

Employment Discrimination

NELP

Fact Sheet for Workers

Advocating for the working poor and the unemployed

January 2002

Know Your Rights

Employment Law
Clinic for Low-Wage
and Immigrant
Workers

Free legal assistance
is available by
appointment. Call:

(212) 417-3800 on
Mondays &
Wednesdays

(888) 218-6974 on
Tuesdays & Thursdays

The clinic is a joint
project with the Legal
Aid Society and MFY
Legal Services

National
Employment
Law Project
www.nelp.org

You have a right not to experience discrimination at your job or when you are looking for a job. There are laws protecting most workers in New York from discrimination based on:

- color
- national origin
- status as a victim of domestic violence
- age
- sexual orientation
- race
- religion
- sex
- marital status
- disability

It is unlawful for employers with more than 4 employees to discriminate based on the above characteristics when they:

- Hire
- fire
- set pay rates
- give assignments or job titles
- make decisions about transfer, promotion, layoff or recall
- advertise job positions
- recruit
- require testing (including medical)
- allow use of company facilities
- provide training and apprenticeship programs
- provide fringe benefits
- provide retirement plans or disability leave
- do anything else that affects work conditions

It is unlawful for an employer to intentionally discriminate against certain groups OR to unintentionally act in a way that has a discriminatory effect on certain groups.

Retaliation

You have a right to complain, support or file a charge for discrimination and it is unlawful for your employer to take negative action against you for doing so.

Sexual Harassment

Sexual harassment against men or women is discrimination. Sexual harassment may involve a request for sexual favors or conditions (such as showing pictures or frequent comments) that create an environment that is hostile or threatening based on your sex.

Language Discrimination

It may be unlawful to require employees to speak only English while on the job. An employer who believes English is necessary for the business must inform employees when English is required and what will happen if the rule is not followed.

Checking Immigration Status

While employers are required to make sure employees have proper work papers, it is unlawful for an employer to check only the papers of certain people because they are from a particular national origin or because they appear or sound “foreign.” Employers cannot insist on checking only specific immigration papers, either.

Religious Accommodation

Employers are required to reasonably accommodate the religious beliefs of employees (for example, allow them not to work on a holy day) unless it would cause an undue hardship.

Disabled Workers

A “disability” is a physical or mental impairment that substantially limits one or more major life activities (such as walking, breathing, seeing, hearing, speaking or learning). Past drug addiction, alcoholism and HIV status may also be considered disabilities. Disabilities include actual or perceived disabilities.

Employers may not ask job candidates about whether they have disabilities, but they may ask if the candidate can do essential job duties. There are limits on employers’ ability to require medical tests.

Additionally, employers are required to provide reasonable accommodations for disabled workers (such as allowing a modified work schedule or making the workplace and equipment accessible to a person with a disability), as long as it would not be an undue burden on the employer’s business.

Criminal History

In New York, it is unlawful for most employers to ask job applicants about arrests that did not result in convictions.

It is also unlawful for employers to decide not to hire applicants because of a past conviction unless the conviction was for an offense directly related to the job (such as a conviction for driving while intoxicated when a person is applying to be a school bus driver).

Remedies for Discrimination

If you are able to establish that you experienced employment discrimination, either through an administrative charge or a lawsuit, you may be able to recover remedies, such as:

- backpay (what you would have earned if not for the discrimination)
- hiring
- promotion
- reinstatement (getting your job back)
- reasonable accommodations
- other actions by the employer to make up for the effect of discrimination.

In some cases you may also be able to recover fees and costs associated with litigation and/or possibly some punitive damages.

Useful phone numbers:

U.S. Equal Employment Opportunity Commission (EEOC): (212) 741-2783 or (973) 645-5974

N.Y. State Division of Human Rights (212) 961-8400 (*note: NY law covers discrimination based on sexual orientation, marital status or status as a victim of domestic violence, while Federal. law does not.*)

N.Y. City Commission on Human Rights (212)306-7500

N.Y. State Attorney General’s Office, Civil Rights Bureau: (212) 416-8250

If you are seeking to enforce your rights and are concerned about your immigration status, make an appointment to see an attorney at the Employment Law Clinic.