

SESSION 8 TERMINATION

HUMAN FACTOR II

TERMINATION

SESSION 8
[Pick the date]

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Termination

1.

the act of terminating.

2.

the fact of being terminated.

3.

the place or part where anything terminates; bound or limit.

4.

an end or extremity; close or **conclusion**.

5.

an issue or result.

If you've lost your job, you have certain rights, such as the right to continue your health care coverage and, in some cases, the right to unemployment compensation.

Jobless and Health Care Benefits

Upon termination of employment, some workers and their families who might otherwise lose their health benefits have the right to choose to continue group health benefits provided by their group health plan for limited periods of time.

Employers may be required to provide certain notices to their employees

Consolidated Omnibus Budget Reconciliation Act (COBRA)

Health Insurance Portability and Accountability Act (HIPAA).

For information on health insurance coverage under the Family Medical Leave Act (FMLA) upon termination,

Unemployment Benefits

Workers who are unemployed through no fault of their own (as determined under state law), and meet other eligibility requirements, may be eligible to receive unemployment benefits.

Unemployment insurance payments (benefits) are intended to provide temporary financial assistance to unemployed workers who meet the requirements of state law.

Under the Federal-State Unemployment Insurance Program, each state administers a separate unemployment insurance program within guidelines established by federal law. See Unemployment Insurance.

Equal employment opportunity (EEO)

Prohibits specific types of employment discrimination. Collectively, these laws prohibit discrimination in most workplaces on the basis of age, race, color, religion, sex, ethnic/national origin, disability, and veteran status.

In general, if the reason for termination is not because of discrimination on these bases, or because of the employee's protected status as a whistleblower, or because they were involved in a complaint filed under one of the laws enforced by the Department of Labor (see Whistleblower and Non-Retaliation Protections), then the termination is subject only to any private contract between the employer and employee or a labor contract between the employer and those covered by the labor contract.

Veterans' Employment and Training Service (VETS).

Protecting the employment rights of veterans is a responsibility of DOL's VETS. VETS protects service members' reemployment rights when they are returning from a period of service through its administration of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

Grounds for Termination

Assess why your contract was terminated. If you feel that you were laid off because of your age, sex, religion, race, color, veteran status, disability or ethnicity, your termination may be illegal. These categories of discrimination are prohibited under federal Equal Employment Opportunity laws. If you feel you may have been unlawfully terminated, the U.S. Department of Labor runs two agencies --- the Civil Rights Center and the Office of Federal Contract Compliance Programs --- that may be able to help with your problem.

Health Benefits

Depending on the stipulations in your contract, you may be eligible for extended health benefits after you have been terminated. For example, your employer's health plan may allow you to elect extended

coverage following your termination, for a potentially higher cost. This health care extension is typically only available for a limited time, such as up to six months. You may also be eligible for health benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA) and the Health Insurance Portability and Accountability Act. Some employers are required to provide details about these programs upon termination, so ask for more information.

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Unemployment Benefits

As with health benefits, employees who have been terminated may also be eligible to receive unemployment benefits, which are a form of temporary financial assistance. To qualify for unemployment benefits, employees must have been laid off or terminated through "no fault of their own," according to the U.S. Department of Labor. The definition of fault is determined by the laws of the state in which you reside. Unemployment benefits are not provided by your employer, but under the Federal-State Unemployment Insurance Program, through which each state runs its own unemployment benefits program under certain federal laws.

Severance

Not all employees are guaranteed severance upon termination, but depending on the conditions in your contract, you may be eligible for severance pay. Severance is given upon termination, and is generally based on the length of your employment. For example, your contract may state that for every year you were employed, you are entitled to one week of severance pay. Again, severance is discretionary, and there is no law under the Fair Labor Standards Act that requires severance be given to terminated employees. According to the U.S. Department of Labor, if you have any questions about severance pay and what you are entitled to, contact the Employee Benefits Security Administration.

Employees: Job Termination Rights



- [What topics may be discussed if my boss wants a meeting to investigate problems at my job? Am I entitled to have someone attend the meeting with me?](#)
 - [Are there ever any exceptions to being an employee at will?](#)
 - [How much unemployment benefits can I collect?](#)
 - [What can I do if I think a former employer has blacklisted me?](#)
 - [I was recently fired from my job. I never received any warnings and got good performance reviews. Was this a wrongful termination?](#)
 - [Is my employer required to give me a reason for firing me?](#)
 - [Can my employer deny my unemployment benefits?](#)
 - [Can my employer hold my final paycheck until I return company equipment?](#)
 - [What can my former employer say when giving a reference?](#)
 - [What does "at will" mean?](#)
 - [What is constructive discharge?](#)
 - [What is promissory estoppel as it relates to at-will employment?](#)
 - [What is public policy as it relates to at will employment?](#)
 - [What kind of employment rights do I have during my probationary period?](#)
 - [When must my employer give me my final paycheck?](#)
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Q: What topics may be discussed if my boss wants a meeting to investigate problems at my job? Am I entitled to have someone attend the meeting with me?

- **A:** Your employer can call a meeting to investigate any number of issues. Your boss can ask questions about thefts, accidents, property damage, absences, poor work, and rule violations. Sometimes these meetings lead to [disciplinary action](#), like a suspension, or even being fired.
You must go to the meeting, but you have the right to ask someone to go with you if you believe the meeting may result in discipline. This right to representation is called "Weingarten rights." It covers all employees, with a few exceptions. Have a [union representative](#) (if applicable) or a coworker attend the meeting to give you support and help explain your side of the issues.

Q: Are there ever any exceptions to being an employee at will?

- **A:** Employment "at will" generally means your employer can let you go from your job at anytime for any reason, or for no reason. There are three major exceptions to [employment at will](#). An employer can't fire you if:
 - It would violate state public policy
 - For example, an employer can't fire you for refusing to do something illegal.
 - There's an express or an implied contract for employment
 - An "express" contract is one that both parties mean to make, and it's usually in writing and signed. An implied contract can be created if your employers tells you, orally or in writing, that you'll keep working for a certain length of time or that you'll be fired only for certain reasons. Sometimes implied contracts are created by [employer handbooks](#) or [job offers](#).
 - It would violate an implied promise of [good faith](#) and [fair dealing](#)
 - In some states this requirement means [terminations](#) must be for a good reason or they can't be made in [bad faith](#). For example, an employer can't fire you solely to avoid paying you a commission that you had earned.

Q: How much unemployment benefits can I collect?

- **A:** Generally, your [benefits](#) are based on a percentage of what you earned over a recent 52-week period. Benefits are paid for a maximum of 26 weeks in most [states](#). [Unemployment benefits](#) are generally given only if you [register](#) at a state unemployment office, don't have a job, and keep trying to get a job
An additional 13 weeks of extended benefits may be available during times of high [unemployment](#). Some states pay up to 7 more weeks (20 weeks maximum) of extended benefits during periods of extremely high unemployment.

Q: What can I do if I think a former employer has blacklisted me?

- **A:** Blacklisting is when your name is included on a list of "undesirable" employees. The list is given to [potential employers](#) in a certain area or industry. You may be included on the list if you did something an employer didn't like, such as steal from the company or often not show up for work.
[State laws](#) prohibit blacklisting. It can be difficult to prove an employer blacklisted you. If you can prove it, you may get punitive damages, which is a money award designed to punish your employer. You may want to contact an experienced [employment law attorney](#) to discuss your situation.

Q: I was recently fired from my job. I never received any warnings and got good performance reviews. Was this a wrongful termination?

- **A:** That depends entirely upon the reason you were fired. Employers don't need to give you warnings.

The vast majority of employees in the US are "[at will](#)" employees. Such employment may be ended by either party, without notice, and for any reason so long as the reason isn't illegal.

Q: Is my employer required to give me a reason for firing me?

- **A:** In some states employers must tell you why you were fired, but you may need to give your employer a written request before they have to give you one. In other states employers don't need to tell you why they fired you. You should check the laws in your [area](#) for more details.
You should be suspicious if you weren't told the reason for your termination. If this happens, you should consider talking to an [attorney](#).

Q: Can my employer deny my unemployment benefits?

- **A:** Your employer can protest your unemployment benefits but can't deny them. The [state unemployment office](#), not your employer, makes the decision about whether you receive benefits. You or your employer may appeal or "challenge" that agency's decision, though.
Generally, you're eligible for [unemployment compensation](#) if you were dismissed for any reason other than for misconduct. If you leave voluntarily, you aren't eligible unless you leave for "[good cause](#)." Quitting work because you are sick or because your paychecks bounce are examples of quitting a job for good cause.

Q: Can my employer hold my final paycheck until I return company equipment?

- **A:** In most states an employer can't withhold your final paycheck until company property is returned. Your employer may be able to deduct an amount from your final paycheck for unreturned equipment if you give it written permission to make that deduction. Contact your state's [Department of Labor](#) for specific information.

Q: What can my former employer say when giving a reference?

- **A:** Your former employer may say anything he wants about you as long as it's factually true or a legitimate opinion. He can't say you were fired for stealing if in fact you resigned or quit. He can say he wasn't satisfied with your work if it's true. The majority of employers don't give more than titles, dates of employment, and rate of pay because it's safer to say as little as possible.

Q: What does "at will" mean?

- **A:** It means you don't have an [employment contract](#). You're employed [at the will](#) of your employer for as little or as long as your employer wishes. It also means you're free to stop working for your employer at any time.
An employer doesn't need to give a reason for termination of an "at will" employee, as long as the termination isn't unlawful or discriminatory (based on age, gender, race, religion, national origin or disability). Termination can be due to a merger, [workforce reduction](#), change in company direction and business focus, poor company performance, or any number of other legitimate reasons.

Q: What is constructive discharge?

- **A:** It's when you find your employer has created intolerable working conditions and refuses to address the issues, resulting in your feeling forced to quit or resign. You may be able to sue for [constructive discharge](#) and apply for [unemployment benefits](#).

Q: What is promissory estoppel as it relates to at-will employment?

- **A:** It is one of the exceptions to [at-will employment](#). To prove promissory estoppel, you must show:
 - Your employer made a clear promise to employ you for a specific time period
 - You relied on the promise
 - Your reliance was reasonable and foreseeable, and
 - You were injured as a resultAn [employment law attorney](#) can help you determine whether your particular situation fits the promissory estoppel mold.

Q: What is public policy as it relates to at will employment?

- **A:** Public policy is generally set by each [state's law](#) and relates to policy that's focused on the best interests of the general public. Usually, under state public policy, an employer can't fire you:
 - Because you refuse to perform an act prohibited by state law
 - For reporting a violation of the law, or "[whistleblowing](#)"
 - For engaging in acts that public policy encourages (for example, not allowing leave for National Guard activities)
 - For exercising a legal right (for example, firing you because you file a [worker's compensation](#) claim)

Q: What kind of employment rights do I have during my probationary period?

- **A:** Not many. You must successfully pass the trial or "[probationary](#)" period of employment to earn the rights held by non-probationary employees.

Probationary employees can normally be discharged at any time within the probationary period with no right to appeal or "fight" the termination. Normally there's no entitlement or "right" to continued employment, even in the civil service arena.

Q: When must my employer give me my final paycheck?

- **A:** The time limit for when your employer must give you your final paycheck depends on the laws in your [state](#). Those laws may vary depending on whether your leaving was voluntary or involuntary. Generally, you must receive your check on your last day or on the next regular payday. Check with your state's [Department of Labor](#) for specific guidelines.

If the regular payday for the last pay period you worked has passed and you haven't been paid, contact the