

# *What Does a Labor and Employment Attorney Do?*

## What is Labor and Employment Law?

The concept of [employment law](#) refers to the constellation of constitutions, statutes, regulations, and legal cases that govern the relationship between employees and their employers. Working for a living involves a range of rights, including freedom from discrimination and retaliation, the honor of your contracts, and payment for every hour worked (plus overtime pay if you qualify). Generally, employment law rights can be defended in court (or by an administrative agency such as the Equal Employment Opportunity Commission (EEOC) or Connecticut Commission on Human Rights and Opportunities (CHRO)).

Labor law, on the other hand, governs the relationship between businesses and labor unions (such as the AFL-CIO or SEIU). A collective bargaining agreement, for example, may negotiate, interpret, and enforce the right to unionize. In most "labor law" disputes, the National Labor Relations Board (NLRB) is the court of last resort.

## What Does Labor and Employment Law Cover?

The [labor and employment lawyer](#) works with union issues, employer-employee relationships, and the enforcement of numerous labor and employment laws.

### Unions and Collective Bargaining

Federal and state collective bargaining laws are robust and contain many opportunities for labor and employment attorney.

The National Labor Relations Act (NLRA) grants most private non-agricultural employees the right to bargain and join unions collectively.

The NLRA has established procedures for employees to choose a labor organization to represent them in collective bargaining. Employers are barred from interfering with this process. The NLRA also requires good faith bargaining and outlines what tactics (like lock-outs or strikes) each side may use during bargaining sessions.

They created the National Labor Relations Board (NLRB or Board) to protect employee rights under the NLRA and enforce its provisions.

The Board investigates complaints from employees that believe their collective bargain rights have been violated. It receives 20,000 to 30,000 of these a year.

Board agents investigate each charge. They gather evidence and may seek affidavits from the complainant and witnesses. Usually, within seven to 14 weeks, a decision about the merits of the charge is made. During this time, most of the issues generally are resolved by the parties. Otherwise, the Board decides whether the evidence supports ending the investigation without further action or proceeding.

If sufficient evidence supports the charge, another effort is made to encourage the parties to settle the dispute. If this doesn't happen, then the NLRB issues a complaint. Allegations commonly include threats, unlawful disciplinary actions against the employee for union activities, or refusal to bargain in good faith.

Then the matter goes before an NLRB administrative law judge. Possible remedies include reinstatement of fired workers or information remedies like a notice to employees from the employer pledging to comply with the law. In some cases, the Board will file a petition in federal court seeking injunctive relief to order

employee reinstatement or require a party to return to bargaining.

Labor and employment attorneys work for the NLRB investigating labor complaints. They represent the Board before an administrative law judge or a federal judge when the district court is petitioned for injunctive relief. Those attorneys with extensive experience can become NLRB administrative law judges.

Conversely, the labor and employment attorney can work for a company. They cooperate with the NLRB during investigations and represent the NLRB's administrative hearings or federal district courts.

Similar opportunities exist at the state level. States have their own collective bargaining laws, often strengthening them or extending collective bargaining rights to agricultural workers.

## **Wage and Hour Standards**

The Fair Labor Standards Act governs the payment of wages and workhour standards. Often, disputes arise from the following scenarios:

A company fails to pay its employees promptly.

A worker receives less than the minimum wage.

Retaliation occurs against an employee who complains about payment issues.

The [labor and employment lawyer](#) represents employees in these issues, especially when a large business and several people have been impacted. The number of unpaid wages claimed can quickly add up. The lawyer can also work for these large businesses, defending them against claims filed by their employees.

## **Health and Safety**

Employee health and safety is a major area of activity for the labor and employment lawyer. The field is heavily regulated at the federal and state. The Occupation Safety and Health Administration oversee employee health and safety at the federal level (OSHA). It rigorously enforces laws and regulations in the seven million worksites it has jurisdiction over. OSHA prioritizes its inspections in this order:

Imminent danger situations with the threat of serious physical injury

Severe injuries

Worker complaints

Complaints from other agencies, individuals, or the media

High-hazard industries or workplaces that have had a high rate of injuries

Follow-up inspections.

If an OSHA inspector finds violations or serious hazards, they may issue a citation or a fine. Those employers issued a citation are entitled to an informal conference with an area OSHA director to try and work out a settlement. If a settlement is not reached, a final order is issued. This final order may include penalties. As of 2021, the fine is \$13,653 for a serious violation. If there is a willful or repeated violation, the fine can be \$136,532 per violation. These can quickly add up.

Those employers disagreeing with a final order may appeal it in federal court.

Labor and employment attorneys work for OSHA in its enforcement division. The draft final orders and represent the administration in any appeals in federal court filed by companies.

Alternatively, the lawyer works for a company that OSHA investigates. They can negotiate with OSHA before a final order is issued or represent the company when it appeals the penalties of the final order in federal court.

Opportunities are also available at the state level. In fact, many state health and safety departments are stricter than OSHA.

## **Discrimination**

### **What Are the Most Common Forms of Workplace Discrimination?**

It is illegal to discriminate at the workplace, but it still happens. Speaking up about workplace discrimination, bringing lawsuits, and shining a light on it is the only way to end it. When discrimination becomes too expensive to allow in the face of big verdicts and settlements, most companies will stop discriminating. Below are the most common types of workplace discrimination.

#### **1. Race Discrimination**

Both in society and the workplace, racial discrimination is not a secret. The prevalence of racial discrimination is high, with over a third of claims based on the race each year. The employment process frequently fails to take into consideration, certain minority groups. In one study, the US had to pay \$16 trillion in costs due to this discrimination. Despite the Civil Rights Act protecting minorities from race discrimination since the 1960s, race-based discrimination is still a major issue in the modern workplace.

#### **2. Disability Discrimination**

The most common discrimination claim in 2019 was disability discrimination or failure to accommodate a disability. People with disabilities are often discriminated against through mistakes made about their abilities, hostility, and unfair policies (such as "no-fault attendance policies") that negatively impact them. In the United States, the Americans with Disabilities Act has been protecting workers with disabilities for over twenty years.

#### **3. Pregnancy Discrimination**

Discrimination against expectant or new mothers is called pregnancy discrimination. If a woman becomes pregnant or is already pregnant, some employers refuse to hire her. If they find out an employee is pregnant, other employers discipline or terminate her. Also, some employers "eliminate" positions for pregnant workers or do not allow them to take leave altogether. Women who exercise their right to leave may suffer workplace retaliation from employers who are unaware of their obligations. A pregnant woman can also be discriminated against for breastfeeding or pumping when returning to work after pregnancy. All new mothers are entitled to these accommodations. Women shouldn't be forced to choose between their careers and their children, and the law does not require them to do so: they have the right to work without being subjected to discrimination or retaliation.

#### **4. Gender Discrimination**

As evidence shows, gender discrimination is prevalent in the workplace, and women face different treatment because of their gender. In many workplaces, discrimination against women can take many forms. Some examples include not hiring women, not supporting or promoting them, disqualifying them from promotions, not paying them as much, or penalizing them for being persistent or aggressive, traits that most employers appreciate in their male employees. During the pandemic, women, particularly women of color, were more likely to be furloughed or fired than men. As a result, some women feel under immense pressure to take time off from work for school closures to care for their children, a problem compounded by the fact that women are often underpaid for the same jobs as their partners.

## 5. Age Discrimination

Today, age discrimination is the fastest-growing form of discrimination in the workplace. An increasing number of cases of age discrimination are filed each year. There are a few common patterns of age discrimination. As a result, older job seekers often have a harder time finding employment; they must apply to more positions and are typically unemployed for a longer period than their younger counterparts. Moreover, younger bosses harass and pressure them to quit. Statistics show that more than half of workers over 50 lose a longtime job before they are ready to retire.

## 6. Sexual Orientation Discrimination

It is always unacceptable to discriminate against someone because of their sexual orientation or gender identity in the workplace, yet it still occurs. We hear from clients who are harassed because of their sexual orientation, who are made to feel unsafe at work, and whose supervisors deny them promotion because of who they are.

## 7. Religious Discrimination

Discrimination based on religious beliefs is also illegal under both state and federal law. Discrimination of this kind is often characterized by harassment at work about your religious beliefs, retaliation for taking off religious holidays or observances, or "hiding" employees from public and visible roles due to their religious apparel.

## 8. Parental Status Discrimination

Applicants cannot be asked about their marital status or if they have children by employers. You may be surprised to learn that parental status is not a legal basis for discrimination. A parent status discrimination policy often violates other anti-discrimination laws—for instance, a company might believe that women with children dislike work, but men with children are likely to work harder. For similar reasons, an employer may consider maternity leave fine for women, but penalize men for taking time off for bonding with their new babies. There is gender equality in the belief that mothers should do certain things, while fathers should do other things, and both of these prejudices could be grounds for discrimination claims. It is becoming increasingly common to discriminate against parents during the pandemic, especially as those with childcare obligations will need to work different shifts or adjust their schedules.

### Federal Anti-Discrimination Law

There are several anti-discrimination laws about employment, both at the federal and state level. Here is some of the common federal legislation:

#### Title VII of the Civil Rights Act of 1964

As amended, the Act protects employees and prospective employees from discrimination based on race, color, religion, sex, and national origin. And, as of June 2020, the Supreme Court extended this protection to members of the LGBTQ community.

#### Equal Pay Act of 1963

This protects employees from gender-based wage discrimination. It applies when two employees perform substantially equal work in the same company.

#### Age Discrimination Act of 1967

As amended, this Act protects employees and prospective employees over 40 from age-based employment discrimination.

#### Rehabilitation Act of 1973 and Civil Rights Act of 1991

These laws protect disabled persons from discrimination in employment and employment opportunities.

Federal agencies must make reasonable accommodation for those with disabilities or those who develop disabilities on the job.

### Opportunities for Labor and Employment Attorneys

The Equal Employment Opportunity Commission enforces these discrimination laws and others. Labor and employment lawyers working for the Commission conduct investigations of discrimination complaints and take enforcement action against businesses engaged in discrimination.

These lawyers can also work for businesses and defend them against discrimination complaints.

### Benefits

Many disputes arise from employee benefits like pensions. Often there is disagreement over the timing and amount of payment the retiree received from their former employer. Disputes often arise over taxes and insurance. Denial of rightful pension benefits also understandably leads to conflict. Often, when a couple divorces, there is discord over splitting one of the parties' pensions.

The labor and employment lawyer helps retirees with these disputes. Alternatively, the attorney can represent companies or pension plans.

With the aging population and the increase in people retiring, there is ample work in this [law area](#).

### Workers' Compensation

Workers' compensation is largely a matter of state law.

However, there is a federal system in place for federal civilian employees and postal workers.

Congress passed the Federal Employees' Compensation Act to provide coverage to applicable workers who suffer an injury or illness in the workplace. The Office of Workers' Compensation Programs (OWCP) of the U.S.

Department of Labor administers the program. Occasionally, a claim for compensation from an injured worker is denied. This is called an Adverse Decision. Those disagreeing with an Adverse Decision may appeal to the Employees' Compensation Appeals Board (ECAB).

Labor and employment lawyers can work for OWCP and represent it at appeal hearings before the ECAB. Alternatively, the lawyer can work for the claimant and represent them at the appeal hearing.

Labor and environmental [attorneys](#) in private practice also help clients with modified job offers. This happens when a doctor determines that an injured worker has recovered. That worker may receive an offer to return to the job with modified or limited duties. Sometimes, however, the worker may still be experiencing pain or is not otherwise recovered and may not yet feel capable of returning to work. The lawyer can help the worker negotiate with their employer on this issue.

## How do I Become a Labor and Employment Lawyer?

Many opportunities exist for the labor and [employment attorney](#), both at government agencies or private sectors. A law degree and bar membership is required, as with any career as a lawyer.

### See also:

[Labor and Employment Attorney at Small Law Firm in San Francisco Interested in Moving to a Major Law Firm](#)

[Labor and Employment, Legal Practice Area](#)

*Why Aren't There More American Day Laborers, Doctors, Engineers, and Textile Workers?*  
*Two Hot Niche Practice Areas - Executive Compensation & Employee Benefits, and Technology Transactions*  
*Do Labor Attorney Salaries Match Their Tough Career Schedules?*