

Attorney General Eric T. Schneiderman



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Can You Be Fired?

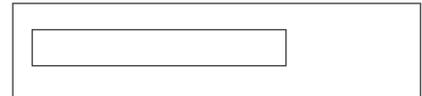
This is a guide to help private sector (i.e. non-governmental) employees determine whether a discharge may be in violation of New York law and where to seek further assistance and information. Keep in mind that federal law will also offer protections in certain circumstances but that federal protections are not covered here.

New York State is generally considered to be an "employment at will" state, which means that a private sector employer can pretty much hire and fire as he or she pleases and a discharged employee usually will have no legal recourse even when the discharge is unfair or unreasonable. However, there are certain circumstances under which the discharge of an employee is against the law and will entitle the discharged employee to government intervention on his or her behalf and other circumstances where a discharged employee has the right to sue his or her employer for damages and/or reinstatement.

1. If you are a member of a union and are employed pursuant to a union contract, you are entitled to all the protection against discharge written into that contract, including seniority protection and the contract's grievance procedure. Consult your union representative for assistance.
2. Even if you are not a union member, you might still be employed pursuant to a written contract of employment which limits the right of your employer to terminate your services. Check the terms of the contract and consult your attorney if you think your discharge is a contract violation.
3. Some employers distribute an employee manual which recites the conditions under which an employee may be discharged and/or preliminary disciplinary steps which will precede discharge. For example, an employee manual might typically provide that an employee whose performance is below standard in some respect shall receive a counseling letter, followed perhaps by a hearing or interview designed to address the performance problem, before being discharged. Under certain very limited circumstances, some employee manuals have been found to create an implied contract of employment entitling an employee to all the protections against discharge that are written into the manual. Check your employee manual and consult your attorney if you have been discharged in violation of its terms. Discharge in violation of either a written or implied contract of employment might entitle an employee to sue his employer for reinstatement and lost wages.
4. A "whistleblower", that is, an employee who is fired for reporting to a supervisor or to a public agency a violation of law which creates and presents a substantial and specific danger to public health and safety, or who is fired for refusing to participate in such conduct, can sue his employer for reinstatement, back pay and attorney's fees. For example, if you report your employer to the Environmental Protection Agency for illegal dumping of toxic waste, you might be a protected "whistleblower". An employee who is fired for complaining to his employer or to the Department of Labor of a labor law violation can also sue his employer for reinstatement, back pay and attorney's fees. For example, if your employer fires you because you complain of receiving less than the statutory minimum wage, you might be protected under the provisions of the labor law banning retaliation for such complaints. In either case, you should consult an attorney to determine whether legal action is appropriate.
5. An employee who is discharged because of his participation, on his own time, in lawful political or recreational activities can bring an action against his employer

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for damages and equitable relief. If you believe you have been discharged because of your involvement in such legitimate pursuits, you should consult your attorney to discuss possible legal action and report the circumstances of your discharge to the Attorney General, who also has jurisdiction to seek injunctive relief and penalties against your employer.

6. The New York State Human Rights Law prohibits an employer from discharging an employee because of his or her race, religion, gender, place of national origin, age, marital status or disability. In New York City, employers are also prohibited from discharging employees on account of their sexual orientation, arrest or conviction record, partnership status, or status as a victim of domestic violence, stalking and sex offenses. Violations of the Human Rights Law can give rise to a private lawsuit, but may also be reported to the New York State Division of Human Rights or the New York City Commission on Human Rights, both of which have jurisdiction to investigate complaints and enforce compliance.
7. The Workers' Compensation Law prohibits an employer from discharging a worker because he has filed a Workers' Compensation or Disability Benefits claim or has testified before the Workers' Compensation Board. Complaints of such retaliatory discharge may be made to the Workers' Compensation Board.
8. Jury duty is an important obligation of all citizens. No employer who is notified in advance of a jury duty summons may fire an employee because of that absence. Employees who are fired because of their absence from work to fulfill a jury duty obligation should contact the Attorney General for assistance.

Some of the most frequently asked questions regarding termination from employment are:

My employer accused me of stealing (or other misconduct) and I am innocent, but he fired me anyway. Is there anything I can do?

Unless you can assert one of the protections against discharge recited above, your employer can fire you for any reason, even an incorrect or unfair reason. He cannot, however, make any deductions from the wages and fringe benefits that you have earned because he believes that you have stolen or destroyed his property.

I was fired for being out sick too much, but I really was sick. Can my employer do this?

Although an employer is prohibited from firing an employee because of a disability as long as it does not impair his job performance, he is not obliged to maintain in employment an employee whose health problems cause poor attendance or otherwise interfere with his or her ability to carry out the work.

I think my personnel file contains derogatory material about me, but my employer won't let me see it. Is this legal?

Yes. There is no law in New York State which permits an employee to examine his or her personnel file.

My employer wants to reduce my salary, or change my hours and says I will be fired unless I accept the change. Can he do this?

Yes. An employer may change the conditions of employment, including salary, prospectively, provided that he pays at least the minimum wage and required overtime and provided that the employee is permitted to have one day off each week. An employer may not, however, change your salary for time you have already worked.

I extended my vacation for a few days because my flight was cancelled (or because I was sick) and when I returned, my boss fired me. Is this legal?

Yes. An employer is entitled to fire at will any employee, except as set forth in the narrative above.

I was fired so that my employer could replace me with a member of his family, or I was fired for fighting with another worker but the other worker wasn't fired, or I was fired because my boss didn't like me, even though I was a good worker. Is there anything I can do?

No, unless you are protected by an express or implied contract of employment, as described above.

I was fired while out on disability (or workers' compensation) leave. Can my employer do this to me?

Your employer cannot fire you because you filed a claim for disability or workers' compensation benefits, but he can replace you if you are unable to work. He does not have to hold your job for you until you are able to return to work.

My former employer is giving me bad references and I can't get another job. Is there anything I can do to stop him?

There is no law restricting the right of a former employer to express his negative opinion of your ability or character when asked for a reference, even if his opinion is unreasonable. It is, however, defamatory and therefore actionable for anyone, including a former employer, to tell lies about you to another person. If you have evidence that your former employer is saying false and derogatory things about you, you might wish to consult your attorney to consider a lawsuit against that employer.

If you have any additional questions concerning this subject, you can telephone the office of the Attorney General, Labor Bureau at (212) 416-8700 or with questions about anti-discrimination laws you may also call the Civil Rights Bureau at (212) 416-8250.

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