service of this notification.

If no payment is made before the deadline, a petition for bankruptcy against [employer's name] will be issued. You are informed that there is will be a presumption of insolvency pursuant to the Bankruptcy Act, Section 63 if the claim is not paid for the deadline for the notification of bankruptcy.

\_\_\_\_\_  
[Your name]

Enclosures: 1) Copy of statutory demand with enclosures

Two copies of the notification of bankruptcy are sent, with enclosures.

### 5.3.2.3 Third step: Petition for bankruptcy

Bankruptcy Act  
Section 64

If your employer has not paid before the deadline specified in the notification of bankruptcy and you still reckon that your employer is insolvent, the next step is to send a petition for bankruptcy.

Civil Procedure Act  
Section 12-3

Five copies of the petition for bankruptcy and all enclosures are sent to the district court where your employer has his principal place of business. You can find out what your employer's principal place of business is by searching on [www.brreg.no](http://www.brreg.no). You can then search for the correct court at [www.domstol.no](http://www.domstol.no). **You must send the petition for bankruptcy to the district court, not your employer. If your employer is based in Oslo, you must send the petition for bankruptcy to the Court of Enforcement and Notary Public in Oslo**

Bankruptcy Act,  
Section 63

**For the notification of insolvency that you sent previously to be applicable as a presumption of insolvency, the district court must receive the petition for bankruptcy within two weeks of the expiry of the deadline for payment in the notification of bankruptcy.** This means that if the deadline for payment in the notification of bankruptcy was 1 February, the district court must have *received* the petition for bankruptcy by 14 February. It is not enough for the petition for bankruptcy to be posted on 14 February, it must have *arrived* at the district court by then. You can turn up in person at the district court and submit your petition for bankruptcy. If you do this, make sure you turn up in plenty of time before the court closes. You can get in touch with the district court for information on opening hours.

Bankruptcy Act  
Section 66

In your petition for bankruptcy, you must explain as much as is necessary to allow the district court to be able to assess whether you have a claim. This is because the district court can only petition for the bankruptcy of your employer if you can prove that you do actually have a claim against him. If you cannot document the claim itself by means of timesheets or bank account statements, for example, you can still petition for the bankruptcy of your employer. The disadvantage here is that it will be more difficult for you to prove that you do actually have a claim, so there is a greater risk of losses and possibly a liability to pay compensation.

**Documentation**

**Company  
Registration  
Certificate**

The petition for bankruptcy must include documentation of the company's registration number and who the chairman is. This can be done by ordering a Company Registration Certificate from the Brønnøysund Register Centre. Some district courts also permit printing of the company's "key information from the Central Coordinating Register for Legal Entities" at [www.brreg.no](http://www.brreg.no). Get in touch with the district court for information on whether a printout of the key information will suffice, or whether you also have to order a Company Registration Certificate.

Disputes Act  
Section 20-2

Before sending a petition for bankruptcy, you must consider the fact that your employer may appeal district court's decision. In this instance, the case will be heard by the court of appeal. If the Court of Appeal decides that bankruptcy proceedings are not to be opened, you may risk having to pay your employer's legal fees. The longer the case continues, the higher the legal fees will be. You must make a decision on this risk before deciding to file a petition for bankruptcy.

Bankruptcy Act  
Section 67

Disputes Act  
Section 20-2

Bankruptcy Act  
Section 76

If you wish to petition for the bankruptcy of your employer in your capacity as an employee, you will not have to pay anything for the bankruptcy proceedings themselves. As stated, there is a potential risk of you having to pay your employer's legal expenses if no bankruptcy proceedings are opened. The chances of you being ordered to pay compensation beyond this are small if you have submitted a correct notification of bankruptcy beforehand.

You can see an example of a petition for bankruptcy on the next two pages. A petition for bankruptcy template can also be found on the Norwegian Advisory Council on Bankruptcy website at [www.konkursradet.no](http://www.konkursradet.no).

[Tingrettens navn, for Oslo: Oslo Byfogdembete (Oslo Tingrett)]

[Tingrettens adresse]

[Dagens dato]

## KONKURSBEGJÆRING

Saksøker: [Ditt navn]  
[Din adresse]

Saksøkt: [Selskapets navn, se punkt 5.5]  
[Selskapets adresse, se punkt 5.5]  
[Arbeidsgivers fødselsnummer eller organisasjonsnummer, se punkt 5.5]  
[Bransje]  
[Styreleder (navn, adresse)]  
[Telefon]

### Grunnlaget for konkursbegjæringen:

Saksøker arbeidet hos saksøkte fra [dato], se vedlagt kopi av arbeidsavtale (vedlegg 1). Saksøker ble oppsagt den [dato], se vedlagt kopi av oppsigelse (vedlegg 2).

Saksøker arbeidet i [tidsrom] [antall] arbeidstimer, se vedlagt kopi av timeliste (vedlegg 3). Saksøker har ikke mottatt lønn, overtidsgodtgjørelse og feriepenger for deler av arbeidsforholdet, se vedlagt utregning av krav (vedlegg 4).

Saksøkte er krevd for gjelden ved påkrav sendt rekommandert, se vedlagt kopi av påkrav (vedlegg 5) [se punkt 5.2.3] og vedlagt kopi av kvittering på rekommandert sending (vedlegg 6). Konkursvarsel er videre forkynt for saksøkte, se vedlagt kopi av konkursvarsel med Hovedstevnevitnets påtegning (vedlegg 7) [se punkt 5.3.2.2]. Konkursbegjæringen er kommet inn til tingretten innen to uker etter utløpet av konkursvarselets betalingsfrist. Det foreligger derfor presumsjon for insolvens etter konkursloven § 63.\*

Vedlagt følger firmaattest for saksøkte (vedlegg 8) [se punkt 5.3.2.3].

### Kravet utgjør per [dagens dato]:

Lønnskrav for [antall] arbeidstimer	kr. 10 000,00
Forsinkelsesrenter av lønn fra [forfallsdato] til [dagens dato]	kr. 400,00
Overtidsgodtgjørelse på 40 % utover alminnelig arbeidstid	kr. 1 000,00
Forsinkelsesrenter av overtidsgodtgjørelse fra [forfallsdato] til [dagens dato]	kr. 100,00
Feriepenger	kr. 1 000,00
Forsinkelsesrenter av feriepenger fra [forfallsdato] til [dagens dato]	kr. 100,00
Forkynningsgebyr av konkursvarsel	kr. 512,00
Utgifter til anskaffelse av firmaattest	kr. xxx,xx

---

**= Krav per [dato] kr. 13 112,00**

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Det kreves i tillegg forsinkelsesrenter fra [dagens dato] til betaling skjer (se punkt 2.4).

Som arbeidstaker er saksøker fritatt for sikkerhetsstillelse etter konkursloven § 67 fjerde ledd.

*Påstand*

Saksøktes bo tas under tingrettens behandling som konkursbo.

Saksøker:

---

[Ditt navn]

Vedlegg: 1) Arbeidsavtale, 2) Oppsigelse, 3) Timeliste, 4) Utrekning av krav, 5) Påkrav, 6) Kvittering på rekommandert sending 7) Konkursvarsel, 8) Firmaattest

Konkursbegjæringen, samt vedleggende, sendes i fem likelydende eksemplarer.

\*Hvis du har en annen presumsjon for insolvens enn konkursvarsel skriver du isteden inn hvilken annen presumsjon du har, for eksempel en utleggsbegjæring med intet til utlegg, se punkt 5.2.5. Dokumentasjon på presumsjonen må legges ved konkursbegjæringen.

**Compulsory  
attendance of the  
hearing**

Bankruptcy Act,  
Section 149, cf.  
Disputes Act Sections  
23-1, 13-2, 3-3

#### 5.3.2.4 *Fourth step: The hearing*

When you are called to attend a hearing, you will receive information on whether you must turn up in person or whether being represented by a lawyer or other approved counsel will suffice. “Approved counsel” is an adult approved by the court to represent you, such as a legal services provider. The case will generally be rejected if you fail to meet your obligation to attend the hearing. This means that the court will not assess whether your employer should be made bankrupt.

When you attend the hearing, you will start off by explaining why your employer owes you money and what you have done to persuade your employer to pay. If you are being represented by a lawyer or legal services provider, this person will present the case on your behalf. Your employer will then be given the opportunity to respond to what you have said. The judge may ask questions of you both if anything is unclear. You are also allowed to ask the judge questions as you go along if you are not sure of what something means, for example.

The hearing may end with bankruptcy proceedings being opened, the hearing being postponed or no bankruptcy proceedings being opened. You will generally find out the results at the end of the hearing.

If the hearing is *postponed*, your employer will have the opportunity to pay until the postponed hearing is held. If the hearing is postponed, you can ask the judge to declare your employer bankrupt independently if your employer has not submitted documentation to the judge stating that the claim has been paid before the time of the next hearing. If the judge agrees, you will not have to attend another hearing and there will be extra pressure on your employer to pay. If your employer does not pay before the deadline, the judge will declare him bankrupt without another hearing being held. If the judge does not agree to declare your employer bankrupt independently, you will be ordered to attend another hearing. You will then be obliged

to turn up. If you have any questions about this, you can get in touch with the court in question.

If *no* bankruptcy proceedings are opened, your employer probably has funds or assets that can be sold. If you disagree with the assessment of the court, you can generally appeal against the decision within one month. If you do not wish to appeal against the decision, you can continue the process by providing notification of a writ of execution; see section 5.2.4.

Get in touch with the district court or one of the student-run legal aid initiatives if you have any further questions. See the back of this brochure for contact details.

#### *5.3.2.5 Fifth step: Bankruptcy proceedings are opened*

If the court decides that bankruptcy proceedings are to be opened, a trustee in bankruptcy will be appointed. The job of the trustee in bankruptcy is to gain an overview of what your employer owes, and to whom. The trustee in bankruptcy will pay the claims in a specific sequence until there is no more money left.

You can get in touch with the trustee in bankruptcy if you have any questions in connection with the bankruptcy proceedings. The trustee in bankruptcy is obliged to provide advice.

When bankruptcy proceedings are opened, you must register your claim to the bankruptcy estate before a specific deadline. This is applicable even if you were the one who submitted the petition for bankruptcy leading to the bankruptcy proceedings being opened. If bankruptcy proceedings are opened, this is announced or published on the Brønnøysund Register Centre website, [www.brreg.no](http://www.brreg.no), and in a newspaper read by the local public (such as the local newspaper for the municipality). This announcement will specify the deadline for registering claims. The name of the trustee in bankruptcy and contact details for this person will also be given.

**Appeal**  
Bankruptcy Act,  
Section 153

**Trustee in  
bankruptcy's duty  
to provide advice**  
Bankruptcy Act,  
Section 84

**Note:  
Deadline for claim  
submission**  
Bankruptcy Act,  
Section 109  
Bankruptcy Act,  
Section 78

You register your claim by writing a letter to the trustee in bankruptcy indicating how much your employer owes you. This letter is known as a notification of claim. You will find a template for this on the Norwegian Advisory Council on Bankruptcy website at [www.konkursradet.no](http://www.konkursradet.no).

### *5.3.3 Are all or parts of your claim covered by the NAV Wage Guarantee Scheme?*

State  
Wage Guarantee  
Wage Guarantee Act

The Wage Guarantee Scheme is a state fund that covers employees' claims for wages, holiday pay and necessary charges in connection with the recovery process, for example. This may also include legal assistance.

Wage Guarantee Act  
Section 1, second and  
sixth paragraph

The Wage Guarantee Scheme covers a maximum of twice the National Insurance Act's base amount. As at 1 May 2015, the base amount is NOK 90,068. Hence maximum cover as at 1 May 2015 is NOK 180,136. The base amount changes from 1 May every year. Get in touch with NAV to find out what the base amount is.

Wage Guarantee Act  
Section 1, third  
paragraph no. 1

If your employer is declared bankrupt, he will generally have not much money and few assets. If your claim is not covered by the Wage Guarantee Scheme, there is not much chance of your claim being met. Therefore, it is a good idea to assess whether your claim will be covered by the NAV Wage Guarantee Scheme before deciding to attempt to petition for the bankruptcy of your employer.

If your claim would not be covered by the Wage Guarantee Scheme, there is still a chance of your claim being covered according to the standard rules in Chapter 9 of the Creditors Security Act. The rules in the Creditors Security Act are complex. Therefore, we recommend that you get in touch with one of the student-run legal aid initiatives if you have any questions on these provisions.

#### *The Wage Guarantee Scheme may cover:*

Wage Guarantee Act  
Section 1

- Wages and other remuneration for work for up to 6 months, calculated from the deadline date

**Deadline date**

The date on which the petition for bankruptcy leading to bankruptcy was received by the district court

- Holiday pay earned in the same year as the deadline date and the previous year.
- Pension benefits for a maximum of 6 months, calculated from the deadline date
- Compensation for lost remuneration for work for a maximum of 6 months, calculated from the deadline date This is relevant if you have been unfairly dismissed and have a judgement on this. However, NAV will assess this even if you have not received a judgement on the case.
- Interest up to the deadline date for claims paid late.
- Recovery costs, including costs for a statutory demand and notification of bankruptcy, for example. These costs will be covered as long as the total claim, including the recovery costs, does not exceed twice the base amount.
- Reasonable expenses for advancing the petition for bankruptcy. These are charges linked with the petition for bankruptcy itself and the processing of it. These charges will be covered in addition to the maximum amount of twice the base amount.

Below is a slightly more detailed explanation of the conditions for a standard wage claim and holiday pay claim to be covered by the Wage Guarantee Scheme. Get in touch with NAV for more information on which claims can be covered.

Wage Guarantee Act  
Section 1 fourth  
paragraph no. 2

**Deadline date**

The date on which the petition for bankruptcy leading to bankruptcy was received by the district court

For a standard wage claim – i.e. not holiday pay – to be covered by the NAV Wage Guarantee Scheme, the amount must not be overdue by more than the last 12 months before the deadline date. The due date is the date on which the wages ought to have been paid. The deadline date is the date on which the petition for bankruptcy leading to bankruptcy proceedings being opened was submitted to the district court. This means that if the petition for bankruptcy was submitted to the district court on 31 May 2016, the

Wage Guarantee Act  
Section 1 fourth  
paragraph no.2  
cf. Creditors Security  
Act  
Section 9-3 , first  
paragraph no. 1

Wage Guarantee Scheme will cover unpaid wages up to and including 31 May 2015. If you have an unpaid wage claim dating back to April 2015, this claim will not be covered by the Wage Guarantee Scheme. The Wage Guarantee Scheme covers maximum pay for up to 6 months. These six months do not have to be consecutive as long as the claim fell due for payment over the course of the last 12 months.

Wage Guarantee Act  
Section 1, third  
paragraph no. 3

For a *holiday pay claim* to be covered by the Wage Guarantee Scheme, this holiday has to have been earned in the same year as the deadline date or the year before. This means that if the petition for bankruptcy was submitted in December 2015, the Wage Guarantee Scheme will cover the holiday pay earned throughout 2015 and 2014. If the petition for bankruptcy was submitted in January 2016, the Wage Guarantee Scheme will only cover the holiday pay earned in January 2016 and throughout 2015. See section 2.3 for information on what claims you are entitled to with regard to holiday pay.

#### ***5.4 If your claim is well documented and your employer agrees with the claim***

Enforcement of  
Claims  
Act, Section 7-2 (f)

If your claim is well documented and your employer agrees that he owes you money but still refuses to pay your wages, you can go directly to the enforcement officer and request taking control of goods proceedings. You do not then need to start a bankruptcy process.

The advantage of a procedure of this kind is that your wage claim can be secured quickly by means of seizure of goods or deduction of wages/social security benefits. The disadvantage is that throughout the entire process, your employer can put forward objections or deny that the claim exists. The case may then end up being heard by the conciliation board. Therefore, this procedure may be slightly uncertain.

If you choose to go directly to the enforcement officer, you must be aware that rules for the proceedings apply which

are not the same as the ones presented previously in this brochure. There are several things you should assess before choosing this procedure. If you are wondering whether you should go straight to seizure of goods without having the case heard by the conciliation board first, you should get in touch with the enforcement officer for your district. You can also get in touch with one of the student-run legal aid initiatives.

### ***5.5 To whom should the claim be addressed, and where?***

There are several different corporate structures in Norway. To whom a wage claim should be addressed, and to which address, is dependent on which corporate structure and the stage you are at the process of recovering the wages owing to you. It is important for your claim to be sent to the right address.

The corporate structure used by your employer may be stated in your contract. You can also find information about this on the Brønnøysund Register Centre website, [www.brreg.no](http://www.brreg.no). Such corporate structures may include limited company (AS), public limited company (ASA), sole proprietorship, general partnership with shared responsibility (DA), general partnership without shared responsibility (ANS), Norwegian registered foreign enterprise (NUF), limited partnership, etc.

We have provided below information on where your claim should be addressed if your employer is a limited company, a public limited company or a sole proprietorship.

#### ***Limited company (AS) and public limited company (ASA):***

Claims directed at a limited company or public limited company must be addressed to the company's place of business. You can use the Brønnøysund Register Centre website at [www.brreg.no](http://www.brreg.no) to find out where the company's place of business is.

*Sole proprietorship:*

If your employer runs a sole proprietorship, your claim must be addressed to your employer's private address, in your employer's own name. In other words, you must not address the claim to the company name or company address. The National Register can provide you with information about your employer's home address if you submit a written application.

It is recommended that you get in touch with one of the student-run legal aid initiatives if your employer has a corporate structure other than sole proprietorship, limited company or public limited company.



## ***6 IS YOUR EMPLOYER ENTITLED TO CLAIM BACK ANY OVERPAYMENT?***

If your employer has mistakenly paid you too much (either wages or holiday pay), this raises the question of whether your employer can claim back the overpaid amount paid in error. Only when the incorrect payment is due to a strike or lockout is this regulated in the legislation. In other instances the solution is dependent on a specific assessment of what would be reasonable in the case in question.

Whether your employer is entitled to a refund of any overpaid wages is difficult to assess. Get in touch with one of the student-run legal aid initiatives – see section 8 – or a lawyer if you require assistance with the assessment.

If your employer can claim back over paid wages, he will generally not be able to recover this amount by making deductions from your wages; see section 3.

## 7 GLOSSARY

Appeal	Bringing a judgement/verdict/decision before a complaints authority or higher court. The higher authority can overrule the decision of the lower authority in the event of an appeal.
Remuneration for work	Money you are entitled to for the work you do, e.g. wages and overtime payments.
Debtor	Somebody who owes something.
Due date	The date by which an amount must be paid.
Deadline date	The date on which the petition for bankruptcy leading to bankruptcy is received by the district court
Fee	A sum of money that must be paid for a service to be carried out.
Insolvency	When the value of the debtor's capital and assets is not enough to cover the debt and the debtor is unable to pay his debts when they fall due.
Bankruptcy	The debtor's capital and assets are collected together in a "pot" which is distributed among the debtor's creditors.
Creditor	Someone who has a claim to something.
Claim	Something to which you are entitled or think you are entitled.
Overvalued	When the rights registered for something have a value which is higher than the value for which the item can be sold.
Lien entitlement	If you have lien entitlement, you have security in a specific item. If the debtor fails to pay, you can request enforced payment of the item so that you can get the funds to which you are entitled.
Presumption	An assumption that a specific alternative is the most likely when no evidence to the contrary is submitted.
Hearing	A meeting held by a court (e.g. a district court) or conciliation board for negotiation between the parties.
Debtor	Somebody who owes something.
Seizure of goods	One of the results of taking control of goods proceedings, which means receiving security for your claim in the form of an object or deduction of wages/social security benefits.
Taking control of goods proceedings	When the enforcement officer processes a writ of execution; the enforcement officer examines what the debtor owns and seizes any goods.
Goods for seizure	The item that is to be seized. Sale of the item may be enforced if the debtor fails to pay so that the claim of the person with an interest in the item can be met.
Deduction of wages/ social security benefits	Wages/social security benefits may be deducted from your employer so that your claim is still met.

## **8 USEFUL LINKS**

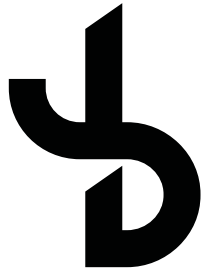
### **8.1 Student-run legal aid initiatives**

Jussbuss	<a href="http://www.jussbuss.no">www.jussbuss.no</a> Tel.: 22 84 29 00
Juridisk Rådgivning for Kvinner (Legal Advice for Women)	<a href="http://www.jurk.no">www.jurk.no</a> Tel. 22 84 29 50
Jussformidlingen i Bergen	<a href="http://www.jussformidlingen.no">www.jussformidlingen.no</a> Tel. 55 58 96 00
Jushjelpe i Midt-Norge (Legal Aid in Central Norway)	<a href="http://www.jushjelpe.no">www.jushjelpe.no</a> Tel. 73 51 52 50
Jushjelpe i Nord-Norge (Legal Aid in Northern Norway)	<a href="http://www.jushjelpe.no">www.jushjelpe.no</a> Tel. 77 64 45 59

### **8.2 Other bodies**

Norwegian Advisory Council on Bankruptcy:	<a href="http://www.konkursradet.no">www.konkursradet.no</a> Tel.: 22 99 13 05/25
Norwegian Labour Inspection Authority:	<a href="http://www.arbeidstilsynet.no">www.arbeidstilsynet.no</a> Tel.: 73 19 97 00
Conciliation board:	<a href="http://www.forliksraadet.no">www.forliksraadet.no</a>
Enforcement Officer:	<a href="http://www.politi.no/tjenester/tvangsfullbyrdelse">www.politi.no/tjenester/tvangsfullbyrdelse</a>
The courts:	<a href="http://www.domstol.no">www.domstol.no</a>
Brønnøysund Register Centre:	<a href="http://www.brreg.no">www.brreg.no</a>

Lovdata: [www.lovdata.no](http://www.lovdata.no)  
Norwegian Mediation Service: [www.konfliktraadet.no](http://www.konfliktraadet.no)  
NAV and the NAV Wage  
Guarantee Scheme: [www.nav.no](http://www.nav.no)  
Advokatvaktten: [www.advokatforeningen.no](http://www.advokatforeningen.no)



## **Jussbuss**

Skippergata 23, 0154 Oslo, Norway

### **Case reception:**

You can get in touch with us over the phone or turn up at our premises within our case reception hours:

17.00-20.00 on Mondays and 10.00-15.00 on Tuesdays.

You can register a new case with us electronically at any time at [www.jussbuss.no](http://www.jussbuss.no). Please note, however, that a case officer will only see your case at the time of the next case reception session.

Telephone: 22 84 29 00      Fax 22 84 29 01

[www.jussbuss.no](http://www.jussbuss.no)