

CALIFORNIA EMPLOYMENT LAW

An Introduction for Employees

adams | nye | trapani | becht | LLP

ATTORNEYS AT LAW



www.AdamsNyeEmployment.com

IMPORTANT NOTE

This booklet is a general introduction to California employment law. If, either before or after reading this material, you have any reason to believe you may have an employment-related case, **you should speak to a lawyer as soon as possible.**

All claims are subject to time limits that can vary and are complex. **Therefore, don't delay. Act now.**

The material in this booklet is not intended to be relied upon, or the basis for decisions about individual legal issues. It is general, and introductory. The specific facts of each situation are unique, and require an attorney to properly evaluate. In addition, by providing this booklet, we do not intend to create, or imply, any kind of attorney-client relationship between a reader and the firm of Adams | Nye | Trapani | Becht LLP. Again, if you think you might have a legal issue

.
.
.

consult an attorney immediately.

“Nonetheless, you remain a rare and unique individual,
no matter how the world of work treats you.
Your worth is not defined simply by your work,
but by your spirit, your heart,
and your compassion toward others.”

– Richard Bolles, *What Color Is Your Parachute?*

INTRODUCTION

Losing your job – whether because of downsizing, layoffs, or just plain being fired – is one of the most traumatic, difficult experiences life presents. Our identities, our self-worth, and much of our day-to-day lives are tied up in what we do for a living. When that changes, the emotional impact can be devastating. In the midst of this, it's often difficult to think clearly about what has happened to you, and whether it may even be illegal. Yet, it's important to find out.

Although a job is not a right, California has very clear, specific and enforceable laws against losing your job for illegal reasons, being harassed at work or discriminated against. If an employer violates these laws there are a host of legal remedies available to the employee.

Here at Adams Nye, we've been representing plaintiffs in employment lawsuits for years. We're experts in employment law, and have won verdicts against some of the biggest companies in California. For example, our partners David Becht and Barbara Adams obtained a racial discrimination verdict for \$1,842,943 against Sybase Corporation in Alameda County Superior Court. Our partner, Bruce Nye obtained a \$2.51 million verdict in *Passeri v. Pacific Life Insurance Company*, a sexual harassment and constructive termination case tried in San Francisco Superior Court.

This booklet is an introduction to the basics of California employment law. *It is not intended to be a substitute for the advice of a practicing attorney.* We are not giving any kind of legal advice here. Rather, this booklet covers the highlights of the law governing the treatment of employees in California, and may give you some guidance as to how the law might view your situation, and whether you may have a case. Again, if you even suspect you have a case, please consult an attorney – we'd be delighted to talk to you here at Adams Nye. But first, read this booklet. We cannot get your job back for you, but in some circumstances, we can help you get the next best thing – justice, and peace of mind.

MAINTAINING YOUR SANITY AND PRESERVING YOUR RIGHTS AS AN EMPLOYEE UNDER CALIFORNIA LAW

Lawsuits can be a harrowing experience. Dealing with an ignorant or antagonistic employer or supervisor can drain your emotional energy, productivity and feelings of self-worth – sometimes without you even realizing it. Sadly, lawsuits can often result in a person being retraumatized by hearing about what happened over and over again. Suing someone is never pleasant or easy.

On the other hand, it can also be very gratifying to have a determined lawyer at your side who knows the law backwards and forwards and is willing to stand up for you on paper, on the phone, in court, in discovery, and ultimately, at trial. We at Adams Nye strive to make litigation as short and as painless as possible so that you can get on with your life. In the end, employment cases are about two things: getting you your money and restoring the respect due to you on the job.

What follows is an introduction to the nuts and bolts of an employment lawsuit, including the types of remedies (e.g., money, injunctions, various types of damages, etc.) available to you. Look it over and contact us if you think we may be able to help.

WHAT IS A JOB? LABOR OF LOVE VS. BROKEN-DOWN SWEATSHOP

First Things First: Are You An “At-Will” Employee?

In California, most employment relationships are “at will.” At will employment means that your employer can terminate the employment relationship *for any reason, with or without cause*. This means that even though you may be good at your job and have never been disciplined, your boss can still fire you at any time unless there is a *contract* saying otherwise or a *public policy exception*.

The public policy exception is a legalistic term for something the California courts or legislature have decided is wrong. Typically, it’s wrong because it’s done with an unlawful motive. It isn’t right, for example, to be fired because of your race, sex, sexual orientation, religion, disability, marital status, pregnancy, or other specified categories of things that you generally cannot change about yourself. Discrimination for these reasons is illegal, and you can sue if your employer terminates, harasses or discriminates against you for them.

Employees often think they can sue the boss if he or she doesn’t like them, or gives them a hard time at work. That simply isn’t true. There has to be an unlawful reason behind the boss’s conduct, such as basing it on the prohibited categories mentioned above, a failure to pay you in a timely manner, or some breach of the terms of a specific employment contract. It’s perfectly legal for your boss to dislike you, and to fire you, as long as it isn’t done for illegal reasons.

The rule for at-will employees to remember is this: *as an at-will employee, employers can generally treat you any way they like and fire you at any time, unless the firing or other adverse action violates public policy (either because of a protected activity that you engaged in on the job or because you are a member of a protected class of persons).* If neither of these apply, you’re an at-will employee and left to the whims of your employer.



Was There An Employment Contract?

When you're evaluating whether you have a case, one of the first questions to ask yourself is whether there was a *written* contract between you and your employer. If there is an employment contract that has a specified term (e.g., number of years, etc.) or certain conditions that are to be met, and that contract is breached, (i.e., the person is fired before the specified term), or the conditions are not met, this may give rise to a claim for wrongful termination.

Public Policy Or General Dislike: Can You Sue Simply Because Your Boss Or Supervisor Is A Jerk?

Regardless of whether you signed a contract, however, you should carefully consider whether your boss or supervisor acted the way they did because they relied on some stereotype or belief about a group of people that you happen to fall into.

Or, was it because they just didn't like you? The distinction is important.

FOR EXAMPLE :

Your sadistic boss tells you to "hurry up" or "shut up" or "get me some damn coffee, would you?" in a *condescending tone of voice*. Your boss is rude all the time and acts this way with everyone – men and women, blacks and whites, gays and straights. He just always seems to enjoy abusing people and you're sick of it.

What's The Verdict?

Without more, you probably don't have a case against him.

FOR EXAMPLE :

You are Asian-American and your boss tells you he expects more out of you because *Asians have a reputation of being good at arithmetic*, more diligent, and harder-working, so you'd better hop to it a little faster. You won't get a raise or a promotion unless your productivity is at least twice that of everyone else, none of whom are Asian-American.

What's The Verdict?

You may have a case for racial harassment and/or discrimination. (This set of facts occurred in a California case.)

Do you see the difference? The boss's behavior in the first example was not directly connected with any unlawful motivation like race, sex, religion, etc. He was a jerk to everyone, including you, and that is perfectly legal. *Unfortunately, there's no legal protection from an employer who's simply a jerk.* You can only sue for conduct that violates the law, and so far, being an awful person is not illegal.

THE BASIS FOR YOUR CASE: WAS IT A PROTECTED ACTIVITY OR ARE YOU A MEMBER OF A PROTECTED CLASS?

There are essentially two types of employment cases handled by our offices: those dealing with protected activities and those dealing with protected classes.

Protected Activities: What You Can And Can't Do At Work

Although employment in California is "at will" (meaning that the employer may fire the employee for any reason, or no reason), this can be changed by other circumstances. For example, an employer may not fire an employee because the employee has engaged in *protected activities* on the job. There are certain things you are legally allowed to do at work, and your employer is required not to interfere or retaliate. The following are some protected activities that have been the topic of litigation by Adams Nye.

Family Medical Leave/California Family Rights:

Full-time workers who take leave from work because they have a serious medical condition, or must care for a parent or child that has such a condition, are typically protected by the law.

Labor Code 98.6 (Punished For Lawful Conduct While Off Work):

For loss of wages as the result of a failure to hire, demotion, suspension, or discharge from employment because of engaging in lawful conduct occurring during nonworking hours away from the employer's premises. In other words, if what you do on your own time is legal and constitutionally protected, it's illegal for it to affect how you're treated at work.

F O R E X A M P L E :

You take the attitude of "*work hard, play hard,*" which means that you put in long hours to get your job done and you excel at it. After work, you apply the same skills and effort to a group advocating gay rights. As you become increasingly known for your efforts on behalf of gay rights, your boss calls you into her office to explain that she is willing to keep you on staff, but only so long as you keep your sexual orientation quiet. She demands that you resign from the advocacy group. You refuse, and are fired.

What's The Verdict?

Your termination violates Labor Code 98.6.

Retaliation (Punished For Asserting Your Rights):

Government Code Section 12940(h) prohibits any employer from retaliating against an employee for opposing discrimination or because an employee has filed a complaint of discrimination or assisted another employee in complaining about discrimination.

F O R E X A M P L E :

You hear a manager telling a racist joke, and you report it to Human Resources. Although your performance reviews have all been outstanding, the manager fires you the next day, "because it just isn't working out."

What's The Verdict?

This looks like retaliation, and you may have a claim.

Whistleblowing:

Under Labor Code Section 1102.5, an employer may not terminate an employee from disclosing violations of state or federal laws or regulations to a governmental agency. In addition, an employer cannot terminate you or otherwise retaliate against you for bringing illegal activities to his or her attention. It is not necessary for you to be correct in your belief that violations of the law have occurred so long as you have a reasonable belief. Finally, it is not necessary for you to cite specific laws, or to vehemently protest; all that is necessary for protection is that you raised the issue of a potential illegality with your employer.

F O R E X A M P L E :

You're a corporate executive at a California company which is doing well. You notice that every member of the board of directors bought large amounts of stock in the company just before a rise in stock value, and made a lot of money. You suspect this is insider trading, and suggest to the President of the company that he should investigate, because insider trading is illegal. He tells you to mind your own business, and then, in a matter of weeks, you are dismissed for a small, inconsequential mistake.

What's The Verdict?

You may have a claim against your employer for whistleblowing.

ERISA:

Employees have the right to complain about benefit plans without suffering retaliation.

Labor Code 232 and 232.5:

Employees also have the right to disclose or complain about their salary or the company's working conditions. If an employer retaliates against you for making such complaints or for telling co-workers the amount you are making, you may have a case for wrongful termination.

Breast-feeding:

Did you know that an employer must provide a place for lactation (the expression of milk for a baby by mothers) under Labor Code Section 1030?

**Pregnancy And Childbearing Disability Leave:**

Female employees are entitled to up to four months of leave for pregnancy or child-bearing related disabilities under Government Code Section 12945(a). This is different from leave required by the California Family Rights Act and the Federal Family and Medical Leave Act mentioned above.



Protected Classes And Discrimination: You Deserve Equal Working Conditions

Now that we've covered protected activities, you should also know that if you are punished for being a member of a certain class of people, you may have a claim. Even if there was no contract, if you think that your employer has discriminated against you or harassed you for a specific reason, such as your race, sex, sexual orientation or religion, then you may have a case. But, you should realize that discrimination and harassment are different legal concepts.

Discrimination comes in a lot of forms. In a nutshell, it's the denial of employment, termination and/or alteration of the terms and conditions of employment (like wages, hours, bonuses, job assignments) because of a "protected classification". "Protected class" means a personal attribute you can't change, and that has nothing to do with your ability to do your job. Some of the most common ones are: race, age, sex, national origin, religious affiliation, marital status, disability, pregnancy, sexual orientation, transgenderism, and, in San Francisco, height and/or weight.

FOR EXAMPLE:

You are Muslim and have been pretty open about it at work. Suddenly, your workload gets extremely heavy, your shift schedule becomes erratic, and your supervisors refer to you as "Malik" or "Mustafa," neither of which are your name. Your car is keyed and *someone writes "Terrorist" on your windshield with lipstick*. You ask for a day off to fast for Ramadan and your boss tells you that he doesn't respect or recognize that holiday and that maybe you should just *"Go back to where you came from or convert to Christianity like the rest of us."* Several co-workers witness this. You have several degrees, glowing references, and an impeccable work record, but you are denied a promotion that goes to a shiftless high-school dropout Christian instead. Only the two of you applied for that position.

What's The Verdict?

You may have a case for discrimination based on religion.

FOR EXAMPLE:

You are over forty and apply for a job in retail sales at a local gym that caters to many college students in the Bay Area. When you arrive for your interview, the manager takes one look at you and says, *"You know, are you sure that you would be able to keep up with this crowd? I was expecting someone a lot younger."* You reassure him that you're able to handle yourself. The interview is short, and he asks you when you were born, whether you are on any medications, and tells you point-blank that you are the oldest person to apply for the job and will probably be considered last because of that.

What's The Verdict?

You may have a case for discrimination based on age.

Protected Classes And Harassment: Was It Severe Or Pervasive?

Harassment is unwanted unlawful conduct because of the employee's protected class or protected activity. When a supervisor, manager or employer demands something (such as sex) in return for a raise, continued employment, or promotion, this is called *quid pro quo* sexual harassment. It's a version of "You give me something, and, I'll let you keep your job" – *quid pro quo* is Latin for, literally, "thing for thing." Other forms of harassment include, but are not limited to, unwanted touching, jokes, exposure to images, statements, and/or other behavior directed at an employee because of their sex, race, disability, age, gender orientation, disability, or some other protected status.

If the harassing conduct reaches a level where it is considered severe or pervasive (meaning it is either so severe or so common that it affects someone's ability to do their job), this is called a *hostile environment*. Cases like this often involve joking (even if the "jokes" aren't funny), photographs of naked men or women, internet pornography, racial slurs, etc.

A company is liable for harassment by a supervisor (or by a non-supervisor if the company knows or should know about it.) Also, under California law an employer has an obligation to take all steps necessary to *prevent* harassment. This is what the Fair Employment and Housing Act (FEHA) refers to as adequate prevention and corrective action. Usually, this is in the form of an anti-discrimination and harassment policy and/or training. These are often contained in a company handbook or orientation packet. If an employer does not have a policy or program designed to prevent harassment, it may be held liable for failing to take steps to prevent harassment from occurring.

Retaliation: You've Got To Stand Up For Yourself!

Quite apart from harassment and discrimination, you can sue your employer for retaliating against you after you complained about something you believed to be unlawful.

F O R E X A M P L E :

You are a black (or a Latino) person and a white supervisor at work always calls you "ghetto" because you wear K-Swiss shoes, gold jewelry, and velour jumpsuits. You know you look good and can't understand why your white co-worker thinks this is so funny. Although you say nothing, it is obvious from your henceforth solitary behavior and mood that you are not satisfied with the work environment. Your demeanor strongly suggests that you are personally offended by the co-worker. Even better, you complain to management in writing or in an email, telling them that you think something racial is going on with your white supervisor and that the joke just isn't funny to you. You're fired for something totally minor shortly thereafter.

What's The Verdict?

You may have a case for retaliation. (This is based on a California case.)

Many people in the Bay Area might say, "Well, being called 'ghetto' isn't so bad." Maybe not. But under the FEHA, the thing you complain about does not have to rise to the level of harassment-- it doesn't have to be severe or pervasive -- for you to have a solid retaliation case! You can even be wrong about whether or not the thing you complained about actually happened. You just have to have a reasonable, good faith belief that it was unlawful. But if you are retaliated against (e.g., fired, treated poorly, demoted, transferred, cut in pay, etc.) because you complained, the law steps in to protect you.

OTHER BASES FOR YOUR CASE: WAGE & HOUR VIOLATIONS, OVERTIME, CONSTRUCTIVE DISCHARGE AND SEVERANCE AGREEMENTS

Wage and Hour Protections: You'd Better Give Me What You Owe Me!

An employer in California has to pay your wages in a timely fashion. There must be regular pay periods and *paychecks cannot bounce*. Generally, employers must pay employees at least the federal minimum wage. If you are terminated, or you quit, an employer must pay you your wages and unused vacation pay on your last day of work and under no circumstances more than 72 hours thereafter. An employer may not engage in “self-help” - remedies like deducting monies they believe they are owed from a final paycheck. Employees denied these rights may be entitled to compensation for all hours worked for which they were not paid, plus penalties, interest and attorneys’ fees.

Overtime: Are You Exempt From Receiving It?

There are two types of employees in California: *exempt* and *non-exempt* employees. The term “salaried” has no bearing on these definitions and is frequently misused. What matters is not whether you are paid a salary or an hourly wage, but whether your job is classified as “exempt” or “non exempt”.

Generally, an *exempt employee* is someone with a special skill or license such as a lawyer, doctor, CPA, engineer, and so on. Exempt employees are usually relatively well paid, and work with limited supervision. Some assistants that assist a business owner and many senior executives can be exempt.

A *nonexempt employee* is one who is generally lower-skilled and/or who handles non-management functions and is involved in general production activities. There are many intricate determinations that are required to analyze whether someone is exempt or not but, generally, rank-and-file employees are nonexempt, and management employees and professionals are more likely to be exempt.

Exempt employees do not receive overtime compensation and other benefits provided to nonexempt employees. Nonexempt employees are entitled to compensation for overtime hours and extra compensation for things like missed lunches when the employer has reason to know that this time is being used for legitimate work activities.

Employees have an obligation to be honest with their employers about their hours worked. They cannot hide the fact that they are working overtime from an employer and later sue, claiming that they have been denied their rights.

It is also illegal for an employer to retaliate against a nonexempt employee for demanding overtime pay.

Finally, an employer cannot condition final payment of wages owed on the signing of a document relinquishing the employee’s rights to sue the employer.



Constructive Discharge: Can You Still Sue If It Gets So Bad That You Just Had To Quit?

Another form of termination is called a *constructive termination*. This is when the employee is not fired, but quits because the conditions are so horrible that he or she has been effectively forced out or left no reasonable option to quit. The law states that if conditions or treatment become so severe that a reasonable person could not consider continuing to work in the environment any further, then an employee may quit and will be considered to have been fired. However, employees can't merely quit and sue after a simple incident of minor harassment or because

some condition is less than perfect. Employees are expected to utilize any available reporting mechanism to attempt to resolve their employment issues before quitting.

FOR EXAMPLE:

You are a good-looking straight guy who works in a coffeehouse in the Castro. All your co-workers are openly gay men and you don't have a problem with it. However, your supervisor has taken a liking to you, and just won't leave you alone. You let him know in no uncertain terms that you're not interested. He won't take "no" for an answer and continues staring at you, blowing you kisses, winking at you, touching you, calling you "Sweetie," "Baby," and "Muffin," and *patting you on your bottom as you walk by him*. You complain to the manager, but he does nothing because, as he puts it, "*That's just the way it is down here, honey.*" After months of this treatment, and several emails to the manager documenting your complaints, you're on the verge of a nervous breakdown. You just can't take it anymore, so you quit.

What's the Verdict?

You have probably been constructively discharged and may have a case for sexual harassment. It is important to remember that a constructive termination only changes a resignation into a firing. Just as terminations must be based on an illegal reason before the employee can sue, an employee who was forced to quit must also show that the constructive termination was based on an illegal motivation. In other words, the illegal motivation should be based on a protected activity (see pg. 4) or protected class (see pg. 6).

What About Severance Agreements?

A *severance agreement* is a contract between the employer and an employee signed in connection with the employee's termination. The employer promises to give the employee certain benefits. These may include money (such as a lump sum payment, salary continuation or payment of continued healthcare (COBRA) premiums), outplacement services and a good letter of reference. In exchange, the employee gives the employer a release of any legal claims the employee may have, including claims for disputed wages or bonuses, wrongful discharge and discrimination.

A severance agreement is only enforceable if the employer, as part of the agreement, gives the employee more than what he/she is already due. It is not sufficient, for example, for an employer to seek a release from an employee in exchange for wages, salaries, commissions, bonuses and vacation pay that the employee has already earned or accrued. Or, to put it another way, an employer can't make a binding contract for something he already owes the employee anyway.

There simply is no "typical" severance. A number of factors affect what the employee is offered. These include employer size, industry, employer's economic health, employer's past practices and region of the country where the employer is located. There are a number of conventions as to how much severance is appropriate. None of them necessarily means anything. Every case is unique.

However, almost all severance agreements require the employee to give up any potential legal actions in exchange for the severance benefits. You should carefully weigh the value of the lawsuit you are giving up before signing any severance agreement.

YOU THINK YOU'VE GOT A CASE. NOW WHAT?

There are a number of resources you can turn to for help in pursuing a case. If you want to file a claim under the FEHA, you'll have to fill out and submit a one-page form describing exactly what happened and naming everyone who might have been involved to the *Department of Fair Employment and Housing (DFEH)* at the proper regional office. After you receive a "right-to-sue" letter from the DFEH, you'll have a year in which to sue. You can also choose to fill out a similar form with the Equal Employment Opportunity Commission (EEOC). They will cross-file with the DFEH and send you a "right-to-sue" letter as well. You only have 90 days to sue after you receive a "right-to-sue" letter from the EEOC. Do not wait before taking action. If your claim is filed with the EEOC more than 300 days after you were fired (or more than a year for the DFEH), you may have lost your case before it begins.

If you choose to hire an attorney, he or she may take your case on a "contingency" basis. This means that you'll only have to pay your lawyer if you win the case. The money will come out of your verdict or settlement. In civil cases, the person who sues is called the *plaintiff*, and the person being sued is called the *defendant*. In employment cases, the employee is usually the plaintiff and the employer is the defendant.

MAKING A CASE: HOW LAWYERS PROVE WHAT HAPPENED TO YOU

The First Hurdle: Establishing A *Prima Facie* Case.

In order to bring and prove a case in civil court, you must present what is called a *prima facie* case. *Prima facie* is a Latin term meaning “at first sight”, which makes sense, because a *prima facie* case is one that claims the necessary things happened to you to support a lawsuit. To use a humorous example, if you claim your employer wore ugly ties, and that made it impossible for you to do your work, you probably haven’t claimed facts sufficient for a lawsuit to go forward. You have to make claims that, if proven, would justify a suit.

A plaintiff can establish a *prima facie* case of race discrimination by establishing that (1) he or she belongs to a racial group; (2) he or she was qualified for the job in question; (3) he or she suffered an adverse employment action by the employer (e.g. discharged, rejected for a position, demotion, etc.); and (4) there are some other indications of discrimination (e.g. replaced by someone outside his or her racial group, position remained open after rejection, etc.) The example above shows how race must fit into the *prima facie* equation. However, any of the protected categories can be substituted in as well.

FOR EXAMPLE :

If you are suing for discrimination on the basis of a national origin, you must show that:



You are someone with a foreign national origin, (for example, you know that *your family originally came to this country in the 1940s from Mexico* so that is your national origin), and,

- you applied for and didn’t get a job despite being qualified, and
- someone else who was not of your national origin (i.e., not originally from Mexico) got the job.

You can usually demonstrate a *prima facie* case rather easily. Having shown these facts, you have passed the threshold step to bringing a viable case. The point to remember here, as mentioned above, is that you must show there is some discriminatory or unlawful basis for the employer’s actions. They can hire, fire and even harass anyone they please as long as it is not on the basis of race, sex, sexual orientation, religion, national origin, marital status, disability, etc. or on the basis of some protected activity.

After the plaintiff has established a *prima facie* case, the burden shifts to the employer to provide a legitimate, non-discriminatory reason for the plaintiff’s rejection. If the employer does this, the plaintiff then has the opportunity to present evidence showing that the employer’s stated reason for the rejection was merely pretextual (i.e., a sham or a coverup). Most of the time and effort spent in employment cases deals with the issue of whether the employer’s claimed reasons for termination were pretextual.



The Burden In A Civil Case: Preponderance Of The Evidence, Or Chances Are, You're Probably Right!

To win a case, the plaintiff must meet a certain level or burden of proof. In a civil case this is generally called the *preponderance of the evidence*. It means that the person seeking to prove a legal point must show, using evidence acceptable to the court ("admissible" evidence), that it is more likely than not that the law has been broken and/or that a duty was breached.

Basically, if your lawyers can show that it is 51% likely you were treated illegally on the job and your old employer can only show by 49% that they probably didn't do anything wrong, then you win on that point. Why? Because odds are that you are more likely than not correct based on the weight of your evidence.

Discovery: Gathering Facts That Will Prove What Happened To You

Before ever getting to trial in a lawsuit, both parties engage in what's called "discovery". This is basically the exchange of information before the trial, so that each side has the information it needs to try the case. During discovery, each party requests relevant information and documents from the other side in an attempt to "discover" pertinent facts. Discovery devices generally include depositions, interrogatories, requests for admissions, document production requests and requests for inspection. (See pg. 13 for details regarding these discovery devices.)

Here are some informal and formal examples of different discovery procedures:

Information You Should Retain:

A lot of discovery is about documents. Save yours. This includes pay stubs, time schedules, punch-in/out cards, disciplinary records, notes, your entire personnel file, and tax returns. Anything having anything to do with your work is fair game for discovery, as are emails from supervisors and managers, and your termination letter.

Depositions:

A long interview during which opposing attorneys have the opportunity to ask you questions about what happened and gather as many facts as they can. A court reporter takes down everything you say and you must state the truth under oath. Many times the deposition is video taped.

Requests For Admissions:

A request to a party to admit certain facts. One party sends the other a request for admission so that basic issues the parties agree on can be resolved and need not be proven at trial.

Interrogatories:

A party provides written answers to written questions under oath. The answers often can be used as evidence in the trial.



Production of Documents:

Parties can request that the other side produce documents or make them available for photocopying. Again, this is another opportunity for attorneys on both sides to gather factual information.

Independent Medical Examination:

A request to a party that he be examined by a doctor if his health (including mental health) is at issue.

TRIAL V. SETTLEMENT

Despite the edge-of-your-seat portrayals of modern-day courtroom dramas, going to trial can be a risky move which may be unnecessary. Much to the disbelief of most non-lawyers, and unlike on television, fewer than 5% of civil cases go to trial at all these days. Given all this, the best approach is to be as prepared as possible for a trial, while aggressively pursuing a good settlement offer. At Adams Nye, we urge our clients to consider all offers carefully while at the same time we gather evidence and prepare for trial with painstaking detail. If we need to go to trial, we will, and we'll do our best to win. But if we obtain a good settlement offer, we'll recommend that our clients take it, and avoid the time and expense of a trial. In the end, however, the decision whether to settle or proceed to trial is the client's. Your lawyer can advise you about whether the settlement offer is reasonable, and the risks of losing the case. But you decide whether or not to accept the settlement.



WHAT REMEDIES ARE AVAILABLE?

Regardless of whether you choose to push the case all the way through to trial or not, any remedy you receive will be based on your damages, which come in four varieties: special, general, punitive, and attorneys' fees.

Special Damages = Pay Me Because I Lost Money!

These are out-of-pocket losses including the following: medical expenses; wage loss/loss of income/loss of earning capacity; property damage; household help; and other expenses caused by the wrongful conduct. These damages are the easiest to calculate because you can obtain bills, receipts and estimates. Often, expert witnesses are used to calculate wage losses and future losses.

General Damages = Pay Me Because This Really Put An Emotional Strain On Me!

These include pain and suffering, humiliation, mental anguish, and emotional distress. These damages are more difficult to calculate, and may be more than economic damages. General damages are sometimes called non-economic damages because they do not represent out-of-pocket losses. Instead, they're a form of compensation for the plaintiff's suffering. There is no fixed standard or method of calculating these damages – they vary by individual and case and are often also referred to as subjective damages because they differ according to each individual's personal/subjective experience.

Punitive Damages = Pay Me Extra Because You Were Malicious!

Punitive damages send the message that this sort of thing should not be happening and it was done maliciously. Think of it as teaching a bully a lesson. Punitive damages are awarded where the wrongdoer has acted in a way that is considered vile, contemptible and/or despicable to members of normal society. The conduct must have been fraudulent, oppressive or malicious. Fraud is deceitful conduct designed to mislead someone. A person is oppressive and/or malicious under the law when they act unlawfully to deprive someone of their legal rights or when they act in deliberate disregard of the rights of another.

Punitive damages are in addition to economic and non-economic damages, which are designed to make an injured party whole — at least, as much as money can. They are a penalty to discourage bad behavior. They must have some rational relation to the underlying economic and non-economic damages. To recover these damages you must meet a higher standard of proof — clear and convincing evidence.

Attorneys' Fees = Oh Yeah, And You Can Pay For My Lawyer, Too!

In employment cases, all of the damages mentioned above are available under certain factual conditions. But, under FEHA, you can also get the defendant to pay for your attorneys' fees as long as the trial court judge approves and thinks the fees were reasonable.



CONCLUSION

As we said at the beginning of this pamphlet, losing your job is a very difficult thing. It's an important part of your identity, it's what supports your family, and it's something that means a lot to you. Under most circumstances, an employer has the right to fire you whenever they want. In a free country, that's what happens.

But while it's a free country, it's also a country in which people have rights. One of those rights, when you get right down to it, is the right not to suffer because of things about yourself that don't, or shouldn't, have anything to do with your job. Things like your physical appearance, your personal life, or your desire to see that your employer obeys the law. If your employer mistreats you for any of these things, the law provides a way for you to be compensated. There is a legal system in place for setting out all the facts, and righting wrongs.

While the system works, it isn't simple. It's tremendously complicated, and unlike on television, or in the movies, there is rarely any clear "Bad Guy." There are often shades of grey, and what determines whether you win or lose is the quality of your legal team. A good legal team has to strike a careful balance between being aggressive and being careful – it takes experience, expertise, tenacity, and judgment.

Our lawyers will fight as hard as they have to, but they also know when to accept a settlement offer and end the dispute. They know employment law, including the newest cases, and know how it applies to your situation. They can help you keep the whole situation in perspective, and give you the best chance of winning possible. Think of them as experienced guides across unfamiliar, sometimes difficult, territory.

We have been representing employees for twenty years. At Adams Nye, we don't write wills, create corporations, or handle taxes. We try cases. If you think you might have one we can help with, please contact us. We'll talk to you, review the facts, and tell you what we think. And if we think you have a case, and you decide to become our client, we'll focus all that expertise on getting you the best result we possibly can.

adams | nye | trapani | becht | LLP

ATTORNEYS AT LAW

222 Kearny Street • San Francisco, California • 94108-4521 • 415.982.8955

www.AdamsNyeEmployment.com