

# Assault and Battery in the Workplace

## YOUR LEGAL RIGHTS

### 1. What is Assault and Battery?

Assault and battery sometimes happen in the workplace when there are fights between employees and supervisors or between two employees. Assault and battery are two separate claims that employees can bring against their employer.

#### **Assault**

The “legal” definition of assault differs from how the word is normally used in everyday language. According to the legal definition, assault occurs when a person *demonstrates* the intent to hurt you and you believe that you will be hurt, but there is no actual contact or physical injury. For example, an assault occurs if your co-worker raises his/her hand in a forceful manner toward you and you reasonably believe you are about to be hit.

#### **Battery**

Battery, unlike assault, requires the actual use of force. It occurs when a person *intentionally* and harmfully touches you without your consent. A person acts intentionally if their *action* was on purpose, regardless of whether they actually intended to harm you with their action. So, for example, if your manager purposely slaps you, the manager has committed battery even if he or she did not intend to actually injure you.

### 2. Are there any “Defenses” to a Claim of Assault and Battery?

There are a couple of situations where something that would otherwise be assault or battery is excused because of the circumstances.

#### **Self-Defense**

A person may use a reasonable amount of force to protect himself or his property. So, for example, if an employee attacked his supervisor and began hitting the supervisor, the supervisor would be justified in using a reasonable amount of force to fend off the employee. In addition, an employer may use reasonable force to aid a third person (another employee, for example) that is being assaulted or battered.

#### **Consent**

It’s possible that an employee might have “consented” to the assault or battery. For example, your employer could argue that “consent” existed when you and your supervisor are “horsing around” in the workplace, even when you claim the action got out of hand. However, if your supervisor clearly uses

*more* force than you consented to, your employer won't be protected from legal liability just because consent for *some* force was given. So, for instance, if an employee and his/her supervisor are playfully wrestling and the supervisor pulls out a knife and cuts the employee, that would be a workplace battery, even though the employee originally agreed only to wrestle.

### 3. Is Sexual Harassment a Form of Battery?

Sexual harassment that occurs along with actual physical contact is a form of battery. In the workplace this might happen if a supervisor inappropriately touches an employee without the employee's consent. However, keep in mind that an employer can argue that no battery occurs if the employee consented to the physical contact. For instance, an employer might suggest that past sexual relations between the employee and the employer meant that the employee had consented to the action in question.

For more detailed information about sexual harassment, see our Fact Sheet titled “**Sexual Harassment.**”

### 4. How do I file an Assault or Battery Claim?

Assault and battery claims must be filed in court. But remember that even if your situation sounds like an assault or battery described above, it normally makes sense to file a claim only if you have some “damages.” Damages are things like medical bills or the wages you lost from missing work time because of the assault/battery. You might also have damages for emotional distress or psychological treatment you received as a result of the incident.

The amount of “damages” you are owed will usually determine which court you will want to file in. For smaller cases, Small Claims court might be your best bet. In Small Claims court, you do not need to find a lawyer (actually, lawyers aren't even allowed in Small Claims court), but the maximum amount you can recover is \$7,500. If your claim is greater than \$7,500 you should file in Superior Court.

The turnaround on Small Claims court claims is usually faster than Superior Court. The Small Claims court hearing is normally held within 30 to 70 days after the claim is filed. See the California Courts Self-Help Center for more information: <http://www.courtinfo.ca.gov/selfhelp/smallclaims/>. Many counties also have a Small Claims Legal Advisor's Office that can help you with your claim.

For larger cases filed in Superior Court, you will have a much easier time if you hire a lawyer to represent you. Unfortunately, it might be difficult to find a lawyer to represent you unless you have a particularly large case. If you are not sure where to find a lawyer, you should start by contacting your local Bar Association and asking for a referral. Many questions about filing in court can also be answered by the Superior Court Clerk.

## 5. Should I file a Workers' Compensation Claim for Assault or Battery at the Workplace?

Assault and battery claims are not covered by the workers compensation system because they cover conduct that is not considered part of the employer's normal business routine.

**This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights in your situation.**

For further information about your employment rights, please call:

### **The Workers' Rights Clinic**

**415-864-8208** (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.