

# **What you should know about Exercising Your Rights as an Employee**

## **Introduction**

Your rights as an employee are protected by federal, state and local laws. From hiring to firing, these laws provide numerous protections. Your employment rights arise from various sources, including legislation, court decisions, employment agreements, union contracts, company handbooks, and civil service rules.

This pamphlet provides an overview of your rights as an employee. You can consult a lawyer for advice if you think that these rights have been violated. Your lawyer can determine whether you have a claim and, if so, help you obtain compensation or other remedies.

## **ANTIDISCRIMINATION LAWS**

It is unlawful for employers to discriminate against workers because of their gender, race, age, religion, national origin, or physical handicap. Some states and cities prohibit employment discrimination on the basis of sexual orientation. The protection against unlawful discrimination covers hiring and firing decisions, promotions, salaries, work assignments, and other employment decisions.

Recent antidiscrimination laws and court cases have expanded employee rights. For example, the Americans with Disabilities Act of 1990 protects individuals with physical or mental disabilities. Also, recent cases make employers responsible for sexual harassment in the workplace. Such harassment may include unwelcome sexual advances at the workplace, requests for sexual favors as a condition for employment, or a hostile and abusive environment resulting from sexually charged language or materials at the work place.

Several remedies may be available to you in the event of discriminatory actions by your employer. You may be entitled to be rehired, promoted or reassigned to a job that you lost as a result of discrimination. You may also be entitled to compensation for lost pay, emotional distress and legal fees.

Ordinarily, you must file a complaint with a federal or state agency if you believe you have been subject to unlawful discrimination. There are strict deadlines for filing discrimination complaints, sometimes as short as 180 days from the date the discrimination took place. You usually have the right to sue your employer if the federal or state agency does not act on your complaint. It is advisable to consult a lawyer who can press your claim with federal and state agencies and, if necessary, pursue your rights with a lawsuit.

## **HEALTH AND SAFETY LAWS**

Federal, state and local laws require that employers provide a healthy and safe workplace. Employers are required to warn their employees about potential hazards, provide protective equipment, and display posters explaining employee safety rights. If you believe that your workplace has a safety or a health hazard, you should notify your supervisor. If you are not satisfied with your company's response, you can file a complaint with the Occupational Safety and Health Administration (OSHA). OSHA will investigate your complaint and may order your employer to remove any health or safety hazards. Your employer may not fire you or otherwise retaliate against you for filing a valid complaint.

## **MINIMUM WAGE LAWS**

Federal law as well as some state and local laws establish minimum wages. In addition, employers must pay overtime to most employees, excluding certain managers, supervisors or administrators. Time worked, for which you must be compensated, includes all time on

the job and may include travel time, training time, and on-call periods. If you believe you have not been paid the proper minimum wage or overtime pay, contact the Wage and Hour Division of the Department of Labor (DOL.) The DOL will investigate your complaint and take appropriate action including, in certain cases, requiring your employer to pay back wages. The DOL will keep your name confidential. It is illegal for your employer to fire or take other action against you for filing a complaint.

### **PROTECTION AGAINST UNJUST FIRING**

For many years, employees have been protected from firing and other adverse employment decisions in violation of the antidiscrimination laws. A long legal history protects employees' rights to unionize and collectively bargain. Employment protections have recently been expanded to include employees who become pregnant or disabled, "blow the whistle" on their employer's wrongdoings or tell their sexual preferences.

You can ordinarily be fired if your employer has "good cause" - incompetence, excessive absences, or violation of company policies. Employers can also terminate your employment as part of a plant closing or company-wide reduction in force. In many states with "employment at will," employers may terminate employees for any reason or for no reason, as long as they do not violate the law.

Although your firing may be legal, the law does provide you with rights as you leave your employment. For example, most states require that fired employees receive prompt payment of their final paychecks. In some cases, this right goes beyond unpaid wages to include compensation for earned bonuses and commissions, unused vacation and holiday time, and severance pay. Depending upon your company's retirement plan, you may be entitled to collect retirement funds at the time of firing. In many cases you may also be entitled to continue your group health care coverage at your own expense. Employers must provide advance notice of an impending firing in special circumstances, such as the closing of a large plant or office.

In addition, your employer must deal fairly with your need to provide employment history to apply for a new job. You should consult a lawyer if your employment has been, or is expected to be, terminated as a result of discrimination or if you believe you have not been paid what you are owed. Your lawyer can advise you about legal strategies for challenging your termination and obtaining all of the salary, severance, and other benefits to which you are entitled.

### **PRIVACY RIGHTS**

Federal, state, and local laws limit the types of information that employers may discuss about you and the methods they may use to find it out. For example, there are limits on questions unrelated to the job that employers may ask applicants about such issues as age, marital status, illnesses, or disabilities.

Employers may be permitted to require that employees take medical exams or tests for drug and alcohol use. However, in some states they may not require lie detector tests or certain psychological testing. Most states allow employers to give information about a worker to a prospective employer. However, communicating false information could be grounds for a libel or slander lawsuit. You should seek legal advice if you believe that someone is making false comments that are damaging to you or your career.

Most states have adopted laws that allow employees to have access to their personnel file.

This is an important right; a personnel file can provide evidence in a lawsuit for unlawful firing, demotion, transfer, or other personnel action. Employers use personnel files to retain salary data, references from prior employees, evaluations from supervisors, complaints from fellow employees, comments from customers, and records of injuries and illnesses. If your employer or former employer refuses to allow you to see your personnel file, your lawyer can advise you about the procedures that you may follow to enforce your rights.

## **PRIVATE VS. PUBLIC EMPLOYEE RIGHTS**

Generally, business employers have more freedom than government employers when dealing with their employees. If you are employed by a private business, your employer ordinarily has great leeway in making hiring, firing, and promotion decisions, provided the employment rights discussed earlier are not violated. Government employers are more strictly regulated and are prohibited from taking arbitrary or unfair action. A government employee may also be entitled to notice of termination and a hearing. The law also limits the type of information that may be retained in the personnel files of federal employees.

## **CONCLUSION**

The scope of job related protection is very wide, and it continues to expand with new laws and court decisions. The front pages of our newspapers regularly report stories of employment violations ranging from sexual harassment to illegal firings and pension improprieties. You should seek legal advice if you believe that your employee rights have been violated. Your lawyer can determine whether your employer has violated the law and can recommend action to protect your rights. If you have a claim, your lawyer can advise you how to obtain satisfaction by dealing directly with your employer or by going outside the workplace with mediation, arbitration, or a lawsuit.

- Accommodation for disabilities
- Age discrimination
- Antidiscrimination
- Balancing work and family
- Blacklisting
- Conduct codes
- Demotion
- Dental insurance
- Discipline for violations or performance
- Downsizing
- Dress codes
- Drug testing
- Employee handbooks
- Employment contracts
- Equal pay
- Ethical codes
- Family and medical leaves
- Final paycheck
- Fingerprinting
- Firing
- Forced retirement
- Fringe benefits
- Gay and lesbian workers
- Grooming codes
- Hazardous substances
- Hazardous work conditions
- Health and safety
- Health insurance
- Immigrant workers
- Injury and illness
- Leaves of absences
- Letters of recommendation
- Lie detector tests
- Medical care
- Medical records
- Minimum wage
- Noncompetition agreements
- Overtime pay
- Pension and savings plans
- Personnel records
- Plant closings
- Privacy
- Promotions
- Reductions in force
- Searches
- Severance pay
- Sexual harassment
- Smoking
- Social security
- Surveillance
- Testing
- Training
- Tobacco smoke
- Unemployment insurance
- Union membership

- Hostile work environments
- Workers compensation

This pamphlet provides general information. Laws develop over time and differ from state to state. This pamphlet does not provide legal advice about specific legal problems. Let us advise you about your particular situation.

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