Wrongful Termination

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* Important: Legal Aid Society of Hawaii does not normally represent people in wrongful terminations. This brochure provides brief, general information. This brochure may be useful if you think that you were wrongfully terminated from your job. 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 member.

**I was just fired from my job. Can I sue my employee?**
**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:** This 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 maybe related to your situation – Discrimination and Violating Public Police. 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.

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**Section 1:** You have a contract.
- You had a written employment contract with your employer;
- You are a member of a union with a collective bargaining agreement;
- You are a public employee (e.g. an employee of the federal, state or local government);

**Section 2:** No contract
- Your employer fired you for a discriminatory reason, for example, because of your race, sex, or disability;
- Your termination violates public policy;
- Your termination breaks an implied contract.

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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, contract 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 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.

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.

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 employers needs to have “good cause” to fire you. The Civil Service Commission determines what reasons are “good cause.”

Some examples include:
- Your actions are compatible 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 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 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. However, there are three basic limitations on the employer’s right to terminate an at-will employee: discriminatory reasons, violation 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 number is 586-8636. Outer Islands call 1-800-468-4644 ext. 68636.

2. Then, contract the Equal Employment Opportunity Commission (EEOC) at 541-3120. 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.

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.

**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 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.
- 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 2a (No Contract) for more information.

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

**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.

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**Useful Numbers**

**Legal Aid Society of Hawai‘i Legal Hotline**

Open from Monday to Friday
9:00 am to 11:30 am & 1:00 pm to 3:30 pm.

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On the web at http://www.legalaidhawaii.org

**The Equal Employment Opportunity Commission:** 541-3120

**State Civil Rights Commission:** 586-8636

Outer Islands: 1-800-468-4644 ext 68636

**Civil Service Commission:** 587-1104

To find a private attorney:

Look in your yellow pages or call Lawyer

**Referral Service:** 537-9140 (Neighbor islands can call collect.)

**REMEMBER:** This pamphlet is meant to give you general information and not to give you specific legal advice about your case. The law often changes. Each case is different.