

I GOT FIRED FROM MY JOB AND IT WASN'T FAIR! CAN THEY DO THAT?

INTRODUCTION:

The bad news is that **the law does not require employers to be fair** or "just." In general the law gives employers the freedom to hire and fire for any reason, or no reason at all.

The good news is that **there are some things an employer cannot do**. There are three types of limitations on the employer's freedom to hire and fire "at will:"

- (1) Did the employer break an agreement or contract with you?
- (2) Did the employer violate the discrimination laws?
- (3) Is what the employer did against "good public policy"?

To answer the question "Can they do that?" you have to look at the specific facts of your situation. The purpose of this pamphlet is to give you information about the things that employers are not supposed to do. You must look at your situation and see if any of these factors apply to you.

(1) AGREEMENT OR CONTRACT:

Personal Contract. Some employees may have entered a specific bargain or agreement at the time they were hired. This can be a written document (a contract or a letter), or just a verbal understanding. Look carefully at this agreement to see if the employer firing may violate some part of the agreement.

Union Contract. If you are a member of a union at your job, the union contract probably has some specific language about firings. Union contracts often discuss what you can be fired for, and the procedure the employer must follow to carry out a firing. Look at your contract carefully to see if it has anything that applies to your situation. You should also talk with your union representative.

Company Personnel Handbook. Many

companies (particularly the large ones) have "Employee Handbooks" or "Personnel Manuals" that they give to employees. These Manuals or policies also may describe the company's system of "discipline" (that is, suspensions and firings) and the procedures to be followed by both company and employee. In some circumstances courts will treat these Handbooks just like a contract between the company and the employee. Again, look carefully at the Personnel Manual or Handbook to see if the employer has failed to follow any of the rules it made for itself.

(2) ILLEGAL DISCRIMINATION

The law prohibits many forms of discrimination in employment. This includes discrimination because of **race, sex, age, religion, national origin, or handicap**. No matter what the company *claims* as the reason, if your firing was *really* because of your race, sex, age, etc., then the firing may violate the discrimination laws.

But remember that **the discrimination laws apply only to certain types of discrimination**. Even if your employer treated you differently from everyone else, if your different treatment was not due to one of the specific prohibited factors (race, sex, age, religion, national origin, or handicap) then your firing probably does not violate the discrimination laws.

PUBLIC POLICY

This last restriction on employer freedom to fire is hard to explain, because the law still hasn't defined it very clearly.

Even if the employer's firing does not violate one of the specific restrictions we've talked about, it might still be bad for society in general to permit this kind of firing. In that type of case the law may tell the employer he can't fire you.

The best way to explain is with some examples.

A bank employee learned that the bank managers were violating consumer

protection laws in the way the bank was being run. She told the managers that if they did not correct the violations, she would tell the bank's Board of Directors. The managers then fired the employee to prevent her from going to the Board of Directors.

This employee did not have any specific agreement (union contract, personnel policy, or personal contract) that the bank managers violated by firing her. The managers did not fire her due

to race, sex, age, etc., so they did not violate the discrimination laws.

Nevertheless, the court held that the bank could not fire this employee for trying to see that the law was followed. There is a strong "public interest" in assuring that the laws are followed, so we will not let employers fire people in order to evade the law.

Another example might be a worker who is fired because he won't violate safety laws that apply to the company. We have safety laws to protect workers and members of the public, so we will not allow employers to fire workers who insist that safety laws be followed.

This concept of a "clear public interest" is pretty vague. This means it can apply to many different situations, but it also means it is difficult to give a general definition. If your firing violates a "clear public interest" then it may also violate the law.

What About "Fairness"?

Unfortunately, the law does not require employers to be "fair," or "just," or "understanding." The employer can be as "unfair," or as "irrational," as he wants so long as he does not violate one of the specific restrictions.

The employer may be wrong in what he thinks about you. Maybe he thinks you didn't call in when you were sick, but you did; or maybe he thinks you treated a customer badly, but you didn't. **So long as he doesn't violate one of the specific restrictions we've talked about** then he is free to fire you.

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