

Wrongful Termination

Was your termination illegal, or just unfair?

How do you determine whether your termination from employment is merely unfair or warrants a serious legal case? It's not easy, but you can begin thinking through the process by learning some of the basic concepts of employment law.

Consider the following situation:

You've been with your company for 30 years. Your performance has always been rated outstanding. You've never been accused of misconduct of any kind. Today is your day off, and you just heard from a colleague that the boss says you are no longer with the company. The colleague says the boss said the company wants to "go in another direction."

"At-will" Employment

"Another direction"? After 30 years and a spotless record? That must be against the law! Don't count on it. Like most employees in the United States - even many highly paid ones - you're probably an "employee at-will." That's a fancy term that just means you can be fired for any reason or no reason at all, unless the reason for the firing violates a specific law or legal principle. Qualifying exceptions include the laws forbidding discrimination based on race, sex, age, disability, religion, or national origin, and the laws protecting your right to organize a labor union or oppose unlawful discriminatory conduct by the company.

What this means is that it's difficult for a fired, non-unionized employee to oppose an unfair firing unless he or she can establish that the employer's real reason for the firing was specifically discriminatory or otherwise forbidden by the law. Since few employers ever admit to unlawful discrimination or retaliation, this can be difficult, though not necessarily impossible. What you must do is to prove your case by "inference," which means proving it without company officials admitting that the company was discriminating.

Making Your Case

Your apparent firing after 30 years seems like it might be age discrimination. So what should you do next? Try to get the company to tell you why you were fired. Getting them to put the answer in writing is best because it provides the strongest evidence later, but at least get it verbally. Many employers will give you a termination letter as a matter of policy, but others will refuse or give you something so vague as to be meaningless. Although this information is important to have, do not despair if you don't get it. If you can prove that you asked for an explanation, the company's refusal to tell you why you lost your job might help you in a legal case down the road.

If you do get more specific information as to the reasons for your firing, start thinking right away about whether the stated reason is a lie and, if so, why. Wrongful termination cases often come down to whether

the employer's alleged reason for termination is truthful or a lie, and you can't begin figuring that out until you've heard the reason.

For the most part, unless you work for the government, you cannot win a discrimination or other wrongful termination case just by proving that the company was wrong or mistaken in firing you. The employee must prove, at a minimum, that the employer's reason did not motivate the firing or, logically, could not have motivated the firing.

Why Were You Fired?

If, for example, your company eventually claims that it wanted to "go in another direction" because you had stolen from the company, it would not be possible to prove age discrimination simply by proving that you did not steal. Rather, you would have to show that the company knew all along that you did not steal, or that the decision to terminate you was made before the date when the stealing was allegedly discovered. In the age discrimination context, you would also typically have to show that younger workers were treated more favorably or were given your job after you were fired.

If the alleged reason for your termination was poor performance, the same principles apply. In one recent case, an employee claimed that she was fired for protesting discrimination, while the company claimed she was fired in part for poor performance. She successfully disputed the company's claim by showing that the same supervisor who alleged poor performance had given her a special raise just three weeks earlier and an extra Christmas bonus a while before that. Then the supervisor fired her shortly after she presented the company with a letter stating that she was the object of discrimination in the creation of weekly work schedules.

As you can see, challenging an unfair termination requires that you have a combination of strong facts in support of your assertion, the ability to acquire the right information to support your case, and an employer who really did fire you for an unlawful reason. You can begin fighting back on your own if you must, but I highly recommend that you consult with a lawyer experienced in employment litigation as early as possible. Although there are laws that protect employees from unfairness, winning an employment discrimination or wrongful termination case requires hard work, skill, and patience.