

WORKPLACE DEFAMATION ("Slander" and "Libel")

YOUR LEGAL RIGHTS

1. What is defamation?

Defamation occurs when one person publishes a false statement that tends to harm the reputation of another person. Written defamation is called *libel*. Spoken defamation is called *slander*.

2. How do I know if I've been defamed?

A person may be defamed by conduct and/or words. The conduct needs only to convey a defamatory message. For example, if a co-worker is removed from work premises by security personnel, this may create a *false* impression that the co-worker committed a crime.

3. What do I need to prove if I want to bring a claim of defamation?

A person must prove all of the following elements: (1) defamatory content; (2) publication; (3) reference to plaintiff; (4) intent; **and** (5) harm or damages.

4. Is an opinion considered defamatory content?

No. A defamatory statement must be an assertion of fact, not an opinion. For example, if your boss says that you are not a very nice person, then that statement is likely to be an opinion. On the other hand, if your boss says you have been stealing from the company, that is a statement of fact, not opinion. The statement must also reasonably be understood as negative by the person who hears, sees or reads it.

5. What does it mean to say that the communication must be published?

Publication simply means that a statement is communicated to any person other than the person who is defamed. For example, publication may occur when a supervisor makes a false statement about an employee to another supervisor.

6. What type of harm must I establish for defamation?

You have to prove that you have been injured because of the communication. Because defamation involves injury to your reputation, you must show actual damage (e.g., that your reputation and esteem in the community has been injured as a result of the communication).

However, there are some statements that so obviously harmful that you do not have to prove actual damages. They are known as libel or slander *per se*. Among the categories of statements that constitute defamation (libel or slander) *per se* that are raised by employees are: statements that a person is unable or lacks integrity to carry out his/her office or employment; **or** statements that hurt the person in connection with his/her trade or profession.

7. Does my employer have any defenses?

Yes. There are four commonly recognized defenses to defamation. These include (1) privilege; (2) consent; (3) truth; and (4) opinion.

1) Privilege

There are two types of privileges an employer may raise as a defense to defamation. An absolute privilege permits your employer to be completely absolved of liability even if the published statement is made with ill will toward you. Statements that are ***absolutely privileged*** include those raised during official proceedings (like a lawsuit), arbitration proceedings, or statements made during a legally required background check of a potential employee, or in any other governmental proceedings. A ***qualified privilege*** only protects your employer if the statement is made without “malice,” or ill will, toward you. Statements that are qualifiedly privileged include: evaluations or appraisals, investigative reports, references, counseling or warnings, grievance adjustment discussions, and discipline or discharge letters.

2) Consent

If the employee gives the employer “consent” to make a statement, then the employer has an absolute privilege to make the statement.

3) Truth

A ***truthful statement*** is a complete defense to defamation.

4) Opinion

As noted above, an ***opinion***, no matter how unfavorable, is not defamation. Courts use a variety of questions to determine whether a statement is an assertion of fact or opinion. Questions include whether the speaker included the words “I felt” or “I think” in his/her statement, to whom the statement was addressed, and the context or purpose of the communication.

8. If I think I have a defamation claim against my employer or a co-worker, what can I do?

First determine whether the employer is making a defamatory statement or expressing an opinion. Then determine whom the statement is made to. If the statement is made to a future potential employer, then it is more likely to constitute defamation.

Sometimes sending a letter to the former employer asking him to stop pursuant to California law is enough to resolve your problem. However, you may also file a complaint with the California Labor Commissioner or go directly to court. Individuals found guilty of defamation may be liable for “triple damages” under a California Labor Code section (1050) that was enacted to prevent employers from “blacklisting” former employees who are looking for new jobs.

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 rights in your particular 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.

