

HAVE YOU BEEN WRONGFULLY TERMINATED?

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You're
fired!!

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CHAPTER 1

**HAVE YOU
BEEN WRONGFULLY
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The question can be a difficult one to figure out in an at-will state. Unless you have a law degree, the issues can be confusing.

That's why we put this book together.

First, let's talk about what "wrongful termination" is not. There is no cause of action in Florida for "wrongful termination." This is a phrase that is used by many people for what lawyers would call unlawful termination. We will use this phrase because it is the familiar phrase. Wrongful termination means more than simply being fired from your job. Wrongful termination doesn't mean you were terminated for "no reason." That's legal in all at-will states. Unlawful termination, or what many people refer to as "wrongful termination," must involve a protected class or protected activity. For instance...

- *Coming in late every day, even after your manager warns you that it will not be tolerated in the future, and then being fired for tardiness **is not wrongful termination.***
- *Being fired because the company is "going in a different direction," **is not wrongful termination.***
- *Losing your job because your manager doesn't think a 50-year old can "do social media," is an entirely different story- it may be an unlawful termination based on being a member of a protected class- people over 40 years of age.*

CHAPTER 2

AT-WILL AND WRONGFUL TERMINATION

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Now let's visit the idea of at will employment.

First, **"at will"** does not apply in the situation that there is an employment contract -- either written or oral (implied). If you were let go against the terms stipulated in your employment contract, your former employer could be in breach of contract.

For the rest of Floridian employees working without a contract, "at will" means you can be fired at any time for no reason at all. It also means you can be fired for a bunch of reasons, whether you agree or disagree with the reason, as long as that reason is not unlawful.

As mentioned before, there are reasons where your employer can't fire you. If you're part of a protected class, you cannot be fired for reasons such as:

- Sex and gender
- Age (over 40)
- Disability (including illness)
- Religion
- Sexual harassment
- Race, color, or national origin

There are also groups who are protected because of their previous actions, also referred to as “protected activity” such as:

- *Whistleblowing*
- *Complaining about a hostile work environment*
- *Filing a Worker’s Compensation claim or attempting to do so*
- *Complaining about age and race discrimination*
- *Complaining about sexual harassment*
- *Asking for unpaid overtime and wage*
- *Pursuing wage and hour disputes*

In Florida you also can’t be fired for taking leave for any of the following reasons:

- *Military leave*
- *Jury duty*
- *Leave protected under the Family Medical Leave Act (FMLA)*

A final word about who’s protected and who isn’t:

Most of the laws which prohibit discrimination or otherwise form the basis for a “wrongful termination” claim require that the employer be a certain size before the law applies. For example, Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex and national origin applies to employers with 15 or more employees. The Age Discrimination in Employment Act applies to employers with 20 or more employees. State laws and local County and City ordinances reach smaller employers.

CHAPTER 3

**IS THIS A
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IS THIS A CASE OF WRONGFUL TERMINATION?

Now that you know what's protected and what isn't, let's do a quick review. For each example decide whether it's possible the recently fired employee has grounds for a wrongful termination suit.

SCENERIO	COULD SHE/HE HAVE A CASE FOR WRONGFUL TERMINATION?
<p style="text-align: center;">JEFF</p> <p>Played video games all day at work on his work computer. His manager repeatedly reprimanded him for it but he never missed a work deadline.</p>	NO
<p style="text-align: center;">CINDY</p> <p>Turned in her boss for fudging the budget.</p>	YES
<p style="text-align: center;">MATT</p> <p>Was injured on the job and filed a Worker's Compensation claim. When he returned to work, he was fired.</p>	YES
<p style="text-align: center;">SARAH</p> <p>Made fun of Jeff for playing video games all day. She was let go based on her attitude towards the team.</p>	NO

CHAPTER 4

HOW COMMON IS WRONGFUL TERMINATION IN THE WORKPLACE?

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It's hard to know exactly how often this is happening because unless a grievance, charge of discrimination, or court case is filed, there is little public information to track.

In 2014, a total of 88,778 (7,528 of those from Florida) individual charges were filed with the United States Equal Employment Opportunity Commission. This number over the past twenty years has been on the upswing. Over the past decade, the number of charges has risen by 9,346, with a spike of nearly 100,000 (99,947) in 2011.

Over the past three years those numbers have been steadily decreasing from that peak (across the nation and in Florida), but are still higher than they were two decades ago. The largest percentage of charges filed include a claim that the employee was terminated in retaliation for "protected activity."

Florida had 3,261 total retaliation charges, making up 43.3% of total state charges, and 8.6% of the national number.

Employee lawsuits for wrongful termination have risen 260% over the past 20 years. - from the whitepaper [2009 Law Changes Could Impact Your Business by Gorski and Tataryn](#)

In 2014, Florida charges with the EEOC made up 8.5% of the U.S. total charges Florida's 2014 EEOC charges numbered 7,528 down from 7,597 from the previous year.

CHAPTER 5

WHO'S AFFECTED BY WRONGFUL TERMINATION?

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Anyone can be affected by wrongful termination, despite age, race, or economic background if you work for a company covered by the anti-discrimination laws. However to be considered wrongfully terminated you must be part of a protected class, have participated in a protected activity, or be fired for taking leave for one of the three reasons mentioned early.

Otherwise employers in at-will states may fire you at any time, with a reason or not, without any advance warning.

Now let's take a moment to explore a couple of specific types of discrimination..

CHAPTER 6

SEX DISCRIMINATION: IS IT ON THE RISE IN THE WORKPLACE?

SEX DISCRIMINATION: IS IT ON THE RISE IN THE WORKPLACE?



The [numbers of sexual discrimination cases](#) as a percentage of the female workforce is probably not on the rise (we're using women here because 85.4% of sexual harassment cases are filed by women). However, the numbers of women (and transgendered people, 90% of whom claim they face harassment) in the workforce are increasing, so it makes sense the raw numbers would increase as well.

In 1960, 28% of married women with children under 18 were in the workforce. (source: Monthly Labor Review 106). By 2013, that number had risen to 70%. (source: Employment Characteristics of Families). It shouldn't be shocking that the number of sex discrimination cases has risen too.

As women continue to feel further empowered to speak up, recognize what harassment is, and earn higher wages and thus don't feel as dependent on one particular employer, it is not surprising to see these numbers rising. It mirrors that of the entire nation and the increase in total EEOC workplace charges.

CHAPTER 7

AGE DISCRIMINATION: ARE YOU A VICTIM?

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Age discrimination may be one of the least understood types of discrimination. According to AARP 58% of Americans believe age discrimination protection begins in their 50s. This is not true. Age discrimination can begin as early as 40.

Even with this misinformation, and nearly a decade missing in their experience, 64% believe they have witnessed or been a victim of age discrimination.

If you have been terminated due to age discrimination, you have a case for wrongful termination.

Source:

<http://www.aarp.org/content/dam/aarp/work/on-the-job/2014->

CHAPTER 8

PROVING WRONGFUL TERMINATION

PROVING WRONGFUL TERMINATION

The first step to establishing a wrongful termination claim is identifying whether you can establish each element of a discrimination case. If not, even if there is a strong element of unfairness involved in your case, you will not be successful in making out a wrongful termination case. If you are in a protected class, have performed a protected action, or were terminated while on approved leave or outside of the parameters of your contract, and you were terminated or suffered some other adverse employment action because of your protected class, protected activity or leave, you have taken the first step toward a wrongful termination case. Now you have to prove it – you need to show there is a link between your protected status and that adverse employment action.

■ **Ask your employer why you're being discharged.**

Ask them if they'll put it in writing. Take notes on the conversation. In Florida, you cannot record the conversation unless you get consent from all parties on the recording.

■ **Request a copy of your personnel file.**

Most companies won't willingly hand these over but it never hurts to ask. If they won't give it directly to you, your attorney can obtain them through the litigation process at a later date.

■ **Compile notes based on recollections of the events surrounding your termination.**

In addition to the details of the events including people and contact information as well as dates of all conversations, you should include any emails, texts or written correspondence involving your termination; positive commendations or awards based on your work; names and notes on employees in similar situations to yours who were treated differently as well as those who were treated the same. While the court is generally looking for unlawful treatment, establishing a discriminatory pattern is also beneficial. For instance, does your company tend to fire women in their 3rd trimester who are about to go out on Family Medical Leave? Finally, compile a list of employees, or former employees, who might be beneficial to your case.

■ **File a Complaint with the Equal Employment Opportunity Commission (EEOC).**

Under many of the anti-discrimination statutes and laws, you cannot file a wrongful termination suit without first filing a charge with the EEOC or the agency charged with administering the particular law you claiming has been violated, such as the Florida Commission of Human Rights. Florida is a dual-filed state. You can file a charge with the EEOC and FCHR at the same time in a single charge. While an attorney is not required at this step, it is extremely helpful to have someone on your side who knows the law and can help you navigate (and move on along) the administrative process. You can be assured your former employer will have an attorney involved from the beginning.

The EEOC will either investigate your charges or not. If they choose not to, you may file a wrongful termination suit at that time. If they chose to investigate, you may wait for them to complete their investigation. At that point they will either to choose to file suit themselves (or the Department of Justice will) or they will issue you a “Right to Sue” letter giving you the right to pursue the case yourself. Retain a copy of that letter. BE FOREWARNED- the Right to Sue letter starts the clock ticking on the time you must file a lawsuit in federal court. Pay strict attention to these deadlines! You may also request a right to sue letter during the course of the investigation, and may pursue claims under State law, prior to the EEOC completing its investigation, subject to various limitations. These are complex decisions and you will benefit from advice of counsel.

■ **Seek Legal Counsel.**

Assuming the EEOC has issued a “Right to Sue” or you are otherwise in a position to proceed with a lawsuit, the next step is finding legal representation, if you have not already done so. Once you do that, he/she can advise you on a legal strategy.

CHAPTER 9

WRONGFUL TERMINATION STATUTE OF LIMITATIONS

WRONGFUL TERMINATION STATUTE OF LIMITATIONS



Taking timely action is critical to your [wrongful termination](#) claim.

As a general rule, you have 300 days from the date of the alleged discrimination to file a charge in Florida with the EEOC. If after their investigation you choose to file a wrongful termination case under most of the Federal discrimination statutes administered by the EEOC, you must do so no longer than 90-days after receiving your “Right to Sue” letter. If you are only filing a charge under the Florida Civil Rights Act you have slightly longer at 365 days after the alleged discrimination occurs.

CHAPTER 10

A WORD ABOUT UNEMPLOYMENT AND UNPAID WAGES

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As long as you were not fired for outright misconduct, as that term is defined under the unemployment law, (such as sexual harassment, revealing trade secrets, or other injurious behavior), you may be eligible for unemployment benefits and receiving benefits will not affect your wrongful termination case.

If you have unpaid wages owed to you at the time of termination, or you believe you were entitled to overtime pay (even if you were called a “salaried employee” you may be entitled to overtime pay), let your attorney know. You may find you have a claim for discrimination on one basis and a separate claim for unpaid wages, unpaid overtime, and the damages which are available to you under the Fair Labor Standards Act and state law.

Termination Checklist

- *Compile the necessary paperwork and proof mentioned in Proving Wrongful Termination including:*
 - *notes of the incident*
 - *names and contact information of those involved in the firing*
 - *names and contact information of employees, or former employees, in similar situations as yours*
 - *names and contact information of employees who may be beneficial to your case*
 - *letter of termination from the employer*
 - *personnel file*
 - *work commendations*
- *(Try to) obtain unpaid wages, if applicable*
- *File for unemployment, if desired and eligible*
- *Seek legal consultation before filing with the EEOC (Consultation does not mean you must secure an attorney but speaking with one will provide additional insight.)*
- *File with the EEOC (Remember you only have 300 days from your termination)*
- *File a claim under the Florida Civil Rights Act, if applicable*
- *Obtain your “Right to Sue” letter*
- *Retain legal counsel if you decide to proceed or you haven’t done so already*

CHAPTER 11

WHEN SHOULD I CONTACT AN ATTORNEY?

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If you have been **fired due to discriminatory practices, retaliation, or while you were on leave due to a military assignment, jury duty, or family needs**, you may have been wrongfully terminated. If you have a contract (either written or implied) and the employer breached the terms of that agreement, you may also have a claim for wrongful termination.

If you have unpaid wages due to you and your former employer has failed to pay, or denies you are entitled to the pay earned by you, contact an attorney to represent your interests.

If you believe you were wrongfully terminated after you reviewed this information, it is essential you act in a timely manner. You may lose a valuable claim simply by the passage of time, not to mention that waiting too long will make proving your case even harder as witnesses leave the employer, documents disappear, and memories fade.

One of the most important things you can do after a termination is to take advantage of our [free consultation](#) to discuss your next steps.

CALL US TODAY FOR A FREE CONSULTATION AT

813-579-2483

OR VISIT US AT

WWW.WENZELFENTON.COM

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