Understanding My Rights As An Employee

WASHINGTON STATE ASSOCIATION
for
JUSTICE

This brochure was prepared by the Washington State Association for Justice (WSAJ) as a guide to help the citizens of Washington State understand their rights. Established in 1953, WSAJ represents attorneys and professionals in the legal field committed to protecting citizens' right of access to the civil justice system. The mission of the Washington State Association for Justice is to protect and promote a fair justice system and the right to trial by jury, and to ensure that any person who is harmed by the misconduct or negligence of others can obtain justice in America's courtrooms, even when taking on the most powerful interests.

Understanding My Rights As An Employee

What follows are some commonly asked questions regarding employment issues and general answers to those questions. Of course, each situation is different. This pamphlet is not intended to be a substitute for obtaining legal advice with respect to your specific situation.

What are my general rights as an employee?

Does it make a difference who I work for?

Generally your rights as an employee in Washington State depend upon whether you are employed by the government or the private sector, and whether your employment is covered by a collective bargaining agreement with a union.

I work for a private employer:

In the private sector, the law of Washington State, like the law in most other states, presumes employment to be "at will." This means that the employer and the employee are free to end, or "terminate", the employment relationship at any time as long as the reason for termination does not break a law, a profound public policy or an actual or implied contract with the employee.

I work for the state or for a federal, local, or regional government:

Most government employees have more rights than private sector employees. For example, many government employees are subject to civil service rules and regulations. After the employee satisfactorily completes a probationary period, she can be terminated but only for "cause."

I work for a unionized shop:

Collective bargaining agreements between employers and unions generally provide that employees can be terminated only for cause. Grievance procedures in the agreement usually lead up to "arbitration" – a process by which a neutral decision maker decides whether a firing or other discipline was permissible.

What if I'm a manager?

Generally, managers, whether in government or the private sector, are exempt from both union labor agreements and civil service.

Q | *My employer has a policy saying that any disagreement we have about my employment has to be solved by going to arbitration, not in court. I don't belong to a union with a collective bargaining agreement. Is this legal?*

A | Recent court decisions may allow private employers to require employees to give up access to the courts and resolve employment disputes only through arbitration. To be enforceable, such a policy must allow the employee the same remedies as she would have in court and must use the same statute of limitations in arbitration as in court.

Employee advocates say that unless the arbitration is cost-free to the employee the process is flawed and may not be enforceable. Another issue arises if the employer requires arbitration after the employee starts work without any benefit to the employee giving up access to the courts.

How should I deal with Harassment, Abuse or Discrimination in the Work Place?

Q | *What can I do if my boss or manager is abusive in her language or conduct?*

A | If your boss behaves this way with other employees as well as yourself, and does not target any specific group based on race, national origin, religion, sex, age, disability or sexual orientation, you should go as a group and jointly inform upper management of the conduct which is troubling you. Give specific instances including dates, times and actions of your boss. You should follow-up by e-mail or in writing so that you have a record of what you said or did. By acting as a group you will have more rights than if you act alone. You may also be protected from retaliation for raising these issues.

Q | *What should I do if I have been harassed at work?*

A | Harassment due to gender, religion, age, race, national origin, marital status, sexual orientation, veteran status or disability is unlawful in Washington State. In addition, some counties and cities have ordinances which protect individuals because of political ideology. These groups are called protected categories.

If a manager or coworker has done or said something which creates a hostile environment because of your membership in one of these protected categories you should immediately bring that to the attention of the harasser or any other manager or human resources personnel. You should be specific about your complaint and, ideally, you should confirm your complaint in writing either in a letter, memo or email. Keep a written record of what was said or done and your attempts to bring that to the attention of management.

If you are touched inappropriately or if you have noticed that anything at work changed for the worse because of your complaints, such as pay, work schedules or promotion opportunities, you should immediately contact management. Document your complaint and the employer's response.

If you are in a union environment you should speak to a union officer or business agent and learn about the grievance process.

Q | *What can I do if my employer discriminates against me because of my membership in a protected category?*

A | Try as best you can to learn the basis of the employer's decision. If you were not hired for a job, for example, try also to learn the name of the individual who was hired. If you did not obtain a promotion, learn the name of the person who received the promotion. If you believe there was bias in some decision affecting your job, document the circumstances leading you to believe bias existed. For example, were there comments made by a manager or supervisor leading you to believe bias entered into a decision affecting your work? Write down what those comments were, who made them, when they were made and where. If you belong to a union, you should speak to your union representatives as soon as possible after the adverse decision is made. You may also want to speak with someone at the Washington State Human Rights Commission or the Federal Equal Employment Opportunity Commission (please see the Resources section at the end of the booklet). They may be able to provide you with some advice about your situation. You may also be able to file a charge of discrimination with either agency. Keep in mind that the laws may require you to file a complaint within a specific timeframe, so you should not delay in acting.

Q | *Can my boss fire me if I get pregnant?*

A | No. Taking action against an employee due to her pregnancy is a form of unlawful gender discrimination and is prohibited by state and federal law.

Q | *I was recently told that I'm too old to go on doing the job that I've had for 30 years. Can I be discriminated against because of my age?*

A | No. State and federal laws prohibit discrimination due to age for individuals 40 years old and older.

Q | *What are my rights if I am a disabled worker?*

A | Both federal and state laws protect workers who have physical, mental or sensory disabilities from discrimination. The employer may also be obligated to accommodate your disability to enable you to perform your job. Alternatively, if your disability prevents you from performing your current job even with accommodation, your employer may be required to help you find a vacant position with that employer. If you are a union member seeking an alternative position, you may still be subject to seniority rules.

Q | *How do I go about getting accommodation?*

A | If you have a mental or physical condition or impairment that affects your ability to do your job, you should tell your employer that you need an accommodation. Ideally you should talk with a human resources representative. Once you give notice that you need an accommodation, your employer is obligated to determine your limitations and what kinds of accommodations could remove the obstacles to your ability to perform your job. Your employer may require you to provide some medical documentation about your disability and any restrictions you need to observe. Your employer is not required to give you the exact accommodation you request, but may be required to provide a reasonable accommodation, unless your employer can show that it would be an undue burden to provide accommodation.

What is the Law concerning Compensation, Breaks, Vacations, and Benefits?

Q | *My employer does not pay me overtime although I work more than 40 hours per week. What should I do?*

A | You need first to learn whether you are eligible to receive overtime. This means that you are not exempt from federal and state overtime statutes and regulations. Keep a record by writing down the date and times you work more than 40 hours in any given week. Keep track of who asks you to do overtime work.

Q | *How do I know if I am entitled to receive overtime pay?*

A | Both state and federal laws require payment of overtime or compensatory time to some employees who work more than 40 hours in a work week. Certain professional employees, administrators and executives, who are salaried, are exempt from these laws. Even if you are paid a salary, if you are not "exempt", under the law, you may be entitled to receive overtime.

Q | *Does my employer have to provide me with paid time for meals and breaks?*

A | If you are a full-time employee your employer must provide you with 10-minute paid break times after three hour periods of work. The employer must also provide you with at least a half hour meal period if you are working more than 5 hours in any one day. You are not required to be paid for mealtimes.

Q | *What does the law require with respect to time off for vacation and paid vacations?*

A | There is no legal requirement that an employer provide paid vacations or time off for vacation. Most employers, however, allow employees to take some period of vacation after they have been on the job for a specified period of time. Employees usually "earn" some amount of vacation with the passage of each pay period.

What other rights do I have related to my job?

Q | *My employer wants me to sign an agreement or a receipt for an employee handbook which says that I will have to take a drug test as a condition for being employed and to take random drug tests after I am employed. Is this lawful?*

A | Private sector employers may lawfully maintain a drug-free workplace. In order to do so, they may sponsor random drug testing to assure compliance with that policy. However, the testing must be done by professional technicians and the privacy of the employee during the testing must be respected. Government employers are subject to certain restrictions. Not all government employees may be subjected to random drug testing or for drug testing as a condition of employment.

Q | *Is my employer required to perform job performance reviews of my work?*

A | Not in the private sector. Employer personnel policies, collective bargaining agreements and civil service rules may require reviews at specified intervals.

Q | *I am concerned about what is in my personnel file. What can I do about that?*

A | Employees in Washington State have a right to review the contents of their personnel files once each year. They also have the right to write a response or rebuttal to any negative information in the personnel file and to have this response included in the file. If your employer does not allow you to obtain a copy of the contents of your file you should make notes about what you find in the file. If you write a response to a statement in the file, keep a copy of your response.

Q | *I've heard about the Family and Medical Leave Act (FMLA). What rights does that law give me?*

A | The federal FMLA gives employees the right to take up to 12 weeks of leave, generally unpaid, for their own serious health condition, for the birth or adoption of a child, or to care for a spouse, parent, or child who has a serious health condition. To qualify for FMLA, you must work for an employer that has at least 50 employees within a 75 mile radius. To be eligible for FMLA leave, you must have worked for your employer for at least one year and you must have worked at least 1250 hours in the previous 12 months. You may be able to use FMLA leave intermittently, if, for example you have a chronic condition that periodically flares up, or if you need ongoing medical treatments for your condition. When an employee returns to work from FMLA leave, the employer must restore him or her to the same or to a comparable job, unless the

employer can prove that the position was eliminated for reasons unrelated to use of FMLA leave. Washington State also has a state law with similar protections, except that it may offer additional leave for pregnancy or childbirth-related disabilities. If you believe you may qualify for FMLA, you should ask your union representative, human resources personnel, or seek legal advice.

What if I am fired or laid off?

Q | *Does my employer have to give me warnings before I am fired?*

A | If you are a civil service employee or if you are subject to a collective bargaining agreement, your employer generally has to give some advance notice of the problem and follow progressive discipline. Otherwise, the employer may terminate you at will and without prior warning,

unless there is an express or implied promise to do the contrary. Even in the governmental sector or under a collective bargaining agreement, your employer can fire you if your conduct is so serious or harmful to the employer's interests that termination is immediately necessary.

Q | *What should I do if I am fired?*

A | Tell your employer, in writing, that you want a written statement as to the reasons why you were discharged. A rule of the Department of Labor and Industries requires the employer to provide a written response within 10 days. You may qualify for unemployment benefits even if you are fired from your job. See the Resources section at the end of this brochure for information about where to file for unemployment.

Q | *Can my employer prevent me from receiving unemployment compensation benefits?*

A | Your employer will be asked for its reasons for your discharge from employment. You may be disqualified from receiving unemployment compensation benefits if you have not worked enough credited hours with a given employer or in a given year to qualify for benefits. You also may be disqualified from receiving benefits if the employer fired you because of "misconduct" at work. "Misconduct" means that you intentionally violated a rule or procedure which was harmful to your employer's interests.

Q | *Do I have any remedy if I am fired?*

A | If you are a civil service employee or are working under a collective bargaining agreement, you may be able to challenge whether the employer had sufficient cause to terminate you. You should immediately check with either your union representative or consult the civil service rules, which are generally available on the internet. You need to learn time limits for bringing a grievance on civil service appeal. This requires action on your behalf. Do not assume that others will act for you.

Private sector employees may also have remedies for wrongful termination.

Q | *What is wrongful termination?*

A | In Washington State a claim for wrongful termination, sometimes known as wrongful discharge, may be made if your employer violated its own written personnel policies or if you were terminated because of your participation in some action or conduct which is specifically protected by a statute, a rule, or the Constitution. An example would be an employer who fires an employee because the employee is on jury duty or because the employee filed a claim for workers' compensation benefits after being injured on the job. Finally, the employer may have distributed something in written form which limits its abilities to terminate employees at will. These documents may promise a process to be followed before a person is fired or may specify grounds for firing an employee.

Q | *What about references? Can my former boss or company tell a potential future employer their criticisms of my job performance or the reasons why I was fired or laid off?*

A | Yes. Your former employer may lawfully give a potential future employer an accurate assessment of your work skills, attendance, rate of pay and behavior at work if those assessments are made in good faith and not for the purpose of harming you or your reputation. Your former employer may also state whether you would or would not be rehired. If your former boss has an honest opinion about your work skills, honesty or devotion to the job, he or she is free to express that opinion to another potential future employer.

RESOURCE LIST

Washington State Resources

Government Agencies

Department of Labor and Industries
Post Office Box 44000
Olympia, WA 98504-4000
Office of Information and Assistance:
1-800-LISTENS (547-8367)
TDD (360) 902-5797
www.lni.wa.gov

Washington Industrial Safety & Health
Administration (WISHA)
1-800-4BE-SAFE (1-800-423-7233)
www.lni.wa.gov/safety

Board of Industrial Insurance Appeals (BIIA)
2430 Chandler Court SW
PO Box 42401
Olympia, WA 98504 - 2401
Appeal Services Division:
(360) 753-9646
www.biia.wa.gov/

Human Rights Commission
Olympia: (360) 753-6770
Seattle: (206) 464-6500
Spokane: (509) 568-3196
Yakima: (509) 575-2772
www.hum.wa.gov/

Community Groups & Non-profit Organizations

Alliance of People with disAbilities
www.disabilitypride.org
(206) 545-7055 (Voice)
(206) 632-3456 (TTY)

Unemployment Law Project
1904 3rd Ave #604
Seattle, WA 98101
(206) 441-9178
http://unemployment lawproject.org

Washington Assistive Technology Act Program
P.O. Box 357920
Seattle, WA 98195-7920
(800) 214-8731 (toll free)
http://watap.org

Lawyer Referral Services

NW Justice Project
Coordinated Legal Education, Advice & Referral System (CLEAR)
1-888-201-1014 (toll free)
1-888-201-9737 (TTY)
1-888-387-7111 (people over 60)
www.nwjustice.org

King County Bar Association
(206) 267-7010
www.kcba.org/LRS/lrs.htm

Tacoma/Pierce County Bar Association
(253) 383-3432

Snohomish County Bar Association
(425) 388-3018

Columbia Legal Services
Seattle: (206) 464-5911
Moses Lake: (509) 765-0417
Yakima: (509) 575-5593
Tri-Cities: (509) 374-9855
Wenatchee: (509) 662-9681
Olympia: (360) 943-6260

Federal Resources

Government Agencies

National Labor Relations Board
Seattle Office:
915 2nd Avenue, Room 2948
Seattle, WA 98174-1078
(206) 220-6300
www.nlrb.gov

Occupational Safety & Health
Administration (OSHA)
Regional Office:
1111 3rd Ave Ste 715
Seattle, WA 98101-3212
(206) 553-5930
www.osha.gov

Equal Employment Opportunity Commission
1-800-669-4000
TTY - 1-800-669-6820
www.eeoc.gov

US Department of Labor
Wage & Hour Division
1-866-487-9243 (toll free)
Seattle District Office:
(206) 398-8039
www.dol.gov/esa/whd

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