

## Overview of Employee Rights

By Donna Ballman

Many employees are confused about their rights in the workplace. You may have rights you didn't even know about, or think you have rights that don't exist. This article will cover some basic employee rights, and try to clear up some misconceptions.

- **Discrimination**

You DO have the right to not be discriminated against based on race, age, sex, national origin, disability, pregnancy, religion, genetic information, color, objecting to discrimination, or association with a person in one of these categories. But this right only applies if your employer is large enough. In most cases, your employer has to have at least 15 employees (for age, 20 employees). However, some states and local governments protect employees of smaller employers.

You DON'T have the right to be of discrimination against you for being you. There are no protections for personality conflicts, weight, appearance, political beliefs (except if you work for government), non-religious beliefs, and other non-protected categories.

You MIGHT have the right to be free of discrimination based upon sexual orientation, marital status, or other categories if your state or local government provide additional protections.

- **Harassment**

You DO have the right not to be harassed due to your race, age, sex, national origin, disability, pregnancy, religion, genetic information, color, objecting to discrimination, or association with a person in one of these categories, if your employer is big enough (see above).

You DO have the right not to be harassed if you're a covered whistleblower, took covered Family and Medical Leave, made a worker's compensation claim, or took some other legally protected action.

You DON'T have the right to be free of a hostile work environment that isn't based on one of the above categories.

You DON'T have the right to be free of bullying or general harassment in the workplace.

If you complain about harassment, you DON'T have the right to be free of retaliation unless what you complained about was legally-protected harassment in one of the categories above.

- **Breaks**

You DO have the right to be paid if you work through your lunch break or if your breaks last less than 20 minutes. This only applies if you are not exempt from the requirements of the Fair Labor Standards Act.

You DON'T have any federally-protected right to any rest or meal breaks. A few states do have some rest and meal break requirements, and the links are below. This is one of the most common misconceptions.

You PROBABLY have the right to take reasonable bathroom breaks. OSHA covers workplace safety and has requirements that restroom facilities be available. There's no specific OSHA regulation about bathroom breaks, but if your employer won't allow them, you might report them to OSHA.

- **Right to Work**

If you live in a "right to work" state, you probably think you have rights you don't. Be careful about this.

If your state is “right to work” that means you DO have the right to work in most industries without joining a union.

You DON’T necessarily have the right to work for a competitor. If you’re being asked to sign a noncompete agreement, get legal advice from a lawyer in your state. Don’t believe anyone other than a lawyer who practices employment law in your state who claims you can go ahead and sign because they won’t be enforced. Right to work simply has no effect on noncompete agreements.

You DON’T have the right to be fired only for good cause. Most states are at-will, meaning you can be fired for any reason or no reason at all unless you have a contract saying otherwise.

- **Benefits**

You DO have the right to get a description of your health insurance, pension, and other benefit plans.

You DO have the right to enforce the duty of the people managing your benefit plans to administer them without fraud, self-dealing or kickbacks.

You DON’T have the right to any specific benefits from your employer. Your employer doesn’t have to provide health insurance, vacation pay, sick pay, severance pay, pension or other benefits unless they have an existing plan.

You DON’T have the right to keep your insurance if the company cancels the health insurance plan.

- **Contracts**

You DO have the right to understand contracts you’re being asked to sign before you sign. If you don’t understand, get advice from a lawyer before you sign.

In some states, you DON'T have the right to refuse to sign a contract. Some states allow an employer to require you to sign away your rights to work for a competitor, get a trial if you're a discrimination victim, or get a jury trial, and they are allowed to fire you if you refuse.

You DON'T have the right to a jury trial, to try your case in court instead of arbitration, to work for a competitor, or to bring claims against your employer if you've signed away your rights, so make sure you understand what you're agreeing to before you sign.

- **Hours**

You DO have the right to be paid for all hours worked and to be paid overtime for hours worked over 40 hours if you aren't exempt.

You DON'T have the right to a specific schedule, to not work extra hours, or to come in late.

- **Illness**

You DO have the right to take Family and Medical Leave if you've worked at least a year, if you work enough hours, and if your employer has 50 or more employees. But there are lots of hoops to jump through, so read your handbook and know the employer's requirements.

You DON'T have the right to sick leave, excessive absenteeism, take care of a sick kid, or miss work due to illness (even with a doctor's note) unless you are covered by Family and Medical Leave.

- **Disability**

You DO have the right to seek reasonable accommodations for your disability that allow you to perform all the duties of your job, if your employer has at least 15 employees.

You DON'T have the right to be excused from any essential duties of your job, to light duty, or to accommodations that create an undue hardship for your employer.

- **Whistleblower**

You DO have the right to report illegal activities of the employer to specific government entities, to object to or refuse to participate in certain illegal activities of the employer, and to not be retaliated against for doing so. Whistleblower laws are diverse and have lots of requirements, so make sure you're doing what is required before you report or object to the illegal activity.

You DON'T have the right to complain about incompetence, coworkers ripping off the company, ethical violations, unprofessionalism, or general harassment without rising retaliation. Make sure you're protected before you complain.

- **Privacy**

You DO have the right to privacy in your phone calls unless your employer meets certain legal requirements. If you think you're being illegally recorded, contact an employment lawyer to find out your rights.

You DO have some rights to privacy of your medical information.

You DO have the right to not be subjected to a polygraph (except certain professions like law enforcement).

You MAY have the right to privacy of your credit information. While many employers use credit history in their employment decisions, more states and EEOC are finding this practice to be a legal violation. It's illegal to discriminate against you based upon a bankruptcy.

You DON'T have the right to keep your criminal record a secret unless it's expunged.

You DON'T currently have the right to refuse to allow your employer to seek a credit report, but there are lots of laws in the works on this issue.

You DON'T have the right to dress any way you want.

You DON'T have the right to privacy in you off-duty behavior. You can be fired for things you do outside of work.

You DON'T have the right not to be videotaped (without audio).

You probably DON'T have the right not to have your belongings searched. Very few states provide protections. If you work for government, you are protected from being searched.

You DON'T have the right to privacy in your workplace internet use or email.

You probably DON'T have the right not to be drug tested. No states prohibit employment drug testing, but some do require cause for the test if it's done while you're employed, as opposed to pre-employment.

You DON'T have the right to free speech. Your postings on Facebook, Twitter, and other websites can get you fired. If you work for government, you have some free speech protections but they're not unlimited.

### **Conclusion**

There are entire sections of law libraries devoted to employment laws. When in doubt, consult an employment attorney before you complain, quit, sign contracts, or sue. The laws are confusing and sometimes have short deadlines and prerequisites to suit. If you think your employer or former employer is breaking the law, make sure you get legal advice.

More about Donna Ballman:

Donna Ballman has practiced employee-side employment law since 1986. Her blog about employment law is called "Screw You Guys, I'm Going Home" and can be found at <http://employeeatty.blogspot.com>. She tweets about employment law as EmployeeAtty.

Websites:

Department of Labor fact sheets on exemptions from the Fair Labor Standards Act

<http://www.dol.gov/whd/regs/compliance/fairpay/>

Department of Labor fact sheet on most common exemptions:

[http://www.dol.gov/whd/regs/compliance/fairpay/fs17a\\_overview.htm](http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.htm)

List of states that have required rest periods for adults, and their requirements:

<http://www.dol.gov/whd/state/rest.htm>

List of states that have required meal breaks for adults, and their requirements:

<http://www.dol.gov/whd/state/meal.htm>