

Hiring a Labor or Employment Lawyer

YOUR LEGAL RIGHTS

1. Do I need to hire a lawyer for my case against my employer?

Maybe. Whether or not to hire a lawyer often depends on the complexity of the case. For example, a complicated workers' compensation claim may require a lawyer while a simple claim for unemployment insurance may not. If your case has been filed in a federal or state court (other than Small Claims Court), then you should strongly consider hiring a lawyer. In other situations, it may be no problem to handle your case without a lawyer.

2. I have decided to hire a lawyer. Is it likely she/he will take my case?

Whether or not a lawyer will take your case will often depend on the strength of your claim. However, even if you have a strong claim it may be difficult to retain a lawyer if the potential damages resulting from your strong claim are not high. That's because many attorneys work on what is called a "contingent fee" arrangement. Under such an arrangement, the attorney is paid a percentage (often 33% to 40%) of any settlement or award from a successful claim. If your claim is not successful, your attorney will be paid nothing. So, an attorney is likely to scrutinize the risk of loss versus the potential money damages in your case and, even if your claim is strong, she/he may decide not to take your case.

In addition, if your claim is against a government employer (such as DMV or SF Muni), you may also have difficulty in hiring a lawyer. The laws covering government workers are highly specialized so there are not many lawyers who practice in this area. Lawyers also may be reluctant to take your case against a government employer because they know that the government has many resources to defend against your claim. In addition, you are normally not entitled to win "punitive" damages against a government employer, so a lawyer may be hesitant to take your case because there will be no punitive damages from which the lawyer will be paid his/her contingent fee.

3. Where do I find a lawyer?

There are many places to find an attorney. **Lawyer referral services** are groups and agencies that are certified by the State Bar of California, and are designed to help people find attorneys. (For example, the Bar Association of San Francisco helps many people find lawyers every year.) A list of lawyer referral services is available either through your local bar association, in the Yellow Pages of the phone book, or at www.lawhelpcalifornia.org. For a small fee (around \$35), these referral services try to match you with a lawyer based on your circumstances, including your legal and language needs as well as your location.

In addition, you may be able to find a lawyer in the Yellow Pages of your phone book. The Yellow Pages may even contain listings under an "employment law" heading. Although some



attorneys may practice only employment law, there is no certified “employment law” specialty. Choose an attorney who has the experience or knowledge to handle your employment law case.

Public interest organizations are another source for finding an attorney. Some non-profit agencies have lawyers on staff who may be able to assist or represent you; often these agencies specialize in specific areas of law such as disability or women’s rights. These agencies may also be able to provide referrals to private attorneys whom are known to public interest organizations.

You may also already have a **pre-paid legal plan** with either your employer or labor union. These plans generally provide members with a reduced rate and/or a specific amount of time with an attorney.

Finally, it might be a good idea to check your local law library or larger county library. There you will likely find a *Martindale-Hubbell Law Directory* that lists attorneys according to the state and city where they practice and will include an attorney’s practice area, employer, and other background information.

4. What do I do if I have a dispute with my lawyer?

If you feel that you have been charged incorrectly by your attorney and you cannot satisfactorily resolve the matter with him/her, then you may request fee arbitration. Fee arbitration is a different process than filing a complaint in civil court against your attorney. In arbitration, there are panels comprised of either one or three neutral arbitrators. If there is one arbitrator, then you can request that the arbitrator be in the same area of practice (either civil or criminal law) as your attorney whose fee is in dispute. If there is a panel of three arbitrators, then you may also request that one of the arbitrators be in the same area of practice as your attorney. In addition, you may also request that one of the three arbitrators be a non-attorney. Furthermore, all of the settlement discussions that take place during the mediation and arbitration are confidential and cannot be used in any future proceedings.

An arbitration award is final and binding on both you and your attorney unless you did not agree to resolve the dispute through arbitration. The State Bar of California is in charge of enforcing these awards. You may petition to have the award confirmed, vacated, or corrected by filing a response within 100 days of the award. Awards will, however, only be vacated in cases of corruption, fraud or arbitrator misconduct. Also, the award will only be corrected if the arbitrators exceeded their powers or miscalculated the award (e.g., a typo resulted in a computation error).

Fee arbitration is offered through many local bar associations. If your local bar association does not offer this service, then the State Bar of California will mediate the dispute. If you request fee arbitration, then the attorney whose fee is in dispute must participate.

Your attorney may also request that you enter into fee arbitration with him/her. However, your attorney may only do this if the fee agreement you made with him/her includes an arbitration clause. Furthermore, your attorney must serve you with notice of the right of arbitration either with, or prior to, service of the summons for any legal proceedings where he/she is trying to recover fees and/or costs. If your attorney fails to do this, then the attorney's claim to recover fees and/or costs may be dismissed. After receiving the notice, you have 30 days to request arbitration or you lose this right.

5. How do I “fire” my lawyer?

You have a right to fire your attorney at any time for any reason. However, if you have a problem with your attorney, it might be a good idea to notify him/her in writing first. This serves two purposes. First, it is sometimes difficult to find another attorney to take over your case. Second, notifying the attorney of your dissatisfaction gives the attorney an opportunity to fix the problem. You should keep a copy of the any letter you send because it may be used as evidence later in case of attorney misconduct.

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.

