



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 or for no reason so long as it is not a reason prohibited by law. 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, or no reason, unless one of these exists:

- Discrimination based upon your race, religion, national origin, sex, age, or handicap.
- An employment contract.
- A written personnel or employee handbook, manual, or set of rules, which could be interpreted as a binding contract between you and the employer. This depends on the wording, intent, and circumstances.
- 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 worker's compensation claim.

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Leslie Dodson, Esq., 217 East Third Street, Farmville, VA 23901, is responsible for the contents of this publication.

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

Whether you are a private or 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.
- Your sexual orientation.
- Your gender identity.

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

You have 180 days to file a written complaint with the U.S. Equal Employment Opportunity Commission (EEOC) and/or the Virginia Council on 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 & 804-771-2222 (F)

Virginia Council on Human Rights
1220 Bank Street
Jefferson Building, 3rd floor
Richmond, VA 23219
804-225-2292

What happens after I file a complaint?

If you file a complaint with the EEOC and/or the Virginia Council on Human Rights, you may wish to ask for mediation. This is where a neutral person helps the parties reach a voluntary settlement to solve a complaint of discrimination. The process is free and confidential. Both parties have to agree to mediation. If mediation is not successful, your complaint will be investigated like any other complaint.

If the EEOC believes there was no discrimination, it will close the case and issue a "right to sue" letter. If the EEOC believes there was discrimination, it will try to settle the case. If the EEOC believes there was discrimination but cannot settle the case, it will also close the case and issue a "right to sue" letter. In addition, you can ask for a "right to sue" letter after the EEOC has had the case for 180 days. You must file a lawsuit within 90 days of the "right to sue" letter.

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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 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. Sometimes, this question cannot be easily answered and may have to be decided by a judge in a civil lawsuit. The courts will consider the wording, intent, and circumstances of the personnel manual and the firing.

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.

Can I get unemployment compensation if I'm fired?

You may be qualified to receive unemployment compensation through the Virginia Employment Commission (VEC) if you were laid off, quit for good cause due to work conditions, or even if you were fired, so long as it was not due to misconduct on your part. Virginia Legal Aid Society can supply you with a separate information sheet on Unemployment Compensation.

THIS INFORMATION IS NOT LEGAL ADVICE. Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.

Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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