



Employment  
Justice Center

# YOUR RIGHTS IN THE WORKPLACE IN WASHINGTON, D.C.

These are some of the common problems you may face at each stage of the employment process:

## (1) Before you get hired:

- (a) Your **criminal record** can make it more difficult for you to get a job.
  - You may be able to have old records sealed or expunged under certain circumstances.
  - Employers may get tax credits in some cases for hiring returning citizens.
- (b) You may be required to submit to **drug testing**.
  - Most drug testing programs, including random drug tests, are legal so long as they apply to everybody.
  - While possession of certain amounts of marijuana has been decriminalized in D.C., you can still be tested for marijuana and could be fired for its use.
- (c) An employer cannot conduct certain **background checks**, such as checking your credit report, without your written consent. They can, however, conduct searches for information in the public domain without your consent, such as criminal convictions reported in the media.
- (d) The D.C. Council recently passed the Fair Criminal Records Screening Act of 2014, also known as “**Ban the Box**.” If fully enacted, that law would prohibit private employers from considering a job applicant’s arrest record during the hiring process and would also restrict employers from looking into a job applicant’s prior convictions before extending a conditional offer of employment.

## (2) When you get your paycheck:

- (a) You can be misclassified as an **independent contractor** rather than an employee.
  - Some employers **misclassify** or mislabel employees as independent contractors so that the workers do not receive such rights as overtime pay and workers’ compensation.
  - If you have little independent control over your work, you are probably an employee; if you set your own schedule and hire other workers, you are probably an independent contractor.
- (b) You may have problems with your **income taxes**.
  - You are legally required to file a tax return no matter how much money you make. If you make less than a certain amount of money, you will get back most of your taxes plus the Earned Income Tax Credit.
  - Even if you are undocumented and cannot get a Social Security number, you are still required to file taxes using an Individual Taxpayer Identification Number (ITIN). For more information on obtaining an ITIN, visit [http://www.irs.gov/Individuals/Individual-Taxpayer-Identification-Number-\(ITIN\)](http://www.irs.gov/Individuals/Individual-Taxpayer-Identification-Number-(ITIN)).
- (c) You may have **wage and hour** problems
  - Employers must pay **all workers** the minimum wage, regardless of documentation. In D.C., the minimum wage is **\$9.50 an hour**. D.C. workers working under contracts with the D.C. government, as well as certain other employees, are entitled to the living wage, which is currently \$12.50.
  - If you are an employee (not an independent contractor) and work over 40 hours in one week, you should be paid **overtime** of one and a half times your regular pay. In D.C., however, domestic workers and minors are not entitled to overtime.

## (3) When you are on the job:

- (a) You may be **injured on the job**.

- If injured on the job, you may be entitled to **workers' compensation**. You must notify your employer of the injury within 30 days, and you must also file your claim within one year.
  - Undocumented workers are entitled to workers' compensation.
  - Workers' compensation should pay for doctor's bills and up to two thirds of your regular pay if you are unable to perform your job due to your injury.
- (b) You may need to be **absent from work** because of illness, injury or other reasons.
- The federal **Family and Medical Leave Act (FMLA)** provides up to **12 weeks** of unpaid leave for serious illness, and D.C.'s FMLA provides up to **16 weeks** of unpaid leave for the birth or adoption of a child (for either parent), your own serious illness, or to care for an ill close family member, provided you worked at least a year and a certain number of hours. For more information, visit [www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla) or [www.dol.gov/whd/state/fmla/dc.htm](http://www.dol.gov/whd/state/fmla/dc.htm).
  - The **D.C. Paid Sick & Safe Leave Act** entitles employees in D.C. to **paid time off** when they or a family member are sick, are victims of domestic violence, sexual assault or stalking, have a physical or mental illness, injury or medical condition, or seek preventive medical care.
  - In D.C., you may be able to use up to 24 hours of unpaid time off each year for **Parental Leave** to attend covered school events for your child, grandchild, niece, or nephew.
- (c) You may face **discrimination** from your employer.
- By federal law, it is illegal for an employer with 15 or more employees to treat anyone differently in employment because of **race, color, national origin, sex, pregnancy, religion, disability, or age (over 40)**. By D.C. law, it is also 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, so long as you are over 18.
  - You cannot be discriminated against in the hiring process for being pregnant. Your employer must also provide the same benefits to you if you are pregnant as he provides to other employees with short-term disabilities, including reasonable accommodations. You cannot be denied maternity leave if your employer normally provides short-term disability benefits or the ability to take similar periods of medical leave to employees who worked the same amount of time with you and are experiencing other short-term disabilities.
  - Men and women must be paid the same for doing the same work.
  - "**Speak English Only**" rules can be a form of illegal national origin discrimination.
  - It is illegal to discriminate because of **citizenship or legal immigration status** if the person is a U.S. citizen, permanent (green card holder) or temporary resident, asylee or refugee.
- (d) If you are **disabled**, you may need an accommodation to do your job.
- If your employer knows of your disability, he must make a **reasonable accommodation**.
  - Examples of disabilities include: having to use a wheelchair, depression, recovering from alcoholism, or being HIV positive. A sprained ankle, the flu, or wearing glasses are not enough.
- (e) You may have trouble working through a **union** or engaging in other forms of collective action.
- You have a **right to organize and/or to join a union**. In D.C., an individual working for a private company can be required to pay union dues, but D.C. government workers cannot. If you are a union worker, you may be able to file a grievance to protest your employer's actions.
- (f) If you are **undocumented**, you may not know what your rights are.
- Undocumented workers can file claims for all employment law violations, except unemployment compensation and welfare-to-work.
  - It is illegal for an employer to call ICE when a worker attempts to enforce his or her rights, but you always run the risk that this will happen.

#### (4) When you lose or leave a job:

- (a) If your employer fired you, you may wonder if you were **illegally fired**:
  - If you do not have a contract, your employment is presumed to be “**at will**,” and you can be terminated for even a bad reason or no reason at all, subject to the exceptions below.
  - No employee can be fired for a **discriminatory reason**, engaging in “**concerted activity**” with other workers, complaining about some violation of the law (“**whistleblowing**”), sustaining a **workplace injury**, taking approved **FMLA leave**, or filing a legal **complaint**.
- (b) You may have questions about applying for **unemployment compensation**:
  - Unemployment compensation is available if you were fired or laid off, provided you were not engaged in “gross misconduct,” which is when you deliberately or willfully violate your employer’s rules, threaten or violate your employer’s interests, show a repeated disregard for your obligation to your employer, or disregard the standards of behavior that an employer has a right to expect of his or her employees. You may also not be eligible for unemployment if you were laid off in a labor dispute or quit without good reason.
  - To receive unemployment benefits, you must **be able to work and be actively seeking a job**.
- (c) You may worry about getting a **bad reference** from your old employer:
  - Employers cannot **defame** former employees. If what your employer says is true, however, that is generally not defamation.
  - Opinions are generally not considered defamatory. For example, “I think you are a terrible person,” may be rude, but it is probably not defamation.
- (d) You may worry about health insurance coverage while looking for a new job:
  - If you received health insurance from your employer, you may have the right to COBRA continuation coverage in the plan for 18 to 29 months, but you must pay the full premium.
  - You can obtain insurance through the Healthcare Marketplace and can learn if you qualify for free or low-cost coverage from Medicaid or the Children’s Health Insurance Program.

*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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