

## TERMINATION OF EMPLOYMENT

If you are discharged (fired or laid off) from your job, you need to find out what rights you have and how to enforce them. You need to figure out whether your termination was lawful, whether your employer owes you any continuing obligations (and whether you owe your employer any such obligations), and how to assert your rights. Keep in mind, though, that an attorney is the best source of advice for your specific factual situation.



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### **1) YOUR EMPLOYMENT RELATIONSHIP**

To understand whether your discharge was legal, begin with what kind of employment relationship you and your employer had. Most employees are in *at-will* employment relationships; some employees have express or implied employment agreements; union workers have collective bargaining agreements; and public employees may be protected by state laws, local laws, or regulations. To figure out your employment relationship, you should look at the following materials: (1) any letters that you got inviting you to apply for the job, (2) any letter you received that offered you the job, (3) any new-employee orientation materials or employee handbooks you received, (4) any contracts or agreements you signed, (5) any union contracts or laws and regulations that apply to your employment, and (6) your personnel file, which you can obtain from a human resources (“HR”) representative at your employer. You can ask an HR representative if you have questions about your employment relationship, but remember that your employer’s representative may have interests that conflict with yours, so if you think that you have been unlawfully terminated, you should get advice from an attorney.

#### **a) At-Will Employment**

An employer can terminate any at-will employee at any time, for any reason—including an arbitrary or irrational reason—or for no reason at all. However, an employer cannot terminate an employee for an unlawful reason (see Section 2, below). And statutes create some exceptions for those employed at-will; for instance, plant closings and mass layoffs require advance notice under federal law.

#### **b) Individual Employment Agreement**

If you signed an employment agreement with your employer, that agreement may tell you when and under what circumstances you can be terminated. It may lay out the reasons employees can be terminated, how much the employees notice will get, and whether the employer has to start with other kinds of discipline before she or he can fire you. It may also tell you that there are grievance procedures that you and the employer must follow before and

after termination, and give you certain rights if you are terminated. Read your agreement carefully, and also read any other documents it refers to. If you have questions, talk to your employer's representative or to an attorney.

### **c) *Implied Employment Contract***

Although your employer may claim that you have an at-will relationship, provisions in employee handbooks, supervisor handbooks, orientation materials, policy manuals or actual employment practices may have created an *implied* contract of employment, giving you termination rights not available to at-will employees. For instance, if your employee handbook says "you will be terminated only for good cause," or "you will be terminated only after have you progressed through each step in the discipline process," you may have an implied right to rely on those statements. However, if your handbook states "*generally* the employer will follow the discipline process," or "*generally*, you will be terminated only for good cause," the employer may have reserved its right to be flexible and make employment decisions at its discretion.

Oral commitments may have also created an implied employment contract. For instance, if your supervisor or the HR person who interviewed you told you during your job interview that you would not be terminated without good cause, this might be found to be a contractual term if you can demonstrate that you "reasonably relied" on it when you decided to take the job.

If you do have an implied contract, its exact terms will depend on how the employer has carried out its policies with other employees. "Good cause" or "discipline" can mean different things to different employers.

### **d) *Collective Bargaining Agreement***

If your position was included in a collective bargaining unit, your union contract established the conditions under which you could be terminated. Many union contracts contain a "just cause" provision that permits termination only for a fair and honest cause or reason. Because union contracts differ, you should review your union's particular contract. Most contracts contain a grievance procedure that you and the company must follow if you challenge your employer's decisions. Your union representative is required to help you understand your rights under the collective bargaining agreement and to represent you if you believe the employer violated the agreement. If you have not yet talked with your union representative about being terminated, do so immediately. Your collective bargaining agreement may state that you forfeit your rights unless you properly file a grievance within days of your firing. If you think the union is not representing you properly, talk with a higher-level union representative, or speak to an attorney who is familiar with labor laws.

## **e) Public Sector Employment Laws and Regulations**

If you worked for the federal government or any state or local government, specific statutes, regulations and personnel manuals apply to the legal reasons for your termination, the procedures that your employer must follow in order to fire you, and the procedures you must follow in order to object to your employer's actions. Consult your employer's HR representative or an attorney to find out what those laws and regulations require.

## **2) UNLAWFUL REASONS FOR TERMINATION**

As discussed above, even if you were an at-will employee, your employer generally cannot terminate your employment relationship for an unlawful reason. The following examples are generally considered unlawful reasons for termination:

- refusing to take a polygraph examination (unless you were in certain types of jobs)
- serving on a local, state or federal jury
- failing to pay child support (or your employer is required to deduct child support payments from your wages)
- filing for protection under bankruptcy laws
- making a complaint with your employer or with state or federal authorities about how much you get paid
- trying to organize a labor union or otherwise “engaging in concerted activity” on behalf of yourself and other employees
- age, gender, race, color, religion, national origin, marital status, sexual orientation, pregnancy; stereotypes based on assumptions about those classes; or association with a member of any of those classes
- attempting, in good faith, to oppose, report or participate in the investigation of unlawful harassment or discrimination
- past or present membership in the uniformed service, applying for membership in the uniformed service, or volunteering for or being obligated to serve in the uniformed service
- disability, so long as you are able to perform the essential functions of your job with or without reasonable accommodation. “Disabled” includes temporary or permanent impairments that are medically diagnosable, exist as a record or history, or are perceived to exist whether or not they actually exist.
- reporting safety violations or otherwise acting in good faith to protect the safety of yourself or others in the course of your employment
- refusing to commit an illegal act on behalf of the employer
- reporting, in good faith, unlawful activity by the employer
- exercising a legal right (such as filing a Worker's Compensation Claim)
- performing a public duty (such as saving a human life)
- taking Family and Medical Leave (if your employer is covered by, and you are eligible for leave under the FMLA)

In addition, if you quit your job because your employer deliberately made your working conditions so bad that a reasonable person would have felt they had to quit, you may have been

wrongfully (illegally) terminated. An example of this would be severe or frequent sexual harassment.

This is not a complete list. If you think your employer terminated you for an unlawful, discriminatory reason, you should read Legal Voice's *Employment Discrimination* memorandum for more information and consider seeking the advice of an attorney.

### 3) **YOUR EMPLOYER'S CONTINUING OBLIGATIONS TO YOU**

Your employer may have continuing obligations to you after you have been terminated, such as:

- **Final Paycheck**: Your employer must promptly provide you with payment of all money that it owes you – all wages or salary, including overtime. Depending on your employer's policies, you may also be entitled to payment for accrued vacation and sick leave. It may also be unlawful for your employer to withhold money from your final paycheck for amounts it claims that you owe it.
- **COBRA**: If you participated in your employer's medical plan, you generally are entitled to continued coverage under that plan for 18 months or more, as required by the federal COBRA act (unless your employer has few employees). Your employer must provide you with timely notice and the opportunity to elect this coverage, **although it can charge you the full cost of that coverage plus 2%**. COBRA requirements are complicated, and you may lose your rights if you do not promptly meet those requirements and the requirements of your employer's medical plan. Read your summary medical plan description and contact your former employer as soon as possible if you have not received a COBRA notice and the materials that you use to sign up for the medical coverage for you and your family.
- **HIPAA**: If you participated in your employer's medical plan, the plan usually must give you a certificate of health coverage after your employment ends. You may need this certificate when you start your new job, in order to avoid health benefit restrictions at your new employer. So be sure to ask for this certificate as soon as possible, when you lose coverage under the old plan or your COBRA continuation coverage ends, or when you start your new job.
- **Benefit Payments**: If your employer's medical plan has not yet reimbursed you for medical care you received while you were still employed, the plan must pay you even though your employment has ended. To avoid waiving your rights under the plan, follow the plan's procedures carefully and file a timely appeal for any failure to pay benefits. Your plan's summary plan description provides you with the information you need in order to understand your rights under the benefit plan. If you do not have a copy of the summary plan description, contact the employer's HR department and request a copy as soon as possible.

- Severance Pay: If your employer had a severance pay program, you may be entitled to severance pay under that plan. Check your employment agreement, employee handbook or employer policy materials for details.
- Retirement Benefits: If you participated in your employer's 401(k) or other retirement plans, you generally will continue to retain certain rights under those plans after your employment ends. Check your summary plan description or contact your former employer's human resources department for more details.
- Contractual Obligations: If you were employed under an employment agreement, that agreement may provide you with certain rights after you are terminated. Read that agreement thoroughly and consider talking to an attorney to make sure the employer is giving you everything it is required to under that agreement.
- Defamation/References: Your employer is not permitted to defame you (to say untruthful things about you **that cause you harm**), and generally is not permitted to interfere with your efforts to seek new employment. However, it generally **is** permitted to release truthful information about you in response to requests for employment references.

#### 4) **YOUR CONTINUING OBLIGATIONS TO YOUR FORMER EMPLOYER**

Depending on the terms of your employment agreement or your former employer's company policies, you may have continuing obligations to your former employer after you are terminated, including:

- Confidentiality Obligations: You may be bound by a confidentiality policy that prohibits you from revealing the company's trade secrets, customer lists, marketing plans, and the like. If you fail to comply with these obligations, your employer may be able to sue you and hold you liable for damages that you caused.
- Non-Compete and Non-Solicitation Limitations: Your employment agreement **may say that you cannot** compete with your employer for business or solicit its employees or customers. Non-compete and non-solicitation provisions are lawful in Washington if the limits they establish are reasonable and necessary to protect the employer's legitimate business interests. If you fail to comply with these obligations, your employer may be able to sue you and hold you liable for damages.
- Defamation: Just as your employer is not permitted to defame you, you also are not permitted to defame your employer. If you make defamatory statements (statements that are both harmful and false) about your employer or its products or employees, your employer may be able to sue you and hold you liable for any harm caused by those statements.

Your employer may claim that you are obligated to comply with non-compete, non-solicitation or confidentiality terms, but the employer might be wrong. Non-compete and confidentiality agreements will not be enforced by Washington courts if they unreasonably interfere with your ability to work in your profession or earn a living. To understand your obligations, review your employment agreement, employee handbook or any other policy materials your employer may have given you. If in doubt, contact your former supervisor, the employer's human resources department, or an attorney for advice about your rights and responsibilities.

## 5) **ENFORCING YOUR RIGHTS**

If you believe that your rights have been violated or you were unlawfully discharged, you may need to follow specific legal steps to enforce your rights:

- **Arbitration Requirements:** Your employer's policies or your employment agreement may require you to use the employer's arbitration program rather than going to court. The law regarding whether these arbitration clauses are enforceable is in flux; before you decide whether arbitration is the best solution to your dispute, you may want to consult an attorney.
- **Grievance Requirements:** If a collective bargaining agreement applies, it will contain a grievance procedure that you must follow in order to avoid waiving your rights. Make sure you understand and comply with the grievance procedure, and talk with a union representative immediately if you need assistance.
- **Administrative Requirements:** If you believe your employer was unlawfully discriminating against you when it terminated you, you may be required to contact the U.S. Equal Employment Opportunity Commission ("EEOC") before you are permitted to file a lawsuit. Both federal and state laws set specific time limits to report employment discrimination. If in doubt, talk to an attorney as soon as possible about time limits, procedures, and whether your situation involves discrimination.

If you believe that the termination of your employment was retaliation for taking "concerted action (action by two or more employees together) regarding workplace issues, you may contact the National Labor Relations Board (NLRB). They will investigate to determine whether your employer has violated the National Labor Relations Act. If so, the NLRB attorney will try to reach a settlement, and may pursue the case on your behalf before the Board. In the end, you may be entitled to reinstatement and back pay.

- **Suing Your Employer:** If your employer has violated your rights, this may be the only way to get your job back or recover damages (money) to compensate you for the harm you have suffered. But filing a lawsuit is not a decision to be made lightly. Most lawsuits settle without going to trial, but only after a year or more of effort. Furthermore, winning the lawsuit may be difficult because *it will be your burden to prove that your termination was*

*unlawful*. Many people don't realize that once they file a lawsuit, the company they sue can obtain a great deal of personal information about their finances, medical history, and family relationships. Also, if a court decides that your claim is frivolous, you could be required to pay some or all of your employer's legal fees, although this is uncommon. Before you decide to sue your employer, you should talk to an attorney and give that attorney all of the facts. If you think you may want to sue your employer, talk to an attorney *as soon as possible* so he/she can evaluate your case, develop a litigation plan and file a lawsuit within the time limits.

## 6) WHEN TO CONSULT WITH AN ATTORNEY

To understand your rights, it may be wise to talk to an attorney familiar with employment law matters.

- If you are not getting the answers or information you need from your employer, this may be a sign that you should ask an attorney to help you. Often, having an attorney make the call on your behalf will turn a stonewalling employer into a cooperative employer.
- Employers sometimes pretend they are firing you for one reason but actually are firing you for another. Without the assistance of an attorney, it may be difficult or impossible for you to investigate and obtain the facts necessary to determine whether your employer violated your legal rights when it terminated you.
- Your first consultation with an attorney will almost always be absolutely free. Also, anything you say to an attorney (even if you are just interviewing the attorney to determine whether or not to hire her) will be completely confidential. As a result, you have nothing to lose by talking with one or more attorneys to get opinions as to whether your rights have been violated.
- If you decide to hire an attorney (and the attorney agrees to represent you) in a wrongful termination matter, he or she probably will do so on a *contingency fee* basis. This means that you will not have to pay for any legal services unless the lawyer recovers some amount on your behalf. However, you will probably have to pay for the actual costs of litigation. This will include costs such as court filing fees, document copying costs, court reporter fees, and private investigator fees. The Legal Voice memorandum "Damages and Contingency Fees in Personal Injury and Discrimination Cases" will help you understand how attorneys decide whether or not to accept a case on a contingency fee basis.

If you need help finding an attorney to represent you, Legal Voice (206-621-7691) can refer you to attorneys in most parts of the State. Some local bar associations also provide lawyer referral: see the Legal Voice memo *Working with a Lawyer* for more information.

## 7) UNEMPLOYMENT BENEFITS

You may be entitled to unemployment benefits from the State -- a percentage of the pay you received when you were employed, for a limited time period. Filing an unemployment claim is not difficult, but you must act in a timely manner. For more information, contact the Washington Employment Security Department at <http://www.wa.gov/esd/ui/icapp/start.htm>. And check the resources listed on [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org). You will find memos on subjects such as representing yourself at unemployment compensation benefits hearings and references to still more sources of assistance.

## 8) ACT QUICKLY

The law contains many *statutes of limitation* that require you to act quickly or permanently waive your rights. If you are terminated, several limitations periods may apply, some of which may be only a few months long. An attorney may help you determine what deadlines apply to your situation.

## 9) ADDITIONAL RESOURCES

Here are resources for more information about your rights and about employment law issues:

- U.S. Department of Labor - <http://www.dol.gov/dol/audience/aud-workers.htm>.
- U.S. Department of Labor's Employee Benefits Administration - <http://www.dol.gov/ebsa/>
- U.S. Equal Employment Opportunity Commission - <http://www.eeoc.gov/>.
- Washington Department of Labor and Industries - <http://www.lni.wa.gov/home/rights.htm>.
- Washington Human Rights Commission - <http://www.hum.wa.gov/>
- National Labor Relations Board - <http://www.nlr.gov/nlr/home/default.asp>

Related Legal Voice Memos

*Employment Discrimination*

*Sexual Harassment in the Workplace*

*Damages and Contingency Fees in Personal Injury and Discrimination Cases*

*Working with a Lawyer*