



Legal Aid
Society
of Hawai`i

Wrongful Termination

This brochure is useful if you think that you were wrongfully terminated from your job.

Important

Legal Aid Society of Hawai`i does not normally represent people in wrongful terminations. This brochure provides brief, general information. If you need more assistance after reading this brochure, you need to contact a private attorney who handles wrongful termination cases.

What is Wrongful Termination?

Hawaii is a no-fault employment state. This means that you can quit your job for any reason or no reason at all. It also means that your employer can fire you at any time for almost any reason. Wrongful termination means that your employer fired you for a reason that is not allowed by law. If your employer wrongfully terminated you, you may have the right to sue him/her.

Legal Aid does not normally represent people in wrongful termination cases.

We'll give you some brief general information so you can try to determine whether or not you were wrongfully terminated. If you need more assistance after this advice, you need to call a private attorney or contact your union if you are a member.

Call Lawyer Referral Service at 537-9140. Neighbor Islands can call collect.

I Was Just Fired From My Job. Can I Sue My Employer?

Maybe. This brochure discusses your options. See the box on the right for the topics this brochure will talk about. If you think that one applies to your situation or if you need more information, go to the appropriate section.

If none of the reasons in the list apply to you, then whether you can sue your employer will depend on the facts and circumstances surrounding your termination. Seek more help from a private attorney.

How to Use This Brochure:

This brochure is separated into two sections.

Section 1: The first section is about wrongful terminations when you have a written contract. This section will also apply to union members and civil service workers. Basically, you will need to refer to your contract or call your union or the Civil Service Commission. However, there are two sections that may be related to your situation--Discrimination and Violating Public Policy. These can be found in Section 2.

Section 2: The second section is about employees who do not have a written contract, also known as at-will employees. Without a contract, employers can terminate you for any reason, unless the reason is against the law. See this section for more information.

In This Brochure:

Section 1: You have a contract.

- (a) you had a written employment contract with your employer;
- (b) you are a member of a union with a collective bargaining agreement;
- (c) you are a public employee (e.g., an employee of the federal, state or local government);

Section 2: No contract

- (a) your employer fired you for a discriminatory reason, for example, because of your race, sex, or disability;
- (b) your termination violates public policy;
- (c) your termination breaks an implied contract.

Section 1: You have a contract.

(a) You have a written contract with your employer.

If you have a written employment contract with your employer, the contract should have rules about how and when the employer and the employee can end their working relationship. You may have a reason to sue your employer if he/she violated the terms of your employment contract. For example, if your employment contract says that you can only be fired for “cause,” and your employer fired you without cause, then you can argue that your employer broke the rules of your employment contract. Or if your employer fired you without following the procedures set out in your contract you may have a reason to sue your employer. You need to carefully read the rules of your employment contract to see if your employer followed it.

If your employer did breach the contract, then: (a) if you are a union member, contact your union representative immediately to see if the union can help resolve the dispute with the employer; or (b) if you are not a union member, then you will need to retain a private attorney to represent you in a suit against your employer. **Call the Lawyers Referral Service at 537-9140 and ask about contingency fees with the attorneys that you call.**

(b) You are a member of a union with a collective bargaining agreement.

Your union and your employer have a written agreement which tells the rules of your employment. If your employer breaks one or more of these rules, contact your union representative as soon as possible to see if the union can help you fix the problem with your employer.

(c) You are a civil service worker.

Civil service workers have specific rules about how and when they can be fired. In general, if you are a civil service worker, your employer needs to have “good cause” to fire you. The Civil Service Commission determines what reasons are “good cause.”

Some examples are:

- your actions are incompatible with public service
- failure of good behavior
- willful disobedience of rules or departmental orders
- neglect of duty
- insubordination

To be terminated from a civil service position, your employer needs to give you a notice ten (10) days before the date you are to be terminated. In this notice, the employer needs to include the reason(s) for your dismissal.

You may appeal your termination within twenty (20) days of receiving notice. You have a right to a hearing to present evidence and be represented by an attorney or represent yourself. For more information, call Civil Service Commission at 587-1104.

Section 2: No contract.

If you do not have a written employment contract with your employer, you are an employee-at-will. This means that you can quit your job at any time for any or no reason. It also means that your employer can fire you at any time for any reason, **BUT**, there are three basic limitations on the employer's right to terminate an at-will employee: discriminatory reasons, violating public policy, and breach of an implied contract.

(a) You were fired for a discriminatory reason.

Your employer cannot fire you for a discriminatory reason, for example, on the basis of your age, race, sex, religion, national origin, sexual orientation, or disability. If he/she does:

1. First, contact and file a complaint with the State Civil Rights Commission. You must do this within 180 days after the discriminatory action by your employer.

The State Civil Rights Commission 586-8636; Outer Islands call 1-800-468-4644 ext. 68636

2. Then, contact the Equal Employment Opportunity Commission. File complaint with the EEOC after you file with the state. You need to meet the earlier of the following two deadlines:

- within 300 days after the discriminatory action by your employer
- within 30 days of receiving notice that the State Civil Rights Commission has terminated its proceeding.

The Equal Employment Opportunity Commission 541-3120.

If you take too long to contact these agencies, you might not be able to sue your employer. Both of these offices are responsible for investigating claims of discrimination.

What will the Civil Rights Commission and EEOC do?

If either of these agencies find that your employer discriminated against you, they will either sue your employer on your behalf or give you a "right to sue" letter.

(b) Your termination violates public policy.

You cannot be fired for reasons that violate public policy. Violating public policy includes discrimination--if you think your employer may have discriminated against you, see part (a) of this section for more information.

If your employer violated public policy, you may have a reason to sue. Examples of employer conduct that violates public policy include:

- firing you because you reported that your employer violated any law--this is called a "Whistleblower" cause of action: if this is your case, you have **90 days** to file an action against your employer--you should contact a private attorney immediately. Call the Lawyer Referral Service at 537-9140;
- firing you for exercising any statutory right, such as filing a worker's compensation claim;
- firing you for refusing to take part in illegal activity; such as testifying falsely or committing perjury;
- discrimination. See Section (a) for more information.

If you think that your termination violated public policy, contact Lawyer Referral Service at 537-9140. Outer Islands can call collect.

(c) Does your termination break an implied contract? An employer cannot fire you if firing you breaches an implied contract.

An implied contract can be created by policies set forth in an employee manual or handbook. An implied contract, however, is not automatically created whenever an employee manual is issued.

If you suspect your employer broke an implied contract, call the Lawyer Referral Service at 537-9140 to get a private attorney. Outer Islands can call collect.

What happens if you were **NOT** wrongfully terminated?

You cannot sue your employer, but YOU CAN STILL APPLY FOR UNEMPLOYMENT BENEFITS. The rules for getting unemployment benefits are not as strict as the reasons why you can sue your employer. As long as you were not fired for misconduct, you can get unemployment benefits. For more information on what misconduct means, get our brochure called "Unemployment Benefits: Good Cause Vs. Misconduct."

Legal Terms

breach of contract when your employer breaks a part of the contract you have

contingency fees an agreement between you and your private attorney which says you will pay him/her a portion of what you receive in court if you win

contract an agreement between two parties about a particular issue

discrimination unfair treatment to a person due to race, age, religion, sex, sexual orientation, disability, etc.

employee-at-will an employee who does not have a contract with his employer

good cause a legally sufficient reason for doing something

implied contract when you do not have a written contract but have reason to believe that you have an employment agreement with your employer

insubordination purposely ignoring reasonable orders made by your employer

misconduct behavior that is not appropriate to the situation

unemployment benefits benefits that you may be eligible for if you meet certain departmental requirements

Wrongful termination when an employer fires you for a reason that is against the law

Useful Names & Numbers

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9:00-11:30AM & 1:00-3:30PM
OAHU: 536-4302 MAUI: 242-07024
HILO: 934-0678 KONA: 329-8331
KAUAI: 245-7580 LANAI: 565-6089
MOLOKAI: 553-3251

The Equal Employment
Opportunity Commission
541-3120

The State Civil Rights
Commission
586-8636
Outer Islands: 1-800-468-4644,
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Civil Service Commission
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