Employment Law for Women

What You Need to Know

This consumer guide is intended to educate you about employment law. It is not intended as legal advice and does not establish an attorney-client relationship with The Spiggle Law Firm. If you believe that you have been subject to an illegal workplace action, I encourage you to consult an employment law attorney.

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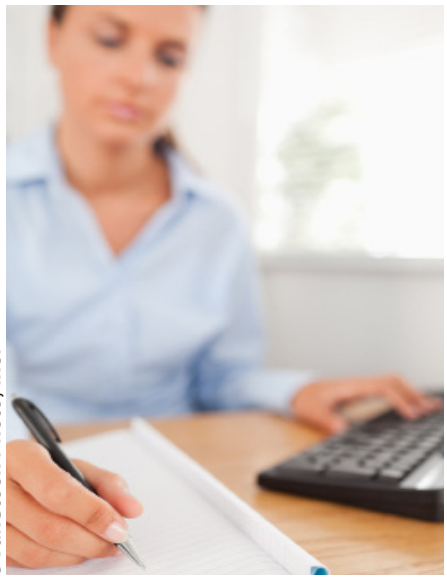
The Spiggle Law Firm



Employment Law for Women

While employment laws apply equally to both men and women, including those for gender discrimination and unequal pay, more women than men face sexual discrimination at work. Far more women than men experience sexual harassment at work. And far more women than men are paid less for the same work performed by someone of the opposite sex. Furthermore, although this trend is changing, women bear more caregiver responsibilities at home – whether that involves caring for children, elderly parents, or a disabled family member – and they experience workplace discrimination because of it. Women serving in the military may also experience more discrimination than men because of their military service and obligations at home. And of course, only women can experience pregnancy discrimination.

In addition, some (though by no means all) women react to discrimination differently than men. Women tend to explain away discrimination. They are also more likely to blame themselves for poor work performance, when they are actually the victims. For these reasons, I focus on representing women with problems at work. This focus allows me to deal with these unique problems in a thoughtful and systematic way. As a result, I am able to offer more effective and holistic solutions to the problems you are facing.

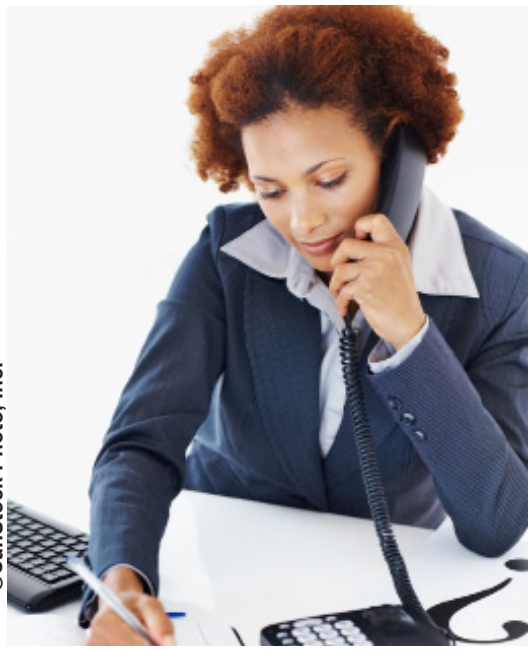
Issues with your job can range from exciting to difficult to outright devastating. This Employment Law Consumer Guide is designed to provide you with guidance and direction. Keep in mind, however, that every section in this Guide is complicated enough to fill a book, so the information provided here should constitute the beginning, not the end, of your research.

This Guide is divided into two sections. The first is for those in the enviable position of starting a new job and who need help negotiating a favorable contract, or for those who are leaving a job and need guidance on how to engineer the most favorable exit. The second section is for those who believe their employer is acting unlawfully – for instance, by discriminating against them for taking leave or based on race – and are considering a lawsuit.

Section I:

Section II:

Section I:
Starting or Leaving a Job



"Do I need a lawyer to negotiate a new employment contract or an exit from my job?"

The short answer is "No." You don't need a lawyer for any of this. You can negotiate a severance agreement or new employment agreement without a lawyer. However, having an attorney can help and the earlier you get one in the process, the better. Employment law is a complicated matter and you may be able to negotiate better agreements if you have an attorney. Remember, your employer has an attorney – or at least a human resources department – to advise them on any agreement, and they don't have your best interests at heart. Also, it is possible that your legal fees could be paid by your employer, particularly if you are negotiating a new employment contract.

"Won't it make matters worse if I get an attorney involved in the process?"

Yes, it could, but your attorney need not announce that he or she is involved. That is a strategy call to be made in consultation with your lawyer. Your lawyer can provide you with advice to help you in negotiations; he or she need not participate in the actual negotiation.

Employment Law Tip

When negotiating a new contract, your employer may pay your legal fees if you hire a lawyer.

Negotiating a New Employment Contract

This section is for those of you lucky enough to be in the position to negotiate for a new job, particularly one with an employment contract. When looking at a proposed contract, try to keep in mind everything that could go wrong. This can be difficult to do given that you are going into a new job with expectations that it will work out. So, when looking at the agreement, think about what protections you would want if your employer fires you.

- Termination for cause – This is a big one. Employers in almost every state have a tremendous advantage in that employment agreements, even written ones, are assumed to be "at will" – that means any party can end the relationship at any time for any legal reason. A contract provision requiring termination for cause means that your employer must have a good reason for ending the relationship. It's also a good idea to have the term "for cause" defined.

- Signing bonus – Most executive positions have a signing bonus, and for good reason. Executives in a position to demand a written contract often have other offers or an existing position that they have to forgo to take the new job. A signing bonus can provide some protection to the executive if the job goes south quickly. Make sure that it is a true signing bonus and does not require you to be on the job for a certain amount of time. (I once had an executive client that was fired from his new job, paying in excess of $300,000, within one week of starting. The signing bonus provision provided that he would be paid within ten days of starting his job. The employer argued that it meant he had to be employed for ten days before being eligible. They eventually abandoned that argument.)

Employment Law Tip

When negotiating a contract, always read through every detail, as boring as it may be. Read it carefully. This is an agreement between you and the company. You can ask for what you want.

During the negotiation process, never let the company attorney tell you that certain language is "required." This is very rarely true.

- Stock options/benefits – In some employment contracts, the benefits and stock options are worth more than the salary. If you are in that position, you probably have some familiarity with what agreement would be favorable to you. Nevertheless, given the complexity of these agreements, it could be well worth your while to consult an attorney. For those new to the game, a big issue is when stocks "vest" – that is, become yours. Your contract should provide for what happens to your stock options if you leave the company.

- Non-competes – These provisions prevent you from competing with your former employer when you leave. The most important terms are time and geography, that is, how long will the restriction last and what area does it apply to – within a 30 mile radius of the company? The entire state? The entire Eastern Seaboard? Courts do not like overly restrictive non-competes, but they are more likely to enforce a broad non-compete if it is part of a severance agreement.

• Intellectual property – You may create things for your company. The company will want intellectual property to belong to it, not you. These contractual provisions are very complicated and warrant review by a lawyer.

Negotiating a Severance Agreement

If you are negotiating a severance agreement – and you may have to request one; your employer may not offer it – here are some things to consider:

• Money – The obvious reason for negotiating a severance agreement is to obtain money. There is no hard and fast rule about how much you could get. Except for very high-level positions, the general rule is one week of salary for every year of service. You can get more if your company believes they are avoiding a lawsuit. All severance agreements include a broad release by you of all claims that you might have against your employer. This, in essence, is what the employer is "buying" with the severance agreement. If you have a potential claim against the company, the value of the release increases. Of course, raising a potential claim is a delicate issue. It could get you a higher severance agreement, but it may also result in burned bridges with your former employer. This is also one area in which bringing a lawyer to the table can help. If you are asserting that you have claims against the company, they are more likely to take you seriously if you have counsel.

• Be a consultant – Some companies are reluctant to characterize any money paid to you as a "severance" agreement. One way around this is to offer to be a "consultant" to the company, essentially doing your same job, for a period corresponding to the amount of severance. In most cases, the company will not actually want you to do any work, so the payment will in effect be a settlement agreement. Of course, consider the tax consequences of any such agreement. Payments pursuant to such an agreement will almost certainly be considered wages and you will have to pay taxes on them.

Employment Law Tip

Consult with a tax attorney or accountant about the tax consequences of any settlement agreement. Tax law in this area is complicated and can result in your severance being much less than you expected.

• Taxes – Watch for any provision that will require you to indemnify that company for any tax consequences of the settlement. What this means is that the company wants you to pay its lawyers if the IRS comes after them claiming that a settlement should have been characterized as wages and taxes withheld. There are limited circumstances in which it may be advisable to agree to such a provision, but as a general rule, these are not a good idea and could result in a legal bill from the company that exceeds the amount of settlement.

Section II: Considering a Lawsuit

"Do I have a case that I can win?"

This is the most obvious question, and it is impossible to answer with certainty – even for experienced lawyers. However, it is possible to make an educated guess about your chances of success. Here are some factors that an attorney will consider:

• Did your employer do something unlawful? Sometimes it is difficult to determine whether your employer actually violated the law. (As you may know, your employer can behave badly without violating the law. So, you may very well have been mistreated, but do not have a case to bring to court.)

• If you have an employment contract. The first thing to determine is whether you have an employment contract. If so, you need to see if the contract provides you with any protection. For instance, the contract may provide that you can only be fired "for cause." The contract may also control other matters that will affect whether and what type of severance agreement you can get.

• If you do not have a contract. If you are like most employees, you do not have a contract. You are what is known as an "at-will" employee, that is, your employer can fire you for any reason – they don't like your attitude, your work, or the color of your shirt – as long as the reason is not in violation of state or federal law.

Federal and State law

• The first issue to determine is whether the conduct violates an issue of state and/or federal law. Many federal laws– for instance, ones that protect against race and sex discrimination– require an employer to have a minimum of 15 employees before they even apply. So, if your employer has 14 employees, federal law does not protect you. The state you live in, however, may provide additional protections. For instance, while there are generally no additional protections provided to employees in Virginia, both D.C. and Maryland have laws that protect employees subject to discrimination. Note that in states with laws that protect employees, you can bring a lawsuit under both state and federal law.

What is Illegal (and What's Just Bad Behavior)

There are many, many federal laws that protect employees (including at-will employees). The descriptions below merely provide you with a place to get started. I strongly advise you to consult an attorney to determine if any of these apply to you. The categories below apply to all employees regardless of race.

Discrimination

- **Race** – an employer cannot take any action against you on the basis of race, nor can they treat a person differently than other employees on the basis of race. For instance, an employer cannot only promote white males over black males.

- **Sex** – an employer may not treat an employee in a different way based only on that person's sex. For instance, an employer cannot prevent women from applying to a certain position because the employer thinks the tasks are "a man's work."

Employment Law Tip

Take action before it is too late! Employment law cases often have strict time limits that must be met. If you fail to take action soon enough, you may lose your right to bring a case, even if it is a strong one. In many cases involving discrimination, you must go to the EEOC first. If you have questions about this, call the EEOC. They can tell you if you need to bring your case to them first. You can find your local office by visiting the EEOC webpage at www.EEOC.gov.

- **Sexual Orientation** – Sexual orientation is not protected under federal law, however, it is a protected status in some states, including the District of Columbia.

- **Pregnancy** – Pregnancy Discrimination is a form of sex discrimination and is prohibited by the Pregnancy Discrimination Act. Under this Act an employer cannot make an employment decision based on a stereotype of the capabilities of pregnant women, for instance, refusing to promote an otherwise qualified pregnant woman based on a belief that a pregnant woman will not return to work because "all women want to stay home with their kids."

- **Caregiver Discrimination** – There is no one particular statute that protects those who are subject to discrimination because they have caregiver responsibilities. But there are a number of laws that together do provide such protections. For instance, the Family and Medical Leave Act (FMLA) protects both women and men who need to take leave to care for a child or a family member. The Americans with Disabilities Act (ADA) protects from discrimination those who provide care to disabled family members. Title VII of the Civil Rights Act prevents discrimination on the basis of any sex stereotype – it applies to both men and women. This means that an employer cannot deny leave to a man to care for his child because "that is something his wife should do."

• **FMLA/DCHRA** – The Family and Medical Leave Act applies to any employer with at least 50 employees within a 75 mile radius (see why you need an attorney!). For covered employers, employees that have worked at least 1,250 hours over the past year must be allowed at least 12 weeks of unpaid leave to take care of their own or a family member's medical needs. The District of Columbia Family and Medical Leave Act has a broader reach: it allows for 16 weeks of leave and applies to employers with 25 employees.

• **Improper treatment related to disability – Failure to Accommodate.** The Americans with Disabilities Act protects those with disabilities from discrimination at work. Just because you are sick or have a medical problem does not mean that you are covered by the Act. Instead you must have a disability that interferes with a "major life activity," like walking, breathing or seeing. If so, the law requires your employer to provide "accommodations" to you so that you can continue to do your job. This is a very complicated area of law. If you believe you may be covered by the ADA and need your employer to make changes to your job duties, write a letter to your superior requesting "reasonable accommodations" and be specific about the changes that you need. Then make an appointment to see a lawyer.

Overtime

• Failure to pay overtime is fairly straight forward compared to discrimination law. If you are an hourly employee, you may very well be covered by the Fair Labor Standards Act, which requires that your employer pay you for any amount of overtime. Failure to do so can result in your employer having to pay DOUBLE the amount owed to you.

Retaliation

• For many of the claims discussed above, an employer violates the law if it takes action (retaliates) against you for attempting to assert your rights. Often it is easier to prove a retaliation claim than it is to prove the underlying violation. For instance, if you report sexual harassment to your HR department and they fire you, that is illegal retaliation. You can win a case on this even if you are unable to actually prove the sexual harassment.

Defamation

• This also occasionally comes up in the employment context. It can occur if a co-worker or your boss says something false that damages your reputation and causes you harm. These cases are difficult and you should consider one only if the statements against you are particularly damaging – e.g., falsely accusing you of sexual misconduct or theft – and if you have damages, that is, if you lost your job or other financial harm as a result of the statement. Remember, truth is an absolute defense to defamation, so it doesn't matter how embarrassing or hurtful the statements are. If they are true – or even arguably true – it isn't defamation. Be careful because defamation claims are sometimes also brought by employers against employees, sometimes as a counterclaim (that is, to harass) an employee that has sued.

"How can I tell the difference between bad behavior and illegal behavior?"

I often receive calls from people who have heard the phrase "hostile work environment" and believe that they have been subject to one. It is undoubtedly true that many people are. But it is important to know that the "hostile work environment" is illegal when it is based on something called "protected status," which generally means race, sex or religion. Thus, if you are an African-American woman and your boss and colleagues repeatedly make racist jokes, that is a hostile environment based on race. On the other hand, if you are an African-American female whose boss yells and screams every time you make a mistake - and if the boss also yells at everyone else when they make a mistake - this is no doubt a "hostile work environment," but it is not based on race and therefore not illegal.

Wrongful Termination

Below are examples of legal – if unfair – terminations. Keep in mind, however, that you might still have a case if the reason for termination offered by your employer is a lie.

Example 1

You work in a sales position for your company that involves managing five junior sales executives. You have no employment contract with your company and are an at-will employee. Your numbers are consistently good, but you have experienced a few problems with under-performing junior sales executives. This, however, is not your fault because, even though you have management authority, you cannot hire or fire. That is left up to your boss. At your year-end review, you are told you are being let go because, although you are a great salesperson, you lack management potential. You later learn that you were replaced by a junior salesperson with inferior numbers, and he happens to be a golfing buddy of your boss. You go to a lawyer wondering if this is wrongful termination. Answer: while this termination is certainly "wrongful," it is not illegal. Employers are entitled to be wrong about your abilities and to make (within reason) dumb employment decisions.

However…

Assume the same situation above, but assume that you had just returned from maternity leave when your boss fired you. He later told a co-worker that you were a great salesperson, but "a new mother really needs to be home with her kids, not putting in 40 hours a week here. Plus, I know she's married. The man of the house should be the one to bring home the bacon." This is a different situation. Here the employer's real reason for firing you – stereotypes based on gender – is illegal.

Example 2

You work as an administrative assistant in a large non-profit organization and are paid an hourly rate. Your boss is, well, strange. You have no written contract with the company and are thus, "at-will." On Monday you come to work wearing a blue shirt. Your boss calls you in and says that he is uncomfortable with you and for that reason you are fired. Is this illegal? Strangely, no. In an at-will relationship, an employer can fire you for any reason, provided it is not unlawful.

However…

Assume the same facts, but when talking to your lawyer, it comes out that you were paid for 40 hours of work per week, but your boss often required you to work 50 hours a week or more while instructing you to only put 40 hours on your time sheet. Because you loved your work, you complied so you could keep your job. Is this illegal? Yes. It is not illegal for your boss to fire you for wearing a blue shirt, but it is illegal to require you to work without pay.

Example 3

Your boss is a blowhard. He constantly complains and yells. You find this unprofessional and tell him so. Boss doesn't say anything, but next week you find your workload doubled. You complain to the boss, but nothing happens. This continues for weeks. Unable to keep up with the increased workload, you miss some deadlines. Boss calls you to his office, puts his feet up on his desk and, with a big grin on his face, fires you. Is this illegal harassment? Unfortunately, no. Your boss is a jerk, but that is not illegal.

However…

Assume the same facts, but that you have an employment contract with the company stating that you can only be fired for gross misconduct, to include fraud. Is it illegal now? Maybe. It could be under this situation that you have a case for breach of contract because you were not really fired for cause.

{ *"What if I find myself in a sticky situation at work?"* }

There are times when workplace problems can result in criminal liability. Any time you get caught up in a workplace investigation, you should be concerned with potential problems with law enforcement. In most other areas, you know when you might have a criminal law problem. Rob a store, get pulled over while driving drunk, you know you'll be in trouble with the law. However, in "white-collar" investigations –ones that often start in the workplace –it can be difficult to tell when you have violated some obscure regulation.

This is particularly true in heavily-regulated businesses like government/military contracting, pharmaceuticals, shipping, and import-export companies. It is also true for multi-national corporations with significant dealings with second or third-world countries. The difficulty with investigations conducted by these types of employers is that they are conducted without regard for employee constitutional rights. For instance, if you work for a pharmaceutical company and get interviewed by compliance, you may have no idea what the investigation involves and that what you say could be turned over at a later time to federal law

Employment Law Tip

A law enforcement investigator can lawfully continue to badger you unless you tell them – in an unambiguous manner – that you do not want to talk.

Employment Law Tip

Most people know that work email and social media can get you in trouble. You should also know that there is a federal statute called the Computer Fraud and Abuse Act (CFAA) which allows employers to sue you if you "access" a work computer "without authorization." This broad language gives employers wide latitude to go after you if use a work computer for personal gain or to help you in a lawsuit. If you have already removed material from a work computer before termination, let your attorney know right away. There are ways to handle this to help limit any potential liability to you.

enforcement. They could use that interview against you without regard for your right to speak to law enforcement and to contact a lawyer.

For these reasons, you should always consult a lawyer if you get called for an interview by your company's compliance officer or your company's attorney. An attorney does not necessarily need to accompany you to the interview, but he or she can advise you of your rights and if you have any criminal law exposure. The same issues also apply to government employees, but government employees face an added layer of difficulty because workplace investigations in the government are often conducted by internal affairs or someone with the office of investigator general ("the IG's office"). These offices can, sometimes for political reasons, be very aggressive in their investigations. In addition, in some instances lying to an IG investigator can be a violation of federal law.

In rare instances, employees can get caught up in a full-on criminal investigation. In extreme situations, this can involve the FBI (or other government agency) raiding an employer to seize documents and to attempt to speak to employees. Unlike investigations by a company's compliance office, these are either criminal investigations or prosecutions and an agent should advise you of your rights not to speak to them - i.e., your Miranda rights. But these are trained investigators and they will attempt to get you to talk anyway. It is, in fact, lawful for them to lie to you in an effort to urge you to talk. For many reasons, it is never in your best interest to talk to law enforcement - even if you have done nothing wrong. Asking for an attorney will never hurt you (even if the agent may suggest otherwise). If you find yourself in this situation, unequivocally tell the agent that you do not wish to talk and that you want your attorney.

Choosing a Lawyer

"Where do I find an employment lawyer?"

There are a number of good resources for finding an employment lawyer. I recommend starting with the National Employment Lawyers Association (NELA), an association of attorneys who represent individuals in employment matters. There is a "find a lawyer" function that will allow you to search for a lawyer in your area. Note, however, that lawyers must pay to be on this list. So, it is not a comprehensive list of attorneys. For employment attorneys in the Washington, D.C metropolitan area a great resource is the Metropolitan Washington Employment Lawyers Association (MWELA), which you can find at www.MWELA.org. Like NELA, MWELA provides an attorney search function. Any attorney you find here focuses on representing individuals in employment disputes. Again, like NELA, the list is not comprehensive, that is, not all good employment lawyers are on it.

Some good resources include the following:

- Avvo.com - this site includes a comprehensive list of attorneys searchable by specialty and geographic location. You will notice that some profiles are completed while others are not. This is because attorneys can "claim" their profiles and add information. Avvo gets the rest of its information about listed lawyers from public resources. The rating system (1 through 10) is a bit arbitrary but does give you some indication of your lawyer's areas of expertise. Just remember that the lawyer's rating is based, in part, on their participation on Avvo, so a lawyer with a perfect 10 rating is not necessarily better than one with a lower score.

- Nolo.com - this is a legal publisher that puts out some very good educational information on all areas of law, including a few on employment law. I highly recommend them. Nolo also has a list of attorneys, and you can search by geography and specialty. Attorneys pay a fee to be listed and are not screened by Nolo.

- Justia.com - Another good resource for locating attorneys. Like Avvo, attorneys pay to be listed. One interesting thing about Justia is that it allows attorneys to post filings from other cases so that you can see samples of their work.

- General Internet search - you can also do a blind Internet search for employment law attorneys. Make sure that you search for attorneys that represent employees, known in employment actions as the "plaintiff." You will undoubtedly pull up a number of attorney pages. This is not a bad place to start your research, but recall that a prominent placement in a search engine does not mean the attorney is the best for your case.

{ *"How do I choose a lawyer?"* }

Employment law is highly technical. Winning an employment law case requires knowledge of case law, statutory law, constitutional law, and regulatory law. There are rarely simple employment cases. You need someone who knows what they are doing. Here are some ways to find the right lawyer for your case:

- Look for a lawyer that advertises as a lawyer who represents employees, as opposed to, for instance, an attorney who describes himself as a general litigator.

- He should put his advertising dollars where his mouth is, that is, the attorney should do more than simply say he does employment law, he should have written about the topic and have information to give you about employment law.

- He should be able to tell you about employment cases that he has successfully litigated in the recent past. Ideally, he should have experience in the particular area in which you need help. A breach of contract case in Virginia is very different from a race discrimination case in DC.

- Ideally, the lawyer should have trial experience. Defendants are more likely to offer favorable settlements if they believe your attorney will take your case to trial, if necessary. However, extensive trial experience is not necessary. Civil cases, like employment cases, most often settle before trial. I would choose the experienced employment lawyer over a seasoned trial lawyer without employment law experience.

Employment Law Tip

The Internet is a terrific source to research lawyers, but it is a "buyer beware" system. Lawyers can, within reason, advertise for any type of case that they want, and a slick website does not necessarily mean the lawyer behind it is the best one for you.

Employment Law Tip

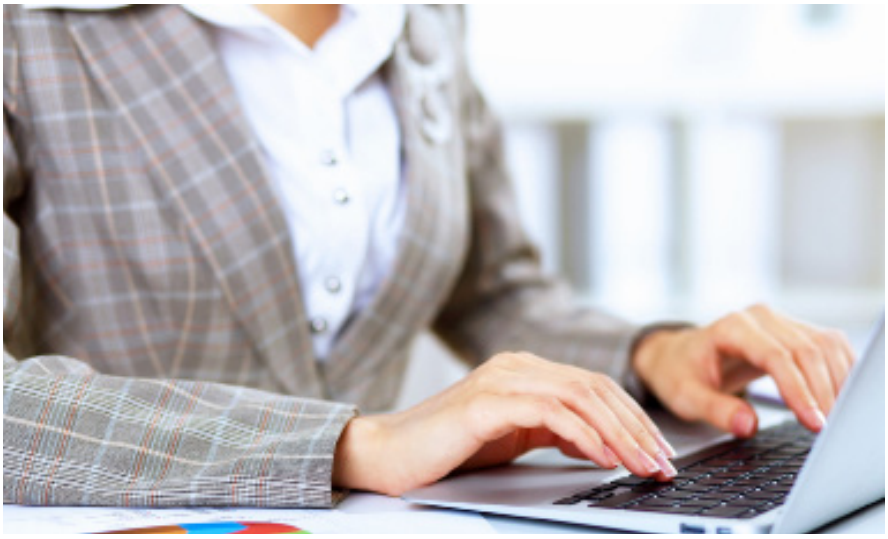
Most employment lawyers that represent individuals work in solo or small firms. Larger firms generally represent employers.

"How do lawyers charge their clients?"

Employment lawyers get paid in various ways, including:

- Hourly - The most traditional way lawyers bill in any practice is by the hour. Rates in this area vary, but can range anywhere from $250 to $500 per hour. The advantage of this type of system is that the lawyer gets paid only for the time he or she works on your case. The disadvantage is that the bill for any particular month will be unpredictable.

- Retainer Payments - Many lawyers that bill hourly require what is called a retainer. This is a down payment by the client towards future fees. The client gives the lawyer a sum of money which the lawyer deposits into a trust account. These funds still belong to you, the client. The lawyer will deduct funds from the trust account, according to an agreement with you, as he does work on your case. An "evergreen" trust account is one in which, by agreement, you must replenish when the balance of the account drops below a certain amount. The amount you put in the trust account is chosen by the lawyer. Generally, the more complicated the matter (for instance, matters in active litigation), the bigger the retainer.



• Contingency - Contingency fee agreements are those in which the lawyer collects fees only if you win, that is, his fees are "contingent" upon your success either in settlement or trial. Generally, a lawyer in these situations gets a third of the money that you win. So, if you settle your case for $10,000 the lawyer would get $3,330, regardless of how much work the lawyer has put into the case. These fee agreements are the norm in physical injury cases. The advantage to these fee arrangements for the clients is clear: you don't have to pay anything unless you win. The disadvantage is that you may end up paying more to the lawyer than you would have if you paid hourly. For instance, let's use the example above and assume you win $10,000. Let's also assume that your lawyer spent five hours total on the case and charges an hourly rate of $300 per hour. Under a contingency fee arrangement, you pay $3,300, but if you paid hourly, you'd pay less than half of that amount - $1500 (5 x 1500). Another disadvantage to contingency fee arrangements is that lawyers who use them are (understandably) very careful to take only those cases that have a good chance of success. Thus, a lawyer who bills on contingency may not take your case simply because it has a good, but not great, chance of success. Some employment lawyers bill on contingency, though many do not given the uncertain nature of employment litigation.

• Contingent Hourly Billing - This is a variation of the straight contingency case. In these cases, like straight contingency cases, a client does not pay the attorney unless they win at trial or receive a settlement. Unlike a straight contingency fee case, the lawyer keeps track of his hours and bases his fee on an hourly rate rather than on the percentage of the win. Thus, if you win $10,000 and the lawyer has billed five hours at $300 per hour, he gets $1500. But if he has billed 20, he gets $6,000. These arrangements apply only when there is a "fee-shifting" statute. That is, a statute that allows a court to award attorney fees to the winner. In an employment context, this means that, if you sue your employer and win, the employer must pay its attorneys' fees AND yours. Discrimination and civil rights statutes often have fee-shifting provisions. Fee-shifting does not apply to breach of contract and defamation cases. Thus, if you win one of these cases, you must pay your own attorney fees.

• Mixed Hourly/Contingent. This is an arrangement in which the client pays a portion of the hourly rate with the rest to be recovered only if the case settles or if there is a victory at trial. For instance, if your attorney's hourly rate is $300, a mixed contingency arrangement might be an agreement by which the client pays $200 per hour with the attorney collecting the remaining $150 at settlement or trial, plus a percentage of the winnings, though less than the 1/3 in a full contingency case.

Your attorney will generally choose the arrangement that will work best after reviewing your case and paying close attention to the likelihood of achieving settlement or victory at trial. That is, the attorney will determine the risk of losing the case. Cases are expensive to litigate, both in terms of cost and attorney time. An attorney will not take on a case on full contingency – and bear all the risk of loss – if you have a weak case. However, an attorney may take such a case if the client is willing to bear all of the risk by paying a straight hourly rate.

Employment Law Tip

Litigation involves two types of expenses, attorney time and what are referred to as costs. Costs include court filing fees and deposition costs. Depositions require hiring a court reporter to take down testimony, and then you have to pay for the written transcript. As a general rule, a deposition costs approximately $1,000 per day. It is not uncommon for even a simple case to involve five or more days of depositions.

Other expenses include hiring process servers, investigators, and large copy jobs. Most cases involve between 5 and 15 thousand dollars in costs. Even attorneys who take cases full contingency often require clients to cover costs.

"How does The Spiggle Law Firm charge clients?"

I charge an hourly rate of $385 per hour for employment litigation, and $400 when the matter involves criminal or compliance investigations. Why the difference? The intersection of employment and criminal law requires specialized knowledge that warrants a higher rate. For cases that require filing in court – i.e., those in active litigation – I sometimes take matters on a mixed contingency basis. I also require a retainer of at least $10,000, sometimes more for complex litigation. This is an "evergreen retainer," meaning that the client must replenish the retainer once it drops below $2000. For more limited engagements, like drafting a demand letter and negotiating a resulting settlement, I sometimes charge a flat rate.

If you have any questions about the information contained in this consumer guide, please feel free to contact me. Navigating the labyrinth of employment law can be difficult and overwhelming. The Spiggle Law Firm can help you make sense of the legal issues you are facing.