

Anti-War Protests by Employees

YOUR LEGAL RIGHTS

1. Can I be disciplined or fired for participating in an anti-war protest?

You cannot be fired simply because you engaged in an anti-war protest, which is considered protected political activity in California. Specifically, California Labor Code 1102 does not allow your employer to discharge, or threaten to discharge you for following any particular “course or line” of political action or activity, such as an anti-war protest. Similarly, Labor Code 96(k) and 98.6 protect you from being demoted, disciplined or discharged for “lawful conduct occurring during non-working hours away from the employer’s premises.” However, you *can* be disciplined or fired if you missed work without permission while you engaged in the protest (unless your employer never disciplines employees for missing work for any other reason). You can also be disciplined or fired if your political activities significantly disrupt your employer’s business.

2. What happens if my employer violates California Labor Code 1102?

Any employer who violates Cal Labor Code 1102 is guilty of a misdemeanor. The violation is punishable, in the case of an individual, by imprisonment in the county jail not to exceed one year or a fine not to exceed \$1,000, or both. If the employer is a corporation, the violation is punishable by a fine not to exceed \$5,000.

3. May I recover money damages for a violation of California Labor Code 1102?

Yes, nothing in the Labor Code prohibits you from recovering damages from your employer for an injury suffered through a violation of the Labor Code protecting political activity. So, if you were suspended without pay for engaging in an anti-war protest, you could be entitled to collect your lost pay. If you believe your employer has violated the Labor Code you may file a claim with the California Labor Commissioner. (The California Labor Commissioner’s phone number is located in the Government listings in your local phone book and is also located at www.dir.ca.gov/dlse.)

4. Don't I have free speech rights that protect me from discharge for participating in an anti-war protest?

Maybe. Political speech and activities outside of the workplace (e.g. an anti-war protest away from your work) are generally protected. On the other hand, political speech and activities at work may not be protected if they interfere with your work or significantly disrupt your employer’s business. If you work for the government, your on-the-job anti-war speech may also be protected by the First Amendment to the US Constitution because it likely addresses a matter of “public concern.”

5. If I was arrested due to anti-war activity, can my employer take action against me while the arrest is pending?

If your arrest could reasonably have an impact on your employer’s business (e.g. you are an off-duty police officer arrested for engaging in violence at an anti-war protest), then your employer may take



action against you while the arrest is pending trial. However, under California Labor Code 432.7, your employer is not allowed to use your arrest pending trial as the *sole* determining factor in making a negative employment decision against you. (Otherwise, there would be no presumption of “innocent until proven guilty.”) Therefore, you can expect your employer to ask about the circumstances of your arrest pending trial to determine whether the arrest could have an impact on your employer’s business.

6. **Can my employer take action against me if my arrest is resolved without a conviction?**

Once your arrest has been resolved in your favor (e.g. you were not convicted, given probation, or had any other mark placed on your criminal record), the mere arrest normally can no longer be used against you.

7. **What are my remedies if my employer wrongly fires me because of an arrest?**

You may sue for actual damages, such as back pay (your lost wages) and front pay (the amount of money you would have been paid until you can get a new job) under the California Labor Code. You should also try to “mitigate” your damages, which means making reasonable efforts to get another job, or else you may lose your claim to both back and front pay.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers’ Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers’ Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

