

# Worker's Rights

## Your Rights in the Workplace

As a worker, you have many responsibilities but you also have rights protected by local, state and federal law. This tip sheet will help you become familiar with your rights as a worker.

**Knowing your rights is the first step toward making sure you are protected in the workplace.**

### Minimum Wage and Overtime

#### Minimum Wage

The **Fair Labor Standards Act** governs minimum wage and creates rules for overtime. The current federal minimum wage is \$5.15 per hour for employees who do not receive tips. Tipped employees are entitled to \$2.13 per hour. However, if an employee's tips combined with the employer's direct wages do not equal the federal minimum hourly rate, the employer must make up the difference. Many states require a wage greater than the federally recognized minimum. In cases where the state minimum wage is greater than the federal, the higher rate is to be paid.

#### Overtime

Overtime pay is required for most workers who are paid an hourly wage. Overtime of 1.5 times the normal pay rate for hours worked beyond the normal 40-hour workweek is standard. Exceptions to the overtime rule exist and are based on managerial responsibilities, employer sector (public or private), position and job training. Salaried workers are often not eligible to receive overtime pay.

If you believe you are being asked to work unpaid overtime in violation of state or federal law, please consult your State Department of Labor and/or a licensed attorney. The Fair Labor Standards Act does not govern sick leave, vacation, severance pay or holidays. For more information, local links and resources on these and other benefits, please visit [www.dol.gov/dol/location.htm](http://www.dol.gov/dol/location.htm).

### Job Safety

#### Occupational Safety

The **Occupational Safety and Health Administration (OSHA)** governs job safety for almost all employees. Notable exceptions include miners, transportation workers, public employees and the self-employed. OSHA works to improve on-the-job safety for workers by inspecting workplaces and investigating workplace-related injuries and fatalities. The standards for workplace safety, such as proper equipment and training, vary by industry and occupation. To learn more about the safety standards in your profession, please contact OSHA's web site at [www.osha.gov](http://www.osha.gov).



*Worker's rights vary widely from state to state. Due to the enormous range of state-based protections and regulations, please note that the following is strictly for informational purposes and does not constitute legal advice or representation. For legal advice, a practicing attorney who has a thorough knowledge of the current law in the state or locality should be consulted. Advice on finding a low-cost lawyer is included at the end of this tip sheet.*

# Unions

## National Labor Relations Act

The **National Labor Relations Act** gives employees the right to organize, form unions, negotiate employment contracts, wear union buttons and attend union meetings. The decision to unionize is based on a vote taken in accordance with the law. However, when employees try to unionize they sometimes face illegal actions by their employer including threats of closure, firing for union activity, discrimination against organizing employees and lockouts of workers based on antiunion activity.

## Union Security Agreements

The National Labor Relations Act permits, under certain conditions, a union and an employer to make an agreement, called a **union security agreement**. This agreement creates a “union shop” and requires employees to make certain payments to the union in order to keep their jobs. A union security agreement cannot require that applicants join the union; however, they may be required to pay for their share of the union’s costs relating to representational activities, such as collective bargaining, contract administration and grievance adjustment. Employees may then be expected to join the union after a set period of employment. “Closed shops,” where permanent employees are required to join a union, are illegal.

## Right to Work

Many states have passed “right-to-work” laws, which prohibit union security agreements between employers and unions. In these states, union shops are illegal, and open shops are enforced. Supporters of right-to-work laws claim that such laws give employees the right to work without joining a union. They argue that no employee should have to pay money to join a union in order to keep her job. Opponents argue that the law prevents free contracts between unions and business owners, making it harder for unions to organize and less attractive for workers to join. Unions are necessary to offset the power of big business in a market economy.

**Right-to-work States:**

<b>Alabama</b>	<b>Kansas</b>	<b>South Carolina</b>
<b>Arizona</b>	<b>Louisiana</b>	<b>South Dakota</b>
<b>Arkansas</b>	<b>Mississippi</b>	<b>Tennessee</b>
<b>Florida</b>	<b>Nebraska</b>	<b>Texas</b>
<b>Georgia</b>	<b>North Carolina</b>	<b>Utah</b>
<b>Guam</b>	<b>North Dakota</b>	<b>Virginia</b>
<b>Idaho</b>	<b>Oklahoma</b>	<b>Wyoming</b>
<b>Iowa</b>		

The **National Labor Relations Board** governs all unionizing activity. If you believe your employer has violated your right to unionize or has taken an illegal action during unionization, contact the Board at [www.nlr.gov](http://www.nlr.gov) or 1-866-667-NLRB(6572).

# Workplace Discrimination

Workplace discrimination can take many forms. Common forms of employment discrimination are discussed below. For more information on workplace discrimination, consult a practicing attorney familiar with federal and state-specific labor laws.

**Ex-Offenders.** The rights of ex-offenders vary widely state-to-state and are based on the type of offense committed. In many states, ex-offenders are barred from working with what are considered “vulnerable populations,” including the elderly, infirm and children. In many states, a person with a felony drug and/or a violent felony conviction is

prohibited from receiving public assistance, including food stamps and public housing. All forms of federal tuition assistance, including Pell Grants and Stafford Loans, are unavailable to a person with a drug conviction.

Employment options for ex-offenders may be limited. Ex-offenders can attempt to clean their backgrounds by seeking a pardon. Also, as of February 2005, 15 states will allow individuals convicted of some nonviolent crimes to seal or expunge their records. These options are seldom used because they are expensive, time-consuming and generally require legal assistance.

For assistance in obtaining employment, contact:

**The Center for Alternative Sentencing and Employment Services**

[www.cases.org](http://www.cases.org) or 212-732-0076

**Legal Action Center**

[www.lac.org](http://www.lac.org) or 1-800-223-4044

**Women's Prison Association**

[www.wpaonline.org](http://www.wpaonline.org) or 212-674-1163

**Disability.** The **Americans with Disabilities Act (ADA)** prohibits private employers, employment agencies, labor unions, or state and local governments from discriminating against qualified individuals with disabilities. The ADA protects a person with an impairment—physical or mental—that substantially interferes with major life activities from discrimination in hiring, firing, retention, recruitment, training, pay and other employment issues.



The ADA allows workers with such impairments to request a “reasonable accommodation.” Reasonable accommodations include workplace modification, such as the addition of a wheelchair ramp; sign language interpreters; training and materials in accessible forms, such as Braille or audio tape; time off or providing a quieter workspace. An employee must request the reasonable accommodations during application or following hire.

If the accommodation would result in undue hardship for the employer or if it involves a bona fide qualification, the request may be refused. Bona fide qualifications are requirements that are absolutely necessary to jobs and cannot be altered. For example, requiring that firefighters be able to carry 100 pounds is justified by the demands of the position, such as the need to lift heavy water hoses or rescue injured citizens.

If you believe your request for reasonable accommodation was wrongly denied, contact:

**The Equal Employment Opportunity Commission**

[www.eeoc.gov](http://www.eeoc.gov), 1-800-669-4000 (voice) or 1-800-669-6820 (TTY)

**Legal Assistance**

Unfortunately, free or low-cost legal assistance is difficult to find. Still, it is sometimes possible to find an attorney to take your case pro bono or at a reduced fee.

Be cautious of attorneys who offer to take your case for free based on a “contingency fee.” A contingency fee means that you won’t be required to pay the attorney unless you are awarded damages in a civil suit, and some contingency fees are as high as 40 percent. However, contingency fees do allow people without resources to access the legal system.

State-based legal aid societies should be listed in your telephone directory under “Legal Services,” “Attorneys” or “Lawyers.”

**The National Legal Aid and Defender Association**

can help refer you to your state’s legal aid service. [www.nlada.org](http://www.nlada.org) or 202-452-0620

To find local resources, including approved law schools free legal clinics, contact the American Bar Association [www.abanet.org](http://www.abanet.org) or (800) 285-2221

Check out [www.freeadvice.com](http://www.freeadvice.com) for answers to your questions about the law.