# Your Rights under the Law

**Adapted from Professional Staff Congress web page "Your Rights under the Law," with permission.**

Whether you work for a public sector or private sector facility, you have the following rights under the law.

### Right to Union Representation

The National Labor Relations Act extends to private-sector employees the right to organize and bargain collectively with their employer. Employees covered by the Act are protected from certain types of employer and union misconduct and have the right to attempt to form a union where none currently exists.

Also called the Public Employees Fair Employment Act, the Taylor law provides all public sector workers in New York State with the basic right to union representation and collective bargaining. It also provides for the structure and legal framework for collective bargaining, the rights of union members and the rights of employers. For example, should your public employer unilaterally change any aspects of your negotiated terms and conditions of employment that may constitute a violation of your rights under the law. The union may file an improper practice charge against the employer with PERB, the Public Employee Relations Board.

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### Weingarten Rights

If you are called into a disciplinary meeting, or a meeting you think might result in disciplinary action, you have the right to union representation. You may read your supervisor your Weingarten Rights: "If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative or delegate be present at this meeting. If this discussion could lead to my being disciplined and you deny my request for representation, I choose not to answer any questions." In 1975, the U.S. Supreme Court ruled, in the *Weingarten* decision that an employee is entitled to have a union representative present during any interview which may result in his or her discipline. It is up to you to insist on union representation. If you fail to do so, you may waive your rights.

In 2007, Governor Spitzer signed legislation codifying "Weingarten" rights for public sector employees in NYS. The legislation amends the Taylor Law to add a new improper employer practice: "It shall be an improper practice for a public employer or its agents deliberately...to fail to permit or refuse to afford a public employee the right, upon the employee's demand, to representation by a representative of the employee organization, or the designee of such organization, which has been certified or recognized under [the Taylor Law], when at the time of questioning by the employer of such employee it reasonably appears that he or she may be the subject of a potential disciplinary action."

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**Your Federal Right to Overtime Pay, NYS Right to Meal Breaks & NYS Prohibition of Mandatory Overtime for RNs**

You deserve to be paid fairly for your work, including overtime hours.

The federal **Fair Labor Standards Act** requires as a legal minimum that employees, unless specifically exempted, must be **paid overtime** if they work more than 40 hours in one week. The overtime rate must be one-and-one-half times your normal rate of pay after 40 hours of work in a workweek. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

NOTE: NYSNA contracts have contract language that provides overtime pay policies that are generally superior to these legal minimums and specify a variety of shifts—7.5 hours/day to 12.5 hours/day as well as the relevant overtime rules.

The FLSA also prohibits the overtime requirement from being waived, even by agreement of the employer and employee. It is illegal for your boss to force or intimidate you into giving up your overtime pay.

The overtime law is enforced by the **Wage and Hour Division** of the U.S. Department of Labor. Your employer can be criminally charged for violating the overtime provisions of the FLSA, and it also is illegal for your employer to fire or discriminate against you for filing a complaint about an FLSA overtime violation.

There is a two-year statute of limitations on recovering back pay, unless the FLSA violation was deliberate and willful, in which case the statute of limitations is three years.

If you think you have been denied overtime pay, you can file a complaint with the nearest office of the Wage and Hour Division. The complaint may be filed in person, by letter or by telephone, but it also must be made in writing.

The **NYS Division of Labor Standards District Offices** investigate claims for unpaid or withheld wages including illegal deductions, and tries to collect these wages. For example, NYS law requires that employees have a **meal break** during their shift. This meal break can be unpaid; however, if nurses are required or permitted to work through their meal break, they must be paid for that time worked. So failure to pay for that time constitutes illegal, unpaid wages.

Mail completed claim forms to: New York State Department of Labor Division of Labor Standards Bldg. 12, Rm. 185C, State Office Campus, Albany NY 12240 (https://www.labor.ny.gov/workerprotection/laborstandards/faq.shtm)

## Mandatory Overtime for Nurses

Before July 1, 2009, employers could and did force RNs to work excessive hours, which led to errors, complications, and less safe conditions for delivering patient care. NYSNA fought for and won a law to ban mandatory overtime for many nurses. Now New York State has joined 14 other states in strongly restricting mandatory overtime for RNs.

The law prohibits hospitals from requiring nurses to work beyond our scheduled shifts – except in the case of a declared emergency. And the law protects us from retribution or discipline for refusing overtime.

Voluntary overtime, on the other hand, is not limited by the law.

More details on what is a declared emergency and what to do if management is pressuring you to work overtime are here on NYSNA's website.

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**Health & Safety Laws**

You have the right to be trained in hazards on your job, to know what chemicals you are working with and to access records concerning your health. You have the right to seek a safe and healthful workplace without fear of retaliation from your employer. This includes complaining to your employer, your union, or the appropriate government agency, about workplace violence, safe patient handling and exposure to infectious disease, chemicals and construction hazards. The health and safety rights of private sector workers are protected by the Federal Occupational Safety and Health Administration (OSHA). The health and safety rights of New York public sector workers are protected by the New York Public Employee Safety and Health Bureau (PESH).

Both OSHA and PESH mandate that employers have in place occupational health and safety management systems. To a lesser degree, the New York State Department of Health regulations refer, briefly, to occupational safety and health issues. It is also helpful to know that the Joint Commission weighs in on worker health and safety and the need for employer safety systems. However, the Joint Commission references, do not come with any real enforcement power.

You should contact your NYSNA delegate, Executive Committee member or NYSNA Representative if you have any concerns about health and safety issues. They will work with NYSNA's Occupational Health & Safety staff to advise you, including if you want to file a PESH or OSHA complaint. Find more about NYSNA's Health & Safety resources here.

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**Federal Family and Medical Leave & NYS Paid Family Leave**

- **The Family and Medical Leave Act (FMLA)**

The Family and Medical Leave Act (FMLA) was passed in 1993. It allows eligible employees to take up to 12 weeks of job-protected unpaid leave from their jobs for the birth, adoption or foster placement of a child; for a seriously ill family member (parent, spouse or child); or for their own serious health conditions. The FMLA applies to all private-sector employers with 50 or more

workers and to all public agencies—state, local and federal. FMLA also requires the employer to maintain health benefits during FMLA leave and guarantees employees can return to the same or equivalent position following FMLA leave. In most NYSNA facilities, as allowed by law, employees are required to use vacation or sick leave for all or part of the 12-week FMLA entitlement.

The FMLA is enforced through the Wage and Hour Division of the U.S. Department of Labor. If you think you have been denied FMLA leave, or if you think your employer has violated the act, you may file a complaint. The complaint may be filed in person, by letter or by telephone, but it also must be made in writing. There is a two-year statute of limitations—three years if the violation was willful.

- **The NYS Paid Family Leave law**

In 2016, Governor Cuomo signed into law the United States' strongest and most comprehensive Paid Family Leave policy that went into effect Jan. 1, 2018. Under this program, NYSNA members and working families across the state no longer have to choose between risking their job security and caring for their loved ones.

As of January 1, 2018, most employees who work in New York State for private employers are eligible to take Paid Family Leave. If you are a public employee, your employer may choose to offer Paid Family Leave. New York's Paid Family Leave provides job-protected, paid time off so you can be with and care for your family in times of need.

Find out more details about eligibility, cost of the benefit, amount of the payment and method for requesting leave by reading the NYSNA FAQ **here** or get more information from the **New York State website**.

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## Protection from Discrimination,

**Adapted from AFL-CIO publication, Your Rights at Work**, with permission.

Working people in America have certain basic legal rights to fair conditions at work. But many employers—perhaps yours—violate these fundamental rights because they value their income and margins more than their workers, including registered nurses.

This section will enable you to find help if that happens to you.

**Protection from Discrimination - Civil Rights Laws**

The Civil Rights Act of 1964 prohibits workplace discrimination on the basis of race, color, religion, sex or national origin. This law and other civil rights statutes are enforced by the Equal Employment Opportunity Commission (EEOC).

If you think you have been discriminated against based on the categories below, you may file employment discrimination charges as an individual or as part of a group (known as "class action") with the U.S. Equal Employment Opportunity Commission. The charges must be filed on an EEOC form within 180 days of the alleged discriminatory act. If you are represented by a union, contact your union delegate, who can help you file charges.

For all of the categories described below, you can file a charge by calling the EEOC at 1-800-669-4000 for more information (1-800-669-6820 for the hearing impaired). All charges must include:

- Your name, address and telephone number.
- Your job title.
- A brief description of the problem.
- When the incident(s) occurred.
- The type of discrimination you encountered.

For more information, visit the EEOC question-and-answer page about discrimination.

Many states and cities also have fair employment practices agencies. In New York there is the New York State Division of Human Rights. In most states, a state or local agency investigates discrimination cases first and tries to work them out on the local level.

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- **Age Discrimination**

As we age, we accumulate experience that can make us even more valuable at work. But that is not how many employers see it. It's not unusual for older workers to encounter age discrimination that makes it harder to get hired, promoted and treated fairly on the job.

The Age Discrimination in Employment Act of 1967protects individuals who are 40 or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, employment discrimination based on age—in hiring, firing, promotions, layoffs, compensation, benefits, job assignments, training and more—is unlawful. It's also unlawful to retaliate against an individual for opposing age discrimination practices or for filing an age discrimination charge, testifying or participating in an ADEA case.

The ADEA applies to employers with 20 or more employees, including state, local and federal government, private employers, and employment agencies.

ADEA protections include apprenticeship programs, job notices and advertisements, pre-employment inquiries, and benefits.

The ADEA generally makes it unlawful to include age preferences, limitations or specifications in job notices or announcements, limited by certain circumstances.

While the ADEA does not specifically prohibit an employer from asking an applicant's age or date of birth, requests for age information will be closely scrutinized to make sure the inquiry is made for a lawful purpose.

The Older Workers Benefit Protection Act of 1990 amended the ADEA to specifically prohibit employers from denying benefits to older employees.

If you think you've been discriminated against, write down a detailed account of the events, including date, time, place, comments and witnesses. Inform the personnel manager of your complaint. For unionized workers, your union delegate can help you write up a complaint and present it to management.

For more facts about age discrimination, how to fight it and what to do if you think you are a victim, check these sites:

- AARP's Age Discrimination fact sheet.
- Workplace Fairness: Your Rights—Age Discrimination.

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- **Gender Discrimination**

No one should be typecast into—or out of—a job or profession because of gender. Gender discrimination involves treating someone (an applicant or employee) unfavorably because of the person's gender. The law forbids discrimination in all aspects of employment, including hiring, firing, job assignments, layoff, training, fringe benefits, and any other term or condition of employment.

An employment policy or practice that applies to everyone, irrespective of gender, can be illegal if it has a negative impact on the employment of people of a certain gender and is not job related or necessary to the operation of the business.

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on sex by a private employer, state or local government, or educational institution with 15 or more employees.

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- **Race/Color or Ethnicity Discrimination**

America is more racially diverse than ever. Under the law, all workers look alike, regardless of skin color or ethnicity. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race, color or national origin by a private employer, state or local

government, or educational institution with 15 or more employees for 20 or more weeks a year. Discrimination can occur even where the victim and the person discriminating are the same race or color.

Racial discrimination involves treating someone unfavorably because of the person's race or personal characteristics associated with race. The law forbids discrimination in any aspect of employment, including hiring, firing, pay and benefits. It is also unlawful to harass a person because of that person's race. Although an employer may implement a policy that applies to everyone regardless of race or color, the policy can still be unlawful if it has a negative impact on the employment of people of a particular race or color, is not related to the job and necessary to the operation of the business.

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- **National Origin Discrimination**

The law prohibits discrimination against an employee or applicant because of that individual's national origin. Whether an employee is Filipino, Turkish, American Indian, Colombian or Ukrainian or any other nationality, he or she is entitled to the same employment opportunities as anyone else. No individuals can be denied equal employment opportunity because of birthplace, ancestry, culture, linguistic characteristics common to a specific ethnic group or accent. The EEOC enforces the prohibition against national origin discrimination under Title VII of the Civil Rights Act of 1964, which covers employers with 15 or more employees.

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- **Religious Discrimination**

Religious freedom is one of the principles on which America was founded and one of the basic rights we value most. Religious discrimination involves treating a person unfavorably because of his or her religious beliefs. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on religion by a private employer, state or local government, or educational institution with 15 or more employees for 20 or more weeks a year.

Title VII prohibits employers from discriminating against workers on the basis of religion in hiring and other conditions of employment. The law requires an employer to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause an undue hardship on the employer.

In addition to your denomination's website, the following sites also can provide information about discrimination: Facts about Religious Discrimination, by the EEOC.

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- **Genetic Information**

The U.S. Equal Employment Opportunity Commission enforces Title II of the Genetic Information Nondiscrimination Act of 2008, which prohibits genetic information discrimination in employment. GINA took effect November 2009 and applies to employers with at least 15 employees. The Departments of Labor, Health and Human Services, and Treasury issue regulations for Title I of GINA, which addresses the use of genetic information in health insurance.

Title II of GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers covered by Title II and strictly limits disclosure of genetic information.

If you think you have been discriminated against because of your genetic information, you may file employment discrimination charges as an individual or as part of a group (known as "class action") with the EEOC.

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**Sexual Harassment as Discrimination**

Sexual harassment is illegal and no worker has to tolerate it. Sexual harassment is a form of illegal sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments, employment agencies, labor organizations, and the federal government.

Sexual harassment is unwanted verbal or physical conduct of a sexual nature when:

- You must submit to the behavior to keep your job or to get a promotion, a good job assignment, or some other job benefit; or
- The behavior unreasonably interferes with your work performance or creates an intimidating, hostile or offensive working environment.

Examples of sexual harassment include pressure for sexual favors; pornographic material left on your desk or work area; touching, "goosing," patting, hugging; leaning against; leering, whistling, catcalls or howling; using demeaning terms such as "sweetheart," babe" or "honey"; sexual teasing and jokes; posting cartoons, posters or drawings of a sexual or insulting nature; asking personal questions, telling lies or spreading rumors about your social or sex life; making sexual remarks or gestures; and actual or attempted sexual assault.

The victim as well as the harasser can be male or female; the victim does not have to be of the opposite sex. Harassment does not have to be of a sexual nature, however. It can include offensive or derogatory remarks about a person’s sex, such as making offensive comments about women in general. The harasser can be the victim’s supervisor, a supervisor in another area, an agent of the employer, a co-worker or a non-employee, such as a customer or client of

the employer. The victim does not have to be the individual harassed but could be anyone affected by the harasser's offensive conduct.

An employer has the legal responsibility to investigate sexual harassment complaints and to take appropriate actions to end the harassment and make sure it doesn't happen again.

You are not required to complain to the person who is harassing you but it is helpful for the victim to have informed the harasser that the conduct is unwelcome and must stop. You should make sure that you, your union, if you have one, or someone you designate tells management about your complaint. You also should keep a written record of the harassment incidents and evidence of your job performance. If your employer has an internal complaint procedure, you are required to use it.

If you have been the victim of sexual harassment and discrimination, you may choose to find recourse in legal action. Unlawful sexual harassment may occur without economic injury to or discharge of the victim.

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**Retaliation for Filing a Complaint**

An employer may not fire, demote, harass or otherwise "retaliate" against individuals for filing a charge of discrimination, because they complained to their employer about discrimination on the job, or because they participated in an employment discrimination proceeding. Retaliation occurs when an employer, employment agency or labor organization takes an adverse action, such as denying a promotion or increased surveillance, against an individual who opposed unlawful practices, participated in a proceeding related to employment discrimination, or requested reasonable accommodation based on religion or disability.

Under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act, employers with 15 or more employees are prohibited from retaliating against employees. Employers with 20 or more employees are prohibited from retaliating under the Age Discrimination in Employment Act. Virtually all employers are covered under the Equal Pay Act.

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**Sexual Orientation & Gender Identity**

There is no federal law explicitly prohibiting employment discrimination on the basis of sexual orientation or gender identity.

However, the EEOC has linked both gender identity and sexual orientation discrimination to Title VII of the Civil Rights Act of 1964:

- The EEOC held that discrimination against an individual because that person is transgender (also known as gender identity discrimination) is discrimination because of sex and therefore is covered under Title VII of the Civil Rights Act of 1964. See Macy v. Department of Justice, EEOC Appeal No. 0120120821 (April 20, 2012).
- The Commission has also held that discrimination against an individual because of that person's sexual orientation is discrimination because of sex and therefore prohibited under Title VII. See David Baldwin v. Dep't of Transportation, EEOC Appeal No. 120133080 (July 15, 2015).

In addition, 21 states and the District of Columbia and Puerto Rico have laws that ban discrimination in the workplace because of a person's sexual orientation. Twenty states, including New York, and the District of Columbia and Puerto Rico ban discrimination in the workplace because of a person's gender identity. Working people in more than half the states are not protected by state law from employment discrimination on the basis of something that has no relationship to their ability to perform their work.

Six cities and three counties in New York also have laws banning workplace discrimination because of gender identity-- Albany, Binghamton, Buffalo, Ithaca, New York City, Rochester, and Suffolk, Tompkins, and Westchester Counties.

If you believe you have been discriminated against based on sexual orientation, gender identity, gender expression or transgender status, you may file a NYS Dept. of Human Rights (DHR) complaint. The charges must be filed on a DHR form to the nearest DHR office within one year of the alleged discriminatory act. If you are represented by a union, contact your union delegate, who can help you file charges.

For all of the categories described below, you can file a charge by calling the DHR at 1-888-392-3644 or visiting the NYS DHR website for more information. All charges must include:

- Your name, address and telephone number.
- A brief description of the problem and type of discrimination you encountered.
- When and where the incident(s) occurred.
- The names of who caused you harm or were witnesses

The NYS Human Rights law prohibits discrimination in:

- Employment
- Apprenticeship and training
- Purchase and rental of housing and commercial space
- Places of public accommodation
- Non-sectarian, tax-exempt educational institutions
- All credit transactions

Congress has debated but not yet passed the federal Employment Non-Discrimination Act that would prohibit discrimination in hiring, firing, promotions, compensation and other employment practices because of a person's sexual orientation or gender identity by employers with 15 or

more employees. Congress has also debated but not yet passed the federal Equality Act to add sexual orientation and gender identity to the Civil Rights Act of 1964, covering employment and also public accommodations and education.

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**Disability**

America has made great progress in recent years in removing the artificial barriers that can prevent people with disabilities from achieving economic self-sufficiency and participating fully in our society. But progress can't be taken for granted, and too many of these barriers remain.

The Americans with Disabilities Act, passed in 1990, prohibits discrimination against people with disabilities in employment and public services, public and private transportation, public accommodations, and telecommunication services. The ADA covers private employers with 15 or more employees, employment agencies and all levels of government.

A person has a disability for the purposes of the ADA if:

- He or she has a physical or mental impairment that substantially limits major life activities;
- Has a record of such impairment; or
- Is regarded as having a condition people would mistakenly perceive as limiting, such as disfigurement.

The ADA does not cover people with temporary disabilities, minor illnesses or active drug users or alcoholics.

The ADA requires employers to make reasonable accommodations to enable an otherwise qualified person with a disability to do his or her job. A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help an individual with a disability apply for a job or perform the duties of a job. An employer does not have to provide a reasonable accommodation if it imposes an “undue hardship” on the employer. An employer is not required to lower quality or production standards to make an accommodation.

In 2008, Congress determined that several U.S. Supreme Court cases narrowed the broad scope of protections intended to be afforded by the ADA and passed the ADA Amendments Act. The ADAAA became effective on Jan. 1, 2009. Some of the most significant changes made by the ADAAA include expanding the definition of “major life activities,” clarifying that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active and an emphasis that the definition of disability should be interpreted broadly.

If you think you are a victim of ADA-covered discrimination:

(1) Keep a written record of incidents, including a description of the discrimination, what was said, time and place, and witnesses.

(2) Check with others in your workplace who might also be victims.

(3) If you are a union member, contact your delegate.

You also may file a complaint with the U.S. Equal Employment Opportunity Commission, as an individual or part of a group (known as "class action").

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**Pregnancy**

Pregnant? You've got legal rights protecting you against job discrimination. Pregnancy discrimination involves treating a woman, applicant or employee unfavorably based on her pregnancy, childbirth or medical condition related to childbirth or pregnancy. The Pregnancy Discrimination Act of 1978 forbids employers from discriminating against workers on the basis of pregnancy, childbirth or related medical conditions. The Pregnancy Discrimination Act amended Title VII of the Civil Rights Act of 1964 and covers employers with 15 or more employees, including state and local governments, employment agencies, labor organizations, and the federal government. The act says women affected by pregnancy or related conditions must be treated in the same manner as other applicants or workers with similar abilities or limitations, such as temporary medical conditions.

As long as a pregnant woman can perform her job functions, an employer cannot refuse to hire her because of her pregnancy or because of the employer's prejudices about pregnant women or the prejudices of co-workers, clients or customers.

If a worker is unable to perform a job because of pregnancy, the employer must treat her same as any other temporarily disabled worker—for example, by providing modified tasks, alternative assignments, disability leave or leave without pay.

A pregnant worker can remain on the job as long as she is able to perform the work. The employer must hold open a job for a pregnancy-related absence as long as jobs are normally held open for workers on sick or disability leave. The Pregnancy Discrimination Act also bans the employer from terminating, demoting or disciplining a worker because of her pregnancy.

If you think you have been discriminated against because of pregnancy, you may file a complaint with the U.S. Equal Employment Opportunity Commission by calling 1-800-669-4000 for more information (1-800-669-6820 for the hearing impaired). Employees have 180 days to file a charge with the EEOC.

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## Hurt on the Job

It shouldn't hurt to go to work. Experts agree that if you are injured on the job, you should:

- Notify your supervisor, the personnel department and your union delegate.
- Get the medical treatment you need. You may be required to see a doctor selected by your employer. If you are injured on the job, your employer's insurance company is obligated to pay for reasonable and necessary medical treatment.

If your employer has written an "incident report," get a copy of it. Your union delegate and the employer should obtain the names of workers who witnessed your injury or assisted you afterward, as you may need this information if you seek workers' compensation benefits.

You also may be entitled to temporary or permanent disability benefits or vocational rehabilitation benefits. If you file a claim for benefits and it is rejected, you may appeal the ruling, even to the courts. Experts recommend seeking legal advice.

The U.S. Department of Labor advises that private-sector and state and local government workers injured on the job should contact their state workers' compensation board.

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## Unemployment Benefits

You are entitled to any monies that are due to you after losing your job.

Workers are facing high rates of unemployment. Many are in need of income to keep their homes or to buy food. There are some safety nets, like unemployment insurance for employees who have lost their job through no fault of their own and meet certain eligibility requirements.

Unemployment insurance is administered by the states, and the laws and eligibility vary by state. The amount of unemployment compensation you receive depends on many factors, including the state you live, the salary of your previous employment and so on.

You may be ineligible for unemployment for several reasons, such as:

1) You engaged in misconduct on the job and that behavior led to your firing.

2) You voluntarily quit your job without good cause. What is good cause varies by state.

3) You are not able to work or available for work.

4) You refuse an offer of suitable work.

5) You knowingly make false statements to obtain benefit payments.

If you have been denied unemployment benefits you believe you are entitled to receive, you must contact your state workforce agency. Remember: Each state sets its own eligibility requirements.

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**U.S. Reservist**

More and more reservists are being called to active duty. Some reservists may be on active duty for six months or longer and are unsure of their rights concerning their job and benefits.

The federal Uniformed Services Employment and Re-Employment Rights Act establishes the rights of reservists and the National Guard to return to work at the end of their service. The USERRA applies to all employers regardless of their size and protects those serving in the U.S. reserve forces of the Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service Commissioned Corps and the National Guard. The U.S. Department of Labor, through the Veterans' Employment and Training Service provides assistance to all persons having claims under USERRA.

While on active duty, employees must receive all benefits available to other employees on comparable leaves of absence. Employees also may use accrued vacation while on leave but cannot be forced to do so.

If you are a permanent employee, the USERRA requires employers to reinstate you to your former job after active duty or to a comparable position with the same status, seniority and pay. To be eligible for reinstatement, you must:

- Give advance notice prior to leaving;
- Be on active duty for less than five years (excluding certain service required by a declared war or national emergency);
- Not be dishonorably discharged or separated under other than honorable conditions; and
- Report back to work in a timely manner after discharge.

When you return to work, you are entitled to the same status, pay and benefits as you would have received had you not gone into active duty. If you cannot perform the job, your employer must use reasonable efforts, such as training, to enable you to upgrade or refresh your skills to become qualified for that position. Your employer cannot consider your time on active duty as a break in employment for pension benefit purposes, and your military service must be considered service with an employer for vesting and benefit purposes.

Although federal law guarantees reservists and the National Guard their jobs, it does not require employers to continue to keep paying for health insurance. Some large companies keep paying the insurance for reservists and the National Guard, but many small companies do not. If you are a reservist or National Guard member who loses health care insurance, you can pay for health care insurance under the Consolidated Omnibus Budget Reconciliation Act, or COBRA, which provides health coverage continuation rights to employees and their families after an

event such as reduction in employment hours. If your military service is for 30 or fewer days, you and your family can continue coverage at the same cost as before your service. If military service is longer, you and your family may be required to pay as much as 102% of the full premium for coverage.

You also may pay for the care yourself or use Tricare, a U.S. Department of Defense agency that provides insurance for members of the military.

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**Wage Garnishment**

Sometimes, there are outstanding debts that must be paid to a third party. If the third party obtains a court judgment, the third party may garnish your wages, meaning payments to satisfy the debt will be taken from your paycheck. Wage garnishment is a legal procedure and could be used to pay obligations such as child support.

Title III of the Consumer Credit Protection Act (CCPA) is administered by the Wage and Hour Division of the U.S. Department of Labor.

It protects employees from having too much of their wages garnished or being fired for a single garnishment. The amount of your wages in one week that can be garnished to pay a debt are also limited.

Your employer knows of your wage garnishments but cannot fire you based solely on your wages being garnished. However, you are not protected from discharge if your earnings have been subject to garnishment for a second or subsequent debt.

Title III applies to all employers and individuals who receive earnings for personal services, including wages, salaries, commissions, bonuses and even pensions. It does not ordinarily include tips because tips are not considered earnings for purposes of the wage garnishment law.

If you think your employer has violated wage garnishment laws, you can file a complaint with the WHD. To file a complaint, contact your nearest Wage and Hour Division office or call the department's toll-free Wage and Hour Help Line at 1-866-4-US-WAGE.

An employer who violates Title III may be required to reinstate the discharged employee, pay back wages and restore any improperly garnished amounts. Employers who willfully violate the discharge provisions of the law may be prosecuted criminally and fined up to $1,000 or imprisoned for not more than one year, or both.

Note: The information on this website does not constitute legal advice. You are not required to have a lawyer to pursue your rights with these government agencies, but legal assistance may be helpful in some instances.