

Intentional Infliction of Emotional Distress in the Workplace

YOUR LEGAL RIGHTS

1. What is intentional infliction of emotional distress (IIED)?

Intentional Infliction of Emotional Distress (IIED) occurs when your employer purposely causes severe emotional distress to you as a result of extreme and outrageous conduct. Examples of Intentional Infliction of Emotional Distress claims can include racial insults, sex discrimination, false imprisonment and conduct that threatens your physical security (although a physical injury is not necessary).

2. Can I bring an intentional infliction of emotional distress claim if my employer fires me?

No. Termination of employment by itself, even if it is wrong or without cause, is not extreme and outrageous conduct.

3. How can I prove a claim of intentional infliction of emotional distress?

To show that IIED occurred in the workplace, you must show ALL of the following:

1. **Extreme and outrageous conduct by your employer or a representative of your employer.**

The most difficult part of this claim is proving that your employer's conduct was "extreme and outrageous." California courts have interpreted this to mean conduct that exceeds what is tolerated in a civilized society or that has gone beyond all reasonable bounds of decency. The conduct must make the average, reasonable person exclaim, "that's outrageous!" Outrageous conduct does not include annoyances, hurt feelings, insults, rough language, or bad manners that a reasonable person is expected to endure.

If your employer's conduct violates California criminal law, it is often automatically considered to be outrageous conduct. IIED is also often found in unlawful discrimination and sexual harassment cases, but the conduct must still meet the "extreme and outrageous" standard.

2. **Your employer must have intended to cause you to suffer extreme emotional distress, or must have known that such distress was substantially likely to result.**

3. **You suffered severe or extreme emotional distress.**

"Severe" emotional distress is that which is substantial or enduring. It has also been defined as a kind of distress no reasonable person is expected to endure. It may consist of any highly unpleasant reaction such as fright, grief, shame, humiliation, embarrassment, anger, or worry. Both the intensity and the duration of your emotional distress are factors to be considered in determining whether it is severe. Your emotional distress need not have been so bad that you were unable to function in business or social relationships.

4. **AND your employer's conduct caused your distress.**

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EMPLOYMENT LAW CENTER

4. How do I bring an IIED claim?

A claim for IIED must be brought in State Superior Court or Small Claims Court. The amount of “damages” you are owed will usually determine which court you will want to file in. For smaller cases, small claims court might be your best bet. In small claims court, you do not need to find a lawyer, but the maximum amount you can recover is \$7,500. The turnaround on small claims court claims is usually faster than superior court. The court hearing is normally held within 30 to 70 days after the claim is filed. See the California Courts Self-Help Center for more information: <http://www.courtinfo.ca.gov/selfhelp/smallclaims/>. Many counties also have a Small Claims Legal Advisor’s Office that can you help with your claim.

For larger cases with bigger damages, you can file in state court, but you will generally need to hire a lawyer, which might be difficult to find unless you have a particularly large case. If you are not sure where to find a lawyer, you can start by contacting your local Bar association and asking for a referral. Many questions about filing in court can also be answered by the Superior Court Clerk.

5. Should I file a workers’ compensation claim rather than file an IIED claim?

Probably. In fact, many claims are actually “preempted” by Workers’ Compensation laws, meaning that you can’t file an IIED claim in court, but rather have to file a Workers’ Compensation claim with your employer instead. That’s because California courts view many types of employer conduct (such as criticizing, demoting, and firing workers) as part of the employment relationship.

There are two situations that will normally avoid Workers’ Compensation laws. First, if the outrageous conduct does not normally occur in the workplace (for example, your employer repeatedly calls you at home in the middle of the night to berate you) or if it violates public policy (for example, your employer sexually harasses you or falsely imprisons you), the conduct is separate from Workers’ Compensation laws. Second, Workers’ Compensation laws will not prevent you from pursuing your claim if you have suffered emotional distress as a result of physical assault/battery by your employer.

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 legal rights in your 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.