



YOUR RIGHTS AT WORK

AFL-CIO

CONTENTS

Introduction	1
Age	2
Agricultural Workers	3
Denied Paid Overtime	4
Disability	5
Fair Labor Standards Act	7
Family and Medical Leave	8
Gender Discrimination	9
Genetic Information	10
Hurt on the Job	11
Misclassification as an Independent Contractor	12
Pregnancy	13
Punished for Supporting a Union	14
Race or Ethnicity	15
Religion	17
Retaliation for Filing a Complaint	18
Sexual Orientation	19
Sexually Harassed	20
Terminated or Laid Off the Job	22
Unemployment Benefits	24
U.S. Reservist	25
Unsafe/Unhealthy Job Conditions	27
Wage Garnishment	28
Wage Theft	29
Youth Employment	30

Note: The information in this booklet does not constitute legal advice. You are not required to have a lawyer to pursue your rights with these government agencies, but legal assistance may be helpful in some instance.

INTRODUCTION

WORKING PEOPLE IN AMERICA have certain basic legal rights to safe, healthy and fair conditions at work. But many employers—perhaps yours—violate these fundamental rights because they value their profits more than their workers.

This booklet will enable you to find help if that happens to you, with links to government agencies that investigate complaints as well as advocacy organizations that assist people with related problems.

MORE INFO

- Workplace Rights and Benefits, Department of Labor (www.dol.gov/dol/rights-benefits.htm)
- Civil Rights Division: Employment Litigation Section, Department of Justice (www.justice.gov/crt/about/emp/)
- The Equal Employment Opportunity Commission (www.eeoc.gov/)
- Workplace Laws enforced by federal agencies other than the EEOC (www.eeoc.gov/laws/other.cfm)
- Minimum Wage Laws in the States (www.dol.gov/whd/minwage/america.htm)
- Drug-Free Workplace Advisor, Department of Labor (www.dol.gov/elaws/drugfree.htm)
- Workplace Fairness (www.workplacefairness.org/)
- Workplace Rights, ACLU (www.aclu.org/technology-and-liberty/workplace-privacy)

AS WE AGE, we accumulate experience that can make us even more valuable at work. But that is not how many employers see it. It's not unusual for older workers to encounter age discrimination (www.eeoc.gov/laws/types/age.cfm) that makes it harder to get hired, promoted and treated fairly on the job.

The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, employment discrimination based on age—in hiring, firing, promotions, layoffs, compensation, benefits, job assignments, training and more—is unlawful. It's also unlawful to retaliate against an individual for opposing age discrimination practices or for filing an age discrimination charge, testifying or participating in an ADEA case.

The ADEA applies to employers with 20 or more employees, including state, local and federal government, private employers and employment agencies.

ADEA protections include apprenticeship programs, job notices and advertisements, pre-employment inquiries and benefits.

It is generally unlawful for apprenticeship programs to discriminate on the basis of an individual's age, subject to certain specific exceptions under the ADEA and specific U.S. Equal Employment Opportunity Commission (EEOC) exemptions.

The ADEA generally makes it unlawful to include age preferences, limitations or specifications in job notices or announcements, limited by certain circumstances.

While the ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth, requests for age information will be closely scrutinized to make sure the inquiry is made for a lawful purpose.

The Older Workers Benefit Protection Act of 1990 (OWBPA) (www.eeoc.gov/eeoc/history/35th/thelaw/

[owbpa.html](http://www.eeoc.gov/eeoc/history/35th/thelaw/owbpa.html)) amended the ADEA to specifically prohibit employers from denying benefits to older employees.

If you think you've been discriminated against, write down a detailed account of the events, including date, time, place, comments and witnesses. Inform the personnel manager of your complaint. For unionized workers, your union steward can help you write up a complaint and present it to management.

You may file a complaint with the EEOC (www.eeoc.gov/facts/howtofil.html), a federal agency that works to protect you from discrimination based on age, sex, race, color, national origin, religion or disability, by calling 800-669-4000 for more information (800-669-6820, for the hearing impaired). Federal employees (www.eeoc.gov/federal/fed_employees/complaint_overview.cfm) have 45 days to contact an EEO counselor. All charges must include:

- Your name, address and telephone number.
- Your job title.
- A brief description of the problem.
- When the incident(s) occurred.
- The type of discrimination you encountered.

For more information, visit the EEOC (www.eeoc.gov/facts/qanda.html) question-and-answer page about discrimination.

Many states and cities also have fair employment practices agencies. In most states, a state or local agency investigates discrimination cases first and tries to work them out on the local level.

MORE INFO

- AARP's Age Discrimination fact sheet (www.aarp.org/work/employee-rights/info-02-2009/age_discrimination_fact_sheet.html)
- Workplace Fairness: Your Rights—Age Discrimination (www.workplacefairness.org/age-discrimination?agree=yes)

AGRICULTURAL WORKERS

AGRICULTURAL WORKERS HAVE RIGHTS, TOO.

Agricultural workers help us keep our diets healthy and our bodies strong. They work long hours, often for low pay.

Labor standards are different for agriculture workers. Employees in agriculture are exempt from the overtime pay provisions of the Fair Labor Standards Act (FLSA) (www.dol.gov/whd/regs/compliance/whdfs12.htm). They do not have to be paid time and a half their regular rates of pay for hours worked in excess of 40 per week. Any employer in agriculture who did not use more than 500 “man days” of agricultural labor in any calendar quarter of the preceding calendar year is exempt from the minimum wage and overtime pay provisions of the FLSA for the current calendar year. A “man day” is defined as any day during which an employee performs agricultural work for at least one hour.

The minimum wage and overtime provisions exemption of the act for agricultural employees apply to the following:

1. Workers who are immediate family members of their employer.
2. Workers principally engaged on the range in the production of livestock.
3. Local hand harvest laborers who commute daily from their permanent residence, are paid on a piece rate basis in traditionally piece-rated occupations and were engaged in agriculture less than 13 weeks during the preceding calendar year.
4. Non-local minors, 16 years of age or under, who are hand harvesters, paid on a piece rate basis in traditionally piece-rated occupations, employed on the same farm as their parent and paid the same piece rate as those older than 16.

Agricultural workers are also protected by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) (www.dol.gov/compliance/laws/comp-msawpa.htm). The MSPA provides protections, such as ensuring safe housing, to migrant and seasonal agricultural workers. It is administered and enforced by the Wage and Hour Division of the U.S. Department of Labor.

MORE INFO

For more additional information on agricultural workers, visit:

- Farm Labor Organizing Committee (FLOC), AFL-CIO (<http://supportfloc.org/default.aspx>)
- Department of Labor: Fact Sheet 49—The Migrant and Seasonal Agricultural Worker Protection Act (www.dol.gov/whd/regs/compliance/whdfs49.htm)
- The United Farm Workers of America (www.ufw.org/)
- Department of Labor: Wages in Agriculture (www.dol.gov/compliance/topics/wages-agricultural.htm)
- Department of Law: Employment Guide (www.dol.gov/compliance/guide/minwage.htm)
- Department of Labor: Work Authorization for Non-U.S. Citizens: Temporary Agricultural Workers (H-2A Visas) (www.dol.gov/compliance/guide/taw.htm)
- Department of Labor: Fact Sheet 12: Agricultural Employers Under the FLSA (www.dol.gov/whd/regs/compliance/whdfs12.pdf)

YOU DESERVE TO BE PAID FAIRLY FOR YOUR WORK, including overtime hours.

The federal Fair Labor Standards Act (FLSA) (www.dol.gov/compliance/laws/comp-flsa.htm) requires that employees, unless specifically exempted—such as managers, certain sales employees and professionals—must be paid overtime (www.dol.gov/WHD/overtime_pay.htm) if they work more than 40 hours in a week. The overtime rate must be one-and-one-half times your normal rate of pay after 40 hours of work in a workweek. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned. Effective July 24, 2009, covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour.

The FLSA also prohibits the overtime requirement from being waived, even by agreement of the employer and employee. It is illegal for your boss to force or intimidate you into giving up your overtime pay, although a recent U.S. Supreme Court decision limited this condition for government employees. However, the law does not set any limits on the number of hours workers older than 16 years can work during a week. Visit the U.S. Office of Personnel Management site (www.opm.gov/flsa/) for more information on Federal Employees and the Fair Labor Standards Act.

DENIED PAID OVERTIME

The overtime law is enforced by the Wage and Hour Division (www.dol.gov/whd/index.htm) of the U.S. Department of Labor. Your employer can be criminally charged for violating the overtime provisions of the FLSA, and it also is illegal for your employer to fire or discriminate against you for filing a complaint about an FLSA overtime violation.

There is a two-year statute of limitations on recovering back pay, unless the FLSA violation was deliberate and willful, in which case the statute of limitations is three years.

If you think you have been denied overtime pay, you can file a complaint with the nearest office of the Wage and Hour Division of the Labor Department. The complaint may be filed in person, by letter or by telephone, but it also must be made in writing. For information about various wage-and-hour and other workplace problems, visit the Interstate Labor Standards Association website (www.ilsa.net/).

MORE INFO

- Wage and Hour Division state labor offices (www.dol.gov/whd/contacts/state_of.htm)
- Department of Labor: Overtime Security for the 21st Century Workforce—FAQs (www.dol.gov/whd/regs/compliance/fairpay/faq_PF.htm)

DISABILITY

AMERICA HAS MADE GREAT PROGRESS in recent years in removing the artificial barriers that can prevent people with disabilities from achieving economic self-sufficiency and participating fully in our society. But progress can't be taken for granted, and too many of these barriers remain.

The Americans with Disabilities Act (ADA), passed in 1990, prohibits discrimination against people with disabilities in employment and public services, public and private transportation, public accommodations and telecommunication services. The ADA covers private employers with 15 or more employees, employment agencies and all levels of government. The ADA's nondiscrimination standards also apply to federal sector employees under section 501 of the Rehabilitation Act, as amended, and its implementing rules.

A person has a disability for the purposes of the ADA if:

- He or she has a physical or mental impairment that substantially limits major life activities;
- Has a record of such impairment; or
- Is regarded as having a condition people would mistakenly perceive as limiting, such as disfigurement.

The ADA does not cover people with temporary disabilities, minor illnesses or active drug users or alcoholics.

The ADA requires employers to make reasonable accommodations to enable an otherwise qualified person with a disability to do his or her job. A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help an individual with a disability apply for a job or perform the duties of a job. An employer does not have to provide a reasonable accommodation if it imposes an "undue hardship" on the employer. An employer is not required to lower quality or production standards to make an accommodation.

In 2008, Congress determined that several U.S. Supreme Court cases narrowed the broad scope of protections intended to be afforded by the ADA and passed the ADA Amendments Act ("ADAAA"). The ADAAA became effective on Jan. 1, 2009.

The ADAAA makes important changes to the definition of the term "disability." The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA. Some of the most significant changes made by the ADAAA include expanding the definition of "major life activities," clarifying that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active and an emphasis that the definition of disability should be interpreted broadly.

If you think you are a victim of ADA-covered discrimination:

1. Keep a written record of incidents, including a description of the discrimination, what was said, time and place and witnesses.
2. Check with others in your workplace who might also be victims.
3. If you are a union member, contact your steward.

You also may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) (www.eeoc.gov/facts/howtofil.html), as an individual or part of a group (known as "class action"). The charges must be filed on an EEOC form within 180 days of the alleged discriminatory act. Federal employees (www.eeoc.gov/federal/fed_employees/complaint_overview.cfm) have 45 days to contact an EEO counselor. You can file a charge by calling 800-669-4000 for more information (800-669-6820, for the hearing impaired). Your complaint must include:

- Your name, address and telephone number.
- Your job title.
- A brief description of the problem.
- When the incident(s) occurred.
- The type of discrimination you encountered.

For more information, visit the EEOC (www.eeoc.gov/facts/qanda.html) question-and-answer page about discrimination.

Remember: The best way to protect your rights at work is to gain a voice on the job by forming a union (<http://aflcio.org/Learn-About-Unions/How-to-Join-or-Form-a-Union>)!

MORE INFO

Additional helpful links on the ADA and its amendments:

- ADA National Network with introductory-level and detailed information links, as well as useful business sites (<http://adata.org/Static/Home.html>)
- Americans with Disabilities Act Information and Technical Assistance, from the U.S. Department of Justice (www.ada.gov/)
- The Arc, pages of disability-related links (registration required) (<https://www.thearc.org/sslpage.aspx?pid=186&bm=-756091216>)
- Department of Labor's information on the ADA Amendments Act (www.dol.gov/ofccp/regs/compliance/faqs/ADAFaqs.htm)
- Department of Labor Office of Disability Employment Policy (www.dol.gov/odep/)
- ADA Amendments Act fact sheet, from Cornell University (www.ilr.cornell.edu/edi/dbtacnortheast/docs/ADA%20Amendment%20Act%20Fact%20Sheet%20-%20Jan%202009.doc)
- American Association of People with Disabilities (www.aapd.com/)

FAIR LABOR STANDARDS ACT

THE FAIR LABOR STANDARDS ACT (FLSA) generally applies to all workers within the United States, including the District of Columbia and U.S. territories and possessions. There are several exemptions, however, from application of the FLSA regarding overtime, minimum wage and child labor requirements.

The most commonly used exemptions are:

1. **Commissioned sales employees** (exempt from overtime requirements if more than half of the employee's earnings come from commissions and the employee earns an average of one and a half times the minimum wage for each hour worked);
2. **Computer professionals** (certain computer professionals who are paid at least \$27.63 per hour are exempt from overtime requirements);
3. **Drivers, driver's helpers, loaders and mechanics** (exempt from overtime provisions if employed by a motor carrier, **and** if the employees' duties affect the safety of the operation of a vehicle in transportation of passengers or property in interstate or foreign commerce);
4. **Farm workers** (exempt from both overtime and minimum wage provisions if employed on small farms; others exempt from overtime provisions regardless of farm size);
5. **Auto salespersons, parts workers and mechanics** (exempt from overtime provisions if employed by automobile dealerships);
6. **Seasonal and recreational employees** (exempt from both overtime and minimum wage provisions if employed by certain seasonal and recreational establishments); and
7. **Executive, administrative, professional and outside sales employees** (exempt from both overtime and minimum wage provisions if paid on a salary basis).

The burden of proof asserting an exemption lies with the employer, and exemptions are narrowly construed against the employer claiming the exemption. Exemptions are applied on a workweek-by-workweek basis, and employees performing both exempt and nonexempt duties in a workweek are usually not exempt.

If you are an employee of the federal government, find out more about how the Office of Personnel Management administers the provisions of the FLSA (www.opm.gov/flsa/).

How to file an FLSA claim (www.dol.gov/whd/regs/compliance/fairpay/complaint.htm):

Any nonexempt employee covered by the FLSA who believes that he or she has not been paid the required federal minimum wage or overtime may file a complaint with the Wage and Hour Division of the U.S. Department of Labor. You may file a complaint by mail or in person at any Wage and Hour Division district office (www.dol.gov/whd/america2.htm).

Be timely: The FLSA contains a two-year statute of limitations (three-years for willful violations). The Labor Department suggests employees file complaints with the Wage and Hour Division as soon as the violation occurs but no later than 18 months after the violation occurred.

Include the proper information in the complaint:

- Your name, address and telephone number.
- Your job title and a description of the kind of work done.
- Your rate, method and frequency of wage payment.
- Number of hours you actually worked each week.
- A description of the alleged violation(s).
- Date(s) of the alleged violation(s).
- Your employer's name, address, telephone number and nature of business.

MORE INFO

- Labor Department's Wage and Hour Division: Fair Labor Standards Act (www.dol.gov/whd/flsa/)
- Labor Department overview of the Fair Labor Standards Act (www.dol.gov/compliance/laws/comp-flsa.htm)
- Fair Labor Standards Act Advisor (www.dol.gov/elaws/esa/flsa/screen5.asp)
- Wage and Hour Division: Handy Reference Guide to the FLSA (www.dol.gov/whd/regs/compliance/hrg.htm)

FAMILY AND MEDICAL LEAVE

WHEN YOU HAVE A NEWBORN, newly adopted baby, or when a loved one is seriously ill, your most important job may be at home.

The federal Family and Medical Leave Act of 1993 (FMLA) (www.dol.gov/dol/topic/benefits-leave/fmla.htm) provides workers up to 12 weeks of unpaid and job-protected leave for certain family and medical reasons, or for any “qualifying exigency” arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The FMLA applies to all private-sector employers with 50 or more workers and to all public agencies—state, local and federal. The U.S. Department of Labor enforces the FMLA (www.dol.gov/compliance/laws/comp-fmla.htm).

To be eligible for leave under the act, a worker must have worked for the same covered employer for a total of 12 months and must also have worked for a total of 1,250 hours or more in the previous 12 months. The

worker also must work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

You may take leave for the birth and care of a newborn; for adoption or foster care of a child; to care for an immediate family member (spouse, child or parent) with a serious health condition; or for your own serious health condition. If you qualify for FMLA, your employer cannot fire you for taking leave.

If you think you have been denied FMLA leave, or if you think your employer has violated the act, you may file a complaint by contacting the nearest office of the Wage and Hour Division (www.dol.gov/whd/america2.htm) of the U.S. Department of Labor.

The complaint may be filed in person, by letter or by telephone, but it also must be made in writing. There is a two-year statute of limitations—three years if the violation was willful.

MORE INFO

- FMLA, from the Labor Department (www.dol.gov/dol/topic/benefits-leave/fmla.htm)
- FMLA and the ADA, by the U.S. Equal Employment Opportunity Commission (www.eeoc.gov/policy/docs/fmlaada.html)
- Family and Medical Leave Act, U.S. Office of Personnel Management (www.opm.gov/oca/leave/html/fmlafac2.asp)
- Guide to the FMLA, by the National Partnership for Women & Families (www.nationalpartnership.org/site/DocServer/FMLAGuide5thedition02.pdf?docID=958)
- The AFSCME Comprehensive Guide to Understanding the Family and Medical Leave Act (www.afscme.org/news/publications/health-care/afscmes-comprehensive-guide-to-understanding-the-family-and-medical-leave-act)

GENDER DISCRIMINATION

NO ONE SHOULD BE TYPECAST into—or out of—a job or profession because of gender. Gender discrimination (www.eeoc.gov/laws/types/sex.cfm) involves treating someone (an applicant or employee) unfavorably because of the person’s gender. The law forbids discrimination in all aspects of employment, including hiring, firing, job assignments, layoff, training, fringe benefits and any other term or condition of employment.

An employment policy or practice that applies to everyone, irrespective of gender, can be illegal if it has a negative impact on the employment of people of a certain gender and is not job related or necessary to the operation of the business.

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on sex by a private employer, state or local government or educational institution with 15 or more employees.

If you think you have been discriminated against because of your gender, you may file employment discrimination charges as an individual or as part of a group (known as “class action”) with the U.S. Equal Employment Opportunity Commission (EEOC)

(www.eeoc.gov/facts/howtofil.html). The charges must be filed on an EEOC form within 180 days of the alleged discriminatory act. If you are represented by a union, contact your union steward, who can help you file charges. Federal employees (www.eeoc.gov/federal/fed_employees/complaint_overview.cfm) must file discrimination charges within their own agency.

They must contact an EEO counselor within 45 days of the discriminatory act.

You can file a charge by calling the EEOC at 800-669-4000 for more information (800-669-6820, for the hearing impaired). All charges must include:

- Your name, address and telephone number.
- Your job title.
- A brief description of the problem.
- When the incident(s) occurred.
- The type of discrimination you encountered.

For more information, visit the EEOC (www.eeoc.gov/facts/qanda.html) question-and-answer page about discrimination. Additional information about sexual discrimination may be found by visiting Workplace Fairness: Your Rights—Gender Discrimination (www.workplacefairness.org/sexual-gender-discrimination?agree=yes).

GENETIC INFORMATION

THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) enforces Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits genetic information discrimination in employment (www.eeoc.gov/laws/types/genetic.cfm). GINA took effect November 2009 and applies to employers with at least 15 employees. The departments of Labor, Health and Human Services and Treasury issue regulations for Title I of GINA, which addresses the use of genetic information in health insurance.

Title II of GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers covered by Title II and strictly limits disclosure of genetic information.

If you think you have been discriminated against because of your genetic information, you may file employment discrimination charges as an individual

or as part of a group (known as “class action”) with the EEOC (www.eeoc.gov/facts/howtofil.html). The charges must be filed within 180 days of the alleged discriminatory act. If you are represented by a union, contact your union steward, who can help you file charges. Federal employees (www.eeoc.gov/federal/fed_employees/complaint_overview.cfm) must file discrimination charges within their own agency. They must contact an EEO counselor within 45 days of the discriminatory act.

You can file a charge by calling the EEOC office at 800-669-4000 for more information (800-669-6820, for the hearing impaired). All charges must include:

- Your name, address and telephone number.
- Your job title.
- A brief description of the problem.
- When the incident(s) occurred.
- The type of discrimination you encountered.

MORE INFO

- EEOC Facts About Genetic Information Discrimination (www.eeoc.gov/laws/types/genetic.cfm)
- Poster: EEO Is the Law (www.eeoc.gov/employers/upload/eeoc_gina_supplement.pdf)

HURT ON THE JOB

IT SHOULDN'T HURT TO GO TO WORK. In 2008, more than 4.6 million workers across all industries, including state and local government, suffered work-related injuries and illnesses that were reported by employers, with 3.7 million injuries and illnesses reported in private industry. Due to limitations in the injury reporting system and underreporting of workplace injuries, this number understates the problem. The true toll is estimated to be two to three times greater—or 9 million to 14 million injuries and illnesses a year. The health and safety of America's workers is detailed in the AFL-CIO's "Death on the Job" (<http://aflcio.org/Issues/Job-Safety/Death-on-The-Job-Report>) report.

Experts agree that if you are injured on the job, you should:

- Notify your supervisor, the personnel department and your union steward.
- Get the medical treatment you need. You may be required to see a doctor selected by your employer. If you are injured on the job, your employer's insurance company is obligated to pay for reasonable and necessary medical treatment.
- If your employer has written an "incident report," get a copy of it. Your union steward and the employer should obtain the names of workers who

witnessed your injury or assisted you afterward, as you may need this information if you seek workers' compensation benefits.

You also may be entitled to temporary or permanent disability benefits or vocational rehabilitation benefits. If you file a claim for benefits and it is rejected, you may appeal the ruling, even to the courts. Experts recommend seeking legal advice.

The U.S. Department of Labor advises that private-sector and state and local government workers injured on the job should contact their state workers' compensation board (http://aflcio.org/Issues/Job-Safety/Safety-and-Health-Sites#workers_compensation). The department's Office of Workers' Compensation Programs (www.dol.gov/owcp/) also has specific information about federal employees', coal miners' and longshore and harbor workers' compensation, plus state workers' compensation laws.

Check It Out

The AFL-CIO's compilation of workers' compensation links, including state agencies (http://aflcio.org/Issues/Job-Safety/Safety-and-Health-Sites#workers_compensation).

MORE INFO

For more information, visit:

- The Center for Construction Research and Training at the AFL-CIO Building and Construction Trades Department (www.cpwr.com/)

For information about state workers' compensation laws and to connect with the state agencies, see:

- State workers' compensation officials at the Department of Labor's Office of Workers' Compensation Programs site (www.dol.gov/owcp/dfec/regs/compliance/wc.htm)
- State workers' compensation divisions on AFSCME's website (www.afscme.org/issues/health-safety)
- Oregon Injured Workers United (www.injuredworker.org/index.htm)
- Pennsylvania Federation of Injured Workers (www.pfiw.org/links.html)

MISCLASSIFICATION AS A CONTRACTOR

YOU DESERVE PROTECTION ON THE JOB.

Some employers attempt to evade the Fair Labor Standards Act (FLSA) (www.dol.gov/compliance/laws/comp-flsa.htm), the National Labor Relations Act (NLRA) (<https://www.nlrb.gov/national-labor-relations-act>) and other federal worker protections by misclassifying their employees as “independent contractors,” who are not entitled to many employee protections. An independent contractor (www.irs.gov/businesses/small/article/0,,id=179115,00.html) is typically defined as someone who is not economically dependent on an employer and who is engaged in his or her own business.

Several factors are important in determining whether an employment relationship—rather than an independent contractor relationship—exists:

1. The extent to which the worker’s services are an integral part of the employer’s business;
2. The permanency of the relationship;
3. The worker’s investment in tools and equipment (i.e., if the worker owns/maintains his or her own equipment, it is more likely that the worker is an independent contractor);
4. The nature and degree of control of the worker by the employer;
5. The worker’s opportunities for profit and loss; and
6. The amount of skill, initiative, judgment and foresight required in performing the job.

More information regarding the factors that are important in determining whether an employment relationship exists may be found on the Department of Labor’s website (www.dol.gov/elaws/esa/flsa/scope/ee14.asp).

Do you think you have been misclassified? Do you consider yourself an employee and not an independent contractor?

The Labor Department has launched the Misclassification Initiative to restore rights to those who have fallen victim to misclassification. States are getting involved in rectifying this growing problem. To get information on certain states that are combating on misclassification and to learn more about the Labor Department’s Initiative, visit www.dol.gov/whd/workers/misclassification/.

MORE INFO

Links to additional information about employer abuses in misclassification of employees:

- The National Employment Law Project (www.nelp.org/index.php/content/content_issues/category/independent_contractor_misclassification_and_subcontracting)
- The Department for Professional Employees, AFL-CIO, misclassification fact sheet 2011 (<http://dpeaflcio.org/wp-content/uploads/2010/08/Misclassification-of-Employees-as-Independent-Contractors.pdf>)

PREGNANCY

PREGNANT? You've got legal rights protecting you against job discrimination. Pregnancy discrimination (www.eeoc.gov/laws/types/pregnancy.cfm) involves treating a woman, applicant or employee, unfavorably based on her pregnancy, childbirth, or medical condition related to childbirth or pregnancy. The Pregnancy Discrimination Act of 1978 forbids employers from discriminating against workers on the basis of pregnancy, childbirth or related medical conditions. The Pregnancy Discrimination Act amended Title VII of the Civil Rights Act of 1964 and covers employers with 15 or more employees, including state and local governments, employment agencies, labor organizations and the federal government. The act says women affected by pregnancy or related conditions must be treated in the same manner as other applicants or workers with similar abilities or limitations, such as temporary medical conditions.

As long as a pregnant woman can perform her job functions, an employer cannot refuse to hire her because of her pregnancy or because of the employer's prejudices about pregnant women or the prejudices of co-workers, clients or customers.

If a worker is unable to perform a job because of pregnancy, the employer must treat her same as any other temporarily disabled worker—for example, by providing modified tasks, alternative assignments, disability leave or leave without pay.

A pregnant worker can remain on the job as long as she is able to perform the work. The employer must hold open a job for a pregnancy-related absence as long as jobs are normally held open for workers on sick or disability leave. The Pregnancy Discrimination Act also bans the employer from terminating, demoting or disciplining a worker because of her pregnancy.

If you think you have been discriminated against because of pregnancy, you may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) (www.eeoc.gov/facts/howtofil.html) by calling 800-669-4000 for more information (800-669-6820, for the hearing impaired). Employees have 180 days to file a charge with the EEOC, and federal employees (www.eeoc.gov/federal/fed_employees/complaint_overview.cfm) have 45 days to contact an EEO counselor.

MORE INFO

- Discrimination, from the U.S. Equal Employment Opportunity Commission (www.eeoc.gov/facts/fs-preg.pdf)
- Your Rights During Pregnancy and Childbirth, AFSCME fact sheet (www.afscme.org/members/education-and-trainings/womens-leadership-training/leadership-tools/fact-sheets/your-rights-during-pregnancy-and-childbirth)
- Pregnancy Discrimination, by Workplace Fairness (www.workplacefairness.org/pregnancy?agree=yes)
- Pregnancy Discrimination FAQs, by Youth at Work (www.eeoc.gov/youth/pregnancy2.html)

PUNISHED FOR SUPPORTING A UNION

MOST WORKING PEOPLE have the legal right to join or support a union and to engage in collective bargaining. The National Labor Relations Board (NLRB) now requires most employers to post a notice (<https://www.nlr.gov/poster>) advising employees of their rights under the National Labor Relations Act (NLRA) (<https://www.nlr.gov/rights-we-protect>). Under the NLRA, workers have the right to:

- Attend meetings to discuss joining a union.
- Read, distribute and discuss union literature (as long as you do this in non-work areas during non-work times, such as breaks or lunch hours).
- Wear union buttons, T-shirts, stickers, hats or other items on the job at most worksites.
- Sign a card asking your employer to recognize and bargain with the union.
- Sign petitions or file grievances related to wages, hours, working conditions and other job issues.
- Ask other employees to support the union, to sign union cards or petitions or to file grievances.

Here's what an employer legally cannot do under the NLRA:

- Threaten employees with loss of jobs or benefits if they join or vote for a union or engage in protected concerted activity.
- Threaten to close the plant if employees select a union to represent them.
- Question employees about their union sympathies or activities in circumstances that tend to interfere with, restrain or coerce employees in the exercise of their rights under the act.

- Promise benefits to employees to discourage their union support.
- Transfer, lay off, terminate or assign employees more difficult work tasks because they engaged in union or protected concerted activity.

Employers routinely mount workplace wars to stop workers from forming unions, legally and illegally.

If you think your employer has violated your right to a voice on the job, you can get help filing charges (<https://www.nlr.gov/forms>) with the NLRB from your union, if you belong to one, or from the union you are trying to join. Charges must be filed within six months of the alleged illegal conduct. The NLRB can order your employer to stop interfering with employee rights and to provide back pay or reverse any action against workers for their union activity.

Check It Out

- Employee Rights, National Labor Relations Board (<https://www.nlr.gov/rights-we-protect/employee-rights>)
- America Rights at Work (www.americanrightsatwork.org/)
- Your Rights/Forming a Union, by the IUOE (www.iuoe.org/WhyJoinIUOE/YourRightsFormingaUnion/tabid/88/Default.aspx)

RACE OR ETHNICITY

AMERICA IS MORE RACIALLY DIVERSE than ever. Under the law, all workers look alike, regardless of skin color or ethnicity. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color or national origin by a private employer, state or local government or educational institution with 15 or more employees for 20 or more weeks a year. Discrimination can occur even where the victim and the person discriminating are the same race or color.

Race/Color Discrimination (www.eeoc.gov/laws/types/race_color.cfm)

Racial Discrimination involves treating someone unfavorably because of the person's race or personal characteristics associated with race. The law forbids discrimination in any aspect of employment, including hiring, firing, pay and benefits. It is also unlawful to harass a person because of that person's race. Although an employer may implement a policy that applies to everyone regardless of race or color, the policy can still be unlawful if it has a negative impact on the employment of people of a particular race or color, is not related to the job and necessary to the operation of the business.

National Origin Discrimination (www.eeoc.gov/laws/types/nationalorigin.cfm)

The law prohibits discrimination against an employee or applicant because of that individual's national origin. Whether an employee is Filipino, Turkish, American Indian, Colombian or Ukrainian or any other nationality, he or she is entitled to the same employment opportunities as anyone else. No individuals can be denied equal employment opportunity because of

birthplace, ancestry, culture, linguistic characteristics common to a specific ethnic group, or accent. The EEOC enforces the prohibition against national origin discrimination under Title VII of the Civil Rights Act of 1964, which covers employers with 15 or more employees.

If you think you have been discriminated against because of your race, ethnicity or national origin, you may file employment discrimination charges as an individual or as part of a group (known as "class action") with the U.S. Equal Employment Opportunity Commission (EEOC) (www.eeoc.gov/facts/howtofil.html). The charges must be filed on an EEOC form within 180 days of the alleged discriminatory act. If you are represented by a union, contact your union steward, who can help you file charges. Federal employees (www.eeoc.gov/federal/fed_employees/complaint_overview.cfm) have 45 days to contact an EEO counselor and must file discrimination charges within their own agency.

You can file a charge by calling the EEOC at 800-669-4000 for more information (800-669-6820, for the hearing impaired). All charges must include:

- Your name, address and telephone number.
- Your job title.
- A brief description of the problem.
- When the incident(s) occurred.
- The type of discrimination you encountered.

For more information, visit the EEOC question-and-answer page about discrimination (www.eeoc.gov/facts/qanda.html).

MORE INFO

- Frequently Asked Questions, from the U.S. Department of Justice's Civil Rights Division (www.justice.gov/crt/about/emp/emp_faq.php)
- Facts About National Origin Discrimination, by the EEOC (www.eeoc.gov/facts/fs-nator.html)
- Facts About Race/Color Discrimination, by the EEOC (www.eeoc.gov/facts/fs-race.html)
- The National Association for the Advancement of Colored People (www.naacp.org/)
- The Mexican American Legal Defense and Education Fund (www.maldef.org/)
- The Asian American Legal Defense and Education Fund (<http://aaldef.org/>)
- The Leadership Conference on Civil Rights (www.civilrights.org/)

AFL-CIO constituency group sites, including:

- A. Philip Randolph Institute (www.apri.org/)
- Asian Pacific American Labor Alliance (www.apalanet.org/)
- Coalition of Black Trade Unionists (www.cbtu.org/)
- Labor Council for Latin American Advancement (www.lclaa.org/)

RELIGION

RELIGIOUS FREEDOM is one of the principles on which America was founded and one of the basic rights we value most. Religious discrimination (www.eeoc.gov/laws/types/religion.cfm) involves treating a person unfavorably because of his or her religious beliefs. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on religion by a private employer, state or local government or educational institution with 15 or more employees for 20 or more weeks a year.

Title VII prohibits employers from discriminating against workers on the basis of religion in hiring and other conditions of employment. The law requires an employer to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause an undue hardship on the employer.

If you think you have been discriminated against because of your religion, you may file employment discrimination charges as an individual or as part of a group (known as "class action") with the U.S. Equal Employment Opportunity Commission (EEOC) (www.eeoc.gov/facts/howtofil.html). The charges must

be filed within 180 days of the alleged discriminatory act. If you are represented by a union, contact your union steward, who can help you file charges. Federal employees (www.eeoc.gov/federal/fed_employees/complaint_overview.cfm) must file discrimination charges within their own agency. They must contact an EEO counselor within 45 days of the discriminatory act.

You can file a charge by calling the EEOC office at 800-669-4000 for more information (800-669-6820, for the hearing impaired). All charges must include:

- Your name, address and telephone number.
- Your job title.
- A brief description of the problem.
- When the incident(s) occurred.
- The type of discrimination you encountered.

In addition to your denomination's website, the following sites also can provide information about discrimination:

- EEOC question-and-answer page about discrimination (www.eeoc.gov/facts/qanda.html).
- Facts About Religious Discrimination, by the EEOC (www.eeoc.gov/eeoc/publications/fs-religion.cfm).

RETALIATION FOR FILING A COMPLAINT

AN EMPLOYER MAY NOT FIRE, demote, harass or otherwise “retaliate” (www.eeoc.gov/laws/types/retaliation.cfm) against individuals for filing a charge of discrimination, because they complained to their employer about discrimination on the job, or because they participated in an employment discrimination proceeding. Retaliation occurs when an employer, employment agency or labor organization takes as adverse action, such as denying a promotion or increased surveillance, against an individual who opposed unlawful practices, participated in a proceeding related to employment discrimination or requested reasonable accommodation based on religion or disability.

Under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act, employers with 15 or more employees are prohibited from retaliating against employees. Employers with 20 or more employees are prohibited from retaliating under the Age Discrimination in Employment Act. Virtually all employers are covered under the Equal Pay Act.

If you think you have been discriminated against because of your religion, you may file employment discrimination charges as an individual or as part of a group (known as “class action”) with the U.S. Equal Employment Opportunity Commission (EEOC) (www.eeoc.gov/facts/howtofil.html). The charges must be filed within 180 days of the alleged discriminatory act. If you are represented by a union, contact your union steward, who can help you file charges. Federal employees (www.eeoc.gov/federal/fed_employees/complaint_overview.cfm) must file discrimination charges within their own agency. They must contact an EEO Counselor within 45 days of the discriminatory act.

You can file a charge by calling the EEOC office at 800-669-4000 for more information (800-669-6820, for the hearing impaired). All charges must include:

- Your name, address and telephone number.
- Your job title.
- A brief description of the problem.
- When the incident(s) occurred.
- The type of discrimination you encountered.

MORE INFO

- EEOC Facts About Retaliation (www.eeoc.gov/laws/types/facts-retal.cfm)
- FAQs on Retaliation, from Youth at Work (www.eeoc.gov/youth/retal2.html)

SEXUAL ORIENTATION

ONLY 21 STATES and the District of Columbia have laws that ban discrimination in the workplace because of a person's sexual orientation. Only eight of those states and the District of Columbia ban discrimination in the workplace because of a person's gender identity. Because there is no federal law prohibiting employment discrimination on the basis of sexual orientation, working people in 29 states are being denied employment on the basis of something that has no relationship to their ability to perform their work.

The states with laws that prohibit workplace discrimination on the basis of sexual orientation are California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington State and Wisconsin. Thirteen of the 21 states also forbid gender identity

discrimination. Several cities have laws banning workplace discrimination because of sexual orientation.

Congress is considering the Employment Non-Discrimination Act (ENDA) (www.aclu.org/lgbt-rights_hiv-aids/employment-non-discrimination-act-enda-hr-2015) that would prohibit discrimination in hiring, firing, promotions, compensation and other employment practices because of a person's sexual orientation or gender identity by employers with 15 or more employees. For more information about ENDA or sexual orientation discrimination, see:

- Pride At Work, AFL-CIO (www.prideatwork.org/).
- ENDA, information from the Human Rights Campaign (<http://sites.hrc.org/sites/passendanow/index.asp>).
- ENDA, information from the American Civil Liberties Union (www.aclu.org/hiv-aids_lgbt-rights/employment-non-discrimination-act).
- Lambda Legal Defense and Education Fund (www.lambdalegal.org/).

MORE INFO

The following sites also provide information about discrimination:

- EEOC: Facts About Sexual Orientation, Status as a Parent, Marital Status and Political Affiliation (www.eeoc.gov/facts/fs-orientation_parent_marital_political.html)
- Office of Personnel Management: Addressing Sexual Orientation Discrimination in Federal Civilian Employment (www.opm.gov/er/address2/Guide01.asp)
- The National Gay and Lesbian Task Force (www.thetaskforce.org/issues/nondiscrimination)
- Sexual Orientation and Gender Identity Employment Discrimination: Overview of State Statutes and Complaint Data, report from the GAO (www.gao.gov/new.items/d10135r.pdf)
- Sexual Orientation Discrimination, from Workplace Fairness (www.workplacefairness.org/sexual-orientation-discrimination?agree=yes)

SEXUALLY HARASSED

SEXUAL HARASSMENT is illegal and no worker has to tolerate it. Sexual harassment is a form of illegal sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments, employment agencies, labor organizations and the federal government.

Sexual harassment is unwanted verbal or physical conduct of a sexual nature when:

- You must submit to the behavior to keep your job or to get a promotion, a good job assignment or some other job benefit; or
- The behavior unreasonably interferes with your work performance or creates an intimidating, hostile or offensive working environment.

Examples of sexual harassment include pressure for sexual favors; pornographic material left on your desk or work area; touching, “goosing,” patting, hugging; leaning against; leering, whistling, catcalls or howling; using demeaning terms such as “sweetheart,” “babe” or “honey”; sexual teasing and jokes; posting cartoons, posters or drawings of a sexual or insulting nature; asking personal questions, telling lies or spreading rumors about your social or sex life; making sexual remarks or gestures; and actual or attempted sexual assault.

The victim as well as the harasser can be male or female; the victim does not have to be of the opposite sex. Harassment does not have to be of a sexual nature, however. It can include offensive or derogatory remarks about a person’s sex, such as making offensive comments about women in general. The harasser can be the victim’s supervisor, a supervisor in another area, an agent of the employer, a co-worker or a non-employee, such as a customer or client of the employer. The victim does not have to be the individual harassed but could be anyone affected by the harasser’s offensive conduct.

An employer has the legal responsibility to investigate sexual harassment complaints and to take appropriate actions to end the harassment and make sure it doesn’t happen again.

You are not required to complain to the person who is harassing you but it is helpful for the victim to have informed the harasser that the conduct is unwelcome and must stop. You should make sure that you, your union, if you have one, or someone you designate tells management about your complaint. You also should keep a written record of the harassment incidents and evidence of your job performance. If your employer has an internal complaint procedure, you are required to use it.

If you have been the victim of sexual harassment and discrimination, you may choose to find recourse in legal action. Unlawful sexual harassment may occur without economic injury to or discharge of the victim.

If you think you have been sexually harassed, you may file employment discrimination charges as an individual or as part of a group (known as “class action”) with the U.S. Equal Employment Opportunity Commission (EEOC) (www.eeoc.gov/facts/howtofil.html). The charges must be filed within 180 days of the alleged discriminatory act. Federal employees have 45 days to contact an EEO counselor. If you are represented by a union, contact your union steward, who can help you file charges. Federal employees (www.eeoc.gov/federal/fed_employees/complaint_overview.cfm) must file discrimination charges within their own agency.

You can file a charge in person, by mail or by calling the EEOC at 800-669-4000 for more information (800-669-6820, for the hearing impaired). All charges must include:

- Your name, address and telephone number.
- Your job title.
- A brief description of the problem.
- When the incident or incidents occurred.
- And the type of discrimination you encountered.

MORE INFO

For more information, visit the EEOC (www.eeoc.gov/facts/qanda.html) question-and-answer page about discrimination, as well as these helpful sites:

- Facts About Sexual Harassment, EEOC (www.eeoc.gov/facts/fs-sex.html)
- Sexual Harassment, Equal Rights at Work (www.equalrights.org/publications/kyr/shwork.asp)
- Sexual Harassment on the Job, by Communications Workers of America Local 4319 (www.cwa4319.org/harass.html)
- What to Do if You or Someone You Know Is Sexually Harassed, from the Feminist Majority Foundation website (www.feminist.org/911/harasswhatdo.html)

TERMINATED OR LAID OFF THE JOB

JOB ENDS MANY TIMES WITH NO REASON.

Millions are without jobs due to the recession and unemployment remains high. Workers across the country are finding themselves involuntarily separated from their jobs. In certain cases, you have a right to challenge that termination and you have some rights after you have been terminated (www.dol.gov/compliance/topics/termination-issues.htm), which may include receiving your final paycheck (www.dol.gov/compliance/topics/wages-other-last-paycheck.htm).

In the United States, most employment is at will, meaning the employer or the employee can terminate the employment relationship (through firing or quitting) any time, for any reason and without notice. Employees, however, cannot be fired for a discriminatory reason (www.eeoc.gov/eeoc/).

Certain workers, however, have additional protections against being fired and can only be fired for just cause.

1. Workers in a union are covered by a collective bargaining agreement, which is a legally enforceable written contract between the management and the union that sets out the terms and conditions of employment. It is usually in effect for a specified period of time.
2. Other workers, such as certain professionals, have written employment contracts that specify the length of employment and the reasons the employee can be dismissed.
3. Some government employees are covered by civil service laws that prohibit employers from firing a worker without just cause.

Federal Employees' Remedy for Termination Under the Merit Systems Protection Board (MSPB) or a Collective Bargaining Agreement:

Federal employees covered by a collective bargaining agreement have protections against being fired without just cause. Employees terminated by the federal government can process their grievance to arbitration under the collective bargaining agreement or seek to

have their appeal heard before the MSPB (www.mspb.gov/appeals/appeals.htm).

Federal law makes it illegal for the federal government to discriminate against any employee or applicant for employment because of that employee's race, color, sex, religion, national origin, age, handicapping position, marital status or political affiliation. In addition, the federal government is precluded from taking adverse employment action against any employee or applicant for employment because of an employee's disclosure of what the employee reasonably believes is a violation of the law (i.e., whistleblower protection). Employees or applicants for employment who believe that the federal government has acted unlawfully in any of the above may register their complaint with the Office of Special Counsel (www.osc.gov/), who will investigate the case and potentially ask the MSPB to take appropriate corrective action.

For more information about federal employee termination rights, visit the Merit Systems Protection Board (www.mspb.gov/) and the Office of Personnel Management: Employee Relations (www.opm.gov/er/appeal.asp).

Private Employees' Remedy for Termination when Covered by a Collective Bargaining Agreement

Employees who are members of a union and so are protected by a collective bargaining agreement generally may only be terminated for cause. Typically, employees who believe that they have been terminated in violation of their collective bargaining agreement file a grievance and go through the arbitration procedure, if such a procedure is included in the collective bargaining agreement. If the employer and union cannot resolve the grievance, the grievance is submitted to a neutral, third-party arbitrator. Prior to arbitration, parties will have the opportunity to obtain relevant evidence from one another. During the hearing, the parties will be allowed to present evidence and testimony and cross-examine opposing witnesses. An arbitration contains

many of the same elements as a court proceeding or administrative hearing. Generally, arbitration decisions are binding on all parties. In a limited number of circumstances, however, such as procedural unfairness, fraud, corruption or partiality, a court will overturn an arbitrator's decision.

Private Employees' Remedy for Termination Who Are Not Covered by a Collective Bargaining Agreement (CBA)

Private employees who are not members of a union and not protected by a collective bargaining agreement are employed at-will, which means that the employer may terminate the employee at any time, for any reason.

Exceptions to this rule nearly always include termination for a discriminatory reason, such as race, sex, national origin or religion in violation of Title VII, age in violation of the Age Discrimination in Employment Act (ADEA), disability in violation of the Americans with Disabilities Act (ADA), or exercising a right under the National Labor Relations Act (NLRA).

Assisting, forming or joining a union and engaging in protected concerted activity, which is when two or more employees take action together regarding their terms and condition of employment, are protected under the NLRA, and employees generally cannot get terminated for taking advantage of those rights.

While employees may usually enforce their Title VII, ADA and ADEA rights in court, an employee must file an unfair labor practice charge with the National Labor Relations Board (NLRB) to enforce NLRA-guaranteed rights.

To file an unfair labor practice charge (<https://www.nlr.gov/faq/questions/how-do-i-file-unfair-labor-practice-charge-and-what-happens-next>):

- Contact the nearest NLRB regional office and ask to

speak to an information officer.

- Remember to file your charges within six months of the occurrence.
- A local NLRB office will investigate the charge and potentially issue a complaint, at which point a hearing before an Administrative Law Judge will be held to determine the truth of the allegations.

For more information on Title VII, ADA and ADEA rights, visit the Department of Labor's website (www.dol.gov/index.htm).

NLRA-protected rights can be found on the NLRB's website (<http://nlrb.gov/>).

State Employees' Remedy for Unlawful Termination:

Individual states have their own workplace laws and protections for state public employees. State public employees who believe they have been terminated unlawfully should consult their state's website for more information on their rights, and the procedures to enforce their rights. Some state employees are also covered by a collective bargaining agreement.

- Department of Labor: Termination.
- USERRA rights for current or former service members.
- Whistleblower protection.

If you are laid off, not terminated, you still have certain protections. The Worker Adjustment and Retraining Notification Act (WARN Act) (www.doleta.gov/layoff/warn.cfm) applies to private-sector employees with 100 or more workers and requires covered employers to give employees 60-day advance notice of mass layoffs and plant closing. The Labor Department has produced a WARN guide for employees (www.doleta.gov/layoff/pdf/WorkerWARN2003.pdf).

- Department of Labor fact sheet on the WARN Act (www.doleta.gov/programs/factsht/warn.htm).
- Department of Labor: Compliance—the WARN Act (www.dol.gov/compliance/laws/comp-warn.htm).

UNEMPLOYMENT BENEFITS

YOU ARE ENTITLED TO ANY MONIES that are due you after losing your job.

Workers are facing high rates of unemployment. Many are in need of income to keep their homes or to buy food. There are some safety nets, like unemployment insurance for employees who have lost their job through no fault of their own and meet certain eligibility requirements.

Unemployment insurance (www.dol.gov/dol/topic/unemployment-insurance/) is administered by the states, and the laws and eligibility vary by state. The amount of unemployment compensation you receive depends on many factors, including the state you live, the salary of your previous employment and so on.

Federal employees also are eligible for unemployment compensation. Federal unemployment compensation (<http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>) is administered through the states as well. Payments or unemployment for federal employees is paid for by various federal agencies.

You may be ineligible for unemployment (www.ows.doleta.gov/unemploy/content/denialinformation.asp) for several reasons, such as:

1. You engaged in misconduct on the job and that behavior led to your firing.
2. You voluntarily quit your job without good cause. What is good cause varies by state.
3. You are not able to work or available for work.
4. You refuse an offer of suitable work.
5. You knowingly make false statements to obtain benefit payments.

If you have been denied unemployment benefits you believe you are entitled to receive, you must contact your state workforce agency (www.servicelocator.org/OWSLinks.asp). Remember: Each state sets its own eligibility requirements.

Check It Out

- AFL-CIO: Unemployment and Related Help (<http://aflcio.org/Issues/Civil-and-Workplace-Rights/Your-Rights-at-Work/Unemployment-and-Related-Help>)

MORE INFO

You also can find more information on unemployment insurance at:

- National Employment Law Project: Unemployment Insurance (www.nelp.org/index.php/content/content_issues/category/unemployment_insurance/)
- Department of Labor: Unemployment Insurance (www.dol.gov/dol/topic/unemployment-insurance/)

U.S. RESERVIST

WITH THE U.S. WAR IN AFGHANISTAN, more and more reservists are being called to active duty. Some reservists may be on active duty for six months or longer and are unsure of their rights concerning their job and benefits.

The federal Uniformed Services Employment and Re-Employment Rights Act (USERRA) establishes the rights of reservists and the National Guard to return to work at the end of their service. The USERRA applies to all employers regardless of their size and protects those serving in the U.S. reserve forces of the Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service Commissioned Corps and the National Guard. The U.S. Department of Labor, through the Veterans' Employment and Training Service (VETS) provides assistance to all persons having claims under USERRA, including federal and Postal Service employees.

While on active duty, employees must receive all benefits available to other employees on comparable leaves of absence. Employees also may use accrued vacation while on leave but cannot be forced to do so.

If you are a permanent employee, the USERRA requires employers to reinstate you to your former job after active duty or to a comparable position with the same status, seniority and pay. To be eligible for reinstatement, you must:

- Give advance notice prior to leaving;
- Be on active duty for less than five years (excluding certain service required by a declared war or national emergency);
- Not be dishonorably discharged or separated under other than honorable conditions; and
- Report back to work in a timely manner after discharge.

When you return to work, you are entitled to the same status, pay and benefits as you would have received had you not gone into active duty. If you cannot perform

the job, your employer must use reasonable efforts, such as training, to enable you to upgrade or refresh your skills to become qualified for that position. Your employer cannot consider your time on active duty as a break in employment for pension benefit purposes, and your military service must be considered service with an employer for vesting and benefit purposes.

Although federal law guarantees reservists and the National Guard their jobs, it does not require employers to continue to keep paying for health insurance. Some large companies keep paying the insurance for reservists and the National Guard, but many small companies do not. If you are a reservist or National Guard member who loses health care insurance, you can pay for health care insurance under the Consolidated Omnibus Budget Reconciliation Act (COBRA), which provides health coverage continuation rights to employees and their families after an event such as reduction in employment hours. If your military service is for 30 or fewer days, you and your family can continue coverage at the same cost as before your service. If military service is longer, you and your family may be required to pay as much as 102 percent of the full premium for coverage.

You also may pay for the care yourself or use Tricare (www.tricare.mil/mybenefit/), a U.S. Department of Defense agency that provides insurance for members of the military.

A federal employee who is a member of the National Guard or Reserves is entitled to 15 days (120 hours) of paid military leave under 5 U.S.C. 6323(a) each fiscal year for active duty, active duty training or inactive duty training. An employee on military leave under section 6323(a) receives his or her full civilian salary, as well as military pay. This leave accrues at the beginning of each fiscal year, and all Guard or Reserve members, including those on extended active duty, should be credited with 15 days of paid military leave on Oct. 1 of each year.

MORE INFO

- AFL-CIO Union Veterans Council (www.aflcio.org/aboutus/allies/unionveterans2008.cfm)
- Reserve Affairs at the Department of Defense (<http://ra.defense.gov/>)
- Department of Labor Veterans' Employment and Training Service (www.dol.gov/vets/)
- DOL overview of USERRA (www.dol.gov/compliance/laws/comp-userra.htm)
- Benefits for reservists (www.dol.gov/ebsa/faqs/faq_911_2.html)
- Re-employment rights of merchant mariners (www.marad.dot.gov/mariners_landing_page/reemployment_rights/ReemploymentRights4Mariners.htm)
- Reservists' rights to health care (www.dol.gov/ebsa/faqs/faq_911_2.html)
- National Mental Health Association (www.nmha.org/reunions/infoReturnWork.cfm)
- Office of Personnel Management FAQs on military leave (www.opm.gov/oca/leave/html/milqa.asp)

UNSAFE/UNHEALTHY JOB CONDITIONS

YOU HAVE THE RIGHT TO A WORKPLACE free of recognized health and safety hazards. Laws are in place to protect you from employers who put profit before the health and safety of workers. With the Occupational Safety and Health Act of 1970 (www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=OSHACT&p_toc_level=0&p_keyvalue=), Congress created the Occupational Safety and Health Administration (OSHA) (www.osha.gov/) to ensure safe and healthful working conditions for working men and women, by setting and enforcing standards and providing training, outreach, education and assistance. OSHA is part of the U.S. Department of Labor.

If you need to file a complaint with the Occupational Safety and Health Administration about a hazardous work condition, follow the step-by-step instructions

on “How to File an OSHA Complaint” (<http://aflcio.org/Issues/Job-Safety/Safety-and-Health-Sites/How-To-File-An-OSHA-Complaint>) on the AFL-CIO website or visit OSHA (www.osha.gov/as/opa/worker/complain.html).

For links to workers’ compensation information and injured workers’ groups, visit **What to Do if You Are Hurt on the Job** (<http://aflcio.org/Issues/Civil-and-Workplace-Rights/Your-Rights-at-Work/Hurt-on-the-Job>).

Check It Out

- Health and safety and related organizations (<http://aflcio.org/Issues/Job-Safety/Safety-and-Health-Sites>)

MORE INFO

- Workers’ Rights, by OSHA (www.osha.gov/Publications/osha3021.pdf)
- Department of Labor: OSHA (www.dol.gov/compliance/topics/safety-health-osh.htm)

WAGE GARNISHMENT

SOMETIMES, there are outstanding debts that must be paid to a third party. If the third party obtains a court judgment, the third party may garnish your wages, meaning payments to satisfy the debt will be taken from your pay check. Wage garnishment is a legal procedure and could be used to pay obligations such as child support.

Title III of the Consumer Credit Protection Act (CCPA) (www.dol.gov/compliance/laws/comp-ccpa.htm) is administered by the Wage and Hour Division (WHD) of the U.S. Department of Labor.

It protects employees from having too much of their wages garnished or being fired for a single garnishment. The amount of your wages in one week that can be garnished to pay a debt are also limited.

Your employer knows of your wage garnishments but cannot fire you based solely on your wages being garnished. However, you are not protected from discharge if your earnings have been subject to garnishment for a second or subsequent debt.

Title III applies to all employers and individuals who receive earnings for personal services, including wages, salaries, commissions, bonuses and even pensions. It does not ordinarily include tips because tips are not considered earnings for purposes of the wage garnishment law.

If you think your employer has violated wage garnishment laws, you can file a complaint with the WHD. To file a complaint, contact your nearest Wage and Hour Division (www.dol.gov/whd/america2.htm) office or call the department's toll-free Wage and Hour Help Line at 1-866-4-US-WAGE.

An employer who violates Title III may be required to reinstate the discharged employee, pay back wages and restore any improperly garnished amounts. Employers who willfully violate the discharge provisions of the law may be prosecuted criminally and fined up to \$1,000 or imprisoned for not more than one year, or both.

The National Labor Relations Board (www.union1.org/oip/Documents/NLRB%20Docs/NLRB_and_You_-_Unfair_Labor_Practices.pdf) does not enforce wage garnishment provisions of the various statutes.

MORE INFO

If you need more information about wage garnishments, check out these sites:

- Fact Sheet #30: The Federal Wage Garnishment Law, Consumer Credit Protection Act's (CCPA's) Title 3 (www.dol.gov/whd/regs/compliance/whdfs30.pdf)
- Department of Labor: Wage Garnishment (www.dol.gov/compliance/topics/wages-garnishment.htm)
- Wages and Hours Worked: Wage Garnishment (www.dol.gov/compliance/guide/garnish.htm)
- Labor Department by topic: Wages—Garnishment (www.dol.gov/dol/topic/wages/garnishments.htm)

WAGE THEFT

THE PHRASE “WAGE THEFT” generally refers to employees being denied full compensation for their work under the law. Often, low-wage and immigrant workers are victims of wage theft and are denied meal breaks, overtime pay and minimum wage and are forced to work off the clock without pay. It is illegal to not pay or to underpay workers their wages.

Wage theft is getting more attention as it is a growing problem. Wage theft can occur when workers are not paid, underpaid or misclassified as independent contractors.

MORE INFO

Read more on wage theft:

- Interfaith Worker Justice: Wage Theft (www.iwj.org/index.cfm/wage-theft)
- Department of Labor Wage and Hour Division (www.dol.gov/whd/)

More information regarding wage theft and resources for combating wage theft is available at the National Employment Law Project’s website (www.nelp.org/index.php/content/content_issues/category/support_for_wage_campaigns_by_worker_centers_and_unions)

YOUTH EMPLOYMENT

YOUNG PEOPLE HAVE RIGHTS ON THE JOB.

Workers often teach their children the value of hard work. Many teens want to work to earn their own spending money. Some teens are forced to take on employment to help their family meet its obligations. Due to age, lack of experience and workplace protections, some employers take advantage of young workers and break the law in doing so.

The rules differ for youth working in nonagricultural occupations (www.dol.gov/whd/regs/compliance/childlabor101.pdf) and those engaged in agricultural work (www.dol.gov/whd/regs/compliance/childlabor102.pdf).

Generally, anyone age 16 and older may work for any amount of time, subject to standard U.S. labor and employment laws as provided by the child labor laws (www.dol.gov/whd/childlabor.htm) of the Wage and Hour Division of the Department of Labor. Some 14- and 15-year-olds may also work, subject to the following conditions: 1) No more than three hours on a school day, 2) No more than 18 hours in a school week, 3) No more than eight hours on a nonschool day and 4) No more than 40 hours on a nonschool week. Between June 1 and Labor Day, those ages 14 and 15 may work from 7 a.m. until 9 p.m. At all other times, however, those ages 14 and 15 may only work from 7 a.m. until 7 p.m.

Different rules apply to youth engaged in agricultural work. Anyone ages 16 and above may work at any time and in any occupation on a farm. Children ages 14 and 15 may also work on a farm outside of school hours and provided they do not work in any occupation the

secretary of labor has deemed hazardous. Children ages 12 and 13 may work on farms outside of school hours, if they obtain a parent's written consent. Children under the age of 12 may be employed outside of school hours, with written parental consent, on any farm that is not subject to the federal minimum wage provisions. A child of any age may work in any occupation on a farm owned by the child's parent.

Children who engage in entrepreneurial activities, such as cutting a neighbor's lawn or babysitting, are usually not subject to federal labor standards.

Federal law prohibits young workers under 18 years of age from working in any occupation the Fair Labor Standards Act (FLSA) has determined to be hazardous. Occupations such as excavation, mining, meat packing or slaughtering and operating many types of power-driven equipment are off limits to youth. Each state has specific child labor laws. States must comply with both the federal and state laws regarding young workers.

More information regarding child labor rules (www.dol.gov/elaws/esa/flsa/cl/default.htm)—including information about which agricultural occupations the secretary of labor has deemed hazardous, which agricultural employers are exempt from the federal minimum wage requirements and more stringent individual state regulations—can be found on the Department of Labor's website (www.dol.gov/whd/childlabor.htm).

Check It Out

- AFL-CIO Young Workers (<http://aflcio.org/Get-Involved/Young-Workers>)

MORE INFO

You can find more information at:

- YouthRules!, a Labor Department website that educates the public on federal and state rules on the employment of young workers (<http://youthrules.dol.gov/>)
- Safety Campaign for Young Workers, by the Occupational Safety and Health Administration (www.osha.gov/SLTC/teenworkers/youngworkers.html)