
Your workplace rights as a political protester

 legalaidatwork.org/factsheet/your-rights-as-protester-political-protests-by-employees

Can I be disciplined or fired for participating in a political protest?

You cannot be fired simply because you engaged in a political protest, which is considered protected political activity in California. Specifically, California Labor Code 1102 does not allow your employer to discharge, or threaten to discharge you for following any particular “course or line” of political action or activity, such as a gathering or march to protest actions by federal, state, or local government officials. Similarly, Labor Code 96(k) and 98.6 protect you from being demoted, disciplined or discharged for “lawful conduct occurring during non-working hours away from the employer’s premises.”

However, you *can* be disciplined or fired if you missed work without permission while you engaged in the protest (unless your employer never disciplines employees for missing work for any other reason). You can also be disciplined or fired if your political activities significantly disrupt your employer’s business.

What happens if my employer violates California Labor Code 1102?

Any employer who violates Cal Labor Code 1102 is guilty of a misdemeanor. The violation is punishable, in the case of an individual, by imprisonment in the county jail not to exceed one year or a fine not to exceed \$1,000, or both. If the employer is a corporation, the violation is punishable by a fine not to exceed \$5,000.

May I recover money damages for a violation of California Labor Code 1102?

Yes, nothing in the Labor Code prohibits you from recovering damages from your employer for an injury suffered through a violation of the Labor Code protecting political activity. So, if you were suspended without pay for engaging in a political

protest, you could be entitled to collect your lost pay. If you believe your employer has violated the Labor Code you may file a claim with the California Labor Commissioner. (The California Labor Commissioner has offices statewide. Contact information is at www.dir.ca.gov/dlse.)

Don't I have free speech rights that protect me from discharge for participating in a political protest?

Maybe. Political speech and activities outside of the workplace (e.g., a political protest away from your work) are generally protected. On the other hand, political speech and activities at work may not be protected if they interfere with your work or significantly disrupt your employer's business. If you work for the government, your on-the-job "political" speech may also be protected by the First Amendment to the U.S. Constitution because it likely addresses a matter of "public concern."

If I was arrested due to political activity, can my employer take action against me while the arrest is pending?

If your arrest could reasonably have an impact on your employer's business (e.g., you are an off-duty police officer arrested for engaging in violence at a political protest), then your employer may take action against you while the arrest is pending trial. However, under California Labor Code 432.7, your employer is not allowed to use your arrest pending trial as the *sole* determining factor in making a negative employment decision against you. (Otherwise, there would be no presumption of "innocent until proven guilty.") Therefore, you can expect your employer to ask about the circumstances of your arrest pending trial to determine whether the arrest could have an impact on your employer's business.

Can my employer take action against me if my arrest is resolved without a conviction?

Once your arrest has been resolved in your favor (e.g., you were not convicted, given probation, or had any other mark placed on your criminal record), the mere arrest normally can no longer be used against you.

What are my remedies if my employer wrongly fires me because of an arrest?

You may sue for actual damages, such as back pay (your lost wages) and front pay (the amount of money you would have been paid until you can get a new job) under the California Labor Code. You should also try to "mitigate" your damages, which means

making reasonable efforts to get another job, or else you may lose your claim to both back and front pay.

DISCLAIMER

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