

Your Rights as an Employee

This guidebook will introduce you to some of the most common employment law issues that arise. While a small percentage of employment relationships, typically those of management-level employees, are governed by individualized contracts with their employer, most employment relationships are governed by well-known and applied federal laws, which seek to protect workers in employment situations from the most common types of violations of workers' rights, including the right to be free from discrimination, to receive fair compensation, and to be safe from toxic and hazardous working conditions.

As you read this guidebook, please contact us with any questions you may have.



Contact us today for a free consultation.

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This guidebook is for informational purposes. Since individual situations and legal issues vary, it is important to contact an attorney to discuss your specific legal situation.

Employment at Will

New York is an "employment-at-will" state. This means that, absent a written contract to the contrary, an employer may fire you for any nondiscriminatory reason, or for no reason at all, so long as the firing is not a pretext for a discriminatory practice.

As an employee, and even as a potential employee, you have certain rights, such as the right to have any hiring, promotion or termination decisions made for nondiscriminatory reasons. For example, there are questions employers are not permitted to ask in an interview, such as your marital status. They also cannot conduct investigations into your financial condition without your express written permission.



Common Employment Issues

During your employment, your rights differ, depending on whether you are actually considered an "employee" or an "independent contractor." The analysis surrounding that determination centers on how much control you have over the terms of your employment. If you set your own hours and pay rate and are free to choose or refuse work, you are more likely to be considered an independent contractor, and are responsible for your own timekeeping, billing, health insurance, and other benefits commonly associated with being an employee.

Some employees are entitled to overtime pay while others, considered "exempt," are not. Typically, these are the salaried employees, such as management or some upper level of employment. There are occupation-specific laws to protect miners and agricultural workers, for instance. The Family and Medical Leave Act governs time off from work for qualified medical reasons. Certain protections depend on the number of people employed by your company.

Certain rights are provided to employees amidst their termination, but those vary depending on conditions, such as the number of people your company employs. In situations surrounding mass layoffs, your employer is obligated to provide at least sixty (60) days' notice, with few exceptions, that a mass layoff will occur. After you are terminated, depending on your work history, you may be entitled to Unemployment Insurance benefits. You are most likely entitled to continue receiving medical insurance under the COBRA laws, which allow you to maintain your group policy coverage for up to eighteen (18) months following your termination, by paying the full premium plus an administrative fee to your former employer.

If you feel you were fired for reporting a dangerous condition which threatened the safety and welfare of other employees, you are entitled to certain "whistleblower" protections. A lawyer can analyze your circumstances and determine if a valid whistleblower claim can be brought on your behalf.

Because certain employment law issues are litigated under state and federal laws, there are penalties, in addition to any actual damages you may have suffered, such as lost earnings, that you may be entitled to if you win your lawsuit. A lawyer can tell you what you may ask the court to award you, depending on the specific facts and circumstances of your situation.

The Claims Process

Because so many employment-related issues are the subject of federal laws, federal procedures must be followed in bringing a claim and/or a lawsuit where you feel your rights have been violated. When you feel you have a claim against your existing, potential or former employer for committing discrimination against you, your first step is to file a claim with the Equal Employment Opportunity Commission (EEOC). An attorney who specializes in employment discrimination can best prepare your claim, which involves a narrative about your employment situation and the circumstances which led you to believe discrimination has been committed.

The EEOC presents your statement of the situation to the employer against whom you are asserting the claim. The employer has the opportunity to defend itself and write a narrative explanation of the facts and circumstances of the situation from their perspective. The EEOC reads both and determines if you have a valid claim — one that could entitle you to some recovery. If the EEOC decides you have a valid claim, it issues you a Right to Sue letter, which entitles you to file a lawsuit. Without this letter, any employer sued for a discrimination claim can get the lawsuit thrown out of court on the basis that the EEOC did not issue the Right to Sue letter.

Employment law is a varied field, and most attorneys specialize in various aspects or only represent either management or employees. It is important to find an attorney experienced in representing people like yourself in situations like yours. Ask for referrals. Employment issues can be complex and it is best to have counsel advise you about whether, and how best, to pursue a claim and/or lawsuit.

