
EMPLOYMENT DISCRIMINATION

WHAT DISCRIMINATION IS AND HOW TO DETERMINE IF YOU ARE A VICTIM


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INTRODUCTION

“NO CHANGE CAN COME IF THOSE WHO ARE IMPACTED THE MOST BY DISCRIMINATION ARE NOT WILLING TO STAND UP FOR THEMSELVES.”

—ZAINAB SALBI

Perhaps your supervisor passed you over for promotion after making suspect remarks about your gender. Or maybe you failed to get hired for a job that you were perfectly able to handle—and you strongly believe that your age, religion or skin color had something to do with it.

Discrimination understandably touches a painful nerve. We all want to be treated fairly—this is a fundamental human need. And when we suffer a wrong due to prejudice, especially if that wrong affects us financially or impedes our dreams of contributing to the world, we want to believe that our legal system has answers.

In some cases, it does. And we will discuss remedies in the pages that follow. Before we do, however, we need to clarify what the law actually says.

Most people do not understand what employment discrimination is. In fact,

I meet all the time with potential clients who've been treated badly at work; they tell me their employer discriminated against them. However, in most cases, the employee was not discriminated against. The employer was just being unprofessional and unfair.

I decided to write this book to help working people understand employment discrimination by giving a general overview. I've also included helpful tips on what you can do to help fight against discrimination. While this short ebook obviously cannot unwind the damage to your career or pocketbook, it can hopefully give you clarity and some peace of mind. Let's begin.

Now What?

You never thought this would happen to you. You were the best candidate for the position—the interviewer said so—but, inexplicably, you didn't get the job after all. Or you were told you have no chance for that promotion, though you have all the skills and tenure. Or you're finding yourself dreading coming into work, because you're the target of cruel jokes and stuck with the worst assignments in the building. Perhaps your boss called you in and dropped the news: You've suddenly been let go. It pains you to admit it. You've gone over what happened again and again, trying to figure out if there's any other explanation for what's happened. But there just doesn't seem to be any.

The only explanation is that you're a victim of discrimination. Now what should you do? This guide will help you determine your next steps. In these pages, we will explain the basics of discrimination. We'll start with what it is, and what it isn't. We will give you suggestions on how to find and work with an attorney skilled in employment law, as well as how to handle the financial, social and emotional costs of discrimination—whether you're still trying to keep your job, or moving on from losing one.

It probably feels like you've been stabbed in the back—we get that. What you've experienced was a betrayal and disrespect. But we're going to help you make things right and help you get back on track.

Jordan El-Hag

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and we'll answer whatever questions you have!**



DISCRIMINATION 101

WHAT IS EMPLOYMENT DISCRIMINATION?



Employment discrimination occurs when your employer treats you (or a group of individuals) differently than other employees because you belong to a protected class. It's that simple.

For example, one person gets a bonus, the other doesn't. The boss asks one employee to go to lunch, while a coworker is stuck in the office. Parking spaces, an office with a window versus a cubicle farm, work schedules, overtime, and promotions. We'd like to say that people are treated equally. But that isn't true. People are treated differently all the time: But being treated differently by itself is not enough.

The issue is why you are being treated differently.

Perhaps a manager is just a jerk, who plays favorites for staff he likes more. That's a toxic environment, but it isn't necessarily unlawful. However, if that manager is treating staff members differently, solely because of membership in a group of people—whether it's race and ethnicity, religion, gender, sexual identity or disability—that is unlawful employment discrimination, and it's illegal under federal and state law.

Occasionally, something may look neutral, but, in reality, it only affects a particular group; if so, that, too, may be illegal. For



example, say there's a manufacturing job limited to native English speakers, but there's nothing in the work impacted by someone's first language. Then the requirement may be a pretext for discriminating against those who are Hispanic or Asian.



Where things become difficult, is when there seems to be a legitimate explanation. Perhaps that manufacturing manager claims the language requirement is for employees' safety—so they understand instructions during an emergency. In order to win, you'll have to disprove that excuse.

Another complicated factor: Discrimination is about harming someone—but what if the problem is that someone else was helped? E.g., Another person was promoted instead of you. In that case, you may have to explain how a benefit to her, really, was at a cost to you. "That promotion should have been mine" may be true, but it's a hard case to win, on its own. But if there are other related facts ("I had to do extra work, because she wasn't qualified for that job."), then the harm becomes clearer.

One more related issue related to discrimination: whistleblowers.

We, as a society, want people to refuse to participate in a crime, and we want people to report crimes that are happening. Therefore, while not a traditional category of discrimination, the law protects employees who speak out against workplace wrongdoing.

Whether it's reporting a manager who is discriminating against you or falsifying time cards, as long as you make that claim in good faith, your employer cannot retaliate against you. The employer is supposed to fix the problem, not punish you for making the complaint. You can't be singled out or otherwise punished for doing the right thing. And if you are, the law can protect you.

FEDERAL & STATE LAWS AGAINST DISCRIMINATION

FEDERAL LAWS AGAINST DISCRIMINATION



Both federal and state law prohibit discrimination in the workplace.

Let's look at just a few examples of the federal laws, but keep in mind that state laws also regulate employment and ban discrimination.

Depending on the specific state and statute, some of these requirements will be narrower, or even more broad, than what the federal laws cover. Therefore, the key is to seek legal advice from someone who knows both the relevant federal and state laws, and which best relate to your specific situation.

U.S. CIVIL RIGHTS ACT OF 1964

Title VII of the Civil Rights Act of 1964 applies to employment issues. This law begins

with three fundamental principles:

1. **First, Title VII** makes it illegal to discriminate against someone on the basis of race, color, religion, national origin or sex.
2. **Second, Title VII** makes it illegal for an employer to retaliate against a person, because that person complained or filed a charge about discrimination or participated in an employment discrimination investigation or lawsuit.
3. **Third, Title VII** requires employers to make "reasonable



FEDERAL & STATE LAWS AGAINST DISCRIMINATION

accommodations” for an applicant’s or an employee’s sincerely held religious practices—unless doing so would impose an undue hardship on the operation of the employer’s business. For example, employers may be required to give employees break time for prayer, if prayer during the day is a part of the employee’s normal religious practice. However, an employer may not necessarily be required to build a specified prayer room, if something else would be a reasonable substitute.

The U.S. Equal Employment Opportunity Commission (EEOC) is an office of the federal government charged with enforcement of the Civil Rights Act and other laws that relate to employment discrimination.

Other laws enforced by the EEOC include:

- » **The Pregnancy Discrimination Act**, which makes it illegal to discriminate against a woman because of pregnancy, childbirth or a medical condition related to pregnancy or childbirth
- » **The Age Discrimination in Employment Act (ADEA)**, which protects people who are 40 or older from discrimination because of age
- » **The Genetic Information Nondiscrimination Act (GINA)**, which makes it illegal to discriminate against employees or applicants because of genetic information
- » **Title I of the Americans with Disabilities Act**

STATE LAWS

Most state laws model the federal law, but many offer more protection. In New York, for instance, we have the following on the books:

- » The **New York State Human Rights Law**, which applies to employers who have four or more employees and covers diverse topics. Complaints can be filed with the **New York State Division of Human Rights** or directly in state court;
- » The **New York City Human Rights Law**, which covers employment discrimination, discrimination related to housing and public accommodations, retaliation, harassment and law enforcement profiling; and
- » Many counties have their own anti-discrimination laws.

EQUAL PAY

A SEPARATE FORM OF DISCRIMINATION

One form of discrimination that many people may not be aware of is pay discrimination - when an employer pays members of the opposite sex less money for performing the same work.

For example, where a man and woman both work as managers in a company, but the man makes \$40,000 a year and the woman \$30,000 per year. If the only reason the employer is paying the woman less just because she is a woman, then this is unlawful pay discrimination. Many states, like New York, have separate laws in place just to address equal pay violations.

One of the reasons that many people are not aware of equal pay violations is because no one in the workplace knows what their coworkers are earning. Generally, people keep this information private. However, many times people talk about the raises they get in the lunchroom or as “water cooler talk.”

So if you want to investigate these claims where you work, you can try to bring up the issue during general conversations with your coworkers. In fact, under the New York Labor Law, Section 194, it is against the law if your employer completely restricts you and your coworkers from discussing wage rates with one another.



Forming a union in the workplace is the most effective way to prevent equal pay violations because the union can help you and your co-workers negotiate a fair and objective pay system that your employer must follow.

And if the employer does not follow the system that the union puts in place, your union can quickly correct the violation without going through a big lawsuit, and the union can easily obtain all the union employee pay rates from the employer to ensure there is no unequal treatment.

If you want to learn more about unions, see our guide “[How to Maximize Your Pay.](#)”



EQUAL PAY

A SEPARATE FORM OF DISCRIMINATION

U.S. pay gap:
All full-time working men vs. women

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Now, equal pay does not mean that an employer must keep everyone at the same pay rate. It only means that an employer cannot pay less wages just because of your sex. Some legitimate reasons for an employer to have different rates of pay are:

1. a **seniority system**
2. a **merit system**
3. a **bona fide factor other than sex**, such as education, training, or experience. This means the factor is related to the job, not based on sex, and consistent with the needs of the business.

Like all areas of employment law, it is against the law for your employer to retaliate against you for inquiring about the rates of pay, filing a complaint about equal pay violations, or attempting to enforce your rights.



HARASSMENT

Like equal pay, harassment is another form of workplace discrimination. However, many people do not understand what harassment is under the law. Unlawful workplace harassment comes in two forms:

1. Quid Pro Quo Harassment

“Quid pro quo” is a Latin term that means “something for something.” In the workplace, this is usually seen when an employer tells an employee that they will give an employee a raise in exchange for a sexual favor or to go on a date with them.

Examples:

- » a supervisor who fires or denies promotion to a subordinate for refusing to be sexually cooperative
- » supervisor requires a subordinate to participate in religious activities as a condition of employment
- » supervisor offers preferential treatment/ promotion if subordinate sexually cooperates or joins the supervisor’s religion



2. Hostile Workplace Harassment

In hostile workplace harassment, it is unlawful for an employer to create or allow the workplace to become so unwelcoming that you would want to leave.

The conduct that is creating the unpleasant workplace must be:

- (1) ongoing and pervasive
- (2) directed at you belonging to a protected class

For example, when a woman in the workplace comes to work every day and the men all make inappropriate sexual jokes about female anatomy whenever the female employee goes to the breakroom.



HARASSMENT

Examples of behaviors that may contribute to an unlawful hostile environment include:

- » discussing sexual activities
- » telling off-color jokes concerning race, sex, disability, or other protected bases
- » unnecessary touching
- » commenting on physical attributes
- » displaying sexually suggestive or racially insensitive pictures
- » using demeaning or inappropriate terms or epithets
- » using indecent gestures
- » using crude language
- » sabotaging the victim's work
- » engaging in the hostile physical conduct

Harassment does not occur just because someone at work makes one inappropriate joke now and then. The conduct at issue also must be unwelcome conduct. This means that you cannot participate in the behavior and then all of a sudden change your mind and then just complain you were subject to inappropriate joking.

Some factors to look at when assessing hostile work environment claims are:

- » the frequency of the unwelcome conduct;
- » the severity of the conduct
- » whether the behavior was physically threatening or humiliating, or a mere offensive utterance
- » whether the conduct unreasonably interfered with work performance
- » the effect on the employee's psychological well-being
- » whether the harasser was a superior within the organization

If you are experiencing harassment like conduct in the workplace, the first thing you should do is report the behavior and keep a diary of everything that occurred and a diary of the steps your employer took to correct the situation.

If the conduct does not improve, and your employer does not take any steps to make the corrections, then you should look to take the next steps to enforce your rights at work.



HOW DO YOU PROVE DISCRIMINATION?

To prove discrimination, you have to be able to prove a few things:

1. **You work in a company that employs more than 4 employees (under New York Law) and more than 15 employees (to be protected under Federal Law)**
2. **You are an employee, not an independent contractor**
3. **You are a member of a protected class**
4. **You suffered an adverse employment action**
5. **The adverse employment action occurred because you are a member of a protected class**
6. **Pretext**

In most if not all cases, your employer will have a non-discrimination explanation for why he took a bad action against you. For example, if you did not get a promotion over someone else, your employer might say you did



not have the same qualifications as the employee who did get the promotion. When your employer makes up a reason to cover up the discrimination, this is called a pretext. You must be able to prove that the employer's excuse is not true.

7. **Damages**

You have to show the harm that you suffered as a result of the adverse employment action.



HOW DO YOU PROVE DISCRIMINATION?

COMMON WAYS TO PROVE DISCRIMINATION

1. SHOW DIRECT EVIDENCE.

This could constitute:

- » Verbal statements. For instance, your supervisor made an offhand remark comparing you to a criminal in the news
- » Written documents. You are able to obtain emails exchanged between higher-ups at the company that call into question your ability to do a job because of your age
- » Video. A coworker shot a cell phone video of your supervisor yelling at you on the factory floor or overtly mentioning your religion as a reason for making a firing decision.

2. SHOW INDIRECT EVIDENCE.

With some exceptions, most employers are mindful enough of their behavior to avoid leaving a clear paper trail exposing naked prejudices. So what can you do? Years ago, the U.S. Supreme Court established the McDonnell-Douglas



Framework. This is a litmus test to help determine whether discrimination occurred. As the plaintiff, you need to build a “prima facie” case that discrimination happened. The employer, meanwhile, will try to counter, offering a non-discrimination related rationale. The burden is on you to connect the dots. For instance:

- » You can prove that the employer’s supposed reason for taking action was false. For instance, your boss swore that he didn’t promote you not because you were a person of color but because you were too inexperienced... and then he turned around and hired a Caucasian who had 5 years less experience than you did.
- » You can prove that the bad or unfair conduct was motivated by consideration of your race, religion, disability, gender, age, etc. For instance, you can compile statistics about the company’s hiring and firing process that demonstrates a clear bias against people in your protected class. Maybe only five percent of the company’s leadership is female, while women constitute at least half of the total workforce.



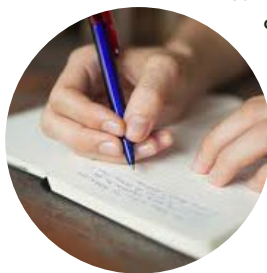
GATHER YOUR EVIDENCE

It is extremely difficult to prove discrimination. If it comes down to just your word versus your employer's word, the odds are stacked against you. You will need more. This is why it's important to build your case while you are still working at the company.

One of the biggest problems in building employment discrimination cases is trying to get your coworkers to come forward to support your case. Many times, when someone loses their job and files a discrimination lawsuit, they think their friends at work will come forward, but typically they are too afraid to step up and do the right thing.

So build your case ahead of time, and keep a journal.

Even though coworkers won't voluntarily talk, you can subpoena them to talk during a lawsuit. If you have compelling notes of what occurred, and your notes reflect that the person was a witness at the event, they can be called upon to testify on your behalf. People will not usually lie under oath, but often need to be reminded of what occurred.



The best evidence shows a “pattern and practice” of behavior.

Are other people who are members of your group having the same problems as you are? On the flip side, are people who don't belong to that group treated differently? Start building your case by keeping a record of any relevant incidents, so that, when the time comes, you have firm evidence to present to your employer or bring to a lawyer.

The very moment that discriminatory conduct occurs, you may not feel able to challenge someone. That's completely understandable. But once you're home, write down what happened. Include exactly what was said—word-for-word if you can—and describe everything that happened. Say who was there (either participating or witnessing the event), when and why it occurred, and any other details you remember. Do this every time that it happens including any racial comments, sexual innuendo, etc. Write everything done. (You can always make a shorter list, and leave things out later, if you want.)



Another great way to gather evidence is with emails and text messages.

Check your company email privacy policy, but generally if you print out or forward emails that have good evidence, you should keep that in your file. Text messaging is a very common form of communication now, and many people will put in writing information that can help make or break a case.

Psychologically, telling yourself, “It was no big deal, forget about it,” may seem like the way to go, but it is a big deal. And the truth is—you aren’t going to forget about it, are you? So document it. Many times, a defense for discrimination boils down to a “He said/she said” denial. That is much less likely to be successful if you can show a list of all the things that have happened, with dates, times and witnesses.

The more evidence you’re able to provide, the more likely you are to win your case.

Pull together any evidence in your possession, including things like computer files, memos, tangible documents or other items that pertain to what happened.

Be sure to keep a record of all official communication, formal or informal, notes, memos, emails—all of which may be useful later. Copy emails, annual reviews, employee handbooks and memos related to promotions.

Be careful when forwarding emails to other people or your personal account, though, as it may violate the company’s policy, and it can be tracked by the IT staff.



If you’ve been fired, make sure you have a copy of your termination notice. If the firing happened in-person, and you do not have a written termination notice, send a follow-up email to your supervisor asking for clarification on why you were fired. But write that email with a cool head, and maintain a professional

tone throughout. Then, start a timeline of events. As soon as you can, begin writing everything you remember about the events that led to your firing. Try to keep your list chronological. Make a note of any dates you can recall, such as dates you were hired, fired and any times you received a promotion. If someone else was involved, be sure to mention that person. List as many events (positive and negative) as you can, and be as specific as possible. And include even the details that seem unimportant.

As upsetting as experiences of discrimination are—whether you are still on the job or have been let go—the good news is that you have options. But first, you need to keep a level head. Lashing out, ranting and raving, or venting, especially to coworkers, will not help your situation. Express your concerns with trusted friends and family members. Channel your frustration into building your case.



WHAT CAN I WIN IF I WIN A DISCRIMINATION LAWSUIT?

There are a few categories of damages available to you if you win a discrimination lawsuit. However, not all of these damages are available to you, depending on the law under which you are suing.

1. **Lost wages and benefits**

Generally, you must be made whole for the losses you suffered because of your employer's discriminatory actions. Reimbursement for lost pay and benefits is one of the available categories of damages.

However, the reimbursement of lost wages and benefits is bittersweet, because the law deducts any other income that you receive. So generally, unemployment benefits you received and income from new employment will be deducted from any award of lost pay and benefits. Moreover, if you secure a new job that is comparable to the job you lost, you do not get any more back pay and benefits.



*** You have a legal obligation to find a new job and limit your lost pay and benefits. If you do not take steps to find a new job, you can get no back pay whatsoever!! This is known as "mitigation of damages". It seems very unfair that your boss who discriminated against you gets to benefit from your finding new work, but that's the way the law is written.*

2. **Costs of finding a new job or remedying the discriminatory conduct**

Since the law is designed to make you whole for your losses, you are entitled to recover any costs that you incurred in trying to recover from the discriminatory act. For instance, you can recover travel expenses that you incurred driving to job interviews or necessary and reasonable relocation costs.



WHAT CAN I WIN IF I WIN A DISCRIMINATION LAWSUIT?

3. Pain and suffering

You are entitled to pain and suffering damages. Under the Federal Law, there are limits on how much you can recover for pain and suffering. These limits are known as “caps” on damages, and the caps are determined by the size of the company you work for. The limits are:

- » For employers with 15-100 employees, the limit is \$50,000.
- » For employers with 101-200 employees, the limit is \$100,000.
- » For employers with 201-500 employees, the limit is \$200,000.
- » For employers with more than 500 employees, the limit is \$300,000.

This means that under the federal law, if you won a lawsuit, and you were awarded pain and suffering, the most you can receive is \$50,000 if you work in a workplace that has 15-100 employees. The caps include punitive damages that you might be awarded. Under the New York State Discrimination laws, there are no caps



on pain and suffering, but courts have reduced awards that they found too high.

No one can tell you how much you might receive from a pain and suffering award. But there are two factors that you can look at to determine whether you can receive a smaller or larger award:

» **A. How repulsive and persistent was the discriminatory conduct?**

The more repulsive the actions, and the longer you were exposed to them, generally the greater the possible pain and suffering award. One-time comments are generally not discriminatory. For the most part, one-handed comments are not even actionable. If your employer made one inappropriate joke or discriminatory comment, generally it would not even be enough to sue (sometimes it is). However, if you put up with your employer making daily abusive comments, sexual advances, or other conduct that is generally inappropriate, you would be more likely to receive a greater award.

» **B. The significance of the impact the**

WHAT CAN I WIN IF I WIN A DISCRIMINATION LAWSUIT?

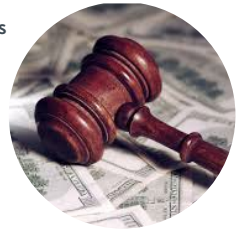
discriminatory act had on you. Even if the discriminatory action taken against you was bad, you won't be entitled to much in pain and suffering if you did not have any pain and suffering. But if you experienced a lot of pain and suffering that you can prove, then the award goes up. What shows whether or not you incurred pain and suffering:

- > *Did you require medical treatment on an ongoing basis?*
- > *Are you taking medication to deal with the mental pain?*
- > *Did you experience sleeplessness?*
- > *Could you not eat, and did you lose weight?*
- > *Did you withdraw from family and friends because you were depressed?*
- > *Did you suffer from panic attacks?*

*** Age or sex discrimination and liquidated damages. In cases involving intentional age discrimination, or in cases involving intentional sex-based wage discrimination under the Equal Pay Act, victims cannot recover either compensatory or punitive damages, but they may be entitled to "liquidated damages." Liquidated damages may be awarded to punish an especially malicious or reckless act of discrimination. The amount of liquidated damages that may be awarded is equal to the amount of back pay awarded the victim.*

4. **Punitive damages**

Punitive damages are designed to punish the wrongdoer. You must be able to show reckless disregard for the law or malicious conduct. It is a very high standard and not awarded often.



5. **Reinstatement**

You can be reinstated to your position or be placed into the position that you would have been in had the discriminatory conduct had not occurred.

6. **Front pay**

If reinstatement is not possible, a court may award reasonable front pay. This is the amount of money that you would have received had you continued to work for the employer.





GETTING THE HELP YOU NEED WITH YOUR CASE

You don't have to fight this battle alone.

If you're represented by a union, your union may be willing to help you. Union representatives can help represent your issues to management, but— particularly if you're concerned about retaliation—you can ask them to help you get an attorney.

Also, union reps may know of others who have dealt with the same issue. That can be evidence you can use in your case. You might even decide to join forces with those individuals to file a complaint.

Even if you have a union rep on your side, hiring a good lawyer will mean that you're more likely to succeed, and it will take an enormous amount of stress off of you.

Look for lawyers who specialize in employment related discrimination cases, because they



will be much more familiar with the laws that govern your case, as well as with the best strategies for success.

Don't panic. Many people wrongly assume that they can't afford an attorney. However, lawyers often agree to represent you on a contingency fee. This means that you pay little or no money up front. Instead, your lawyer agrees to

accept payment only after you've succeeded; payment is based on a percentage of your recovery, plus the attorney's direct expenses while working on the case.

When you meet with an attorney for an initial consultation, the meeting will go more smoothly if you're prepared and ready to explain the details of your case, and have supporting evidence in the form of witness who will give favorable statements and documentation.



GETTING THE HELP YOU NEED WITH YOUR CASE



Be familiar with the particulars of your situation and ready to discuss:

- » How many years you worked for the company
- » Employment history—including promotions, demotions, transfers, awards, bonuses, firing, and any performance reviews you received
- » How you were treated, compared others in your firm
- » How you defended yourself, if you did;
- » Your salary
- » Any other pertinent facts from your notes

Good attorneys often have many pending cases. By having this information ready for

your attorney, you will save yourself and your attorney a lot of time, and your attorney will be better able to move forward with your case.

Also, try to be direct and to the point with your attorney.

Remember that your lawyer is not your therapist. Refrain from talking about events unrelated to your case or spending a great deal of time venting.

Even though your attorney will handle the legal aspects for you going forward, the attorney/client relationship is a collaborative one, and your end result will be better if you stay engaged in the process.



CONCLUSION

You didn't want to be here. You didn't want to have to pursue legal action against your employer for discrimination.

Your employer set into motion a series of events that are prohibited by law. For decades now, American laws have made it illegal to discriminate against applicants or employees for a number of reasons, including race, sex, age, disability and more. Your employer pushed you to this point, and now we want to help you decide what you should do next.

The Civil Rights Act of 1964, the Pregnancy Discrimination Act, the Age Discrimination in Employment Act (ADEA), the Genetic Information Nondiscrimination Act (GINA), Title I of the Americans with Disabilities Act and numerous state and county laws all specifically protect employees and applicants from an employer's discriminatory behavior. By looking at the specifics of your situation, your employer's behavior and existing evidence, you—with the help of a lawyer—can assess how successful you might be in taking legal action.

When you take charge of your situation—by helping your lawyer, organizing your



life, practicing healthy habits, creating and following a budget and preparing for conversations with future employers—you can reclaim some of the power you've lost, and begin to chart your future course.

We're on your side. We want to help you chart that course.

Want to meet with us to discuss your situation? We can strategize to help you achieve a successful resolution.

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FAQ AND MORE RESOURCES

How do the Civil Rights Act and the Equal Employment Opportunity Commission (EEOC) work?

The Civil Rights Act and the EEOC govern a number of workplace policies in the United States. The EEOC has a website on what is protected and what restrictions are on those protections.

What does the Americans with Disabilities Act (ADA) do?

The ADA is powerful, comprehensive law that protects the rights of disabled people in the United States. You can read some interesting facts about the ADA from the EEOC's website and the U.S. Department of Labor.

Hear from other people living and thriving with disabilities

“Ouch: Disability Talk” is a wonderful British podcast, produced by the BBC, that discusses all aspects of living with a disability.



How to use the Family and Medical Leave Act (FMLA)

Curious about how employers and employees can comply with FMLA rules? Here's a simple explanation of what and what-not to do.

What if I've been fired because of discrimination?

Wrongful termination means that you've been fired, not because of your performance, but because of some other reason that is prohibited by law— such as racial or gender discrimination. To learn more, this article has some examples of wrongful termination cases.

Make your whole life better

Learn how to get organized, downsize and free yourself of things you don't need in your home.

FAQ AND MORE RESOURCES (continued)



And then apply the de-cluttering concept to your entire life. How to find all the stuff that dragging your down—and get rid of it!

Don't even know what "self care" means or where to start? UC Berkeley has a wide range of resources, from essays to videos, from better sleep to managing stress. And here is a huge list of self care ideas.

Budgeting is more than just telling yourself "no."

Here's a great video that explains how you can reframe how you think about money in order to save lots when you don't have much.

And whether you have no income right now, or simply less income, you'll likely benefit from learning how to make the most of the money you've got.

WORKSHEET FOR PROVING DISCRIMINATION

If you work in New York State, you can use this worksheet to determine whether or not you might be a victim of discrimination in the workplace. If you can reasonably answer each of the following questions, then you should contact an attorney or equal employment agency as soon as possible to get a professional opinion about your circumstances.

1. Do you work in a business that regularly employs more than 4 employees?

YES or NO (Circle One). If you answered yes, then the New York Human Rights Law protects the employees who work in the business.

2. Do you work in a business that regularly employs more than 15 employees?

YES or NO (Circle One). If you answered yes, then the Federal Civil Rights Act protects the employees who work in the business.

3. Are you an employee or independent contractor?

INDEPENDENT CONTRACTOR or EMPLOYEE (circle one). If you own your own business, then you are an independent contractor, and the law does not apply.

4. Did you suffer an adverse employment action? (Did something bad happen at the workplace?) If so, describe what the problem is in a sentence or two.

(For example: were you fired? Were you suspended? Did other people get raises and you didn't? Etc.)

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5. Do you believe the adverse employment action you just identified occurred because you are a member of a protected class? For example, did it happen

because you are a woman, African American, disabled, homosexual, etc.?

a. Identify the protected class to which you belong: b. Why do you think that being a For example, did the employer often make derogatory comments? If so, how often did they occur, and what were they? Or did the employer tell you that you were being fired because you were old, or pregnant, or disabled? member of the protected class is the reason why the employer acted badly toward you?

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6. What did you lose as a result of the adverse employment action? *You have to be able to prove emotional and economic loss.*

a. Financial Loss: Have you lost pay or benefits? *If so, how much have you lost to date?*

b. Emotional Loss: Have you been losing sleep, seeing a therapist, taking medication, having panic attacks, etc.?

7. Pretext. What was the excuse your employer gave you for causing the adverse employment action you identified, and why is that reason a lie?

If you can reasonably answer the above questions, then you might very well be a victim of discrimination and have a viable lawsuit. We have included a sample filled out form so you can get a sense of how to use the work sheet.

This is also a helpful form for you to use, because if you cannot answer one of the questions, you might be able to do some investigating to get the answer. For example, if you cannot explain if the employer's excuse is a lie, then you know you need to ask some co-workers if they heard something different at work, or uncover some other evidence to answer that question.

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(For example: were you fired? Were you suspended? Did other people get raises and you didn't? Etc.)

My boss fired me.

5. Do you believe the adverse employment action you just identified occurred because you are a member of a protected class? For example, did it happen

because you are a woman, African American, disabled, homosexual, etc.?

a. Identify the protected class to which you belong: b. Why do you think that being a For example, did the employer often make derogatory comments? If so, how often did they occur, and what were they? Or did the employer tell you that you were being fired because you were old, or pregnant, or disabled? member of the protected class is the reason why the employer acted badly toward you?

I am disabled. I suffer from cancer, and I undergo regular treatment at my doctor's office. When I told my boss I was diagnosed with cancer, he told me that he was sorry to hear that. I told him that I would need to take time off to get treatment, and he said that I would have to make sure it does not conflict with work too much, and that I only have a few sick days. Once I used my sick days, he told me that I was fired for taking too much time off from work.

6. What did you lose as a result of the adverse employment action? You have to be able to prove emotional and economic loss.

a. Financial Loss: Have you lost pay or benefits? If so, how much have you lost to date? *I have lost \$400 week in gross weekly pay and my health insurance. I have also had to pay for gas and travel expenses to find new work.*

b. Emotional Loss: Have you been losing sleep, seeing a therapist, taking medication, having panic attacks, etc.?

I started seeing a therapist, because I cannot sleep and I feel like I don't want to do anything. I started taking medication regularly to avoid daily panic attacks and help me to get through the day.

7. Pretext. What was the excuse your employer gave you for causing the adverse employment action you identified, and why is that reason a lie?

My boss told me that they couldn't give me more time off to deal with my illness and that they do not make exceptions because they want to be consistent. However, they did not make any effort to try to find a reasonable balance for me to get treatment and continue working there, and they did not give me any reason why giving the extra time would cause an undue hardship on the business.

If you can reasonably answer the above questions, then you might very well be a victim of discrimination and have a viable lawsuit. We have included a sample filled out form so you can get a sense of how to use the work sheet.

This is also a helpful form for you to use, because if you cannot answer one of the questions, you might be able to do some investigating to get the answer. For example, if you cannot explain if the employer's excuse is a lie, then you know you need to ask some co-workers if they heard something different at work, or uncover some other evidence to answer that question.

ABOUT THE AUTHOR

In founding El-Hag & Associates, P.C., Jordan El-Hag brings over 15 years of experience in advising employees throughout lower New York State with regard to labor and employment law matters. In those years, he has served as the Chief Officer of several labor unions and has substantial experience in resolving legal disputes that arise at the workplace. Mr. El-Hag can offer a valuable and unique perspective on resolving workplace issues due to his extensive background in labor relations. He regularly counsels clients on a host of employment issues, including unpaid wages, overtime and minimum wage claims, employment contracts, severance



agreements, reductions-in-force, terminations, employee discipline, restrictive covenants, discrimination and union organizing.

Mr. El-Hag is a graduate of the Fordham University School of Law and the Fordham University Graduate School of Business, where he received

a Master of Business Administration majoring in finance. He graduated from S.U.N.Y Empire State College with a B.S. in industrial labor relations. Additionally, Mr. El-Hag has received various labor relations certifications from the Cornell University Labor Relations Institute and the International Brotherhood of Electrical Workers Education Department.



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