# **Pay Agreements**

Federal and state laws leave it largely up to employers and employees to work out what the pay or compensation agreement will be. Employers must take care to stick to what the employees have been promised in the way of pay methods and pay rates. A wage agreement can be established by both verbal and written evidence, so all oral and written communications to employees regarding pay should be carefully expressed. Since state payday laws are enforced according to the terms of the wage agreement, employers need to ensure that they say what they mean and mean what they say. Wage agreements that are ambiguous, i.e., can be understood in two or more different ways by reasonable people, will usually be resolved against the employer, since the employer was presumably in charge of how the agreement was reached and is responsible for expressing its intent clearly.

Do not worry about a written wage agreement interfering with an [at-will employment relationship](https://www.twc.texas.gov/news/efte/pay_and_policies_general.html). Courts seem to be unanimous that unless an agreement shows a clear intent to create a definite term or duration of employment, the presumption will remain that the employment is intended to be of indefinite duration, i.e., terminable at will by either party. For added security, though, it is a good idea to include a standard employment at will disclaimer in a compensation agreement (note: this is only an example. You should consult your own employment law attorney about this type of disclaimer before implementing it in any form of agreement):

Employment at Will Disclaimer

I understand that this agreement concerning my compensation and benefits does not modify the at will employment relationship between myself and Body Smirks LLC; does not constitute a commitment by Body Smirks LLC to employ me for any particular length of time; does not commit me to remain with Body Smirks LLC for any particular length of time; and does not restrict either Body Smirks LLC or myself from ending the employment relationship at any time for any reason, with or without notice.

Under the general common law, an employer must pay an employee according to the wage agreement that was in effect when the work was performed. This general rule finds expression to one degree or another in the Fair Labor Standards Act and in almost every state wage payment statute. If there is no written agreement, agencies and courts will use some variation of the "best evidence" rule to determine what the employer and employee "agreed" to when the employment relationship was formed. Whoever has the best evidence of the rate of pay and the method of pay will usually prevail on those points. In Texas, the common-law rule is known as *quantum meruit*. If a worker performs services for an individual or company, but there is no clear agreement on the rate of pay, method of pay, and so on, the law presumes that the employer agreed to pay a reasonable rate of pay for the type of work performed, and "reasonable" would be up to a judge or jury to decide (see the Texas Supreme Court's decision in *Colbert v. Dallas Joint Stock Land Bank*, 136 Tex. 268, 150 S.W.2d 771, 773 (Tex. 1941)).

Reductions in the pay rate are legal, but should never be retroactive (see below). Remember that [pay cuts of 20% or more](https://www.twc.texas.gov/news/efte/ui_law_the_claim_and_appeal_process.html" \l "ui-20percentrule) may give an employee good cause connected with the work to quit and qualify for unemployment benefits. Notice of any changes in the pay rate should always be in writing, for the company's own protection, in order to minimize disputes over the rate of pay.

Some companies have employees sign policies providing for a complete forfeiture of pay for the [final pay period](https://www.twc.texas.gov/news/efte/final_pay.html) if the employee violates an employment agreement or a particular policy. That would not be legal - an employee is not allowed to waive his or her right to minimum wage or overtime pay. It is generally permissible to have the employee agree that in the event of a violation of an agreement or policy, his or her pay rate for the final pay period will be a lower rate (it can be no lower than minimum wage). However, agreements like this are largely untested before the agency and in the courts. While the author has not seen an employer lose with a suitably-worded agreement, some attorneys at TWC have commented that such agreements are suspect from the standpoint that an employee does not know when such a provision might affect his pay because he does not know when to expect a discharge. However, an employer can take a lot of the ambiguity out of such an agreement by making the lower pay rate apply only to work occurring after the violation by the employee. That way, the company can argue that the employee knows when to expect lower pay because the timing of the violation was arguably within his power to control. For suggestions on wage agreement language to address specific problems, see the topics ["Frequency of Pay"](https://www.twc.texas.gov/news/efte/frequency_of_pay.html) and ["Final Pay"](https://www.twc.texas.gov/news/efte/final_pay.html) in this book.

Company signatures on pay agreements are not absolutely required, but are generally a good idea. Such agreements are valid without signatures by a company representative, but without the signatures, it can be easier for a former employee to disavow their own signature and claim that their signature was forged. Also, courts often indicate that counter-signed documents show that the company intended for the document to be mutually binding, which is something that generally works in favor of enforceability of whatever agreements are at issue. Accordingly, try to have any such agreement counter-signed by a company representative who is likely to be available to serve as a witness in case the authenticity of the employee's signature ever becomes an issue.

Signed:

Applicant’s Signature:

Date: