THE SECRET EMPLOYEE HANDBOOK

What your boss won’t tell you about your rights in the workplace.

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Introduction

This is not legal advice!

This handbook is intended to give you the information about your rights that your employer may not give you. This handbook contains basic information about the rights of employees under Pennsylvania and federal law. It is not complete, it is not perfect, and it is not legal advice. You'll find a lot of “mights” and “maybes” and “sometimes” in this handbook. That is not because lawyers are incapable of giving straight answers (although my wife might disagree). It is because the laws and regulations that govern activity in the workplace are extremely complex and fact-specific. Simply put, in employment law there is a lot of gray, and not much black and white.

This information is meant to help make you aware of your rights at work. Every situation is different, and it would take a library of books to provide accurate information about every situation. If you are interested in learning more about the law or about your specific legal rights, contact my office to schedule a confidential consultation.

I encourage you to share this handbook with friends, co-workers and family members who have questions (or, have them request their own copy from my office or website). But - don’t take this handbook to work, don’t throw it at your boss when he or she says something insulting, and don’t “accidentally” leave it paper clipped to your time sheet.

By the way, in this handbook I will refer to employers generally as “the boss.” “The boss” can anyone from the company president down to your shift manager - anyone who can tell you what to do and get away with it. I will refer to “the boss” as “he” because it is easier than writing “he/she”, “it” or something else silly. Women bosses can be just as stupid, evil, and unpleasant as men.

Disclaimer:

Reading this handbook does not make me your lawyer, and it does not make you my client. That does not happen unless and until we meet, discuss your case in person, and we both decide to sign a contract that says clearly what both of us will do.

I am only licensed to practice law in Pennsylvania. This handbook is only about the law (state and federal) that applies in Pennsylvania. If you are not in Pennsylvania, I can’t help you - but I can refer you to a lawyer in your state who is (like me) a member of the National Employment Lawyers Association, an association of lawyers who care enough to spend the time and money to keep up to date on new legal developments and information. This handbook is not legal advice - enjoy it, learn from it - then call a lawyer! OK - here we go!
I Know That Your Boss is a Jerk!

I have been self-employed as a lawyer for more than ten years, but before that I held a lot of jobs. I have done just about everything that the law allows to earn money. I didn't go straight to college after high school because my parents couldn't afford it. Instead, I went to work in the places that would hire a skinny kid with long hair and acne - factories and retail businesses – for minimum wage.

Eventually, I went to work in the social services field helping developmentally disabled people live independently in the community. When I started college, I continued to work full-time while I studied full-time. I didn't go to law school right after college, but worked for several years in education. Later, when I went to law school, I also worked my way through. I have been a union member (I am proud to have helped organize one of my former workplaces), a manager, an employee, an independent contractor, and an entrepreneur. I've been the boss and the new guy, sometimes at the same time. I've been “laid off”, “downsized”, “let go” and “just plain fired.” I have also had to fire people who worked for me. I have held the following jobs – for real, for a living:

- Janitor
- Sales clerk
- Guidance counselor
- Musician
- Stock clerk
- Loading dock worker
- Associate attorney(small law firm)
- Associate attorney(large law firm)
- Teacher
- Salesman
- Gas station attendant
- Production worker
- Warehouse worker
- Warehouse manager
- Dishwasher
- Assembly line worker
- Resident advisor
- Program director

In almost every one of those jobs, I had a boss who did not really understand what I did all day. Most of those bosses could not have done my job if their life depended on it. Of course, that didn’t stop them from telling me what to do – even if it didn’t make sense – or from suggesting absurd ways for me to do it better. All of my bosses expected the impossible. And while most of my bosses were good, decent,
well-intentioned people, a couple of them were rude, crude and offensive in every way. In short, **most of my bosses were jerks.** Sound familiar?

**IT’S NOT AGAINST THE LAW FOR YOUR BOSS TO BE A JERK!!** As I will explain in more detail, in most cases your boss does not have to be fair, respectful, pleasant or even reasonable. The boss can be a first class jerk and still never break the law.

**BUT – EMPLOYEES HAVE RIGHTS TOO!** Probably more than you know. Pennsylvania and federal laws require employers to do certain things, and forbid employers from doing certain things. This handbook will give you some basic information about those laws and how they apply in the real world.

**But What About Employment at Will?**

You may have heard that Pennsylvania is an “employment at will” state. Bosses love to remind you that Pennsylvania is an “employment at will” state, because they think that means they can do whatever they want without getting sued. That is NOT what “employment at will” means.

**Some employment relationships are not “at will”**. The most common exception to the “at will” rule is an employment relationship that is governed by a contract. The contract may be directly between the employer and a single employee, or it may be between the employer and a bargaining organization – a union. In some very rare circumstances the provisions of an employer’s employee handbook may operate like a contract between the parties. When there is a contract the parties are obligated to fulfill the requirements of the contract, and those requirements define the employment relationship. The federal and state laws (discussed later) still apply, but the contract imposes additional obligations and responsibilities.

Another type of employment contract is the “non-compete” or “non-solicitation” agreement that some employers require employees – usually managers or sales professionals - to sign. Obviously, I need to review a contract to tell you what it means and whether or not it may be enforceable in court. **If you have questions about your non-compete agreement, call my office for a confidential consultation.**

**If Your Employment is “At Will”**

**You Still Have Rights!**

“At will” simply means that the employment relationship does not create any ongoing duty on the part of either party. This means – with some important exceptions - that the boss can change or terminate your employment “for good”
reason, bad reason or no reason at all”¹ – and that the boss can do so without “cause” – meaning without having to explain why. The other side of the coin is that an employee can quit anytime, and regardless of how much that might bother the boss, there is nothing that he can do about it.

“At will” means that the boss can fire you because he pulled your name out of a hat, or because God told him in a dream that he should fire everybody whose last name begins with “D”, or because you wouldn’t have lunch with him, or because you had lunch with him and didn’t offer him any of your fries, or because you remind him of the girl who dumped him in junior high school. The rule is “good reason, bad reason or no reason at all.”

At Will Employment Means The Boss Doesn’t Have To Be Fair - But He Still Has To Obey The Law.

Personally, I think “at will” employment is wrong. I think that employers should have to be fair. I think that after an employee gives decades of loyal service, the boss owes them some loyalty in return. I also think that light beer, cats and the Dallas Cowboys should be illegal. But it doesn’t matter what I think - what matters is what the law says.

And the law says that the boss cannot fire you because of your race, sex, disability, age (over 40), religion, race, ethnicity, pregnancy, use of FMLA, whistleblower activities or other unlawful criteria, and there are certain things that the law requires your employer to do.

I will try to explain each of these, at least a little bit, in the following pages.

Fighting Back

The Pennsylvania and federal laws that govern employee/employer relationships can be broken into two groups – what employers MUST do and what employers MUST NOT do. Generally speaking:

Employers MUST pay their employees at least the state minimum wage, and in most cases must pay employees for EVERY hour worked, sometimes with overtime. In addition, most employers MUST give most employees specific amounts of time off to deal with serious medical issues, and MUST provide reasonable accommodations for disabled employees.

Generally, employers MUST NOT discriminate against employees based on the employee’s race, gender, religion, pregnancy, age, or disability, or based upon the employee’s association with some of a certain race, religion, etc. Employers MUST

NOT permit other employees to do these things either, and an employer who tolerates a hostile environment created by other employees may be held liable. Employers MUST NOT retaliate against an employee who pursues his or her legal rights under those laws. For example, employers MUST NOT act against employees who seek legal counsel, file complaints against them or report unlawful activities to authorities (these are called “whistleblower laws”).

What follows is a brief overview of the various sets of state and federal laws that provide employees with protection, as well as a basis for legal action against offending employers.

SOME (BUT NOT ALL) OF THE LAWS THAT EMPLOYEES SHOULD KNOW SOMETHING ABOUT

Wage and Hour Laws
a.k.a. Show Me the Money

The boss has to pay you for the work that you do. That seems simple, but you would be surprised at how many bosses just don’t get it.

State and federal laws regarding payment of wages require employers to pay employees in specific ways. Generally speaking, employers must pay at least the mandated state or federal minimum wage (whichever is higher). They must also pay most employees for overtime - usually time worked in excess of forty hours in one week. In addition, many employers must give employees a specified number of breaks during a given workday.

Salaried or “exempt” employees are those who are paid a fixed salary regardless of the number of hours it takes them to perform their job. The salaried employee gets the same amount of money for a sixty-hour workweek that he or she gets for a forty-hour workweek. In theory, a salaried employee would get the same amount of money for a twenty-hour workweek.²

The primary law regarding payment of overtime is the Fair Labor Standards Act (“FLSA”) Many FLSA lawsuits are about whether or not a worker designated by the employer as “salaried” or “exempt” should be designated that way. Simply because an employer has designated someone as a “salaried” or “exempt” employee does not necessarily mean that the employee is ineligible for overtime. There are many regulations and court decisions that explore the question of when an employee is eligible for overtime, and those questions are very fact-specific.

² For years there have been whispered rumors about salaried employees who work fewer than 40 hours a week. No one has been able to prove the existence of these mythic creatures (at least outside of county government) – kind of like Sasquatch or the Loch Ness Monster.
In most cases, it is unlawful for an employer to give “comp time” instead of overtime, or to allow or encourage employees to work “off the clock” to avoid overtime. It is unlawful for employers to give “bonuses” instead of overtime. If the boss makes you punch out then go back to work, or gives you 5 hours of vacation time instead of 5 hours paid overtime, or pays you cash instead of overtime, he is probably breaking the law.

Another issue that comes up pretty regularly is travel time. The boss doesn’t (usually) have to pay you to travel to and from work, but if you travel during work, you should be paid for the time.

If you have questions about the way you are being paid, call my office at 570.824.3088 for a confidential consultation.

**Family Medical Leave Act**

Under the Family Medical Leave Act (“FMLA”), **covered employers** are required to provide **eligible employees** with time off from work to deal with **serious health condition** faced by the employee or the employee’s immediate family members.

Important terms to understand:

**Eligible employee** = a worker has been employed for at least 12 months and worked a minimum of 1,250 hours (about 25 hours per week). Pretty straightforward, right?

**Covered employer** = a public or private employer with 50 or more workers in a 75 mile radius. Usually not much debate over this.

**Serious health condition** = “an illness, injury, impairment, or physical or mental condition that involves (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider.” This is where the problems start. Courts are constantly making decisions that change the practical definition of “serious health condition.” Sometimes doctors get this wrong as well, because they think that if they write “jump” on a prescription pad, your boss has to ask “how high.” Your doctor does not decide whether or not your condition is serious enough for FMLA.

The employer does not have to pay the employee for FMLA time. The employer may require the employee to burn vacation time or other paid time off during their FMLA leave. The FMLA simply means that, within the limits of the FMLA, the covered employer may not fire an eligible employee for taking FMLA time, up to 12 weeks per year, to deal with serious health conditions suffered by themselves or an immediate family member. The time doesn’t have to be used all at once – in fact it can be used an hour or two at a time in some cases. Another complication is the employer’s calculation of those 12 weeks. FMLA lets the employer count the 12 weeks in many different ways – 12 weeks in a calendar year, 12 weeks from the last FMLA use, etc.
FMLA leave can be CONTINUOUS or INTERMITTENT. Continuous FMLA is where the employee is off of work for a specific period of time, usually for a medical condition of finite duration - i.e. two weeks to recover from surgery. Intermittent FMLA is where the employee is off for short periods, usually as needed for a long-term condition. For example, an employee may have intermittent FMLA that allows him or her to leave work early due to asthma attacks or to attend medical treatments.

FMLA is very complicated. Doctors don't understand it. Employees don't understand it. Employers don't understand it.

Though they do not understand FMLA, employers hate FMLA, especially intermittent FMLA. That is worth saying again. Employers HATE FMLA. Employers seem to believe that every employee who uses FMLA is a lazy slacker who just wants more vacation time. FMLA is a pain in the employer's behind, and they often get it wrong, intentionally or otherwise.

If you have questions about FMLA, call my office for a confidential consultation. 570.824.3088

A Word About “Discrimination”

“Discrimination” is a dirty word, and for good reason. Workplaces have been, and continue to be, filled with unlawful discrimination that keeps good people down because of their race, gender, age or other factors. For every case that makes its way into court, I am sure that there are dozens of cases in which the victim stays silent and the employer gets away with breaking the law.

But not all discrimination is unlawful. In fact, employers discriminate all the time and stay well within the law. Every time an employer hires, promotes or fires an employee, the employer discriminates – choosing one possibility over others. The law does not require the employer to be fair, or to get it right every time, or to choose the most qualified employee for promotions. The courts will not second guess those decisions.

Most of us (bosses are the exception) have an inherent sense of fairness that tells us that the good guys should win, the hard workers should get ahead, and idiots should not get promotions. Unfortunately, the real world does not always work that way.

UNFAIR ≠ UNLAWFUL

Unfair does not equal unlawful. The boss can be unfair. He can target you because he just doesn’t like your shoes, because he picked your name out of a hat or
because you remind him of the girl who dumped him in 10th grade. Those things are unfair, but not unlawful.

What is unlawful is discrimination on the basis of race, gender, age, disability, etc. I’ll use myself as an example. I am a white male, 40-something years old, 6 feet tall, with a larger-than-average (but classically handsome) nose.

Let’s say I apply for a job with Fender Musical Instrument Corporation on their assembly line. Let’s assume that I am qualified and able to do the job I apply for.

If Fender refuses to hire me because I am a male, they have broken the law. Ditto if they refuse to hire me because I am over 40, or because I am white.

But if Fender has a policy against hiring people under 6’3”, or if they have a policy against those of us with big noses, they are probably not breaking the law, only acting like fools. Ditto if I remind the boss of the guy who stole his girlfriend or if the boss passes me over because he thinks that Pennsylvanians are bad people. Acting like a fool is usually not against the law.

Proving unlawful discrimination . . .

Employers (at least most employers) aren’t dumb enough to actually tell you that they are firing you because of your race, gender, age, etc. Employment cases are often difficult to prove, and they require a great deal of “digging” to find the truth. Timing can make a big difference – if you get fired the day after you tell the boss you need an accommodation for a disability, it certainly looks like unlawful discrimination. Of course, your testimony and the testimony of others is important. Other evidence – like inappropriate emails, comments or jokes – can also be very important. Your performance evaluations and disciplinary history at work make a difference too. If the employer says that it fired you for discipline, but never wrote you up, it looks like the employer is lying and makes a discriminatory reason more likely.

Remember earlier when I said that the boss could fire you because you remind him of the girl who dumped him in junior high? Unreasonable, isn’t it? A little crazy?

You can’t sue the boss because he fired you for an unreasonable or even a crazy reason – that’s what “employment at will” means. So if the boss says he fired you because you look like the guy who stole his girlfriend, that’s not enough to go to court.

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3 I know nothing about Fender’s employment practices, only that they make the best electric guitars ever, period. As far as I know, they treat their employees like gold.

4 BUT – if the height requirement in practice excludes women or people of a certain ethnicity, and the height requirement is not a business necessity – it may be unlawful. Complicated, isn’t it?
But what if just before you got fired, you took some FMLA leave to deal with a medical issue? And what if it turned out that you had diabetes, and that you requested an accommodation so that you could maintain your blood sugar at work? And what if the bosses response was that he didn’t want to talk about your disability or provide any accommodations? And then you got fired. When you factor in these other things it starts to look like your termination was not really about the bosses broken heart.

Age Discrimination

State and federal laws forbid employment discrimination because of age. Specifically, employees and potential employees over the age of forty are considered a protected class. An employer who discriminates against members of that class may be held liable under the state and federal law.

Age discrimination claims are complex and often difficult to prove. Some actions that look like age discrimination are probably not – for instance, an employment policy that has the “side effect” of adversely affecting workers over forty will usually be upheld by courts. Another example - if an employer makes a decision to lay off its highest paid workers, doing so is not necessarily illegal just because all or most of those workers happen to be over the age of forty.

The age of the person who replaces the older worker is an important piece of the puzzle in age discrimination cases, as are ageist comments and the age of the decision-makers.

If you have questions about age discrimination, call my office for a confidential consultation. 570.824.3088

Race/National Origin Discrimination

State and federal laws protect employees from discrimination because of their race, color, ethnicity and national origin. In order to succeed with a claim, the employee must prove that he or she has been treated differently than other employees – and that the difference is due to his or her race, etc.

The motivation of the employer is often proven through remarks made by the employer, or by hiring, promotion and compensation decisions. In addition, a practice that may appear acceptable on its face may violate the law if it has a negative impact on employees in a protected class.

If you have questions about racial discrimination, call my office for a confidential consultation. 570.824.3088
Gender and Pregnancy Discrimination

State and federal laws forbid employers from discriminating against employees because of their gender, or because of pregnancy. Although they were originally intended to give women a level playing field, gender discrimination laws protect men as well.

These laws do not impose quotas on employers. Employers may still choose among candidates for jobs or promotions based upon the candidate’s qualifications and work history. However, if an equally or better qualified candidate is denied an opportunity because of his or her gender, the employer may have broken the law.

The law requires that men and women have equal opportunities in the workplace and receive equal pay for equal work. An employer may not make employment decisions on the basis of gender, or pregnancy, or real or imagined family responsibilities.

If you have questions about gender or pregnancy discrimination, call my office for a confidential consultation. 570.824.3088

Sexual Harassment

Sexual harassment is a particularly nasty type of gender discrimination. Federal and state laws prohibit sexual harassment in the workplace. The primary difference is that discrimination laws govern the decision-making process of the employer with regard to hiring and promotions. Sexual harassment laws deal with the workplace environment, and may or may not be tied to hiring or promotion practices.

There are two recognized forms of sexual harassment in the workplace, quid pro quo harassment, and “hostile environment” harassment.

Quid Pro Quo Harassment

Quid pro quo harassment is probably what most people first think of when they think about sexual harassment in the workplace. Quid pro quo harassment occurs when an employer demands or requests sexual favors or other behavior from an employer’s prospective employee in return for continued employment, raises, promotions, or other job benefits. Quid pro quo harassment may also occur in the context of a consensual relationship between an employer and an employee, if the employer punishes the employee for ending that relationship.
Hostile Environment Gender Discrimination

Hostile environment gender discrimination occurs when an employer creates or permits a workplace environment that creates a hostile environment for employees because of their gender. Most commonly, the employer does this by making or allowing comments and remarks of a sexual nature, sexual teasing or flirting behaviors, photographs, dirty jokes, gestures, and other actions. The result is the creation of a sexually charged atmosphere in the workplace that makes it impossible for some employees to perform their jobs.

If you have questions about gender discrimination or harassment, call my office for a confidential consultation. 570-824-3088

Sexual Orientation (GLBT) Discrimination

At this time (Winter 2015) there is no federal or Pennsylvania law prohibiting discrimination on the basis of sexual orientation in private (non-governmental) employment. Public employment (employment by the state or federal government) is a little different. In addition, there are a few municipalities in Pennsylvania that have ordinances forbidding sexual orientation discrimination.

However, the Supreme Court recently overturned the Defense of Marriage Act, and the tide appears to be turning in favor of equal rights for GLBT individuals. In addition, discrimination due to sGLBT issues can, in some cases, constitute discrimination on the basis of gender, which is unlawful. It is worth speaking to an attorney about your situation if you have questions about GLBT discrimination.

If you have questions about GLBT discrimination, call my office for a confidential consultation. 570.824.3088

Religious Discrimination

There are state and federal laws prohibiting discrimination on the basis of religion. These issues arise in the context of hiring, firing and promotions. In addition, some religions include practices that may require an employer to make accommodations for employees.

If you have questions about religious discrimination, call my office for a confidential consultation. 570.824.3088

Americans with Disabilities Act

Most employers are subject to the requirements of the Americans with Disabilities Act (“ADA”). The ADA protects employees who have, or are perceived to have, a
disability and who, with or without an accommodation for the disability, can perform the job in question. The definition of what constitutes a disability is very complex and must be answered on a case-by-case basis. The disabilities covered under the ADA may range from physical disabilities to emotional or mental illnesses. In addition, an individual who the employer believes to be disabled qualifies as a disabled individual regardless of whether the person is actually disabled. Temporary impairments are generally not disabilities under the ADA.

The ADA also protects employees who have a relationship or association with a disabled person. These provisions protect people who have family, social or other relationships with disabled persons.

The ADA prohibits employers from asking certain questions or conducting medical examinations before making a job offer to a perspective employee. Once a disabled individual is employed, the ADA requires employers make “reasonable accommodations” for the disability. A reasonable accommodation is a change in the working conditions or environment that would allow the person with the disability to do their job effectively.

Disability discrimination often goes hand-in-hand with an employers’ violations of the FMLA. Both laws can apply at the same time, and can overlap. For example, if a worker needs time off due to a medical condition, that time off could be protected as FMLA leave, and also as a reasonable accommodation under the ADA.

If you have questions about disability discrimination, call my office for a confidential consultation. 570.824.3088

**A Note on “Hostile Environment” Discrimination**

Earlier, I discussed hostile environment discrimination in the context of gender, which is in my experience the most common. However, hostile environment discrimination can occur in the context of other types of discrimination. **A work environment that is hostile to individuals because of their race, age, disability, etc. is unlawful. The reason for the “hostile work environment” is critical.**

Hostile environment discrimination can reach terrible levels of intensity, and can even cross the line into criminal activity⁵. But - not every bad or unpleasant work environment is “hostile” for purposes of the law. For example, I used to work in a factory for a supervisor who was a raging alcoholic. Every Monday he would come in to work hung over, miserable, angry and . . . smelling very bad. He was evidently too busy drinking all weekend to shower or brush his teeth.

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⁵ If you think that someone at work has committed a criminal act against you, you should report it to the employer and the police immediately.
Mondays were almost unbearable – the guy would scream at everybody, tell us we were worthless and threaten to fire us all. Worst of all, he would stand very close to us while he did it.

That was the most “hostile” work environment I have ever suffered through. That boss was “hostile” in every sense of the word and easily one of the most unpleasant people I have ever met. But as bad as it was, it was not a “hostile work environment” for purposes of the law – because the boss directed his abuse at everybody, regardless of race, gender, etc. Unfortunately, there is no law against bosses who stink, literally or figuratively.

Sometimes hostile environment gender discrimination is created by the employer for the specific purpose of forcing an employee or group of employees out of the workplace based upon their membership in some protected class. More frequently, it is a result of a small number of offensive employees combined with a lax or nonexistent disciplinary policy regarding hostile environment rules. While employers are not always responsible for the acts of their employees, employers must address such situations seriously. If they do not, the employer may be liable for perpetuating and encouraging the harassment.

That means that victims of the hostile environment MUST speak up and tell the employer. If the employer does not know what is happening (or can successfully lie about that fact) then the employer will not be held responsible. And when you speak up DO IT IN WRITING!

If you have questions about hostile environment discrimination, call my office for a confidential consultation. 570.824.3088

Wrongful Termination

Pennsylvania courts have recognized that under some circumstances, an employer’s termination of an employee will support a cause of action for “wrongful termination”. “Wrongful termination” occurs when the employer’s action against the employee violates the public policy of the commonwealth. For example, courts have recognized that firing an employee in retaliation for filing a Workers Compensation claim may constitute wrongful termination. I successfully litigated a case alleging a wrongful termination claim where a nurse was fired for reporting another nurse’s license suspension to an employer. These cases are very fact-specific, and not everything that most people would consider “wrongful” will support a legal claim.

If you have questions about wrongful termination, call my office for a confidential consultation. 570.824.3088
Associational Rights

Just as an employer cannot fire you because of your race, religion, disability, etc., and employer may not fire you because you associate with a person of a particular race, religion, disability, etc. Likewise, if you speak up against unlawful discrimination in your workplace and your employer punishes you for it, you may have your own discrimination claim.

What About Free Speech?

There was a pretty famous case a few years ago that combined two of my favorite things - employment law and beer. I may have the players wrong, but the basic idea was this:

A guy (we’ll call him Sam Adams for fun) worked for Anheiser Busch in the local bottling plant. One weekend his boss happened to be in the neighborhood where Mr. Adams lived and stopped to say hello. Sam was on the porch sipping a Coors Light. They talked for a few minutes then the boss went on his way.

As you may know, Anheiser Busch (makers of Budweiser, Bud Light and a bunch of other nasty yellow liquids they call “beer”) and Coors (makers of Coors, Coors Light, and a bunch of other nasty yellow liquids they call “beer”) are competitors in the enormous “yellow, beer-like liquid” market in the United States.\(^6\)

When Monday came, Sam started his shift at the plant and soon got a call to go to the office. The boss said “Sam, you were drinking a Coors on Saturday when I stopped at your house weren’t you?” Sam admitted that he was. The boss said “I will not tolerate disloyalty - you’re fired!”

Sam sued. He argued that he had the right to drink any brand of beer that he chose. The court agreed - but also held that Anheiser Busch had the right to fire Sam for any reason - even a stupid reason.

Most of us do not have a right to “free speech” at work. The Constitution only applies to the government and its agents. If your boss is not a state actor, you have no right to free speech at work.

But if your boss is a state actor - if you work for a school district, local government, etc. - you have more protections, including a right to speak and not get fired - sometimes.

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\(^6\) If I sound like a beer snob - guilty as charged. But there are hundreds of craft brewers making thousands of really great beers and you should try some. Also - both Coors and Anheiser Busch are now foreign owned. Buy American beer.
Other Employment Laws

There are many other employment-related laws that may have an impact on your rights. It is impossible to discuss them all here. If you have questions, call my office. Consultations are always confidential.

If you have questions about your legal rights, call my office for a confidential consultation. 570.824.3088

How to Protect Your Rights

The laws governing relationships between employees and employers are often complex, difficult to understand, and unforgiving if a mistake is made. If you feel that your rights have been violated, the first thing you should do - and you should do it as quickly as possible - is contact an attorney to discuss the matter.

You may have heard the term “statute of limitations”. A statute of limitations is a law stating that lawsuits must be brought within specific amounts of time. The length of time is determined by the subject of the suit. If a plaintiff does not bring a lawsuit within the specified amount of time, he or she loses the right to sue - forever. If you think that you have been the victim of unlawful treatment at work, the clock is ticking – act NOW.

In employment-related cases the plaintiff (the employee or former employee) is often (but not always) required to bring a complaint before the appropriate administrative agencies (usually the Pennsylvania Human Relations Commission (“PHRC”) and/or the Equal Employment Opportunity Commission (“EEOC”) before taking the case to court. Once the agencies have had an opportunity to investigate the case, the plaintiff has the option of taking the case to court. If the plaintiff fails to take the case before the administrative agencies within the required time, he or she will lose the right to sue.

The administrative proceedings that follow a complaint vary widely with the different agencies involved and the type of complaint. In some circumstances the relevant regulations require that the employee start the administrative claim no more than one hundred and eighty days (six months) from the time of the action leading to the complaint. In practice, this means that the real “statute of limitations” for those employment actions is six months- much shorter than that for almost any other kind of lawsuit.
But, keep in mind that the statute of limitations for some employment actions is much longer, up to three years in some cases. Whether you were fired yesterday or two years ago, do not assume that you are out of time.

The first step in protecting your rights is to be aware that you have a very limited of time in which to act. If you think you might have a case, contact a lawyer (or two) NOW.

If you are worried about a deadline – or if you cannot get a lawyer to accept your case - contact the appropriate agencies directly and tell them you want to start a case. You can have a lawyer get involved later in the process, but it is crucial to protect your rights NOW. Contact information for the PHRC and the EEOC is here:

Pennsylvania Human Relations Commission
Harrisburg Regional Office
333 Market Street, 8th Floor
Harrisburg, PA 17126-0333
(717) 787-9780
http://www.phrc.state.pa.us/

Equal Employment Opportunity Commission
Philadelphia Office
801 Market Street, Suite 1300
Philadelphia, PA 19107-3127
Phone: 1-800-669-4000
Fax: 215-440-2606
TTY: 1-800-669-6820
http://www.eeoc.gov/philadelphia/index.html

IMPORTANT: if the EEOC or PHRC tells you it's too late to file, call an employment attorney anyway. I have seen cases where the administrative agency gave bad advice about deadlines. If EEOC or PHRC accepts your case, call an attorney anyway – you still have a limited time to go to court.

If you have questions about the PHRC/EEOC process, call my office for a confidential consultation. 570.824.3088
GOOD NEWS/BAD NEWS ABOUT PHRC/EEOC

THE GOOD NEWS: They are free. No filing fee or costs involved, and if you do not have a lawyer the staff will help you to file your complaint.

THE BAD NEWS: Everything else.

PHRC and EEOC are supposed to enforce some of the laws regarding discrimination in employment. To me, that means they should be chasing employers who break the law like police officers chase criminals. They don’t. Not even close. Both agencies mean well and both agencies have good people working for them. They should be on your side, but they are not.

IF YOU HAVE A CASE AT PHRC/EEOC YOU SHOULD AT LEAST SPEAK TO AN EMPLOYMENT LAWYER. PHRC/EEOC do not do enough for employees. I have heard PHRC/EEOC staff say things that are legally not true - misunderstanding the law and their own authority. Even more importantly, they only deal with SOME of the laws that govern employment. I see a lot of cases in which an employee is disabled and needs an accommodation (ADA) and also needs time off of work (FMLA). PHRC/EEOC will investigate the ADA violation, but they have no authority regarding the FMLA, so they will ignore the issue completely.

For a lot of complicated reasons, PHRC/EEOC investigations tend to heavily favor employers. The investigators do not do nearly as much digging and researching as a good employment lawyer does. Think about what is in your PHRC/EEOC file. On your side – your claims, probably hand-written, without any citation to legal authority and without any documentary evidence. On their side – a legal brief prepared by an experienced employment attorney, copies of Official Policies that say that employer NEVER discriminates, statements from several respected members of management, and documents that they cherry-picked from your personnel file. And YOU have the burden of proving discrimination. It’s not fair.

The statistics are shocking. In 2013 EEOC investigated almost 26,000 charges of disability discrimination under the ADA. They found “reasonable cause to believe that discrimination occurred based upon evidence obtained in investigation” in just 4.5% of those cases - about 1,000 of the 26,000 cases investigated. In age discrimination cases, the percentage of “reasonable cause” findings was 2.4% and in Title VII (race and gender) cases it was 3.4%.
Does that mean that the other 97% of cases at PHRC/EEOC are “frivolous lawsuits?” Absolutely not. Employment law claims are difficult to prove, and many PHRC/EEOC claims amount to “my boss isn’t fair” which usually is not unlawful. But I don’t believe for a minute that only 3% of claims have merit. The numbers are deceiving - mostly because the system is stacked against the employee.

Even worse, when PHRC/EEOC finishes “investigating” a case, it tells people that there is “no probable cause” for a finding of discrimination. Many people give up when they hear this.

DON’T GIVE UP! I have filed dozens and dozens of complaints with PHRC/EEOC for my clients. I have NEVER had either agency find in favor of my client. BUT - in almost every case that I have had before PHRC/EEOC I have eventually reached a good result for my client, usually later - in court, where we can demand documents and question witnesses. The result is usually not everything my client wants, but it is a lot better than what PHRC/EEOC got them. That’s not because I am a genius, it’s because PHRC/EEOC do not do a very good job. Remember: THE PHRC/EEOC DETERMINATION REGARDING YOUR CASE MEANS NOTHING- EXCEPT THAT THE CLOCK IS TICKING AND YOUR TIME TO FILE IN COURT IS CLOSING FAST.

PHRC/EEOC CONFERENCES

Like I said, the PHRC and EEOC should be on your side, but they aren’t. They seem to view themselves as a neutral decision-maker - sort of like a judge. The employer has lawyers, you should too.

If you are scheduled for a settlement conference, a fact finding conference or a mediation, you can bet that the employer will bring their lawyers. You should have an employment lawyer with you as well. If you filed without a lawyer, this is the time to get one.

A lawyer can review your case, help you prepare for the meeting, help you make the right legal arguments, help you value your case, and help make sure that you do not sign a settlement agreement that you will regret. Don’t hire the lawyer that helped your uncle with his real estate closing. Hire an employment rights lawyer – one who understands this area of law and has experience in these kinds of cases.

I can help with PHRC/EEOC conferences. Call my office for a confidential consultation. 570.824.3088
What To Do When Things Get Bad at Work

Get help. Your employer cannot discipline or fire you for contacting a
government agency or a lawyer about your job. If you hesitate, you may lose
your rights.

Don’t give them an excuse for firing you. If you think that your
employer is targeting you or considering terminating your employment, do not
give them a legitimate reason to fire you. Be especially careful about your work,
your attendance, and your demeanor when you interact with your supervisors
and your fellow employees.

Document everything. If you need an accommodation for a disability or
to use some FLMA time, make the request in writing and keep a copy. If you
believe that there is something wrong with the way your employer is paying you,
inform them of the problem in writing and keep a copy. If you are being
subjected to harassment, keep a diary and write down as much as you can
remember about every incident as soon it happens – and report the harassment
to supervisors in writing. Remember – in writing.

Do it now. Names, dates, times, and other little things can become
enormously important in litigation – and you may have to testify about them years
later. Write it all down now.

Keep a diary - outside of work. Do not use your work email or your work
computer to write or say anything that you would not want published on the front
page of the company newsletter. You have almost no right to privacy while
you are at work. The same goes for looking for another job. Like it or not,
when you are at work your time is your employer’s time. If you polish your
resume or surf Monster.com for a new job while you are at work, you will get
fired, and you will deserve it – and you might let your employer get away with
having broken the law.

Don’t talk to co-workers about it. Your co-workers may be wonderful,
supportive people when you are venting about how what a heartless loser the
boss is. But - and I know this is hard to swallow - many of your co-workers will
betray you – or at least “forget” a lot - if they think their job is at stake. Don’t give
them the chance.
When You Should Quit Your Job

This is not about the law. It is a public service announcement from someone who has been where you are.

I think it is safe to say that if you are reading this handbook, you have been thinking about quitting your job. That is always a big decision to make. Our jobs are so important to us that we sometimes forget about everything else – our friends, our families, our health, etc.

In life, there are battles you should fight and battles you should walk away from. I know what it is like to need that paycheck. But if you have the option, sometimes the best thing to do is quit your job and walk away with your sanity and health intact.

Please understand that if you quit, you probably will not be eligible for Unemployment Compensation, and if you have been the victim of unlawful practices, quitting may make it harder to prove your case. You might have to explain the gap in your resume, and some future employers might not like the fact that you quit. On the other hand, it is usually easier to explain quitting than it is to explain having been fired.

You should quit a job that is hurting you. I once had a job that I loved, really loved – until some new bosses started changing the rules and ruining everything. I tried to fight, but eventually started getting physically ill because of the stress. Most things worth doing - including work - are stressful, but too much stress kills people. I quit. It was difficult at the time. Looking back, it was absolutely the right decision.

You should quit a job that is hurting your family. I know people who literally work 18 hours a day, every day, including weekends and holidays. People who are so attached to their cell phones, laptops and tablets that you can email or call them about business at midnight on Saturday and not only will they be there – and they won’t even be mad at you for bothering them. They usually make a lot of money. They are usually well respected in their fields. But their kids are strangers. Their spouses are lonely. And they are missing the best things in this all-too-brief life. Remember - no one ever lay on his or her deathbed thinking “I wish I’d worked more weekends.”

7 In case you’re wondering - no, I do not have weekend appointments, but I am usually available until 6pm a couple of days a week.
You should quit a job that has become dangerous. Some heroic people choose jobs that are dangerous – police officers, fire fighters, soldiers, etc. I don’t mean to suggest that they should quit. Unfortunately, other kinds of workplaces sometimes become dangerous because people lose control. If there is a threat of violence in your workplace, or if you feel inclined to introduce violence into your workplace, you need to get help immediately – and it may be time to quit.

What to do next . . .

This handbook tells only part of the story – employment law is very complicated, and it changes in small ways every time a judge makes a decision. Countless other employment-related legal issues exist, but I would need several books to discuss them all. And - just in case you missed it the first ten times - this handbook is not legal advice.

Call (570) 824-3088 to talk to me about your case. There is no charge for the telephone consultation, and no obligation.

I accept most employment cases on a contingent fee basis, which means that my clients do not have to pay my fees out of their pockets.

There is a lot more information about employment law on my website: www.georgebarronlaw.com. If you liked this handbook you should sign up for my free email newsletter. The link and instructions are at www.georgebarronlaw.com.

If you or your loved ones have a question about some other area of law, give me a call. I do not practice in all areas of law – I limit my practice to employment law, select personal injury and accident cases and a couple of other areas. If you have questions about other legal matters I will be glad to refer you to a reputable, experienced local attorney.

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