

## **Employment / Termination /**

### **I Got Fired and It Wasn't Fair! Can they Do That?**

The bad news is that the law does not require employers to be fair. In general the law gives employers the freedom to hire and fire for any reason they see fit, or no reason at all. But the good news is that there are some things an employer cannot do.

#### **There are three types of limitations on the employer's freedom to hire and fire "at will:"**

- (1) Did the employer break an agreement or contract with you?
- (2) Did the employer violate the discrimination laws?
- (3) Is what the employer did against "good public policy"?

Now let's talk about each of those three limitations.

#### **(1) Your Firing Violates Your Employment Agreement or Contract:**

**Personal Contract.** Some employees may have entered a specific bargain or agreement at the time they were hired. This can be a written document (a contract or a letter), or just a verbal understanding. Examine this agreement carefully to see if the employer firing may violate some part of that agreement.

**Union Contract.** You may be a member of a union at your job. The union contract probably has some specific language about firings. Union contracts often discuss what you can be fired for, and the procedure the employer must follow to carry out a firing. Examine your contract carefully to see if it has anything that applies to your situation. You should also talk with your union representative.

**Company Personnel Handbook.** Many companies have "Employee Handbooks" or "Personnel Manuals." These Manuals or policies also may describe the company's system of "discipline" (that is, suspensions and firings) and the procedures to be followed by both company and employee. In some circumstances courts will treat these Handbooks like a contract between the company and the employee. Again, examine the handbook carefully to see if the employer has failed to follow any of the rules it made for itself.

#### **(2) Your Firing Violates Anti-Discrimination Laws**

The law prohibits some specific types of discrimination in employment. These include discrimination because of race, sex, age, religion, national origin, or handicap. No matter what the company claims as the reason, if your firing was "really because of" your race, sex, age, etc., then the firing may violate the anti-

discrimination laws.

But realize - the anti-discrimination laws apply only to certain types of discrimination. Your employer may have treated you differently from everyone else. For example, he just doesn't like you and never has. But if the reason for your different treatment is not on the prohibited list (race, sex, age, religion, national origin, or handicap) then your firing probably does not violate the anti-discrimination laws.

### **(3) Your Firing Violates "Public Policy"**

This last restriction on employer 'freedom to fire' is hard to explain, because the law is very flexible on this topic. The law sometimes recognizes that a firing is not just unfair to you, but it would also be bad for the way our society works. Probably the best way to explain is with some examples.

**Example 1:** A bank employee learned that the bank managers were violating consumer protection laws. She told the managers that she would blow the whistle on them to the bank's Board of Directors if they kept doing it. The managers then fired the employee to prevent her from going to the Board of Directors.

This employee did not have any specific agreement (personal contract, union contract, or personnel policy handbook) that the bank managers violated by firing her. The managers did not fire her due to race, sex, age, etc., so they did not violate the anti-discrimination laws.

Nevertheless, the WV Supreme Court held that the bank could not fire this employee for trying to see that the law was followed. There is a strong "public interest" in assuring that the laws are followed. Our legal system will not let employers fire people in order to evade the law.

**Example 2:** A worker is fired because he won't violate safety laws that apply to the company.

We have safety laws to protect workers and members of the public. The law will not allow employers to fire workers who insist that safety laws be followed.

This concept of a "clear public interest" is pretty vague. It can apply to many different situations. But it's also difficult to give a simple rule or definition. If you think your firing violates a "clear public interest" then it may also violate the law. You should talk to a lawyer to get a better understanding of your particular situation.

### **What About "Fairness"?**

Unfortunately, the law does not require employers to be "fair," or "just," or "understanding." The employer can be "unfair" or "irrational" or just plain wrong. But if he does not violate one of the specific restrictions, then the law will let him run his business any way he wants.

The employer may be wrong in deciding to fire you. The employer may think you didn't call in when you were sick, but you did. Or maybe he thinks you treated a customer rudely, but you didn't. Unfortunately, if he fires you due to his own mistake, that's not necessarily against the law. The law will let the employer make a bad decision, unless it violates one of the specific protections we've discussed.