



Portfolio Media, Inc. | 648 Broadway, Suite 200 | New York, NY 10012 | www.law360.com
Phone: +1 212 537 6331 | Fax: +1 212 537 6371 | customerservice@portfoliomedia.com

I've Lost My Job: What Do I Do Now?

Law360, New York (March 31, 2009) -- Everywhere we look in these troubled economic times, we run into friends and business associates who have lost their jobs. It's always stressful to lose your job, but when unemployment is so high and there are so few employers looking to fill positions, terminated employees have even more to be concerned about.

I'm seeing a lot of these people in my practice and the first thing they ask me is "What are my rights?" Unfortunately, I often have to tell them that, in Connecticut and in many other states, their rights are few and limited.

Connecticut, like a lot of other states, is what's called an "employment at will" state. What this means is that, in the absence of a contract, or other special circumstances, employers can fire employees at any time, with or without an explanation. All may not be lost, however, and employees who lose their jobs are well-advised to seek professional advice about their rights.

Take the case of a hypothetical employee named Jack. What are some issues Jack should consider if he loses his job?

First of all, if Jack worked for an employer covered by the Federal Worker Adjustment and Retraining Notification Act ("WARNS Act"), he might be entitled to advance notice that he would be losing his job.

The act applies to specific employers with more than 100 employees which must give employees 60 days advance notice of plant closings or mass layoffs.

If Jack's situation falls under the WARN Act protection, and Jack did not receive proper advance notice about losing his job, he may be able to collect back pay with benefits, including earned vacation, for up to 60 days.

While employers are generally allowed to fire employees without a reason, employees who are fired for what the law considers the wrong reason may have certain rights. State and federal laws have what are known as “protected categories.”

If Jack’s employer fired him based on Jack’s status as a member of a protected category, Jack would have case under state and federal law.

For example, in Connecticut, employers are generally prohibited from firing an employee based on his or her race, color, religious creed, age, sex, marital status, national origin, ancestry, history of mental disability, mental retardation, learning disability, physical disability, including blindness, sexual orientation or pregnancy.

Jack might also have a case against his employer if he were fired because he:

- 1) Opposed a discriminatory employment practice of the employer;
- 2) Exercised rights of free speech, religious liberty, or assemblage under the state or federal constitution or
- 3) Disclosed an employer’s illegal or unethical acts.

Under these circumstances, he might be able to recover lost pay, attorney’s fees and other types of damages from his employer.

There are additional issues that Jack should consider, regardless of whether he believes he was wrongfully fired. Jack is entitled to be paid all wages owed through the date of termination. An employer who fails to make such payments may be held liable for double damages.

Jack should also consider whether he is entitled to be paid for accrued vacation, based on company policy or some contractual right. Under proper circumstances, Jack’s employer should provide Jack with a letter of recommendation that might improve Jack’s chances of finding a new job.

Jack also needs to know whether he is entitled to severance pay based on his employment contract (if he has one) or company policy. Jack should not expect to receive severance pay for nothing. Generally his employer would ask him to sign a separation agreement.

That agreement usually requires Jack to release all claims against his employer in exchange for the severance pay, among other provisions. Jack needs to evaluate whether the severance pay is significant enough to make him want to release claims he has against his employer.

In addition, he should receive benefits under the severance agreement beyond those he would have received if he did not sign the release.

I should add that his employer cannot require him to waive some claims, such as certain state and federal agency claims, Federal Fair Labor Standard Act claims and workers' compensation claims.

If Jack suspects he's been fired because of discrimination, or some other form of prohibited conduct, he may very well be able to negotiate a richer package than the one initially offered by the employer, by working with an attorney who will let the employer know of Jack's potential claim. This can often provide an incentive for an employer to "sweeten" the package.

Finally, Jack may be entitled to collect unemployment benefits if he wasn't fired for willful misconduct or didn't quit his job without good cause. The amount of his benefits will depend on his average earnings during a specific period of time. Jack will be required to prove that he is making reasonable efforts to find work during the period that he collects unemployment benefits.

The shock of losing a job is often so great that people cannot think of anything else. Their rights are the last thing on their minds. But, after recovering from the initial shock they may very well benefit from a professional consultation to review their potential rights. These rights can offer some protection while they are getting back on their feet.

For a checklist of "Employee Rights," visit [www.begoshorgan.com/employee rights](http://www.begoshorgan.com/employee%20rights).

--By Daniel Green, Begos Horgan & Brown LLP

Daniel Green is of counsel with Begos Horgan & Brown in the firm's Westport, Conn., office and chairs the firm's employment group.

The opinions expressed are those of the author and do not necessarily reflect the views of Portfolio Media, publisher of Law360.