



YOUR RIGHTS IN THE WORKPLACE In Washington, D.C

EMPLOYMENT LAWS IN GENERAL

- Laws can be federal (U.S.), state or local.
- Statutes: laws passed by legislative bodies, such as Congress, the Maryland state legislature or the D.C. city council.
- Regulations: more specific guidelines about how the law will be carried out.
- Case law: when something comes up that the law does not cover or you could argue over the meaning of a law, it goes to court. Courts publish their decisions and their decisions become part of the law also. (Courts can be federal, state or local as well).
- Most employment laws have these provisions: 1) the other side pays your attorney's fees if you win; 2) it's illegal to retaliate against someone for filing a claim or participating in a claim.
- Some employment laws also have these provisions: 1) you must go to administrative agency before filing suit; 2) civil penalties for violations.
- The **place of employment**, not the place of residence, determines which state's laws apply. If you work in D.C. and live in Maryland, D.C. law applies to your employment claim. (Federal laws apply no matter where you live or work.)

UNEMPLOYMENT COMPENSATION

- Available when employee loses job by being fired or laid off.
- Domestic violence victims who lose their jobs as a result of the violence can apply for benefits even if they would not otherwise qualify, but they need to establish that they are victims of domestic violence.
- Employers often fight paying benefits, but worker can ask for a hearing.
- Employer must prove that employee quit without a good reason, was fired for misconduct, or was laid off in a labor dispute (with a union).
- Those receiving unemployment must be able to work and be actively looking for a job. A person without legal authorization to work is entitled to payment for work already completed, but is not eligible for unemployment because they are not considered "able to work."
- Forms are not printed in Spanish, though each office is supposed to have one Spanish-speaking person. In addition, the office is supposed to provide language services in other

widely-used languages, either in person or through Language Line. Non-English speaking clients may need more guidance through the system.

- **Time limits for appeal in D.C. are very short**, usually **10 days from the mailing**, not the receipt, of the denial letter. Clients should save envelopes and reply promptly.
- How to apply: Call the D.C. Office of Employment Services, (202) 724-7000, to find out which office to file with. Appeals (first level): (202) 698-3700.
- Free legal help appealing a denial: If a worker has a hearing date, he or she should call the AFL-CIO Claimant Advocacy Program, (202) 974-8159.

INJURY ON THE JOB

- If an employee is injured on the job, she should report it to her supervisor immediately.
- If the supervisor does not fill out a claim form, a worker can file a claim directly with the D.C. Office of Workers' Compensation at 64 New York Avenue, NE, 2nd floor, (202) 671-1000.
- Workers' compensation should pay for doctor's bills and lost wages, and may give money for future medical bills.
- Some injuries you might not think of: carpal tunnel syndrome from typing, mental injury from extreme stress at job (e.g. sexual harassment by supervisor).
- Undocumented workers are entitled to receive workers' comp.
- Domestic workers in D.C. (e.g. housekeepers, baby-sitters) are covered if they work 240 hours in a quarter (6 weeks in any 3 month period).
- Private attorneys can handle workers' compensation cases.
- Unfortunately, it is almost impossible to find an attorney to handle a case against the D.C. government.
- Enforcement: Private employees in D.C., Department of Employment Services (DOES) (202) 671-1000; D.C. government employees, D.C. Office of Risk Management, 1-888-832-2524; Federal employees, Department of Labor, Office of Workers' Compensation Programs 1-866-692-7487 or (202) 513-6800.

WAGES AND HOURS

- Employers must pay at least the federal minimum wage or the state minimum wage, **whichever is higher**.
- The minimum wage in D.C. by law must always be at least \$1 higher than the federal minimum wage. Currently, it is \$7.55 an hour, but it goes up to \$8.25 an hour on July 24, 2009.
- The federal minimum wage is currently \$6.55 an hour. After July 24, 2009, the federal minimum wage will be \$7.25 an hour.
- Special minimum wages apply to the government and government contractors.
- Any work over 40 hours in one week should be paid **overtime**. This means one and a half times regular pay.
- Employer must pay for uniforms, tools, cleaning (of uniforms), and transportation on the job. The employer can not deduct these costs from an employee's paycheck.
- The employer cannot make any deductions from pay that put the wage under minimum wage (except child support and taxes).

- The minimum age to work (besides actors and newspaper delivery) is 14.
- 14 and 15 years olds have special rules: while school is in session, no more than 18 hours per week and 3 hours per day, and work must be completed by 7:00 p.m. each night.
- Minimum shift in D.C.: four hours a day unless regular shift is fewer hours. This means, for example, that someone who works two hours a day must be paid for four hours.
- After quitting, wages should be paid at the next regular pay day or within seven days, whichever is sooner. After being fired, wages should be paid the next working day. Penalty is 10% of the wages per day up to 100%.
- Enforcement: D.C. Office of Wage and Hour, (202) 671-1880, 64 New York Avenue, NE, 2nd floor; U.S. Department of Labor, Wage and Hour Office 1-866-487-9243; or private lawsuit.

LIVING WAGE AND OTHER HIGHER WAGES

- Certain workers in D.C., including D.C. government workers, are entitled to special wages and protections. These protections are found in the Service Contract Act, the Davis Bacon Act, and the Way to Work Act (which established a living wage).
- The living wage in D.C. is currently \$12.05, and it automatically increases with inflation. It applies to employees working under contracts with the D.C. government, as well as to certain other employees.
- The Service Contract Act (SCA) requires government contractors to pay their employees certain set wages, depending on the position, as well as fringe benefits and vacation time. The Act applies to all contracts with the federal or D.C. government, for contracts of more than \$2500.
- The Davis Bacon Act (DBA) is similar to the Service Contract Act, but it applies to contracts for the construction, alteration, or repair of federal or D.C. public buildings/public works. Those contracts must exceed \$2000.
- If both the living wage and either the SCA or the DBA apply, the higher wage prevails.
- For more information on these laws or to learn whether they apply to you, please visit one of the EJC's Workers' Rights Clinics.

ABSENCES FROM WORK

Family and Medical Leave Act

- D.C.'s FMLA provides up to **16 weeks** of unpaid leave for the birth or adoption of a child (for either parent), the employee's own serious illness, or to care for a close family member who is ill. Federal FMLA provides up to **12 weeks** of unpaid leave.
- Illness must be **serious**: A serious illness generally means an illness that requires hospitalization or continuing care. A worker will not be entitled to FMLA leave for a minor illness such as a cold or their child's earache.
- The employee must have worked in the same place for **one year**, at least 1,000 hours (D.C. law) or 1,250 hours (federal law) in the last year. In DC, the one year period must be continuous; under federal law, the time worked just needs to add up to a total of one year.
- Employer must have more than 20 employees in D.C. (D.C. law) or 50 employees within a 75-mile radius (federal law).

- Enforcement: D.C. Office of Human Rights (202) 727-4559; U.S. Department of Labor 1-866-487-9243; or private lawsuit. For DC, you must file for enforcement within one year of the violation or discovery of the violation. Under federal law, you have two years.

Paid Sick and Safe Days

- D.C. employees are entitled to paid time off when they are sick, a family member is sick, or for preventative care. In addition, victims of domestic violence, sexual assault, or stalking can use paid time off to address those situations.
- Employers with 1-24 employees must provide 1 hour of leave for every 87 hours worked, up to 3 days/year. Employers with 25-99 employees must provide 1 hour of leave for every 43 hours worked, up to 5 days/year. Employers with 100 or more employees must provide 1 hour of leave for every 37 hours worked, up to 7 days/year.
- To be eligible, an employee must have worked for the employer for 12 months, and for at least 1000 hours.
- Certain employees are not entitled to paid sick and safe time: 1) full-time students working fewer than 25 hours/week at their own school; 2) restaurant workers who earn a combination of wages and tips (bartenders, wait staff); 3) health care workers who participate in premium pay programs.
- Enforcement: D.C. Department of Employment Services (DOES) (202) 671-1000.

Parental Leave

- In D.C., you can have up to 24 hours of unpaid time off each year to attend school events for your child, grandchild, niece, or nephew. Covered events include school plays, sports games, and parent-teacher conferences. You have to give your employer notice at least 10 days before the event, and the leave can be denied if it would disrupt business.
- Enforcement: D.C. Office of Human Rights (202) 727-4559; or by filing a private lawsuit. You must file for enforcement within one year.

Emancipation Day

- All workers in D.C. are entitled to a day off on D.C.'s Emancipation Day, April 16, as long as they give 10 days' notice. This is unpaid, although the employee may opt to use paid vacation time.

DISCRIMINATION

- By federal law, it is illegal to treat anyone differently in any area of employment because of the person's **race, color, national origin, sex, religion, disability, or age (over 40)**.
- **Pregnancy** must be treated like any other short term disability. If an employer provides special accommodation for someone with another type of short-term disability, such as a broken leg, then the employer must also do so for someone who is pregnant.
- **Equal Pay**: men and women must get equal pay for equal work.
- **Speak English Only** rules can be a form of illegal national origin discrimination.
- By D.C. law, it also is illegal to discriminate because of **sexual orientation, gender expression or identity, marital status, family responsibilities, personal appearance** (but not grooming), **political affiliation, genetic information, because you are enrolled in school, or because of your age (if you are over 18)**.

- Harassment can be a form of discrimination.
- Biggest problem with discrimination cases: proof.
- Federal law applies to employers with 15 or more employees, D.C. law to all employers.
- Private attorneys will take good cases because the law requires the losing party to pay attorneys' fees. There are many attorneys who specialize in employment discrimination in the Washington area.
- Under federal law, must file with the EEOC within **300 days** of the incident, or with the D.C. Office of Human Rights within one year of the incident. Note: this is much shorter than the statute of limitations in most cases.
- Federal employees have completely different rules and a very short time limit: 45 days to go to their agency's Equal Employment Opportunity (EEO) office.
- D.C. government employees must contact their agency's EEO counselor within 180 days.
- Union grievances do not extend the statute of limitations.
- Enforcement: Equal Employment Opportunity Commission (EEOC) 1-800-669-4000; D.C. Human Rights Office (202) 727-4559. Employees should file in both offices to preserve all rights and claims.

DISABILITY ACCOMMODATION

- If an employer knows that an employee has a disability, the employer must make a **reasonable accommodation** of that disability. Note that employers are not required to accommodate disabilities they do not know about.
- Examples of disability include: having to use a wheelchair, recovering from alcoholism or drug addiction, depression, schizophrenia, or being HIV positive.
- Examples of things that are not disabilities: sprained ankle, the flu, wearing glasses.
- Examples of accommodations: wheelchair ramp, time off to attend therapy, time off to attend AA or NA meetings, leave to deal with mental issues.
- You cannot be asked whether you have a disability before you are offered a job; you can be asked whether you can perform the job. You cannot be asked to take any medical tests until you have a conditional job offer.
- Employers should not be asking these types of questions: Have you ever been addicted to drugs or alcohol? Have you ever been under the care of a psychiatrist? Do you have any serious medical conditions that we should know about?
- Enforcement: D.C. Office of Human Rights and U.S. EEOC.

INDEPENDENT CONTRACTORS

- There is a legal difference between an employee and an independent contractor.
- **Independent contractors** lose many of the employment rights listed here, but some employers **misclassify** people as independent contractors to avoid their legal responsibilities to employees. It's important to look at the situation carefully to determine whether someone actually is an independent contractor.
- What matters is the **economic reality** of the situation. If the worker is told what to do and has little independent control over the work, they are an employee, not an independent contractor. If the worker sets his own schedule and hires other workers, he is an independent contractor.

UNIONS

- A union is a group of employees who get together to negotiate with their employer for **better pay and working conditions**.
- Everyone has a **right** to organize a union. Everyone has a right to join a union if the workplace already has one. In D.C., a private sector worker can be required to pay union dues, but federal or D.C. government workers cannot be required to do so.
- Each workplace has a “shop steward” who is the front-line **advocate** for the union worker.
- Most union workers can file a **grievance** to protest an adverse action. Usually, they can do this by themselves or together with the union shop steward.
- Unions have a duty to represent all members fairly. When they don’t, an employee can file a claim against the union.
- Groups of employees can get assistance in organizing a union in their workplace, no matter how small.
- Enforcement: Grievance procedure under the collective bargaining contract; National Labor Relations Board 1-866-667-6572.

CHANGE IN CONTRACTORS

- A D.C. law may protect the jobs of people who work for contractors with service contracts (e.g. building maintenance and food service workers) with the government when the contract changes hands.
- In most circumstances, the new contractor must retain all non-supervisory workers.
- Enforcement: private lawsuit.

TAXES

- Workers should file a return! Most low-income people get back most of the taxes that were withheld, plus extra in the form of the Earned Income Tax Credit.
- If you have not received a W-2 (statement of wages for the last year) by Valentine’s Day, ask your employer for it.
- Withholding: One option is to claim as few dependents as possible on the W-4. Almost no low-income individual will end up owing at the end of the year, so this puts more money in their pockets. On the other hand, some clients like the “forced savings” of extra withholding. Note that TANF checks are reduced by the amount of gross income (before taxes), not net income.

WELFARE TO WORK

- Welfare reform requires all TANF (Temporary Assistance to Needy Families) recipients to participate in 30 hours of “work activity” per week or face a sanction or termination from TANF.
- “Work activity” includes work, training, school, and community service programs.

- TANF recipients are supposed to receive reimbursement up to \$10 a day for transportation and other work-related expenses. For many, this stipend is placed on their EBT cards. For others, it comes directly from the “employer”. There have already been problems with stipends.
- **The following workplace protections** generally apply to work done as part of the TANF requirements – even if it is unpaid: minimum wage (value of TANF check should equal minimum wage), workers’ compensation, occupational safety & health, and protection from discrimination (including harassment).
- The law provides several reasons for **excused absence** from work activity, including illness, lack of child care and discrimination on the job.
- For clients who find paying jobs, their benefits are supposed to **continue**. The first \$100 of gross income plus 50% is supposed to be disregarded. Thus, someone who finds a paying job can have their income go up by more than 50%, while maintaining Medicaid.

UNDOCUMENTED WORKERS

- Workers without work authorization are entitled to work **free from abuse!**
- Undocumented workers can file claims for all of the above topics, except for unemployment compensation and welfare-to-work.
- To protect workers, advocates should file claims using their organization’s office address as the worker’s address. This way, if the employer calls immigration (which is illegal retaliation), the worker is still protected.
- Although it is illegal for the employer to call INS when a worker attempts to enforce his or her rights, it may happen. The worker is in the best position to know what his or her employer may do and to decide whether they want to take the risk.

WHAT’S NOT ILLEGAL

- The general rule of employment in the United States is employment at will. This means that in the absence of a written contract, such as a union contract or a specific employment contract, all employment is presumed to be at will. An employee can be terminated for a good reason, a bad reason, or no reason at all (except for illegal discrimination or other protection discussed above).
- You can be fired because the supervisor does not like you.
- You can be fired for being late, even once.
- You can be fired because someone else did not do what they were supposed to do.
- However, you cannot be fired for complaining about some violation of the law, or for filing a legal complaint.
- If a person is fired for a silly reason, they may not get their job back, but at least they may be able to receive unemployment benefits.

CRIMINAL RECORDS

- If **criminal records** are a barrier to employment, there may be a way to have old records **sealed**.

- **Arrest** records generally should not count against a person applying for a job, unless they are pending with no resolution.
- If an employer considers arrests, it may constitute a form of **racial discrimination** against African-American and Latino workers. Come to a Workers' Rights Clinic for more details.
- Employers can get tax credits for hiring ex-felons.

OTHER LAWS

- **Drug Testing:** most drug testing programs, including random drug tests, are OK, as long as they are not conducted in a discriminatory manner.
- **Polygraph Testing** (lie detector test) is not OK. It is outlawed (with some exceptions) by the D.C. Employment Polygraph Protection Act and by the federal Employee Polygraph Protection Act. Government employees, security workers, pharmaceutical workers and some others are not protected from polygraphs.
- **Occupational Safety & Health:** all employees have the right to a safe workplace, free from hazards.
- **Bad References:** Employers cannot defame (make untrue statements about) former employees. Truth is a defense to defamation. Opinions generally cannot be defamation (example: "I think you are a son of a bitch" is rude, but probably not defamation.).
- **Health Insurance:** Upon termination or quitting, an employee has two rights with regard to their health insurance 1) under COBRA, to continue in the plan for 18 to 29 months, but paying the full premium; 2) under HIPAA, some rights to maintain health insurance from job to job and avoid pre-existing condition clauses.

How to Get Help: If you are a low-income worker in the Washington, D.C. metropolitan area, you may come to one of the EJC Workers' Rights Clinics for free employment law advice:

Northwest Clinic, Bread for the City NW, 1525 7th St. NW, Washington, DC
Wednesdays at 6:00 p.m. - Clients accepted on a first come first served basis until we are full.

Southeast Clinic, Bread for the City SE, 1640 Good Hope Road SE, Washington, DC
Mondays at 3:00 p.m. - Clients accepted on a first come first served basis until we are full.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in Washington, D.C. Because laws and procedures frequently change, the D.C. Employment Justice Center cannot ensure that the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights in your situation.

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