



Defendant's Guide To Understanding Employment Lawsuits

*By Nowland Law
The Law Offices of Thomas F. Nowland
Business Litigation Attorneys
Licensed in California*





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Call Now For A **Free Consultation**: (949) 221-0005
tom@nowlandlaw.com



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What Is A Labor or Employment Lawsuit?

We should point out that Employment Law is an enormous study with almost infinite depth. This book is a quick read summary, offering useful ideas to keep in mind as you move forward in dealing with a case.

Employment and/or labor disputes occur when a 'worker' feels they have been wronged by a company.

Although there are hundreds of ways in which a 'worker' could claim they have been wronged, the general categories of employment complaints are:



Worker's Compensation: These claims arise when an employee has been injured and feel a company should be liable and responsible for compensating them. They also feel that there has been zero or insufficient compensation. "Wrongs" can include issues like injuries, death, loss of wages, the cost of rehabilitation from workplace injuries, and medical compensation.

Occupational Safety: These administrative claims generally allege that an employer either contributed to, or was negligent in addressing the safety of a worksite. Usually an unfortunate accident has occurred, but less commonly, employees can seek an injunctive relief to force an employer to take steps to make an environment safer.

Occupational Disease: These administrative claims come from employees or workers who believe that general and chronic exposure to environment (or another factor of chronic exposure) has led to the worker developing a disease. Infamous examples include asbestos and mesothelioma exposure. It can include

Carbon Dioxide poisoning, radiation, diatectyl, outgassing and fuming, toxins and other hazardous threats.

Sexual Harassment: These claims originate from a worker who believes that one or more co-workers or superiors either sexually (physically or verbally) violated them, or allowed an environment to brew in which inappropriate sexual comments or behaviors were 'allowed' to happen.

Unpaid Overtime: Unpaid Overtime claims can involve both claims of unpaid overtime or underpaid overtime. If a worker believes that state or federal law was not followed to compensate them for hours considered 'overtime', the company should be forced to compensate them for that extra time.

Employee Misclassification: These disputes involve a 'worker' or 'independent contractor' who feels as if they should be an employee. This is currently a hotly controversial trend, as some employers refuse to hire workers as employees for tax and other savings. The worker can claim



damages that they feel would have been due to them if they were an employee, such as overtime, health insurance, tax savings, discrimination protection and more.

Wrongful Termination: These claims most often are similar to 'discrimination' claims, because the worker feels that they were discriminated against and subsequently fired. (This is not always the case for States that do not have 'at-will' employment. California is an 'at-will' employment state, which means that unless a specific employment agreement was created, both parties can terminate the relationship at-will.) A discrimination case can turn into a Wrongful Termination case if there was allegations for retaliation against a whistleblower. Although there are a number of scenarios, a common example is that an employee reports being discriminated against by an employer. Later the employee is terminated for unknown or unrelated reasons, and the employee believes the termination occurred as a result of their original complaint.

Discrimination: These claims are a fiercely litigated area due to the controversial nature. Workers can claim that an employer discriminated against them for being a certain type of 'class'. (The law protects certain 'classes' like age, race, religion, etc.) Claims can also arise if the employee feels that the company did not do enough to prevent or correct an issue in which a company representative was discriminating against an employee (most often, a subordinate accuses a superior of discrimination.)

Federal Law protects the following classes...

- Race
- Color
- National Origin
- Religion
- Sex (including related medical condition like

pregnancy and childbirth)

- Disability
- Age (40 & over)
- Citizenship Status
- Genetic Information

The State of California protects these additional classes of workers:

- AIDS/HIV
- Marital Status
- Sexual Orientation or Identity
- Medical Conditions
- Political Activities or Affiliations
- Military or Veteran Status
- Status as a victim of stalking, domestic violence, or assault.

Jones Act Maritime Law

Allows special protections for workers who are employed on vessels in US waterways, coastlines, and ocean territories. Jones Act claims are personal injury claims that seek to collect from employers from the negligence of a ship owner, captain or fellow crew members.

”

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In California, Employment & Labor Litigation happens in one of three places:

- The Courts
- Labor Board Hearing
- Arbitration, Mediation, or Negotiation

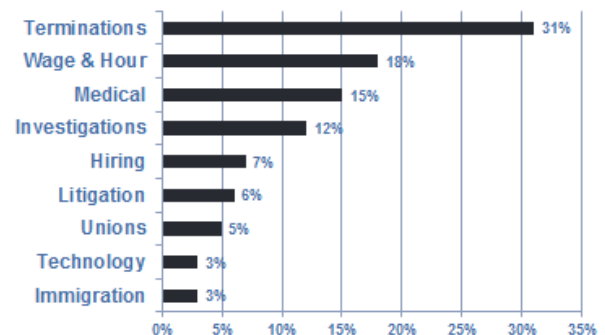
These three venues have binding consequences for your business. Not only is the fate of a particular matter (and the monetary 'damages') at stake, but employment policies and that affect the inner-workings of your organizations can be threatened.

Labor law is a complicated field that draws on a body of law over all 50 states, and Federal labor law.

If you are reading this ebook, you are likely facing a claim from an employee, or a class action of claims representing 'similarly situated' individuals. How your company handles these issues is of grave importance.



Which area of employment law gives you the most headaches?



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Results of A ManpowerGroup informal survey of 3,423 event participants (assumed to be business owners.) <http://manpowergroupblogs.us/>

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Which Laws Govern Employment Lawsuits?

In California, the majority of labor law is contained in the "California Labor Code". It covers such issues like Minimum Wage, Meal and Rest Breaks, California Overtime, and Misclassification. It also covers rules about exempt employees like Domestic Work Employees, Outdoor Workers, Illegal Immigrants, Car Wash Employees, Underpaid workers, Carpenters, Electricians, Cement Masons, Drywall Installers, Teamsters, Iron Workers, Painters, Laborers, Asbestos Workers, Tunnel Workers and Dredgers. The code also dictates issues regarding sexual harassment, and discrimination, Military and Veterans discrimination protections and gives additional protections to 'whistleblowers.'

The other major body of law that affects workers in California is the California Family Rights Act. (CFRA)

This gives protections on top of federal laws for issues concerning leave during the birth, adoption or fostering of a child, and health conditions/incidents that affect a child, parent or spouse of the employee. (It also covers the employee's own health issues.) In a nutshell, it guarantees up to 12 workweeks of unpaid leave within a 12 month period, and offers protections to the employee that guarantee they will be reinstated to the same or similar position upon return.



Federally, you must be aware of:

Fair Labor Standards Act (FLSA)

Federal law that covers overtime hours, overtime wages, employee wages and hours. This law also established that certain types of workers can be exempt from overtime pay. It sets detailed criteria for exemption.

Family Medical Leave Act (FMLA)

This law established rights for employees to take up to 12 unpaid weeks of leave. It details the valid reasons for such, including 'maternity leave', foster care placement, serious health conditions or handling the health conditions of certain family matters.

Occupational Safety and Health Act (OSHA)

Federal law that covers the topic of workplace safety. It requires employers identify hazards and ensure that the work environment is free from dangerous conditions. It spells out requirements for preventing work-place injuries, illness and deaths.

Employee Retirement Income Security Act (ERISA)

This Federal law, established a lawful foundation for employee benefit plans, pension plans, health plans for private business. It also covers employee stock options, 401ks, and other plans.



How Much Does A Labor Lawsuit Cost?

What does it typically cost to defend against Employment Lawsuits?

We may never have a 100% accurate figure for how much an employment lawsuit costs. Many cases are settled out of court, and the results of the settlement are kept private and confidential. Many cases are resolved at the demand letter stage. That being said, employment lawsuits can be painfully expensive.

According to the California Department of Fair Employment and Housing there was 18,480 Employment cases filed in 2013. We have heard estimates that the median case is around \$90,000 to defend.

Typically, the more people involved, the more egregious the complaint, the more valid evidence the opposing side has, how poorly you and your current employees handle the litigation, the higher the cost.

The range you can expect, including damages or settlements, trial costs, and attorney's fees is anywhere from \$30,000 to \$250,000 per case.

How Do I Control These Costs?

One should keep in mind the estimated ranges are for cases that go through the full legal process until judgment, and do not include settlement figures (or damages, if a judge rules against you). It is typically more expensive to bring a case to resolution.

You should speak with your lawyer about strategies to reduce cost. Nowland Law stands behind business owners and knows that our long-term success is dependent upon our client's success, so we strive to hold reasonable and fair compensation.

Our greatest strength is legal strategy founded on knowledge. Our goal in working with you would be to craft excellent strategies to help resolve this issue magnitudes quicker and cheaper than fighting out an expensive litigation.

While past results can never guarantee future performance, the attorneys at Nowland Law have a history of success in demolishing the arguments and cases of employment plaintiffs, facilitating mediation and negotiation when the parties had previously refused to participate, and negotiating favorable and acceptable settlements/outcomes.



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Top Employment Lawsuit Myths

Myth: It is easier and safer to let go of employees who are on a probationary period.

Reality: Employment laws take effect on day one of employment. If an employee builds a valid case that you discriminated against them, even though it was within a probationary period, they can still win a complaint.

Myth: Companies should never ask departing employees to sign a release.

Reality: Companies can choose to offer severance packages to employees who are being terminated or resigning, contingent upon signing a release of all claims, and strict confidentiality clauses. You should be careful to offer these consistently to those similarly situated, so as to not create evidence that you discriminated against an employee by not doing so.

That being said, you can absolutely opt to not give someone a severance package if their conduct was illegal or intentionally harmful, offensive or negligent. Make sure that these instances have ample evidence on your part to back up your position.

Why would you want to give severance packages? As long as you are making the package contingent upon signing a release of claims, the cost of a small but fair severance package of your outgoing employees could be well worth savings had a few of them decided to litigate.

Myth: We discourage employees from working overtime, and require signed approval for any overtime worked. Therefore, we do not have to pay for overtime they have worked.

Fact: This would make sense... but it is not true. Trust goes both ways in this situation. If you explicitly tell an employee not to work overtime, but they do anyway, you are 100% required to pay them. However, if an employee does this repeatedly and abuses you, you may terminate them for not following your policy. It is crucial that you have a written policy that the employee has signed. We also recommend that you privately have a conversation with an employee if they have violated your request to not work overtime, and have them sign a summary of your meeting. If they keep abusing it, and you terminate them, having the documentation will be a huge saving grace for your company.

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How to Find the Right Employment Lawyer to Defend You

Finding a lawyer or Law Firm to represent your company in an employment dispute should be a high priority. Ultimately, it comes down to trust. Upon interviewing the various lawyers, which ones inspire trust that they are a competent guide? Which lawyer do you feel would be a competent representation that aims to represent your company as if their company was on the line? Additionally, look for a lawyer who is open and honest about your best interests.

A good lawyer will be as upfront about costs as possible. It is impossible to build an invoice at the start of a case. As the case unfolds and decisions need to be made, no one knows what the choices you will make. No one knows what choices the plaintiff will end up making... or the judge. All three parties have a hand in making the dispute end quickly, or dragging it out. Despite this open question mark, a good lawyer will not shy away in discussing specific ways to make sure fees are reasonable and appropriate.

A good employment lawyer should be paid for the knowledge, skills, expenses and expertise, but the lawyer should also care about your overall business goals. They should seek to keep their fees reasonable and fair.

A good employment lawyer can advise you when it would be a good idea to settle, or if you should litigate at all. This shows they are putting your interests above theirs. A good employment lawyer will advise against aggressive litigation if you do not have a strong case, or if the plaintiff has a rock solid case.

Closing:

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Question About Your Case?

Nowland Law would love to hear it.

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