

# I Lost My Job. Do I Have Rights?

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## Should I read this?

Lost your job? You may have legal rights.

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- ❖ Some employees are “fired.” Others are “discharged” or “laid off.” Your basic rights are similar, no matter which term applies. We use the word “terminate” to cover all situations.
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This will help you understand

- if your termination was illegal
- if your employer owes you anything
- if you owe your employer anything
- how to assert your rights

## I lost my job. What should I do?

**Know why you were terminated.** To find out why, send your employer a dated, written request by certified mail. By law, your employer must respond within ten days with a letter stating the reasons for your termination.

**Talk to a lawyer.** This can help you understand your general rights. The best way to learn about your situation is to talk to a lawyer, if possible.

**Act quickly.** Many employment laws have time limits. We call these “statutes of limitation.” They require you to act quickly. Some are as short as a few months after losing your job. If you do not act before the time limit is up, that law may no longer

protect you. A lawyer can help you find out which time limits apply to your situation.

## What type of employment relationship did I have?

To understand if your termination was legal, you must know what kind of relationship you had with your employer.

In Washington State, most employees are hired **at-will**. Your employer can terminate you any time, for any reason.

**Some employees** have individual written or implied employment agreements. **Union workers** may have collective bargaining agreements. **Public employees** may be protected by state laws, local laws, or regulations.

To figure out your employment relationship, look at:

- Any letter you got inviting you to apply for the job
- Any letter you got offering you the job
- Any new-employee orientation materials or employee handbooks they gave you
- Any contracts or agreements you signed
- Any union contracts or laws and regulations that apply to your job
- Your personnel file - you can get it from your employer’s human resources (“HR”) representative

If you have questions about your employment relationship, ask the HR

representative. **The HR representative may see things from the employer’s viewpoint, not yours.** If you think your employer has illegally terminated you, talk to a lawyer.

What if I have at-will employment? An employer can terminate any at-will employee any time, for any or no reason. An employer does not have to give an at-will employee advance notice of termination.

There are three exceptions to these rules:

1. If you and your employer changed your rights by entering into an agreement. (See sections on Individual Employment Agreements, Implied Employment Contracts, and Collective Bargaining Agreements, below.) Even then, they can still usually terminate you for just cause. “Just cause” means a “fair and honest reason.” Examples include: having or using drugs or alcohol, absenteeism, theft, incompetence, and lying.
2. If your employer terminated you for illegal reasons or reasons that are against public policy. (See section labeled “Was I Terminated Illegally,” below.)
3. If your employer is a large company, and a special situation such as a plant closing or mass layoff requires it to give you advance notice of termination.

**If you had a written individual employment agreement:** The agreement may say when and why the employer can terminate you. It may state how much notice you must get, and if your employer must impose less severe discipline before it can

fire you. It may list grievance procedures you and the employer must follow before and after termination. It may grant you certain rights if fired.

Read your agreement and any documents it mentions carefully. If you have questions, talk to your HR representative or a lawyer.

If you had an implied employment contract: Your employer may say you are an at-will employee. However, written statements in employee or supervisor handbooks, orientation materials, policy manuals, and so on, may be “implied” employment contracts. Since your employer gave you these, you can rely on the employer to do what the materials say, even though it is not an official contract.

**Example:** John’s employee handbook says “you will be terminated only for good cause,” or “you will be terminated only after have you progressed through each step in the discipline process.” These could mean John’s employee handbook is an implied contract.

**Example 2:** John’s handbook says, “*Generally* the employer will follow the discipline process,” or “*generally*, you will be terminated only for good cause.” John’s employer may be able to treat him like an at-will employee.

Oral promises may also create an implied contract. **Example:** Jill’s supervisor or an HR person told her at hiring that she would not be terminated without good cause. That could be an implied contract. In court, Jill must show she relied on this statement when she decided to take the job.

If you have an implied contract, its terms may depend on how the employer carries out its

policies with other employees. “Good cause” can mean different things to different employers. **Example:** Marie’s employer does not care if Marie swears on the job. Paul’s employer considers that good cause to fire an employee.

If you were subject to a collective bargaining agreement: Your union contract says when your employer can terminate you. Some union contracts have a “just cause” provision. (See section on At-Will Employment, above.) Most have a “grievance procedure” you must follow to challenge your employer’s decisions.

Your union representative must help you understand your rights under the collective bargaining agreement. The union rep must represent you if you believe your employer violated the agreement. Contact your union rep as soon as possible. You may lose your rights if you do not file a grievance within days of your termination. If you think the union is not properly representing you, talk with a higher-level union representative or a labor lawyer.

If you worked for **the federal or any state or local government**, specific laws, regulations and personnel manuals may limit reasons your employer can terminate you, or set procedures your employer must follow and procedures for you if you object. Talk to your HR representative or a lawyer.

### Was my termination illegal?

No matter who your employer or what your relationship, your employer cannot terminate you for a reason that is against the law.

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❖ It is generally **legal** in Washington for your employer to ask you to take a drug test.

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**Illegal reasons for termination** - It is, generally, *illegal* for your employer to terminate you because you:

- Refused to take a lie-detector test (Note: some jobs can require this test)
- Refused to take an HIV or Hepatitis C test (Note: state law requires these tests for certain jobs)
- Tried to take reasonable meal or rest breaks during the work day
- Missed work because you served on a jury or voted
- Missed work because you took Family & Medical Leave (“FMLA”) AND:
  - FMLA covered your employer
  - You were eligible for FMLA
- Are, or the employer believes you are, a victim of domestic violence, sexual assault, or stalking
- Did not pay child support (or your employer had to deduct support payments from your wages)
- Filed for protection under bankruptcy laws
- Made a complaint with your employer or government authority about how much you get paid
- Tried to organize a union or otherwise “engage in concerted activity” for yourself and other employees

- Tried to oppose, report, or take part in a harassment or discrimination investigation
- Refused to commit an illegal act for your employer
- Reported illegal activity or misconduct by your employer (“whistle blowing”)
- Reported safety violations or otherwise acted to protect your safety or others’ at work
- Exercised a legal right (such as filing a Worker’s Compensation Claim)
- Performed a public duty (such as saving a human life)

**If your employer had eight or more workers on payroll, it is *illegal* if your employer:**

- Discriminated against you for disability or use of a service animal:
  - You must have been able to do the essential functions of your job (and your employer must have made reasonable accommodations)
  - You qualified as disabled because you had a temporary or permanent impairment that was medically diagnosable, documented, and “abnormal”
  - Your impairment was sensory, physical, or mental. If you were not actually impaired, but people thought you were, you may still qualify (example: there was an untrue rumor about your health

status)

- Discriminated against you based on age (40+), gender, race, color, religion, marital status, sexual orientation, pregnancy, or political activity. This can include:

- Stereotypes based on assumptions about these groups
- Association with a member of any of these groups

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❖ Effective January 1, 2019, “sexual orientation” includes gender expression or identity.

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- Discriminated against you because of your military status or because you are an honorably discharged veteran
- Discriminated against your citizenship or national origin
  - It is illegal for employers to hire undocumented immigrants or to discriminate based on immigration status.
  - Immigration laws are complicated. Talk to an immigration lawyer if you think this type of discrimination happened to you.

**It is illegal if you felt you had to quit because the employer** deliberately made your working conditions so bad that a reasonable person would have felt they had to quit. **Example:** severe or frequent sexual harassment.

This is not a complete list. [Employment Discrimination](#) has more.

## Does my employer owe me anything after terminating me?

**Maybe.** They may owe you:

**A Final Paycheck** - Your employer must promptly pay you all wages or salary it owes you, including overtime. This is due on your regularly scheduled pay day. Depending on the employer's policies, you may be entitled to accrued vacation and sick leave pay. It may be illegal for the employer to deduct from your final paycheck for amounts you may owe.

**COBRA** - If you took part in the employer's medical plan, the federal COBRA Act generally entitles you to continue plan coverage for eighteen months or more (unless the employer has few employees). The employer must give you timely notice of this option. You must choose to continue coverage under COBRA within 60 days of your termination. You will generally pay the full cost of the premium, plus two percent.

Contact your employer as soon as possible if you do not get the materials you need to sign up for this coverage when the employer terminates you. Make sure you meet the time requirements set by COBRA **and** the employer's medical plan.

**HIPAA** - If you took part in the employer's medical plan, the plan usually must give you a certificate of health coverage after your employment ends. You may need this certificate when you start your new job, to avoid health benefit restrictions there. Ask for this certificate as soon as possible after you lose coverage under the old plan, when your COBRA coverage ends, or when you start a new job.

**Benefit Payments** - If you got medical care while employed, and your employer's medical plan covered it, the plan must reimburse you even though you are now unemployed. Follow the plan's procedures carefully. You must timely appeal any failure to pay benefits. Your summary plan description should help you understand your rights under the plan. If you do not have a copy of the summary plan description, ask the employer's HR department for a copy as soon as possible.

**Severance Pay** - If the employer had a severance pay program, you may be entitled to this. Check your employment agreement, employee handbook or employer policy materials.

**Retirement Benefits** - If you participated in the employer's 401(k) or other retirement plans, you generally keep certain rights under those plans after termination. Check your summary plan description or contact your employer's HR department.

**Contractual Obligations** - If you had an employment agreement, it may give you certain rights after your termination. Read it carefully. Think about talking to a lawyer to make sure the employer is giving you everything the agreement lists.

**Defamation/References** - By law, your employer may not defame you (say things about you that are not true and cause you harm), and generally may not interfere with your new job search. Employers generally **can** share *truthful* info about you when responding to requests for job references.

## Do I owe my employer anything?

**Maybe.** It depends on your employment agreement or employer policies. You may owe your former employer -

**Preventing Further Damages:** If you plan to file a lawsuit for illegal termination, you may have to show the court you have been looking for a new job. Make copies of resumes you send out. Keep a list of places you apply. Without this proof, the court may award you less.

**Maintaining Confidentiality:** You may be bound by a confidentiality policy that keeps you from revealing the employer's trade secrets, customer lists, marketing plans, and so on. The policy might be in an agreement you signed, an employee handbook, or a conversation with your manager. If you reveal confidential info, you may have to pay the employer damages.

### **Non-Compete and Non-Solicitation**

**Limitations:** Your employment agreement may say you cannot compete with the employer for business or solicit its employees or customers. Non-compete and non-solicitation provisions are legal in Washington if reasonable and needed to protect the employer's legitimate business interests. If you violate these provisions, you may have to pay the employer damages.

**Defamation:** You may not defame your employer. If you make harmful and false statements about the employer, its products, or employees, you may have to pay the employer damages.

The employer may claim that you must follow non-compete, non-solicitation or confidentiality terms. The employer might be

wrong. Washington courts will not enforce an agreement that unreasonably interferes with your ability to work in your profession or make a living.

Reread your employment agreement, employee handbook or any other policy materials. If you still have questions, contact your former supervisor, the employer's HR department, or a lawyer.

## Can I get unemployment benefits?

**Maybe.** If the employer terminated you for a reason that is not your fault, you might be able to get government unemployment benefits. These will equal a percentage of the pay you got when you were employed, for a limited time.

Filing an unemployment claim is not hard, but you must do it soon after your termination. The Resources section at the end has more info.

## How do I enforce my rights?

If you believe your employer has violated your rights or illegally terminated you, you may have to do these:

### **Arbitration, if your employer requires it.**

This type of dispute resolution uses a neutral, third-party decision-maker instead of the court system. The employer's policies or your employment agreement may require arbitration.

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- ❖ Some types of arbitration clauses are not enforceable in Washington. Talk to a lawyer to find out if you must, or should, arbitrate your termination issues.
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**A grievance procedure**, if a collective bargaining agreement applies. Follow the procedure to avoid losing your rights. Make sure you understand it. Talk with a union rep right away for help.

**If your claim involves illegal discrimination**, you can sue in state court at the same time you file complaints with state or federal government agencies. (More info on suing below.)

These government agencies can help protect you against discrimination or offer you other remedies:

- the [Washington State Human Rights Commission](#)
- the [United States Equal Employment Opportunity Commission](#) (“EEOC”)

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❖ **There are time limits for reporting discrimination**, once you have been terminated. Talk to a lawyer as soon as possible about time limits, procedures, and whether your case involves discrimination.

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**If your claim involves action you took with other employees:** If you believe you were terminated because you took “concerted action” (action by two or more employees together) over workplace issues, contact the National Labor Relations Board (“NLRB”). They can look into whether your employer has violated the National Labor Relations Act. If so, the NLRB lawyer will try to reach a settlement. They may take the case on your behalf before the Board. You may get your job back plus back pay.

**Suing the employer:** If the employer has violated your rights, you can sue to get your job back or recover damages for the harm you have suffered. You should not make this decision lightly. Most lawsuits settle without a trial, but after a year or more of effort. Winning may be hard. *You must prove your termination was illegal.*

Once you file a lawsuit, the employer can get lots of personal info about your finances, medical history, and family relationships. If a court decides your claim is frivolous, you might have to pay some or all of the employer’s legal fees. If you think you want to sue the employer, contact a lawyer as soon as possible to study your case, make a plan and file a lawsuit within the time limits. You must give the lawyer *all* the facts.

### **Should I talk to a lawyer?**

**Maybe.** Even if you do not file a lawsuit, you should talk to an employment lawyer, to understand your rights.

**If you are not getting info you need from the employer** – Ask a lawyer for help. This may inspire the employer to cooperate.

**If you think the employer is giving incorrect or untrue info** – An employer may pretend they are firing you for one reason while actually firing you for another. Without a lawyer’s help, it may be hard to get the facts needed to figure out if your employer violated your legal rights when it terminated you.

**Your first conversation with a lawyer** may be free. Anything you say to a lawyer (even if you are just interviewing the lawyer to decide whether to hire them) will be confidential. You can talk with one lawyer, or

several, for opinions about whether your employer has violated your rights.

**Your lawyer's fees and costs** - If you hire a lawyer to represent you in a wrongful termination case, the lawyer probably will do so on a *contingency fee* basis. You do not pay for any legal services unless the lawyer recovers some amount on your behalf. You will probably pay for actual costs, like court filing fees, document copying costs, court reporter fees, private investigator fees, and so on.

**Finding a lawyer** - Some local bar associations provide lawyer referral. [How to Find a Lawyer](#) can also help.

## Where can I read more?

**COBRA health insurance** - U.S. Department of Labor: Employee Benefits Administration: <https://www.dol.gov/general/topic/health-plans/cobra>

**Unemployment benefits** - [washingtonlawhelp.org](http://washingtonlawhelp.org) has publications and videos. Click on "Employment/farmworker rights," then on "unemployment compensation."

Washington State Employment Security Department:

[www.wa.gov/esd/ui/icapp/start.htm](http://www.wa.gov/esd/ui/icapp/start.htm)

Getting your last paycheck:

- Washington State Department of Labor and Industries Wage and Hour Division, (360) 902-5316; 1-866-219-7321; [www.lni.wa.gov/](http://www.lni.wa.gov/)
- Casa Latina Workers Defense Program Wage Claim Project for low-income King County Workers; (206) 956-0779, wage claim intake line x 22

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❖ [Legal Voice](#) has many related publications on employment issues.

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## What if I need legal help?

- Apply online with CLEAR\*Online - <https://nwjustice.org/get-legal-help> or
- Call CLEAR at 1-888-201-1014

CLEAR is Washington's toll-free, centralized intake, advice and referral service for low-income people seeking free legal assistance with civil legal problems.

- **Outside King County:** Call 1-888-201-1014 weekdays 9:15 a.m. - 12:15 p.m.
- **King County:** Call 211 for info and referral to an appropriate legal services provider weekdays 8:00 am – 6:00 pm. You may also call (206) 461-3200, or toll-free 1-877-211-WASH (9274). You can also get info on legal service providers in King County through 211's website, [www.resourcehouse.com/win211/](http://www.resourcehouse.com/win211/).
- **Persons 60 and Over:** Seniors age 60 or over may call CLEAR\*Sr at 1-888-387-7111, regardless of income. Assets limits may apply. Seniors in King County may call 2-1-1.

Deaf, hard of hearing or speech impaired callers can call CLEAR or 211 using the relay service of your choice.

211 and CLEAR will conference in free interpreters when needed.

Free legal education publications, videos and self-help packets covering many legal issues are available at [washingtonlawhelp.org](http://washingtonlawhelp.org).

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❖ [Unemployment Law Project](#) provides legal representation at administrative hearings challenging your right to get unemployment benefits. They can advise at any stage of the appeals process. Call them at (206) 441-9178 or 1-888-441-9178.

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***Northwest Justice Project gratefully acknowledges the work of Legal Voice, whose original publication we largely adapted here.***

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

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