

# Wrongful Termination

## YOUR LEGAL RIGHTS

### 1. Can my employer fire me for any reason whatsoever, even if the reason is false or unfair?

YES, in many situations. The general rule in California is that employees are considered to be employed “at will,” meaning that they may be fired at any time by their employers, for any reason or for no reason at all. However, there are important exceptions to the “at will” rule:

The most common exceptions to the “employment at will” rule are:

- An oral or written contract (such as a collective bargaining agreement between a union and an employer) specifying that an employee cannot be fired without “good cause.”
- An “implied contract” specifying that an employee cannot be fired without “good cause.”
- A termination that violates a particular public policy, such as a “whistleblowing” law or a law against discrimination.
- A termination after a reasonable reliance on the employer's job offer when the employer knows the employee has had to quit another job, leave school, move closer to the job, etc. to take the new job.

### 2. What is “good cause” for being terminated?

“Good cause” exists when the employer has a good faith business reason for discharging the employee, such as a layoff for economic reasons or termination of the employee for poor performance.

### 3. What is an “implied contract” between an employee and an employer?

An implied contract is created when all the circumstances of the employment, including the statements and/or actions of the employer, lead a “reasonable” employee to believe that he or she can no longer be fired “at will” and that the employer must instead have “good cause” to terminate the employee.

### 4. How can I tell if I have an implied contract that I cannot be fired without “good cause”?

There is no specific formula for determining whether you have an implied contract requiring “good cause” for termination. When deciding whether an implied contract exists, a court may consider the following evidence:

- Whether the employee has worked for the employer for many years;
- Good performance evaluations and commendations;
- Promotions, salary increases, and bonuses;
- Statements by the employer assuring the employee that his or her job is secure and will continue;
- Employee handbooks or personnel manuals specifically designating which offenses warrant the discipline or termination of an employee;
- Employee handbooks or personnel manuals describing a system of “progressive discipline” which the employer follows instead of firing workers “at will;”
- Whether it is the practice or policy of the employer to discipline or terminate employees only when there is a good reason.

## 5. What if my employee handbook says my employment is “at will?”

If an “at will” provision is in your personnel manual or handbook, it is strong evidence against the existence of an implied contract. This can be overcome, however, by stronger evidence of an implied contract (see above).

## 6. What if my termination seems to violate the “good cause” provisions of my union contract?

If you are covered by a union contract, you are probably protected from being fired without a good reason. If you are fired, and you believe there is not sufficient cause for your discharge, you should request the union to file a “grievance” on your behalf against the employer. In deciding whether to file your grievance or to take your case to arbitration, your union must represent you fairly.

However, as long as your union takes reasonable steps to investigate your case, it may legally decide not to file your grievance or go to arbitration if it believes that your case does not have enough merit.

If you are covered by a union contract, you cannot take your case to court if it requires only an interpretation of your contract. Cases that can be taken directly to court because they do not involve your contract include most violations of public policy or law, such as discrimination on the basis of race, sex or disability.

## 7. What if I accept a job offer and then am fired before I have a chance to perform the job?

If you have reasonably relied on a job offer to your detriment (e.g. by quitting another job, quitting school, moving to be closer to the job, investing money in equipment or training, or incurring other expenses reasonably related to the job offer), your employer may be liable if it terminates you before a reasonable period of time goes by. In that case, the employer may owe you money to compensate for the amount you reasonably spent, and for the expense of finding a new job. (If the amount owed is less than \$7,500, you may be able to recover the funds in small claims court, without a lawyer.)

## 8. When does a termination violate a law or public policy?

Many state, federal, and even local laws prohibit employers from terminating employees because of certain forms of discrimination or retaliation. If your termination violates one of these laws, you may be able to take legal action.

**A termination might violate law or public policy if it is based on:**

- discrimination based on race, national origin, sex, pregnancy, religion, disability, age, marital status, sexual orientation, or gender identity.
- discrimination or retaliation for seeking a reasonable accommodation for a disability.
- discrimination or retaliation for having complained about discrimination or unlawful harassment, or for having filed a charge of discrimination with a government agency.
- discrimination based on a serious health condition necessitating a leave of absence.
- retaliation for taking a leave of absence for a serious medical condition.
- discrimination or retaliation for having been injured on the job, or for having filed a claim for workers' compensation.
- retaliation for having complained about workplace safety.
- retaliation for having complained about wage violations or for having filed a wage claim.
- discrimination or retaliation for having joined a union or for participating in lawful union activities.
- retaliation for having complained to the employer, or to a government agency, about the unlawful activities of the employer.

## 9. What should I do if I think I have been terminated in violation of a law or public policy?

If you have been fired in a manner that you believe violates law or public policy, you may be able to (depending on a number of factors, such as the size of the employer) file a complaint with the government agency that specializes in the particular law. Listed on the next page are the most common violations of law or public policy, together with the state or federal agency that accepts complaints. Call directory assistance or go to the agency's website to find the office closest to you.

Discrimination or harassment (or retaliation for complaining about discrimination or harassment) on the basis of race, national origin, sex, pregnancy, disability, age, religion, marital status, sexual orientation, or gender identity.	U.S. Equal Employment Opportunity Commission (EEOC) (except claims for sexual orientation and gender identity) or the California Department of Fair Employment and Housing (DFEH).
Discrimination or retaliation for seeking a reasonable accommodation for a disability.	EEOC or the DFEH.
Discrimination on the basis of a serious medical condition necessitating a leave of absence.	EEOC or the DFEH. The U.S. Department of Labor.



Retaliation for taking a medical leave of absence.	
Discrimination or retaliation for being injured on the job, or for filing a claim for workers' compensation.	California Workers' Compensation Appeals Board
Retaliation for complaining about workplace safety.	California Department of Industrial Relations, Division of Labor Standards ("Labor Commissioner").
Retaliation for complaining about wage and hour violations, or for filing a wage claim.	Labor Commissioner.
Discrimination or retaliation for joining a union, or for participating in lawful union activities.	National Labor Relations Board (NLRB) (private employees), California Public Employee Relations Board (PERB) (state employees).

**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.

