

# Termination From Employment: Unfair Or Unlawful?

---

February 10, 2014 | by Thomas F. Dorn, Jr

Simply because your termination was unfair does not make it unlawful. To determine if it was unlawful, consider your termination in the context of New Jersey employment law. New Jersey is an "employment at will" state. Fortunately, if you are an at-will employee, you can quit your job at any time for any reason. Conversely, this also means that your employer can terminate you at any time for any "lawful" purpose. If you are fired, the first question to ask is whether you are an at-will employee, which applies to the overwhelming majority of employees. Generally, unless you have an individual employment contract, group employment contract (such as a Collective Bargaining Agreement as a member of a union), or have another recognized entitlement to your position, such as tenured teachers or civil service employees do, you are an at-will employee. If this is the case, you can be fired for any "lawful" reason, or no reason at all!

The next question to ask is what constitutes a "lawful" reason for termination. In New Jersey, it is "unlawful" to discriminate against an employee based on their race, ethnicity, religion, gender, sexual orientation, nationality, disability, age, or pregnancy. Termination from employment may never be based on these criteria. The New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et. seq., (LAD) prohibits discrimination based upon any of these characteristics. LAD does not only protect individuals with respect to employment, it also specifically protects against discrimination in housing, public accommodations, certain business transactions, nursing homes and assisted living facilities from discriminating against an individual because of their Medicaid eligibility.

There are numerous laws that protect employees from unlawful discrimination. For example, the Conscientious Employees Protection Act (CEPA) protects "whistleblowers" from retaliation and wrongful discharge. Other statutes that protect employees include: the Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963 (EPA), Americans with Disabilities Act of 1990, the Prevailing Wage Act (PWA), New Jersey Family Leave Act (FLA), and federal Family and Medical Leave Act (FMLA).

Frequently, it is difficult to understand an employer's decision to terminate one employee while maintaining another. Even though you may have consistently received positive employment evaluations, or even no evaluation at all, it is generally lawful for an employer to terminate you. This may be lawful even if the retained employee received less favorable employment evaluations in a similar position.

Ordinarily, unlawful employment decisions will not be blatant. Keeping a diary or log of the conduct of a supervisor if you suspect that you are being treated unlawfully for any reason will provide evidence of this conduct should you bring a case. Similarly, employers should document all discipline or improper conduct of employees to avoid allegations of discrimination and to justify employment actions. To avoid a lawsuit, employers should be sure to follow any company disciplinary policies and progressive discipline practices. To determine if your employment action was unlawful or unfair, our employment counsel can help from both the perspective of the employer or employee.