

Work in South Carolina?



Know Your Rights?

This Workers' Guide Can *HELP YOU!*

South Carolina Workers' Rights Guide sponsored by LIA (Law In Action).

Law In Action (www.sclia.org) is a nonprofit organization that supports and educates workers about their job rights in South Carolina.

DISCLAIMER

This guide is not a substitute for legal advice but is meant as basic information for employees. If you have a potential employment case, you should consult an attorney before taking any legal action. Employment and labor laws change frequently and the facts of a particular case will determine if a case can be filed in court. An attorney who represents employees can help you keep up with those changes and give you advice for your case.

Why this Guide?

Law In Action sponsored this Guide to:

- Provide information to help you help yourself on the job.
- Give you a better understanding of your job rights.
- Provide a list of Federal and State Agencies that can help you in protecting your rights on the job.
- Allow you to take independent action when needed.
- Show you how to make complaints about your workplace in a safe and legal way.

This is the first edition of the *South Carolina Workers' Rights Guide* sponsored by:



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It is important to note that this Guide is not legal advice and the information given is subject to changes in the law since the publication date.

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“You’re Fired!”

The “At-Will” Employment Doctrine

For employees to protect themselves at work, they must know the ground rules. The first and most important rule is the employment “at-will” doctrine.

This legal doctrine sets the scene for all employment relationships in South Carolina (and in the rest of the country). As the SC Appellate courts state:

“This doctrine allows either party to terminate the employment ‘for any reason or no reason’ without being subject to a claim for breach of contract, subject to narrow exceptions...”

This means that unless there is an exception (this workers’ guide deals with such exceptions), an employer can fire an employee at any time and an employee can quit at any time.

At first, this may sound fair and balanced to you. **Yet, there is one major thing that employers have and employees don’t. It’s leverage.**

What does leverage mean?

It means that if a loom fixer threatens to quit for no reason, does the textile plant manager get nervous? How about a lab technician or a police officer or a salesperson? Are they a threat to their bosses if they threaten to quit?

No, they are not a threat at all since another person can be hired to take their place.

However, if a boss fires a worker for no reason, the worker may lose health insurance, a car, or a home.

The power to quit does not match the power to fire.

“You’re Fired!”

The “At-Will” Employment Doctrine (continued)

If your boss came to today and said, “It’s Monday and I have to fire you,” your firing is legal according the “at-will” doctrine.

Many employees believe that they are protected against unfair firings. Most are wrong. Many workers think that “the law” must be able to fix the many job terminations merely because they are unfair. This is, sadly, not true.

The “at-will” doctrine allows employers to fire employees for “no reason” and even for the wrong reason. If you are fired for being late for work even though you were out sick, the “at-will” rule does not protect you. You cannot sue to get your job back even when the reason for your firing is unfair.

Unfair firings are protected by the “at-will” rule and are legal.

You also cannot claim “wrongful discharge” since the legal definition means that you have to be fired in violation of a contract or because of discrimination. “Wrongful discharge” does NOT mean that a worker was fired unfairly.

All this may depress you but there are exceptions to the “at-will” doctrine that can provide you with job protection. It’s these exceptions that give you job rights.

These job rights are based on laws passed by the U.S Congress and by the S.C. General Assembly. Some of your job rights come from court interpretations of the law.

Let’s take a look at these exceptions to the “at-will” rule to help you understand your rights at work.

Hurt on the Job?

IF you're hurt on the job, you may be entitled to recover part of your wages during your recovery as well as payment of medical bills and compensation for any permanent disability resulting from the on-the-job injury. Here is how it works:

- You should report the accident to your employer immediately although you have up to 90 days to do it. The sooner you notify your employer the stronger your case will be.
- Your claim must be filed within 2 years of your injury with the S.C. Workers' Compensation Commission (see Agency List on page...). For job-related illnesses, you must file within 2 years of when you knew or should have known that the job caused your illness.
- A Commissioner will be assigned to your case and will decide what benefits you're entitled to, if any.



- If your employer fights your claim or fails to provide benefits you feel that you're entitled to, you should seek legal assistance.
- A settlement offer by your company's insurance carrier may be offered to you at any time during your case. Be sure to carefully review any such offer since your signature will make it final ending any claim to additional benefits in most cases.
- It is unlawful for an employer to fire or demote you because you have filed or pursued your workers' compensation claim.
- If your employer fired you for pursuing a claim and you are still able to do your job, you can sue the employer for lost wages and job reinstatement.

Workers' Compensation is a system that provides limited but almost certain recovery for workers injured on the job. The amount of compensation you can receive is determined by the state legislature and is very specific in most cases.

As this Guide goes to print, there is a loophole in South Carolina state law that allows companies to "opt-out" (drop out) of the workers' compensation system. Legislative efforts to close this loophole are underway.

For the latest updates regarding workers' compensation, you can go to the state website, <http://www.wcc.state.sc.us>.

Assaulted on the Job?

If you're assaulted on the job and are hurt, **you need to call the police and report the incident** to your supervisor.

The assault can result in a **Workers' Compensation Case, a Criminal Case, and/or a Civil Action Lawsuit.**

Workers' Compensation Case:

To qualify as a Workers' Compensation (WC) case, your employer must report the claim to the workers' compensation commission once you have notified your employer of the incident.

If the employer does not submit a claim, you should contact a WC attorney since it is easier to prove a workers' comp. claim than a civil suit.

If the employer does not report the incident to the commission because he or she believes that it is not covered by WC, then it is up to you to report the incident by filing FORM 50 with the Commission. This form is available online at <http://www.wcc.state.sc.us>.

Once you complete and submit the form to the Commission, remember to keep a copy for your records. If you have any questions or need further assistance, you should contact a WC attorney.

Criminal Case:

To qualify as a Criminal Case, you need to make a report to the police or sheriff's office. Cooperate with the law enforcement investigation and **provide witness information**. If there are physical injuries, **seek medical attention** and **have photos taken** of the injuries as soon as possible.

Check with the Solicitor's office to see if there is a witness assistance program that can help you. You may also be eligible for compensation through the South Carolina victim compensation program. You can call (803 734 1930) or go online to <http://www.oep.sc.gov/sova/fund.html>.

Civil Action Lawsuit:

To seek a Civil Action Lawsuit, you cannot be eligible for workers' compensation. **However, you can prosecute a criminal case against your assailant and also sue for civil damages.** If you decide to sue on criminal and civil basis, you should wait until the criminal case is done before bringing your civil suit. You have three years to initiate a civil suit.

In South Carolina, there are two basic courts for civil suits:

1. Circuit
2. Magistrate

If you are suing for an amount greater than \$7,500, the case must be filed in the Circuit Court. The Magistrate Court handles lesser amounts. Of course, you may need to consult an attorney to bring these suits.

Discriminated on the Job?

It is illegal for your employer to make decisions about work based on race, sex, national origin, age (40 and over), disability, or religion. However, federal discrimination law does **not** protect people based on sexual preference.

In 1964, the U.S. Congress passed an expansive civil rights law. One section (Title VII) deals with job discrimination. Title VII prohibits discrimination by employers because of race, color, national origin, gender, and religion. Not all employees are protected by Title VII. Those protected are government workers and employees at private firms with 15 or more workers.

In reality, you cannot claim discrimination if you work for a firm with less than 15 employees. There are states that do protect workers at small firms but South Carolina is NOT one of them.

In 1967, Congress passed the Age Discrimination in Employment Act (ADEA) prohibiting age discrimination against government workers and employees at private companies with 20 or more workers.

In 1990, Congress passed the Americans with Disabilities Act (ADA) to protect disabled citizens in many areas of life, including the workplace. Like Title VII claims, ADA and ADEA violations are investigated by the EEOC (Equal Employment Opportunity Commission).

Each statutory exception to the “at-will” doctrine has its own set of rules that must be forwarded to qualify for protection.

Proving intentional job discrimination can be difficult. Here are some ways to prove it:

COMPARISONS:

One of the best ways to prove discrimination is to use comparisons. For example, if you are an African-American female who has been turned down for a promotion for which you are qualified and a less qualified white male got the position that would be good comparison evidence to support a discrimination claim.

PATTERNS:

It is also helpful if you can prove your employer has a pattern of hiring or promoting less qualified persons from a different race or gender.

COMMENTS:

You can also use comments made by supervisors or managers to support your discrimination case.

If you get helpful testimony at your unemployment hearing, make a request to the Commission to hold the tape for you.



Discriminated on the Job?

(continued)

To make a discrimination claim, you must first file a claim with EEOC/SCHUAC within 300 days of the act of discrimination. If you intend to file a case in court at some point, you must have first filed with EEOC/SCHAC.

Before you file a charge of discrimination with EEOC/SCHAC, you should have more evidence than just the fact that you are in a protected class (race, sex, age, disability). For example, in order to have a legal claim for “discrimination,” you must prove that the unfair treatment was motivated by the employer’s bias.

If you file a claim for discrimination with EEOC/SCHAC, you are protected against wrongful firing. If you have been fired wrongfully and are claiming discrimination, you must continue to look for a job and accept any reasonable job offers.

Harassed on the Job?

You cannot make a claim or lawsuit from “harassment” on the job unless that “harassment is due to discrimination (e.g. racial or sexual harassment). Or, the “harassment is so severe as to meet the legal test for an “emotional distress” claim (*page 12*).

In general, what most people consider harassment on the job rarely results in a legal claim. Always keep a log of harassment incidents (at home) and include as much detail as possible. A detailed journal based on discrimination can be used later to refresh your memory.

However, there are specific things you can do in dealing with job harassment.

COMPLAIN AS A GROUP

The best way to stop the nondiscriminatory type of harassment (especially by supervisors) is to use the group complaint process which is not just limited to harassment complaints. The National Labor Relations Act (NLRA) provides some protection for group complaints made by private industry workers.

Harassed on the Job?

(continued)

In the early 1930's, the United States economy was suffering. The stock market crash of 1929 left behind The Great Depression and a country of unemployed workers with no hope in sight.

In 1933, President Franklin Roosevelt' administration encouraged Congress to pass the National Industrial Recovery Act which included ethical work rules called, "The Textile Code." However, when workers in South Carolina and in other textile states tried to have the new "Code" enforced, they couldn't.

Unrest over the absence of "teeth" in the federal law led to the nationwide textile strike of 1934 which included S.C. plants. The United Textile Workers of America sent "flying squadrons" to textile mills in the southeast to encourage workers to follow the national call to strike. Nearly, 500,000 textile workers went out on strike on Labor Day, 1934.

To stop the strike and protect their facilities, mill owners hired private security and the police deputized other citizens who supported the textile companies. In Honea Path, S.C., there is a monument to the seven textile workers who were shot and killed during the "Uprising of '34."

In response to the 1934 general textile strike, the 1935 National Labor Relations Act (NLRA) was passed. The NLRA provides the right to form unions and protects all workers, even those who are not in a union, who protest unfair job conditions.



Section 7 of the NLRA states:

*Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other **concerted activities** for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment....*

When you complain as a group, this is one example of "concerted activities" noted in Section 7. **The NLRA says that legitimate complaints made by private industry workers to bosses about working conditions cannot be punished.** In order for a group complaint to be protected, it must be clearly presented to the company, the workers must identify themselves by name as part of the group, the company must be an "employer" under the act (companies with less than 15 employees are not covered) and, the complaint must be about working conditions. **Any punishment or retaliation by an employer against a worker who has filed a legitimate group complaint can be challenged through a timely complaint (180 days) to the National Labor Relations Board.**

Harassed on the Job?

(continued)

RIGHT TO ORGANIZE



In short, the NLRA says that employees have the right to self-organization, to form, join, or assist labor organizations, and, as a group, to elect representatives who can engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The NLRA does not apply to government workers, supervisors, agricultural laborers, domestic employees within a home, independent contractors, individuals employed by a spouse or parent, or any individual who is subject to the Railway Labor Act [29 U.S.C. §152 (3)].

An employee who suspects unfair labor practice must file a charge with the appropriate field office of the NLRB within 180 days of the unfair labor practice.

Using this protection for group complaints is an inexpensive and effective method of improving conditions on the job in private industry. It is also a method seldom discussed or mentioned by companies or state agencies.

EMOTIONAL DISTRESS



Most on-the-job aggravation, “harassment,” and irritation do not amount to a claim for emotional distress in court or are covered by workers’ comp.

To have an emotional distress claim:

- The conduct that causes your emotional distress must have been so bad or “outrageous” that it goes beyond the bounds of human decency.
- In addition, you must have suffered **severe** emotional harm as a result of this conduct.

Harassed on the Job?

(continued)

In order to recover for the intentional infliction of emotional distress, a plaintiff must establish:

- The defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct.
- The defendant's conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.
- The actions of the defendant caused the plaintiff's emotional distress.
- The emotional distress suffered by the plaintiff was severe so that no reasonable person could be expected to endure it.

It is rare that a legal case for emotional distress can be based on conduct by supervisors or co-workers on the job because most such incidents can be brought as Worker's Compensation claims. Contact a lawyer if you feel that you have a legal claim.

"The law intervenes only where the distress inflicted is so severe that no reasonable person could be expected to endure it."

Dickert v. Metropolitan Life Case Co., 311 S.C. 218, 428 S.E.2d 70 (1993)

Shipe v. Settle, 315 S.C. 510, 445 S.E.2d 651 (Ct.App 1995)

SEXUAL HARRASSMENT

The law protects some, but not all, employees against unwanted sexual advances at work.

Under federal law, if you work for an employer who has 15 or more employees, sexual harassment is illegal. Some states (not South Carolina) provide sexual harassment protections for workers at companies with fewer than 15 employees.

Sexual harassment also includes sexually offensive jokes, comments, or behavior by other employees that make the workplace intolerable.

If you think you have a sexual harassment claim and you have 15 or more employees where you work, you can file a claim with the Equal Employment Opportunity Commission (EEOC) (See Agency List). However, the law normally requires that you first give your employer a chance to fix the problem, especially if the "harasser" is not the owner or top manager.

To protect yourself and give the company a chance to stop the harassment, you should make your complaint to the employer in writing and be specific but don't exaggerate. You should also keep a copy of anything you give to the employer and keep a journal at home noting all of the harassment in detail, including specific quotes, dates and times.

Harassed on the Job?

(continued)

If you suffer serious emotional harm because of the harassment, ask for a medical leave and seek counseling.



You should also consider filing a workers compensation claim (see pages 4, 5, & 6). This is particularly important if you work for a small employer (fewer than 15 employees) since no other legal protection is available to you.

If the owner or top manager of your company harasses you or if there is a pattern of harassment supported by the top management, you may also have a claim for intentional infliction of emotional distress.

Finally, it is common that harassers go after more than one employee.

If you know of other victims of job harassment, it will help you to make your harassment complaints together. (See GROUP COMPLAINTS)

Denied Last Paycheck?

South Carolina has a payment of wages statute (41-10-80, S.C. Code of Laws). Once an employee earns wages, they become due on the regularly set payday. Commissions are counted as “wages” under the law.

If you are an employee who has not been paid on time but is still employed by the company, you have a real problem. You can request payment, of course, but can be fired for asking. If you have been fired or have quit your job, you should take the following steps to recover your lost wages:

1. Send a certified letter stating exactly what you are owed.
2. The letter should go to the top person on the job.
3. Keep a copy of the letter for your records.
4. If your company has a national headquarters, a copy should be sent there as well.
5. In the letter, give the company no more than seven days to make a full payment and provide a mailing address (ask SCLIA for a sample letter, if needed)

Denied Last Paycheck?

(continued)

6. If the money is not paid on time or the full amount is not paid, then you can file suit under S.C. Wage law.
7. You are entitled to collect up to three times the amount of wages owed to you.
8. You need to file in either Magistrate Court (for damages up to \$7,500) or in Circuit Court (damages over \$7,500) and you need to file where you worked. For example, if you worked in Simpsonville, you need to file in Simpsonville Magistrate Court.
9. When you file in Magistrate Court, the filing fee is \$55. The filing fee for Circuit Court is \$70.
10. Take proof of the wages you are owed (pay stubs, contract, notice of wages, etc.)
11. You can file suit on your own in Magistrate Court but you might want a lawyer if the case goes to trial.
12. In Circuit Court, you may want an attorney representing you even though you can represent yourself.
13. The S.C. Wage law also allows you to be reimbursed for any attorney fees and legal costs if you win the case.

Slandered or Libeled?

When a person says a damaging comment about you, it is called “slander.” If a person writes a damaging statement about you, it is called “libel.”

You cannot sue for slander merely because you were fired unfairly. In order to have a slander case, you must be able to prove that a false statement (verbal or written), damaged your reputation. In some limited slander cases, the actions of an employer can be considered slander.

Slander and libel cases are easier to prove when they involve false statements about stealing, lying, or breaking the law. However, proving damage to your reputation can be difficult.

It is crucial and critical to a slander case to show that people other than your friends and family witnessed the false statements about you.

It is important to keep a journal and record or make note of any slanderous statement made about you, including the name of the person who made it and the exact words that were used, as well as the date of statement, and the names of others who witnessed the statement.

Slandered or Libeled?

(continued)

Some people ask if they can record conversations at work. Under South Carolina law and under federal law, you can record your own conversations with another person. A good example of the damages that could possibly be caused by slander is the loss of a job, particularly future employment. A bad job reference is not the same as slander.

To find out what your former employer says about you, you can contact a reference check company.

If a serious false statement has been made against you, and you believe that you have been damaged by it, consult an attorney.

Under SC law, the filing of a slander or libel lawsuit and/or tape recording your own conversations, does not protect you from being fired.

Fired or Laid-Off?

WARN (The Worker Adjustment and Restraining Notification Act of 1988) requires some employers to provide 60 days' advance notice of plant closings and large layoffs. Most layoffs and many closings are not covered under this federal law, however, and no advance notice to workers will be required. Below are the WARN rules:

1. If your company has less than 100 full-time workers, it is not required to provide any advance notice of a closing or layoff.
2. A plant closing is defined as the permanent or temporary shutdown or a single site employment loss of 50 or more full-time employees during any 30-day period.
3. A company must give advance notice of a mass layoff only when 33% or more of full-time workers are laid off, and it affects 50 or more full-time workers.

Even if the closing or layoff affects a large enough number of people, the law allows companies to avoid giving advance notice in a number of other ways, such as by offering transfers to other sites in cases of business relocations or consolidations; or by claiming that the business conditions that caused the employment loss were not "reasonably foreseeable."

If you are involved in a mass layoff or plant closing, consult the LIA staff or a lawyer for help in determining whether you are covered under the WARN law.

Took Drug Test?

Drug testing usually involves a worker giving to the employer a urine or blood sample that is then tested for the presence of illegal drugs. Since government workers have constitutional rights on the job (e.g. the right to be free from unreasonable searches), their employers must give drug tests in a reasonable manner. **Workers in private industry can be tested for drugs almost without restriction.**



More and more companies are writing drug testing policies. **It is therefore essential for you to carefully review and understand your company's policy.**

For private industry workers who have drug testing policies, the policy will usually be followed if the employee handbook or manual has been distributed to you and testing is mandatory.

If you are a government worker and your employer wants to test you, the reasons given for the test will determine whether the employer has the right to test you. Some reasons that courts have considered valid include tests following accidents and tests as part of theft investigations.

If you are confronted with having to take a drug test, you should go to your family doctor the same day and have him test you. By doing this, you reduce the chances of being fired because of a mistake by your employer or the testing lab it uses.

The use of drug testing by employers is a developing area of the law. Because of this, **you may want to consult a lawyer when you're notified that you will be tested.**

Although your employer's demand that you take a drug test may offend you, refusing a drug test, particularly while working for a private company can lead to your termination without recourse.

Remember, under the "at-will" doctrine, you can be legally fired for taking a drug test, passing a drug test, or refusing a drug test. Drug testing can be challenged through Group Complaints as noted under the NLRA section.

If you are fired and your employer tells others that you're doing drugs and you passed the drug test, you might have a slander suit.

Took Polygraph?

Employers in private industry can conduct polygraph tests but, the Employee Polygraph Protection Act of 1988 (EPPA) greatly limits the use of polygraph tests. Government workers are not protected by the federal polygraph law.



Restrictions on private industry testing include a requirement that you are suspected of conduct involving economic loss or injury to the company. The suspicion needed to justify giving you a polygraph test must be specified in writing and must pass a “reasonableness” test.

If you are applying for a job in businesses involving security systems, armored car services, etc., or jobs involving

If you are applying for a job in businesses involving security systems, armored car services, etc., or jobs involving production of nuclear or electrical power, or drug manufacturing jobs, you may be polygraphed.

Employees who can legally be tested under the federal law can be fired for refusing to take the test, as long as the specific notice requirements and other procedures are followed by the employer.

Federal law provides for lawsuits and penalties against employers who violate this federal law. The federal law restricts the use of polygraphs, voice stress analyzers, and similar “machines” that claim to detect honesty.

The law does not restrict the use of other types of “honesty” detectors such as written tests or questionnaires.

Polygraphs and other “honesty” tests have proven to be unreliable and unfairly used in the workplace, particularly in private industry.

If you are faced with a polygraph test, you should seek legal advice and assistance. Be careful not to refuse a test directly because you could be fired for insubordination.



If you get advance notice that your employer is going to require a polygraph for a specific incident, you can get your own test first and use it to challenge the company’s result. You can still be fired under the “at-will” doctrine but conflicting evidence might make your bosses think twice.

Have a Grievance?

Whether you work in private industry or in government, you must follow to the letter any grievance procedure provided to you by your employer. Most government workers have a grievance procedure that is required by the Constitution. Private industry workers may have a grievance procedure in a handbook or policy manual (see Handbooks).



If you are uncertain as to whether you're entitled to submit a grievance, send a written request for a grievance and force your employer to deny coverage, in writing if possible. In this way, you cannot be accused later of failing to exercise the rights given to you under the company policy.

Government employee grievances are difficult to win. Very often, this is due to the final decision being made by a mayor or administrator who was involved in the initial firing decision. File the Grievance and pursue it to the end anyway.

In some cases, participating in a grievance hearing is your only remedy if there is no lawsuit that can be filed. Be sure to ask for all available rights including: the participation of legal counsel, witnesses, confrontation and cross examination of witnesses against you, and written notice of charges.

Denied Unemployment?

You are not automatically entitled to receive unemployment compensation benefits following a separation from a job. You must apply for unemployment compensation and prove that you were without fault in causing your firing to receive the maximum benefit. Employers are contesting unemployment compensation benefits in more and more cases.

If you are laid off from a job, you should have no problem receiving maximum benefits.

If you quit your job, you will receive no benefits unless you were compelled to quit due to severe mistreatment or major changes in job conditions and can prove it.

If you are fired for an alleged rule violation or other "misconduct," you can be disqualified for benefits from 5 to 26 weeks.

When the reason given for firing by an employer is not correct, you should challenge any denial of unemployment benefits through the Employment Security Commission's appeals procedures. In unemployment benefits cases, there is only one hearing at which witnesses can testify and documents can be presented. This unemployment "trial" is called the "appeals or tribunal" and is conducted in your local area. **Treat this hearing seriously, and come prepared to prove why you are entitled to benefits.**

You can use the unemployment appeal hearing to prove that your firing was false and sometimes to prove discrimination. If you get helpful testimony at your unemployment hearing, make a request to the Commission to hold the tape for you. If you file a case later, you can subpoena the tape and have it transcribed.

Denied Unemployment?

(continued)

According to S.C. Code 41-39-30, you do not have to pay a fee to the Commission or its representatives or to any court or officer at a Employment Security Hearing. You can also be represented by an attorney or other duly authorized agent. However, no attorney or agent can charge or receive from you more than the amount approved by the Commission.

This maximum fee is the sum of \$125.00 or the weekly benefit amount that you earned, whichever is greater. In addition, a mileage fee to and from the hearing at the existing rate approved by S.C. for state employees can be charged to you.

Keep in mind that at the hearing, you can:

- Subpoena documents and witnesses but must give the unemployment office the name, address, and phone number of any witness you need for the hearing.
- Subpoena friends at work who will testify for you. The subpoena could protect them against being fired if the company does not like what they say at the hearing.
- Use an attorney to help you cross examine witnesses.
- Appeal a decision that goes against you to the full Commission in Columbia. However, you cannot add any new evidence to your case. Usually, the full Commission will not change the hearing tribunal's original decision unless there was an obvious mistake.

Denied Vacation or Holidays?

You are not entitled by law to holidays and vacation pay in private industry.

You should review your employee handbook or policy benefits. Government workers are provided certain holidays by law but, employers are not required to provide vacations. If your employer provides for holidays and vacations, this does not automatically mean that you will be paid for unused holidays or vacations.

If you are fired and have unused holidays or vacations, your handbook or policy manual will tell you if you are entitled to be paid for these days when leaving the company. If you company does not have a written policy on holidays and vacations, you probably will have no rights to be paid for unused days.

If you are entitled to be paid for unused holidays or vacation days under your company policy, you can:

- Complain to the S.C. Department of Labor (see Agency List) or,
- Contact the magistrate's office in the county where your employer is located (if your claim is for 2,500 or less) or,
- Consult a lawyer.

Denied Sick Days or Leave of Absence?

You are not entitled by law to leaves of absence or sick days except under the rules of the Family and Medical Leave Act (FLMA) holidays and vacation pay in private industry.

Federal law does prohibit employers with leave policies from violating federal discrimination laws in the use of leave policies. (see "Discrimination" on pages)

An important issue concerning leaves or sick days is the **treatment of pregnant workers**. Employers must treat pregnancy leaves the same as any medical leaves covered by the company's policy or practices.

To find out what your employer's rules are for leaves or sick days, review your employee handbook or policy manual.



Denied Health Insurance?

Until some type of national healthcare reform is enacted, employers are not required by law to provide health insurance coverage for their workers.

If employers choose to provide health insurance coverage, however, federal tax laws require that they also provide continued coverage for you after separation from employment in some cases.

If you are provided health insurance coverage and leave the company, write to your former employer and ask about health insurance continuation rights under the Congressional Omnibus Budget Reconciliation Act of 1986 (commonly known as "COBRA").

Denied Family Leave?

Employees of public agencies and employees of private companies with 50 or more employees are now entitled to a total of 12 workweeks of leave without pay for family or medical reasons under FMLA (Family and Medical Leave Act of 1993).

These medical reasons include:

- The birth of a child
- Placement of a child in your home for adoption/foster care
- A serious medical condition involving yourself, your parent or spouse.

The employer must also continue the group insurance coverage for you during the leave.

If you have accrued vacation or other leave time under the employer's policy, you may elect to substitute this time for any part of the 12-week period. Some employer may require you to substitute this time.

If your rights under this Act are denied or retaliation for exercising your FMLA rights occurs, you can sue and recover the job, benefits, and money lost, as well as attorney's fees and related costs.

The administrative agency responsible for this Act is the U.S. Department of Labor (not the Equal Employment Opportunity Commission). If you have problems getting your leave, you are not required to file a complaint with the Department of Labor before filing a suit.

Except in cases of certain "highly compensated" employees, after the leave ends, you are entitled to be "restored" to the same or equivalent position.



Denied Minimum Wage?

Employees who work for companies with large enough annual earnings are covered by the federal minimum wage law. For most of these employees, the minimum wage is \$5.85 per hour.

If you're not being paid minimum wage, contact the U.S. Department of Labor Wage and Hour Division. (see Agency List). Not all employees are protected by the Fair Labor Standards Act (FLSA). Managerial and professional employees are exempt.

Denied Overtime Pay?

Employees who work for companies with large enough annual earnings are covered by the federal overtime law.

The basic rule for payment of overtime is that **workers must be paid time-and-a-half for each hour worked over 40 hours per week.**

There is no restriction under federal or state law as to the maximum amount of overtime hours that your employer can require you to work each week, so long as you are paid correctly.

Although state law requires that the employer notify you of your starting pay and hours, as well as changes in your pay and hours, the law doesn't give you a right to sue for violations or otherwise adequately punish employers who violate this rule.

If you have a question about your overtime pay, contact the U.S. Department of Labor, Wage and Hour Division (see Agency List).

If your employer changes your hours without notice, you can complain to the S.C. Department of Labor (see Agency List).

Denied a Pension?

Employees are not required to provide you with a pension or retirement plan.

If your employer does have a pension plan, there is a federal law that sets out rules to be followed:

- The Employee Retirement and Income Security Act of 1974 (ERISA) requires employers with pension plans, retirement plans, and severance packages to protect the money that supports these benefits.
- **ERISA also requires your employer to give you a plan summary when you make a written request.** This information should include vesting requirements, the amount of money you will receive under the plan, "lump sum" payment options, and when your benefit payments will start.

Every pension or retirement plan has procedural steps for you to follow. Failure to follow these steps can cost you your pension or retirement funds.

If you have any questions about your pension plan, write for and obtain a summary of the plan. Ask any questions you have in writing to the plan administrator. You may want to consult a lawyer if you have any problems obtaining or understanding this information.

Denied Overtime Pay?

Federal Law prohibits discrimination based on disabilities.

The Americans with Disabilities Act of 1990 (ADA) is, among other things, designed to overturn the effects of stereotypes, prejudices, and unfounded beliefs about the lack of capabilities of disabled workers.

If you are having difficulty at work because of a disability, then you must notify your employer in writing of your disability.

You also must ask your employer in writing to make specific changes in your job relating to your disability. These requests are sometimes called “accommodations.”

For example if you have a serious back problem, you might ask your employer to adjust your work schedule so that you can take additional breaks, or sit for part of the day.

You should never assume that the employer knows about your disability or knows what needs to be done to make your job go more smoothly in spite of your disability.

If your employer does not adjust your job because of your disability, you might have a disability discrimination claim.

Disability discrimination claims must be filed with the Equal Employment Opportunity Commission (EEOC) or South Carolina Human Affairs Commission (SCHAC).

Equal Employment Opportunity Commission

301 N. Main Street, Suite 1402

Greenville, SC 29601-9916

Phone: 1-800-241-4416

Fax: 864-241-4416

Website: <http://www.eeoc.gov/>

South Carolina Human Affairs Commission

PO Box 4490

2611 Forest Drive, Suite 200

Columbia, SC 29204

Phone: 803-737-7800

Toll free: 1-800-521-0725

Website: information@schac.state.sc.us

You must file your claim with the EEOC or SCHAC within 300 days of the date of discrimination.

Denied Rights as a Government Worker?

As a government worker, the United States Constitution and the South Carolina Constitution provide certain protections for you. No such protections exist for workers in private companies.

Below are guidelines that you can follow to be sure your rights are protected:

- Find out if your place of employment has a written grievance process. If so, get a copy.
- If you are a new employee, you might not be eligible to file a grievance.
- Be sure to file your grievance on time and with the right person.
- Be sure to submit all of your issues in one group in one grievance. Raise all constitutional issues that you may have with the case. (If an issue is not raised in the first place, you lose the right to raise it at a later time).
- Do not skip any steps in the grievance procedure.
- Know the time limits between each step of the grievance procedure.
- If, for example, Step 1, requires a response from your employer within 5 days and you are unable to receive one from your employer, move on to the next step of the process.
- Submit everything in writing and keep a copy for your own file.
- Check a procedure to see if you have the right to bring a lawyer or other representative to a hearing.
- Find out if the hearing will have “live” testimony or merely written statements.
- If grievance procedure does not allow attorney to participate in the hearing, consider consulting an attorney to help you prepare.
- Find out whether there is a right to appeal the decision to another grievance body or court.



Even if the grievance process you have appears to be a waste of time, do it anyway.

Denied a Safe and Healthy Work Environment?

Employers are required to provide you with safe and healthy working conditions by federal law.

The Occupational Safety and Health Act of 1970 (OSHA) sets standards for hazards that are especially harmful and states that employers have a “general duty” to provide workers with a job environment that is free from dangerous conditions that are likely to cause death or serious physical harm.

OSHA is authorized to conduct workplace inspections, review employers’ records, question workers, issue written citations for violations, and assess financial penalties.

In order to get an inspection, your complaint must:

- Be in writing
- Claim that a violation of the OSHA law exists
- Specify the hazard and explain why it is dangerous
- Be signed by an employee or your union or legal representative.

In describing the dangerous condition, include a description of the hazard, the location of the hazard of company property, the number of employees exposed, the length of time the hazard has existed and any complaints about the hazard made to the employer that were ignored.

Denied Seniority?



There is no state or federal law that provides special benefits or job security for workers based on length of service.

Your employee handbook or policy manual may mention seniority, but unless the policy provides a specific benefit for length of service, you are otherwise not protected (see Handbooks).

Union contracts frequently provide a form of job security based on years of service with the company. This is where the concept of seniority rights comes from.

Many employees incorrectly believe that their years of service give them special consideration of job security.

Unless specific benefits or rights are provided in an employee handbook or union contract, a person with many years of service has no more job security than a new hire.

Denied a Job Reference?

You are not entitled by law to receive a reference from a former employer.

There is little or nothing you can do about a negative or unfavorable work reference.

You may wish to contact the S.C. Department of Labor, which can **negotiate with your former employer to provide you with “neutral” (dates of employment, amount of pay, job title) work references** (see Agency List).

False statements by former employers, including references, may be so damaging to your reputation as to amount to slander or libel. A slander/libel claim based on a former employer’s statement is very difficult to prove in court (see Slander/Libel).

In rare cases, a claim for third party interference can be created if a former employer is making maliciously false statements.

Job references represent a very sensitive area in labor law. References are on the one hand very important to future employment, and on the other hand, are difficult to control. You can contract a reference check company to find out what your former employer is saying about you (see Agency List).



Denied Breaktime?

There is no state or federal law that requires an employer to provide breaktime.

To try and change your company’s policy on breaktime consider a group complaint (see group complaints).

Denied a Job Reference?

Your company's handbook (if it has one) can be a critical tool for documenting your worker's rights.

Since most employees in South Carolina who work in private industry can be fired "at will," any written employment agreement may provide the only job rights you have.

If your company has a written handbook, you should become familiar with it when you are first hired. **Do not wait until a job arises to read it.**

It's important to know that:

- Employee handbooks that are not distributed to workers generally cannot be enforced as contracts.
- Most handbooks look like they provide you some rights but have a "disclaimer" in front of the book which says "this book is not intended to create a contract" or words to that effect. The legal impact of these words is to take away the "rights" contained in the rest of this book. You could try to force your employer to remove this disclaimer through group action (see Group Action).
- You should carefully review the sections in the handbook that refer to disciplinary action, terminations, grievance procedures, and warnings. These sections may require prior warnings before you are fired.

After June 30, 2004, South Carolina Law (41-1-110) regarding handbooks as "contracts" changed to state:

...that a handbook, personnel manual, policy, procedure or other document issued by an employer or its agent after June 30, 2004, shall not create an express or implied contract of employment if is conspicuously disclaimed. For purposes of this section, a disclaimer in a handbook or personnel manual must be in underlined capital letters on the first page of the document signed by the employee...

Handbooks are no longer a source of job rights in S.C. after the law changed in 2004.

Know Your FOIA Option?

FOIA (The Freedom of Information Act) allows you to track the status and details of your case.

The FOIA applies to any meeting of a public body, whether the meeting is designated as formal or informal and whether action is taken upon public business or merely discussed.

Thus in government cases or in cases involving government grievances, the FOIA allows you to access information about your case.