

Employment Discrimination

Under U.S. law, and the law of most states in the U.S., it's illegal for public and private employers to discriminate in hiring, retention, pay, promotion, discipline, or firing of employees based on several different categories. Under federal law, employers may not discriminate based on race, color, religion, national origin, sex, age, disability, or pregnancy. Furthermore, many (but not all) states have laws prohibiting discrimination based on sexual orientation, gender identity, or HIV/AIDS status.

One would hope that most employers in the U.S. wouldn't engage in this type of discrimination, even if it weren't illegal, and this may well be true. Nonetheless, unlawful discrimination in employment still occurs, and victims of such discrimination are entitled to legal redress.

What Constitutes Employment Discrimination?

It's important to note that, just because a person is a member of a group that anti-discrimination laws are meant to protect, and adverse employment action was taken against them, the employer is not necessarily liable for discrimination.

The employee has the burden of proving that the employer's conduct was based, either in whole or in significant part, on the person's membership in a protected class, and not a legitimate reason, such as lack of qualifications, poor performance, insubordination, etc.

How Do I Prove Discrimination?

Proving employment discrimination is often very difficult, because almost any time an employee is terminated, the law presumes that the termination was lawful, leaving it up to the employee to prove otherwise.

Obviously, we can't read an employer's mind to find out exactly what their motives for firing, or refusing to hire, an employee might have been. Generally, their motivations have to be inferred from their conduct.

For example, if you allege that that you were not hired for a particular job because of your race, there are several things you have to prove.

First off, you have to prove that you belong to the race which you allege the employer discriminates against, and that you actually applied for a job with the employer. These two things are very easy to prove, obviously.

Next, you must prove that you possessed at least the minimum qualifications for the job you applied for. Obviously, there are many factors beyond objective qualifications that an employer will look at when evaluating an employee, many of which are hard to quantify. However, it's generally accepted that the employee only needs to prove that they

possessed the objective qualifications (those listed in the job posting, usually related to education, skills, and experience, for example) required for the job.

Next, it must be shown that you were not hired for the job. Again, this part is easy to prove.

Finally, it must be shown that, after you were rejected, someone equally or less qualified than you, who does not belong to the protected class that the alleged discrimination was based on, was hired instead.

Once this is proven, you are said to have made a “prima facie” case of employment discrimination. Basically, this means that you’ve proven enough facts to raise a presumption that discrimination occurred, and your case can go forward.

This does not mean you’ve won, however. Now, the employer has a burden of proving that they did, in fact, have a valid, non-discriminatory reason for declining to hire you. Basically, any reason other than one specifically prohibited by law, is valid, no matter how silly or irrational it is.

Once the employer presents a valid reason for firing or declining to hire you, the burden of proof shifts back to you, and you must prove that the reason offered is a pretext. For example, suppose the employer said “I didn’t hire the plaintiff because, despite his qualifications, he was chewing gum during the interview, which really put me off.” Whether this is a good or bad reason to reject a job applicant, it’s a perfectly legal one. However, this might simply be a pretext to cover for the employer’s discriminatory motive. If this is the case, the employee might be able to prove it by showing that other applicants chewed gum during interviews, and the employer never made an issue of it.

If the employee proves all of these elements, they will prevail in a discrimination suit. However, if they fail to prove even a single element, they will lose.

How Do I Complain About Employment Discrimination?

Before filing a discrimination lawsuit in federal court, you must file a complaint for employment discrimination with the Equal Employment Opportunity Commission, or EEOC. After the alleged discrimination occurs, you have 180 days to file a complaint with the EEOC. The EEOC then conducts an investigation.

The EEOC is usually flooded with complaints, and does not have the resources to handle every individual discrimination case that comes before it. Therefore, if it determines that a case has merit, it will simply send the employee a “right to sue” letter, which basically states that they have a case, and can pursue it in federal court.

At this point, the plaintiff should hire a [lawyer](#), who will help them file the lawsuit.

What are The Remedies for Discrimination?

If you file an employment discrimination lawsuit and win, you have some remedies. While a court has authority to compel an employer to hire or reinstate an employee who was unlawfully discriminated against, this is rarely practical, since the employee likely wouldn't want to work for the employer anymore, and the work environment would likely be toxic.

Therefore, a court will usually award monetary damages in the form of back pay, punitive damages, and attorney's fees. Damages in these cases are capped under federal law, which vary depending on the size of the employer; the larger the employer, the higher the cap on damages.

How Can A Lawyer Help?

If you believe that you have been the victim of employment discrimination, a [lawyer](#) who specializes in employment law should be able to help.

An employment attorney will be able to advise you on your likelihood of success in your case, and guide you through the process of filing it. An employment discrimination lawsuit is likely to be time-consuming and complicated, and having the assistance of a lawyer will greatly improve your chances of success, if your case has merit.