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Have You Been Fired Illegally?

A variety of federal and state statutes restrict an employer's freedom to discharge employees. These form the legal basis for many challenges to firings. The most comprehensive and significant federal legislation is the Equal Opportunity Act, which prohibits employers to fire workers based upon personal characteristics of gender, age, race, religion, national origin, and non-disqualifying physical or mental impairments unrelated to job qualification. If you believe that your termination from your job was due to discrimination, see our guidebook on discrimination for more information about your rights.

This guidebook will focus on the other areas of illegal firing and outline the many exceptions to the employment-at-will doctrine; to help you understand your rights and to help ensure you are protected.

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Employment-at-Will and its Exceptions

Not every firing is illegal. If you are fired in a state that still recognizes the employment-at-will doctrine, you may have little bargaining power in getting your job back. At-will means that an employer can terminate an employee at any time for any reason (except an illegal one) or for no reason without incurring legal liability. Likewise, an employee is free to leave a job at any time for any or no reason with no adverse legal consequences. However, if your state still follows this doctrine, you are still entitled to monies earned and due before the firing, such as commission, profit sharing, and perhaps bonuses. Notwithstanding this law, you may still have a statutory right to fight the discharge. This is because other laws, which operate independently of the employment-at-will principle, protect workers who are fired due to discrimination, whistle blowing, and other acts.

Many courts and legislature have carved out other exceptions to the employment-at-will doctrine based on public policy considerations. For example, workers are protected from discharge who refuse to violate criminal laws by committing perjury on the employer's behalf, participating in illegal schemes, e.g., price-fixing and other antitrust violations, misleading packaged goods, giving false testimony before a legislative committee, altering pollution control reports, or engaging in any practices that violate federal or state laws. Additionally, employees who perform a public obligation or exercise a public duty of any kind, such as jury duty, voting, or supply information to the police, are also protected.

Fired in Breach of Contract Rights

If you are fired in a manner inconsistent with or different from the rights in your written contract or collective bargaining agreement (if you belong to a union), you may have a strong case for illegal firing and may be entitled to damages. The failure to give timely notice as required by a contract, or failure to follow the requirements set forth in a contract, may expose a company to a breach of contract claim; in some instances, it can even cause the agreement to be extended for an additional period. If a contract exists, examine it upon termination and contact an experienced employment attorney to assess your contractual rights and to evaluate if a breach has occurred.

- The following are examples of causes that justify contract terminations:
- Theft or dishonesty
- Falsifying records or information
- Punching another employee's time card
- Insubordination or disrespect of company rules and policies
- Willful refusal to follow the directions of a supervisor (unless doing so would endanger health or safety)
- Assault, unprovoked attack, or threats of bodily harm against others
- Use of drugs or possession of alcoholic beverages on company premises or during company-paid time while from the premises
- Failing to report absences
- Sexually harassing or abusing others

Do You Have an Implied Contract?

One of the newest protections that may restrict an at-will authority of employers to terminate employment without having to state a reason for the termination is the "implied contract." An implied contract consists of the terms created by representations and promises published by the employers in their employee handbook. If your company articulated its firing policies in writing and such statements exist in the work rules, policy manuals, periodic memos, or handbook, you may have a case for illegal firing.

Additionally, the implied contract exception to the employment-at-will doctrine may also extend to oral promises made in the hiring interview. For example, if you are told by the company president at the hiring interview, "Don't worry, we never fire anyone around here except for a good reason," a legitimate case could be made to fight the firing. However, be aware that not all oral promises are enforceable against an employer, particularly when you are promised a "job for life."

Types of promises to look for (Which may give you additional rights during and after firing) include:

- Allowing you to appeal or mediate the decision through an internal nonbinding grievance procedure
- Requiring the employer to give reasonable notice before any firing
- Stating you can be fired for good cause only after internal steps toward rehabilitation have been taken and have failed
- Guaranteeing the right to be presented with specific, factual reasons for the discharge before the firing can be effective

Fired Due to Whistleblowing

Reporting abuses of authority or "whistleblowing" is protected conduct under both federal and state law and another exception to the employment-at-will doctrine. The Sarbanes-Oxley Act (SOX) prohibits publicly traded companies from discharging, demoting, suspending, threatening, harassing, retaliating against, or in any other manner discriminating against their employees for providing information or otherwise assisting in the investigation of conduct that they reasonably believe is a violation against the law or other regulations. Be aware however, that not all conduct is protected. If you believe you were fired as a result of whistleblowing, seek the advice of an experienced employment attorney to evaluate your circumstances.

Fired Due to a Legitimate Illness or Absence

Another exception to the traditional employment-at-will doctrine is legitimate illness or absence. As mentioned earlier, any public duty of any kind, such as jury duty, is not a basis for firing and constitutes grounds for a legal claim against a company. Similarly, you cannot be fired if you were injured on the job and file a workers' compensation claim, or are absent for a medical purpose relating to legitimate reasons such as pregnancy.

Fired as Part of a Large Layoff

If you are part of a massive layoff and not given at least 60 days' notice or 60 days' severance pay, this is a violation under the federal Worker Adjustment and Retraining Notification Act (WARN). This law prohibits employers from ordering a plant closing or massive layoffs until 60 days after the employer has given written notice of this to affected employees or their representatives, the state dislocated-worker unit, and the chief elected official of the unit of local government where the closing of lay off is to occur. If you are fired suddenly and are part of a massive layoff, consult a lawyer immediately to discuss your rights and options under WARN.

General Overview

Instances when firing should become suspect:

- If your company fails to act in a manner specified in its employment applications, promotional literature, policy statements, "welcome aboard" letters, handbooks, manuals, written contracts, correspondence or memos, benefit statements, or disciplinary rules
- If you are fired right after returning from an illness, pregnancy, or jury duty
- If you are fired after complaining about a safety violation or other wrongdoing
- If you are over 40, belong to a minority, are partially disabled, or are a female and believe you were fired primarily because of such personal characteristics (See our guidebook on discrimination)
- If you are a long time worker and believe the firing was unjustified
- If you received a verbal promise of job security or other rights that the company failed to fulfill

The law varies from state to state, and each case warrants attention based upon its particular facts and circumstances. The first step in determining when action should be taken is to know your particular state laws and to consult an experienced employment attorney to safeguard your legal rights.

