
EMPLOYMENT RIGHTS

How To Protect Yourself Against Employment Rights Violations

by Jeannie Santiago

Employment rights are fundamental principles that protect workers' rights and interests in the workplace, ensuring fair treatment, dignity, and equality. Constructively implementing these rights not only fosters a positive work environment but also promotes employee satisfaction, productivity, and organizational success. Mediation is a valuable tool for addressing employment-related disputes and conflicts, facilitating dialogue, understanding, and resolution. This article explores the importance of employment rights, constructive implementation strategies, and mediation's role in promoting fairness and justice in the workplace.

Employment rights encompass a range of legal protections and entitlements granted to employees, including but not limited to equal employment opportunities by protecting against discrimination based on race, color, religion, sex, national origin, age, disability, or other protected characteristics. Establishing fair labor standards that ensure fair wages, overtime pay, minimum wage requirements, and safe working conditions for employees.



Workers also have the right to a harassment-free workplace against bullying and hostile work environments and are entitled to privacy rights, including personal information, electronic communications, and medical records.

Several federal laws protect employees to ensure fair treatment in the workplace. Listed below are the eight most commonly violated federal acts by employers.

Title VII of the Civil Rights Act of 1964

Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin. It applies to employers with 15 or more employees, including private employers, state and local governments, and educational institutions.

What Do Violations Look Like?

Discrimination

- Refusing to hire or promote qualified individuals based on their protected characteristics.
- Paying employees of a certain group less than others for the same work.
- Harassing employees based on their protected characteristics, creates a hostile work environment.

Harassment

- Verbal abuse, derogatory comments, or offensive jokes related to a person's race, gender, religion, or other protected characteristics.
- Unwanted physical contact, gestures, or advances of a sexual nature.
- Retaliation against employees who report harassment or participate in investigations.

Retaliation

- Reporting discrimination, harassment, or other illegal practices to management or government agencies.
- Participating in investigations, legal proceedings, or union activities.
- Requesting accommodations for disabilities or exercising rights under employment laws.

Wage and Hour Violations

- Paying employees below the minimum wage or misclassifying them as exempt from overtime pay.
- Failing to pay overtime compensation for hours worked beyond the standard 40-hour workweek.
- Denying meal and rest breaks as required by law.

Wrongful Termination

- Firing an employee for discriminatory reasons or in retaliation for exercising protected rights.
- Terminating an employee in violation of employment agreements, implied contracts, or established company policies.
- Discharging an employee for whistleblowing or reporting illegal activities.

Violation of Family and Medical Leave Rights

- Denying eligible employees leave for qualified medical or family reasons covered by the FMLA.
- Failing to reinstate employees to their previous positions or equivalent positions upon return from FMLA leave.
- Retaliating against employees for taking FMLA leave or exercising their rights under the FMLA.

Unsafe Working Conditions

- Failing to provide proper safety equipment, training, or protective measures.
- Ignoring or failing to address known hazards or unsafe working conditions.
- Retaliating against employees for raising concerns about workplace safety or refusing to perform unsafe tasks.

Americans with Disabilities Act (ADA)

The ADA prohibits discrimination against individuals with disabilities in all aspects of employment, including hiring, firing, job assignments, promotions, and compensation. It applies to employers with 15 or more employees.

Age Discrimination in Employment Act (ADEA)

The ADEA protects individuals aged 40 and older from age-based discrimination in hiring, firing, promotions, layoffs, compensation, and other employment practices. It applies to employers with 20 or more employees.

Equal Pay Act (EPA)

The EPA requires employers to pay men and women equally for performing substantially similar work in the same establishment. It prohibits wage discrimination based on sex. The EPA applies to employers covered by the Fair Labor Standards Act (FLSA).

Family and Medical Leave Act (FMLA)

The FMLA provides eligible employees with up to 12 weeks of unpaid, job-protected leave for qualified medical and family reasons, such as the birth or adoption of a child, serious health conditions, or caregiving responsibilities. It applies to employers with 50 or more employees.





Fair Labor Standards Act (FLSA)

The FLSA establishes minimum wage, overtime pay, recordkeeping, and child labor standards for covered employees. It applies to most employers engaged in interstate commerce or producing goods for interstate commerce. Occupational Safety and Health Act (OSHA) OSHA sets forth workplace safety and health standards to ensure safe and healthy working conditions for employees. It applies to most private-sector employers and some public-sector employers.

Worker Adjustment and Retraining Notification Act (WARN)

WARN requires employers with 100 or more employees to provide advance notice of mass layoffs or plant closings affecting a certain number of employees. It helps protect workers and their families from sudden job loss.¹

Violations of these laws can result in legal consequences for employers, including fines, penalties, and lawsuits. It's essential for employees to be aware of their rights and to take appropriate action if they believe their rights have been violated. Seeking guidance

from legal resources or advocacy organizations can help individuals understand their options for addressing employment rights violations and seeking remedies.

What should you do if you find yourself in a situation where your rights are being violated?

There are several proactive measures one can take in these situations. Reporting violations of employment rights typically involves specific steps, depending on the nature of the violation and the applicable laws. The following steps are in the order of actions you should take.



In Phases

1

Identify the Violation

Determine which employment right or law has been violated. Common violations include discrimination, harassment, retaliation, wage and hour violations, denial of leave under the Family and Medical Leave Act (FMLA), and unsafe working conditions.

Gather Evidence

Collect relevant evidence to support your complaint, such as emails, memos, documents, witness statements, performance evaluations, pay stubs, transcripts, and photographs. Documentation is crucial for proving the violation and supporting your case. Please note, word-of-mouth or hearsay will not suffice as evidence.

Review Employer Policies

Review your employer's policies and procedures for reporting employment rights violations. Many employers have internal complaint procedures or grievance mechanisms that employees are required to follow before taking external action.

2

File an Internal Complaint

If your employer has an internal complaint process, follow the established procedures for reporting the violation. This may involve notifying your supervisor, human resources department, or designated compliance officer and submitting a formal written complaint.

Document the Complaint Process

Keep detailed records of all communications, meetings, and actions taken during the internal complaint process. Note the dates, times, participants, and outcomes of each step in the process.

3

Seek Legal Advice

Consider consulting with an attorney who specializes in employment law to understand your rights, options, and potential remedies for employment rights violations. An attorney can provide guidance and representation throughout the complaint process.

File a Charge with a Government Agency

If internal resolution is not possible or unsuccessful, you may file a charge with a relevant government agency that enforces employment laws. The appropriate agency depends on the type of violation and the applicable law. Common agencies include the Equal Employment Opportunity Commission (EEOC) which handles charges of discrimination.²

For violations regarding wage and hour laws, including minimum wage, overtime pay, and FMLA violations contact the Department of Labor (DOL)³. The Occupational Safety and Health Administration (OSHA)⁴ will investigate workplace safety and health violations and the National Labor Relations Board (NLRB)⁵ addresses unfair labor practices and violations of labor rights under the National Labor Relations Act (NLRA).

File a Lawsuit

In some cases, you may have the option to file a lawsuit against your employer for employment rights violations. Consult with an attorney who specializes in employment law to assess your legal options and determine the best course of action.

Cooperate with Investigations

If your complaint is being investigated by a government agency or legal authority, cooperate fully with the investigation process. Provide all requested information, documents, and testimony to support your case. It's essential to act promptly and diligently when filing a complaint for violations of employment rights to preserve evidence, meet filing deadlines, and protect your legal rights. Be sure to follow the appropriate procedures and seek assistance from legal or advocacy resources if needed.

Civil Mediation

Mediation plays an important role in resolving employment disputes by providing a neutral and confidential environment conducive to constructive dialogue. In this setting, parties can openly discuss their concerns without fear of judgment or reprisal, allowing for a safe space for exploring mutually acceptable solutions. With the guidance of a trained mediator, employees, and employers can engage in facilitated dialogue to identify underlying issues, clarify misunderstandings, and collaboratively work toward resolution. This approach not only addresses the immediate dispute but also promotes a deeper understanding between parties, laying the foundation for improved communication and cooperation in the workplace.

One of the key benefits of mediation is the empowerment it offers to employees, allowing them to actively participate in the resolution process and have a voice in determining outcomes. By involving employees directly in finding solutions to their disputes, mediation promotes a sense of ownership and accountability, enhancing their commitment to the agreed-upon resolutions. Moreover, mediation prioritizes the preservation of relationships, unlike adversarial approaches such as litigation, which often strain

employment dynamics and trust. By focusing on workplace morale and productivity.

Additionally, mediation offers practical advantages in terms of cost-effectiveness and efficiency. Compared to lengthy and expensive litigation processes, mediation tends to be faster, less costly, and more efficient. By resolving disputes promptly through mediation, parties can minimize disruptions to their work routines and allocate resources more effectively.



**For more information about Civil Mediation please visit
www.MyMediator.JeannieSantiago.com**

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