

# Employment Law

---



---

Your rights as a Private,  
Non-Union Employee

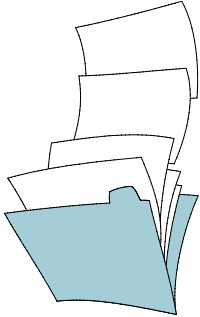
# Employment Law

## Unreasonable Termination

If you work for a private employer and you do not belong to a union, Nebraska law generally allows that your employment may be terminated at the will of the employer. There is, however, some protection against unreasonable termination. If you have an employment contract, your employer may not lawfully fail to honor this contract.

Sometimes an employment contract may be implied from the employee handbook, from past practices of the employer or from specific promises from the employer. A contract is more

likely to be implied if the terms of the handbook, practices or promises are clear and definite, and you have accepted or relied upon them.



It is important you obtain a copy of the employer policies, procedures or handbook before leaving the employer's premises. These should be reviewed with an attorney to see if they may

constitute a contract.

Nebraska law also protects you from adverse employment actions against a specific statute. For example, you may not lawfully be terminated for refusing to take a polygraph exam. Also, you cannot be terminated in violation of any of the other laws discussed in this pamphlet.

All the limitations on an employer's right to terminate you which are discussed in this pamphlet also apply if your employer makes the terms and conditions of employment so unreasonable and intolerable that a reasonable person would quit the job under similar circumstances. This is called a "constructive discharge." Many of the limitations discussed in this pamphlet also apply to demonstrations and other adverse actions.

In some cases, you may have up to four years to file a lawsuit; however, it is best to act as soon as possible.



## Equal Opportunity Laws

### Discrimination:

It is unlawful for an employer or employment agency to discriminate against you on the basis of race, color, sex, creed, religion, national origin, disability (or mental impairment), age or marital status. Generally, if you work for an employer of 15 or more employees, you are covered by the law.

To preserve your rights, you must file with the city Human Rights Commission (if available), the Nebraska Equal Opportunity Commission or the Federal Equal Opportunity Commission within 180 days of the alleged discrimination. The burden of proving discrimination is on you.

If the Commission finds reasonable cause to believe discrimination took place, settlement between you and your employer will be attempted. If such settlement efforts fail, then the Commission will call for a public hearing. If the Commission finds no reasonable cause to believe discrimination took place, you may still have some rights. This should be discussed with your attorney.

If you have a physical disability, you may be entitled to protection from discrimination unless your disability is such that you cannot perform your job. Your employer must make some effort to accommodate your handicap so you can do the job.

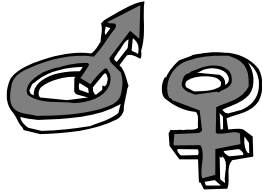
### Retaliation:

It is unlawful for an employer to discriminate against an employee for filing a charge of discrimination, opposing an unlawful practice or refusing to carry out an unlawful act. If you work for an employer of more than 15 persons, you are covered by this law.

If your employer harasses you or takes adverse action against you in violation of this law, you should contact the Nebraska Equal Opportunity Commission within 180 days.

### Sexual Harassment:

Both state and federal laws, as well as some city ordinances, make sexual harassment in the work place unlawful. Generally, if you work for an employer of 15 or more employees, you are covered by these laws.



To preserve your rights, you must file with either the appropriate city Human Rights Commission (if available), the Nebraska Equal Opportunity Commission or the Federal Equal Opportunity Commission within 180 days of the occurrence of the harassment. You are a victim of sexual harassment if you were the subject of unwelcome sexual harassment from your employer or coworker during the time of your employment. This harassment must be sufficiently severe to unreasonably interfere with your work performance or create an intimidating, hostile or offensive work environment.

To be successful, you may also have to show your employer either knew or should have known of the conduct and failed to take prompt remedial action.

### Damages:

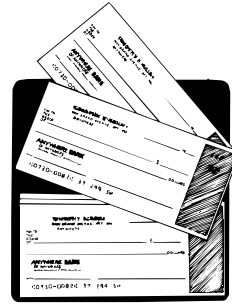
If you are successful in a claim for discrimination, retaliation or sexual harassment, you may be entitled to compensation for back pay, out-of-pocket losses, restoration of lost job benefits and attorney fees. In some instances, additional damages may be available.

### Unemployment compensation:

You are entitled to unemployment compensation if you leave your job involuntarily and were not terminated for misconduct. You are disqualified for seven weeks if you leave your employment voluntarily. Also, you may be disqualified if you are terminated for misconduct.

Misconduct is conduct not in the best interests of the employer or in reckless disregard of the employer's best interests. It can include insubordination and unexcused absences.

There is a distinction between getting terminated for cause and being disqualified for misconduct. Your employer may have a good reason to terminate you, but he or she must show you were guilty of misconduct to disqualify you from benefits. Disqualification for misconduct is from seven to ten weeks, after which you may be eligible for unemployment.

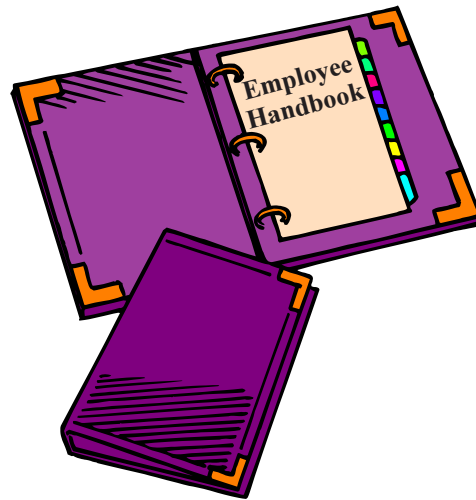


You are not eligible for unemployment benefits while receiving severance pay. For example, if you receive four weeks' severance pay, you are not eligible for unemployment compensation for four weeks.

Under Nebraska law, if you receive a lump sum distribution from a retirement plan and fail to roll it over immediately, it will be considered income. The amount of the distribution is divided by your average weekly wage and that number is the amount of time you are disqualified from receiving unemployment.

### Workers' Compensation:

Under Nebraska law, you are entitled to receive workers' compensation if you are injured on the job. You are only entitled to benefits if you are injured while performing work



for the employer in the normal course of business. Thus, if you are injured in an accident while doing a personal errand in your employer's car during normal working hours, you are not eligible.

If you suffer a heart attack on the job, you may qualify for workers' compensation only if the heart attack was caused by the job, by the stress of the job or by some unusual exertion on the job. These factors are often difficult to prove.

Usually, workers compensation pays 66 2/3 % of your average weekly wage, up to a maximum. If your salary is less than the maximum, you will receive 66 2/3 % of your average weekly wage. If your salary is greater than the maximum, you will receive the maximum in effect at the time you are injured.

If you lose a limb, finger or sight of an eye, you may be limited to statutory amounts based on loss of function. Courts are beginning to consider loss of earning power as opposed to loss of function. This could provide a greater recovery for you and should be discussed with your attorney.

If you are injured on the job, you may be entitled (subject to maximum amounts) to temporary total disability; permanent partial disability; or permanent total disability. Finally, you may be entitled to rehabilitation if you re injured to the extent you can no longer so the job for which you were trained.

*This pamphlet, which is issued to inform, not to advise, has been prepared and published by the Nebraska State Bar Association. It is distributed by those who want to help you obtain your rights under the law.*



**Nebraska State Bar Association**  
**635 South 14th Street**  
**P.O. Box 81809**  
**Lincoln, Nebraska 68501-1809**  
**(402) 475-7091**  
**[www.nebar.com](http://www.nebar.com)**

*This pamphlet may be reprinted with the written permission of the Nebraska State Bar Association.*

© 2001 Nebraska State Bar Association. All rights reserved.

**Revised and Reprinted 2001**