

# When Do I Need an Employment Lawyer?

*by Lisa Guerin*

**Sometimes it makes sense to hire an attorney to handle employment disputes.**

Even the most conscientious employer occasionally needs help from a lawyer. Although you can handle many employment matters on your own, some issues are particularly tricky and will require some legal expertise.

Employment law can change rapidly. Courts and government agencies issue new opinions interpreting these laws every day, sometimes completely overturning what everyone thought the law meant. When you also factor in that lawsuits brought by former employees can end in huge damage awards against the employer, it's easy to see why you should seek legal advice when you get in over your head.

On the other hand, you don't need to talk to a lawyer every time you evaluate, discipline, or even fire a worker. After all, lawyers don't come cheap -- if you run to a lawyer every time you have to make an employment-related decision, you will quickly go broke.

The trick is to figure out which situations require some expert help and which you can handle on your own. Here are a few tasks and issues that you should consider bringing to a lawyer.

## **Advice on Employment Decisions**

A lawyer can help you make difficult decisions about your employees.

**Firing.** Particularly if you are worried that an employee might sue, you should consider getting legal advice before firing an employee for misconduct, performance problems, or other bad behavior. A lawyer can tell you not only whether terminating the worker will be legal, but also what steps you can take to minimize the risk of a lawsuit.

Here are a few situations when you should consider asking a lawyer to review your decision to fire:

- The worker has a written or oral employment contract that limits your right to fire (for more on employment contracts, see [Written Employment Contracts: Pros and Cons](#)).
- The employee may believe that he or she has an implied employment contract limiting your right to fire.
- The employee has benefits, stock options, or retirement money that are due to vest shortly.
- The employee recently filed a complaint or claim with a government agency, or complained to you of illegal or unethical activity in the workplace.
- The employee recently filed a complaint of discrimination or harassment.

- Firing the employee would dramatically change your workplace demographics.
- The employee recently revealed that he or she is in a protected class -- for example, is pregnant, has a disability, or practices a particular religion.
- You are concerned about the worker's potential for violence, vandalism, or sabotage.
- The worker has access to your company's high-level trade secrets or competitive information.
- You are firing the worker for excessive absences, if you are concerned that the absences may be covered by the Family and Medical Leave Act or the Americans with Disabilities Act.
- The employee denies committing the acts for which you are firing him or her, even after an investigation.
- The employee has hired a lawyer to represent him or her in dealing with you.

**Other decisions.** You may also wish to have a lawyer review any employment decision that will affect a large number of employees. For example, if you are planning to lay off some workers, change your pension plan, or discontinue an employee benefit, it would be smart to run your plans by a lawyer before you take action. The lawyer can tell you about any potential legal pitfalls you might be facing -- and give you advice on avoiding them.

## **Representation in Legal or Administrative Proceedings**

**Lawsuits.** If a current or former employee sues you, speak to a lawyer right away. Employment lawsuits can be very complex. You have to take certain actions immediately to make sure that your rights are protected -- and to preserve evidence that might be used in court. The time limits for taking action are very short -- many courts require you to file a formal, legal response to a lawsuit within just a few weeks. As soon as you receive notice of a lawsuit against you, begin looking for a lawyer.

**Claims and complaints.** Sometimes, a current or former employee initiates some kind of adversarial process short of a lawsuit. For example, an employee might file an administrative charge of discrimination, retaliation, or harassment with the U.S. Equal Employment Opportunity Commission or a similar state agency. Or, a former employee might appeal the denial of unemployment benefits, which in many states allows the employee to request a hearing.

In these situations, you should at least consult a lawyer, if not hire one. Although some employers can and do handle these administrative matters on their own, most could probably benefit from some legal advice on the strength of the employee's claim, how to prepare a response to the charge, how to handle an agency investigation, and how to present evidence at the hearing.

It might be worth hiring a lawyer to represent you if any of the following occur:

- The employee raises serious claims that could result in a large award of damages against you.

- Other employees or former employees have made similar allegations, either to the agency or within the workplace.
- The employee has indicated that he or she intends to file a lawsuit (in this situation, the employee may just be using the administrative proceeding to gather evidence to use against you in court).
- The employee has hired a lawyer.

## Reviewing Documents

**Contracts and agreements.** A lawyer can quickly review and troubleshoot employment-related agreements you routinely use with your workers, such as employment contracts, severance agreements, or releases. A lawyer can check your contracts to make sure that they contain all the necessary legal terms and will be enforced by a court. If you have included any language that might cause problems later, or if you have gone beyond what the law requires of you, a lawyer can draw these issues to your attention. And a lawyer can give you advice about when to use these contracts -- for example, you may not want to give severance to every departing employee or enter into an employment contract with every new worker.

**Policies and handbooks.** You can also ask a lawyer to give your employee handbook or personnel policies a thorough legal review. First and foremost, a lawyer can make sure that your policies don't violate laws regarding overtime pay, family leave, final paychecks, or occupational safety and health, to name a few. A lawyer can also check for language that might create unintended obligations towards your employees. And a lawyer might advise you to consider additional policies. (For help creating an employee handbook -- including sample language you can modify to fit your workplace -- see *Create Your Own Employee Handbook*, by attorneys Lisa Guerin and Amy DelPo (Nolo).

## Next Steps

If you have decided that it might be wise to speak to a lawyer, your next step is to find a good one. For tips and information on finding an attorney, read *How to Find an Excellent Lawyer*. For detailed advice on every stage of a civil lawsuit, from finding a lawyer to filing an appeal, see *The Lawsuit Survival Guide*, by attorney Joseph L. Matthews (Nolo).