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Courtesy  
LSBA

# RIGHTS OF THE FIRED EMPLOYEE

*Employment  
At-Will*



For further information, call or write to:

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## Employment At-Will

In Louisiana, you may be fired for any reason, or no reason, unless:

- ▶ you have a contract of employment for a specific length of time; or
- ▶ are a union member with a collective-bargaining agreement.

However, you cannot be fired for a reason protected by federal or state law. These protected reasons are called exceptions to the "employment at-will" doctrine.

## Exceptions to the At-Will Doctrine

There are too many exceptions in state and federal laws to list here. One of the major exceptions forbids any adverse employment action — not just discharge — based on discrimination because of the employee's race, color, sex, pregnancy, age, national origin, religion, handicap or disability. Some parishes or cities may protect against other kinds of discrimination (for example, sexual orientation in Orleans Parish).

Many other laws protect employees from retaliation for certain actions. A few examples include:

- ▶ exercising statutory rights by complaining about discrimination;
- ▶ filing a workers' compensation claim;
- ▶ union activities;
- ▶ complaining about environmental violations;
- ▶ making an OSHA complaint;
- ▶ taking jury duty; and
- ▶ whistle-blowing activity.

## Talk with a Lawyer

It is best to consult with a lawyer when you are fired. A lawyer will review your evidence to see if you have a case and will know if other laws protect you. A lawyer also may be able to help you with other legal problems that may come with losing your job.

## Filing Grievances

In some cases, you may be able to file directly in federal or state court. In most cases, you have to "exhaust administrative remedies" first. This means that usually before going to court, you have to file a grievance or charge with a government agency which will investigate your complaint. Talk with a lawyer if you are not sure what to do.

Follow internal grievance procedures, if your employer had any. File a grievance with your union if you are covered by a collective-bargaining agreement. File a complaint with your employer's Equal Employment Opportunity representative if you are a federal employee or a civil service worker.

You also may file a charge with the Louisiana Commission on Human Rights or the Equal Employment Opportunity Commission (EEOC) to preserve your federal and state rights. The EEOC investigator represents the federal government and not you. Most employers have a lawyer during the EEOC process. It is best to get a lawyer if you can. The New Orleans EEOC Field Office number is 1-800-669-4000 (1-800-669-6820 TTY).

If you are in a union, check your collective-bargaining agreement immediately. You may have only a few days to file a grievance.

You have 180 days to file a charge with the Louisiana Commission on Human Rights or with the EEOC. You have 180 days to file a breach of contract claim if you are in a union. You have 90 days after receipt of a right to sue letter from the EEOC to file a lawsuit in federal court and you have one year to file a lawsuit in state court. Time limits run from when you get notice of the adverse job action, not its effective date. These time limits run whether or not you have filed a claim with the EEOC. Your state rights expire in one year even if the EEOC is still investigating the case.

## Going to Court

At some point, you must file a lawsuit in the right court or forever lose your rights on a claim. If you have a lawyer, be sure to ask what the time limit is for your case.

## Potential Damages

If you win your case, you should be put in the same financial position you would have been in if not for the discriminatory conduct of the employer. This includes back pay, reinstatement or front pay, attorney's fees and costs. Some kinds of claims also will allow you to recover what are called "compensatory damages." These include pain and suffering; mental anguish; embarrassment; humiliation; and loss of reputation.

Some federal claims also will allow additional money awards if you prove that the employer acted "with malice or reckless indifference" to, or with "willful disregard" of, your federally protected rights.

## Costs of Going to Court

If you lose your case, the court may award the employer his or her costs in the case. This means that you would be responsible to pay the employer's filing fees, deposition costs and some of the copy costs. The court also may order each side to pay its own costs. The costs can be thousands of dollars.