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Wrongful Discharge & Wrongful Treatment at Work

Virginia has an “employment at will” doctrine. An employer may hire, refuse to hire, promote, demote, fire, or lay off employees, for any reason at all – good reason, bad reason, or no reason – as long as it is not a prohibited reason. Unfair treatment in the workplace, personality conflicts, and poor personnel practices usually do not violate the law. There are exceptions to this rule. These depend on whether you work in private or public employment.

What are the exceptions to “employment at will” if I am a private employee?

A private employee (one who does not work for the government) may be fired at any time for any reason, unless one of these exists.

- An employment contract.
- A written personnel or employee handbook, manual, or set of rules, which is binding on both you and the employer.
- A union contract.
- Retaliation because you have filed a job-related safety or health complaint.
- Retaliation because you have filed, or intend to file, a workers’ compensation claim.
- Discrimination based upon your race, religion, national origin, sex, age, or handicap.

When can I be fired if I have an employment contract?

If you have an employment contract, you can’t be fired unless the contract says so. If the contract says nothing about being fired, you can’t be fired unless you broke the contract.

When can I be fired if I have a personnel manual?

If there are written personnel rules which are binding on both you and the employer and the employee, you cannot be fired if that would go against the rules. However, if there is no written rule about firings, you can be fired like any other employee.

When can I be fired if I have a union contract?

If you have a union contract, most of the time you can’t be fired except for a good reason. The contract should tell you the way to contest the firing. Your union is required to help.

What are the exceptions to “employment at will” if I am a public employee?

A public employee (one who works for the government) may not be fired unless it is for a good reason. You must get a notice and chance for a hearing. You must be given a right to find out why you are being fired, and the right to present evidence to show that the reason is not good enough or is not true. You may not be fired for using your freedom of speech, religion, assembly or association. However, these rights apply only if you are a permanent public employee.

What are the exceptions to “employment at will” in cases of discrimination?

Whether you are a private or a public employee, you cannot be fired, or receive unfair or different treatment at work, for any of these reasons.

- Your race.
- Your religion.
- Your national origin.
- Your sex.
- Your age, if you are 40 years of age or older.
- Your handicap or disability.

What should I do if discriminated against for one of these reasons?

You have 300 days to file a written complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the Office of the Attorney General of Virginia - Division of Human Rights:

Equal Employment Opportunity Commission
Richmond Area Office
830 East Main Street, 6th Floor
Richmond, VA. 23219
800-669-4000 (toll-free)
804-771-2200 (V) & 804-771-2222 (F)

Office of the Attorney General
Division of Human Rights
900 East Main Street
Richmond, VA. 23219
804-225-2292 (V)
804-225-3294 (F)

How do I prove employment discrimination?

Poor employment practices, bad management and wrongful treatment at work do not – in and of themselves – prove a case of legally prohibited employment discrimination. Rather, you must show, by the greater weight of the evidence, that your employer treated you badly **and** that it is more likely than not that this was due to your membership in a protected class, rather than due to some reason other your membership in a protected class.

There are four basic elements in an employment discrimination case:

- 1) You are a member of a protected class.
- 2) You were treated adversely.
- 3) You were otherwise qualified to do the job.

- 4) You were treated worse than someone not in a protected class.

Usually, elements #1 and #2 are not hard to show. Elements #3 and #4 are more difficult to show. Specifically, to show element #3, there has to be no good reason to fire you that was not based on race, religion, national origin, gender, age or handicap. To show element #4, there has to be another employee who did the same thing as you – but was not in a protected class – who was treated better than you.

What happens after I file a complaint?

Once you file a charge of discrimination with the EEOC, the EEOC has 180 days from then to do one of four things:

- (1) Resolve the charge by conciliation or mediation between the parties.
- (2) Not resolve the charge, but issue a decision of “founded” and a 90 day right to sue letter.
- (3) Not resolve the charge, but issue a decision of “unfounded” and a 90 day right to sue letter.
- (4) Not resolve the charge and not issue a decision or a 90 day right to sue letter.

Conciliation and mediation are processes where a neutral person helps the parties reach a voluntary settlement to solve a complaint of discrimination. The process is free. The process also is confidential. Both parties have to agree to conciliation or mediation. If conciliation or mediation is not successful, the charge will be investigated like any other charge.

The difference between conciliation and mediation is that conciliation is used when the EEOC thinks you have a **strong** case. Mediation is not used when the EEOC thinks you have a **strong** case. Mediation is used when the EEOC thinks you have a **weak** case, but might be able to get the former employer to pay a small settlement (\$1,000 - \$2,000) to make the case go away. If mediation is set up, you should go, but not expect a large (\$5,000, \$10,000, \$50,000, \$100,000, etc. settlement).

If the EEOC does not do any of these things within 180 days, then you have the right to ask for a 90 day right to sue letter. Once the letter is issued, you have 90 days from the date on the letter to file a lawsuit. Any lawsuit must be filed within 90 days of the “right to sue” letter.