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Volunteer Lawyers Project  
Nebraska State Bar Association

# Employment Law

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## At-Will Employment and Termination of Employment

If you work for a private employer and you do not belong to a union, you are likely an at-will employee. This means that either you or your employer may terminate your employment relationship at any time for any lawful reason or for no reason at all. As discussed below, your employer cannot terminate your employment for an unlawful reason. Examples of unlawful reasons include, but may not be limited to, discrimination or retaliation. In addition, if you have an employment contract, your employer may not lawfully fail to honor this contract.

Sometimes an employment contract may be implied from an employee handbook, from past practices of an employer or from specific promises made by an employer. A contract is more likely to be implied if the terms of the handbook, practices or promises are clear and definite, and you have accepted or relied upon them.

If you have concerns or questions about actions taken by your employer, it may be helpful for you to request a copy of your employer's policies, procedures or employee handbook. If you have been discharged, you may wish to obtain these documents before leaving your employer's premises. You may also wish to review these documents with an attorney to see if they may constitute a contract.

As discussed below, it is unlawful for an employer to discharge an employee for discriminatory or retaliatory reasons. Nebraska law also protects you from certain, specific adverse employment actions. For example, you may not lawfully be terminated for refusing to take a polygraph exam. Also, you cannot be terminated in violation of any of the other laws discussed in this pamphlet.

All the limitations on an employer's right to terminate you which are discussed in this pamphlet also apply if your employer makes the terms and conditions of employment so unreasonable and intolerable that a reasonable person would quit the job under similar circumstances. This is called a "constructive discharge." Many of the limitations discussed in this pamphlet also apply to some kinds of employee discipline and other employment actions.

You should consult with a lawyer if you have questions about whether your termination or another action taken by your employer was unlawful. You have a limited period of time to take action. The time to file an action against your employer can be as short as six months from the alleged unlawful action. In some cases, you may have up to four years to file a lawsuit; however, it is best to act as soon as possible.

## Equal Opportunity Laws

### Discrimination:

It is unlawful for an employer or employment agency to discriminate against you on the basis of race, color, sex, creed, religion, national origin, disability (or mental impairment), pregnancy, age or marital status. Generally, if you work for an employer of 15 or more employees, you are covered by the law.

To preserve your rights, you must file a charge of discrimination with the city Human Rights Commission (if available), the Nebraska Equal Opportunity Commission or the Federal Equal Opportunity Commission within 180 days of the alleged discrimination. The burden of proving discrimination is on you.

The Commission will investigate the allegations contained in your charge. If the Commission finds reasonable cause to believe discrimination took place, settlement between you and your employer will be attempted. If such settlement efforts fail, then the Commission will call for a public hearing. If the Commission finds no reasonable cause to believe discrimination took place, you may still have the right to pursue your claim. This should be discussed with your attorney.

If you have a physical or mental disability, you may be entitled to protection from discrimination unless your disability is such that you cannot perform the essential functions of your job. Your employer must make some reasonable effort to accommodate your disability so you can do the job.

### Retaliation:

Under state and federal law, it is unlawful for an employer to retaliate against an employee for filing a charge of discrimination, opposing an unlawful practice or refusing to carry out an unlawful act. If you work for an employer with more than 15 employees, you are covered by these laws.

If your employer harasses you or takes adverse action against you because you engaged in any of the protected activity described above, you should contact the appropriate city Human Rights Commission (if available), the Nebraska Equal Opportunity Commission or the Federal Equal Opportunity Commission within 180 days.

### Harassment:

Both state and federal law, as well as some city ordinances, make harassment in the workplace unlawful. Harassment may be perpetrated by your employer, a supervisor, or a coworker. Generally, if you work for an employer of 15 or more employees in Nebraska, you are likely covered by one or more of these laws.

For the harassment to be unlawful, it must be based on your protected characteristics. Protected characteristics under the law may include, but are not limited to: race, color, sex, religion, national origin, disability, and/or age. Harassment may consist of, for example, inappropriate comments and/or touching. Generally one-time inappropriate remarks are not enough to establish a claim of harassment. Rather, the conduct must be sufficiently severe to unreasonably interfere with your work performance or create an intimidating, hostile, or offensive work environment. Whether inappropriate comments create a hostile or offensive work environment may depend on what type of job you work in. For example, comments that may be deemed inappropriate in an office environment may be deemed more appropriate in a rougher environment like a meat packing plant or a construction site. To be successful, you may also have to show that your employer either knew or should have known of the conduct and failed to take prompt remedial action.

If you feel that you have been subjected to harassment in the workplace you may preserve your rights by filing a charge with either the appropriate city Human Rights Commission (if available), the Nebraska Equal Opportunity Commission or the Federal Equal Opportunity Commission within 180 days of the occurrence of the harassment.

#### **Damages:**

If you are successful in a claim for discrimination, retaliation or harassment, you may be entitled to compensation for back pay, front pay, emotional distress, out-of-pocket losses, restoration of lost job benefits and attorney fees. In some instances, additional damages may be available.

#### **Unemployment compensation:**

You may be entitled to unemployment compensation if you resign without good cause, or are terminated for a reason other than misconduct. You are generally disqualified for unemployment for between 2 and 13 weeks if you leave your employment voluntarily.

If you are terminated for misconduct, you will likely not qualify for unemployment for a period of time. Misconduct must be shown by the employer, and is conduct not in the best interests of the employer, in reckless disregard of the employer's best interests, and generally willful. It can include insubordination, theft, falsification of expense reports, and unexcused absences. If you are disqualified due to misconduct, you may be eligible after any disqualification period ends.

You are not eligible for unemployment benefits while receiving severance pay. For example, if you receive four weeks' severance pay, you are not eligible for unemployment compensation for four weeks. Also, if you receive a lump sum distribution from a retirement plan and fail to roll it over immediately, it will be considered income. In that circumstance, the amount of the distribution is divided by your average weekly wage; and, that number is the amount of time you are disqualified from receiving unemployment.

#### **Workers' Compensation:**

Under Nebraska law, you are entitled to receive workers' compensation if you are injured on the job. You are only entitled to benefits if you are injured while performing work for the employer in the normal course of business. Thus, if you are injured in an accident while doing a personal errand in your employer's car during normal working hours, you are not eligible.

If you suffer a heart attack on the job, you may qualify for workers' compensation only if the heart attack was caused by the job, by the stress of the job or by some unusual exertion on the job. These factors may be difficult to prove.

Workers' compensation claims must be filed within two years. That deadline for filing may be extended if the First Report of Injury is not timely filed or when there are voluntary payment of benefits by the employer. This should be discussed with your attorney.

Usually, workers compensation pays 66 2/3% of your average weekly wages, up to a maximum. If your wages are less than the maximum, you will receive 66 2/3% of your average weekly wages. If your wages are greater than the maximum, you will receive the maximum in effect on the date of injury.

If you lose a limb, finger or sight of an eye, you may be limited to statutory amounts based on percentage of impairment. Courts may consider loss of earning power as opposed to loss of function. This could provide a greater recovery and should be discussed with your attorney.

If you are injured on the job, you may be entitled (subject to maximum amounts) to temporary total disability; permanent partial disability; or permanent total disability. Finally, you may be entitled to vocational rehabilitation to the extent you can no longer do the job for which you were trained.

#### **Family and Medical Leave Act (FMLA)**

FMLA is designed to help employees balance their work and family responsibilities by allowing them to take reasonable unpaid leave for certain family and medical reasons. It also seeks to accommodate the legitimate interests of employers and promote equal employment opportunity for men and women.

Covered employers must grant an eligible employee up to a total of 12 work weeks of unpaid leave during any 12-month period for one or more of the following reasons:

- for the birth and care of a newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- to take medical leave when the employee is unable to work because of a serious health condition.

An "eligible" employee is an employee who has been employed by the employer for a least 12 months and worked at least 1,250 hours. The 12 months do not need to be consecutive. You are only an "eligible" employee if your employer employs 50 or more employees within 75 miles of the worksite.

The employee is entitled to have their insurance benefits maintained; but, they must continue to pay their portion during the leave. The employee also has the right to return to the same or equivalent position, pay, and benefits at the conclusion of their leave.

If you and your spouse work for the same employer, you cannot each take 12 weeks off for the birth of a child, when adopting a child, or to care for a parent with a serious health condition.

FMLA can be taken on an intermittent basis allowing the employee to work on a less than full-time schedule

### **Consolidated Omnibus Budget Reconciliation Act (COBRA):**

If you receive health care benefits through an employer plan, you may be entitled to continued health care coverage in the event your employment ends or if your hours are significantly reduced. Employers with 20 or more employees are subject to federal law which provides for the temporary continuation of health coverage for employees and their covered family members for up to 18 months (or more in some cases) in the event an employee is no longer eligible to participate in the employer's health plan. Although this coverage is at the employer's group rates, the employee must pay the entire premium for coverage. For employers with less than 20 employees, Nebraska law provides employees with similar health care benefits continuation coverage for up to six months. If you are terminated, quit, or if your hours are significantly reduced, ask your employer about the right to continued coverage of your health care benefits.

### **Your Right to Join or Not Join a Labor Union**

The National Labor Relations Act of 1935 (NLRA) was passed by Congress to encourage a healthy relationship between private sector workers and their employers. The NLRA defines the rights of employees to organize and to bargain collectively with their employers through representatives of their own choosing (i.e. labor unions), in addition to protecting the rights of workers who prefer to remain non-union. To ensure that employees can freely choose their own representatives for the purpose of collective bargaining, or choose not to be represented, the NLRA establishes a procedure by which employees can choose whether or not to be represented by a union through a secret-ballot election process conducted by the National Labor Relations Board.

### **Employee Rights**

Employees generally have the right to form, join, or assist a labor union, and to bargain collectively through representatives of their own choosing. The NLRA also protects the rights of employees who do not want to engage in union activities and/or those who attempt to remove an existing union.

The NLRA also applies to any situations when employees are engaged in "protected concerted activity," which is activity undertaken by two or more employees in an attempt to improve their pay, benefits, or working conditions, or fix job-related problems. The NLRA protects all private sector employees who engage in "protected concerted activity," regardless of whether they are represented by a labor union.

### **Employer/Union Rights and Obligations**

To protect the rights of employees and employers, and to prevent labor disputes that would adversely affect the rights of the public, Congress has defined certain practices of employers and unions as "unfair labor practices." For example, the NLRA forbids employers from interfering with, or retaliating against, employees who: (a) exercise their right to form, join or assist a labor union; or (b) engage in protected concerted activity with their coworkers in an effort to improve their wages, benefits and working conditions. Similarly, unions are prohibited from interfering with, or retaliating against, employees who: (a) do not support the union; or (b) engage in efforts to remove an existing union.

Any private sector employee who believes his or her rights have been violated by their employer or a labor union can file an unfair labor practice charge with the nearest NLRB regional office. If you have any questions about your rights under the NLRA, you can visit [www.nlr.gov](http://www.nlr.gov) for more information.

The information in this brochure is for educational purposes only. It is not legal advice or a substitute for legal advice by a lawyer. If you want legal advice, you should contact a lawyer licensed to practice law in Nebraska.

#### **Nebraska Find-A-Lawyer**

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#### **Nebraska Free Legal Answers**

Visit [www.NE.freelegalanswers.org](http://www.NE.freelegalanswers.org) to learn how to ask a lawyer licensed to practice law in Nebraska a civil (non-criminal) legal question online. Qualifying users may receive free basic legal information and advice from an approved volunteer lawyer.

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