

PITT, DOWTY, McGEHEE & MIRER, P.C.

What to do if you believe your civil rights are violated

Good advice we often give an employee who perceives discrimination at work is to document what has transpired. A journal should be kept of all important dates and events. Statements made by supervisors or coworkers of importance should be recorded verbatim (if possible). Always remember that if your claim proceeds to a lawsuit, your journal will become discoverable by the employer's lawyers. This means that you will be required to turn over the journal for inspection and photocopying by the employer's attorneys. It is, therefore, important that all entries be accurate, business like, and professional in content and tone. Tape-recording of conversations, although legal in some situations, is discouraged because it often places the employee in a negative light.

Management must be notified of any discriminatory or hostile work environments. Notification should be in writing so that there is proof of when the complaint was made, the nature of the complaint, and the relief requested. You should be prepared to cooperate with management in its investigation into your complaint. Without adequate notice of a workplace problem, your employer is usually not legally responsible for injuries caused by problematic conditions.

Request a copy of your personnel file. Michigan has a statute known as the Bullard-Plawecki Right-to-Know Act. Under this law, you must make a written request to your employer to review and photocopy your personnel file. Your employer must produce the personnel file for inspection and photocopying within a reasonable amount of time (usually one week). Your employer can charge you a reasonable fee (usually no more than .25 per page) for photocopying your record. You are entitled to correct any errors in your personnel file by including, on a separate sheet of paper, your version of events in question.

Prepare a chronology of the events in controversy. In proving a discrimination case, the sequence of events is very important. If consulting with us regarding an alleged discriminatory employment action, we will require a concise and accurate written narrative. If you have not begun the documentation of your claim, you should immediately reconstruct the important events in a chronology or time line and continue to add events as they occur.

If you have been terminated from your employment, the law imposes upon you a duty to mitigate your losses. Mitigation means "to lessen the effect of". Your duty to mitigate requires you to pursue comparable employment in your field. The law does not require you to obtain another position in order to have a viable claim. The law, however, does require you to make a reasonable and diligent effort to find comparable work. You will be required to prove that you have taken steps to mitigate your losses. The best way to do this is to keep careful records of all job pursuit activities, including copies of advertisements for positions, applications for employment, correspondence and the like. If a lawsuit is filed on your behalf, you will be able to demonstrate your diligence in pursuing alternative employment opportunities by presenting to the company's lawyer a log of activities and/or copies of your applications and reject letters.

If you are offered a comparable position with another company and refuse to accept that position without a legally-justifiable reason your claim for economic damages may cease as of the date of your rejection. In order for the employer to have the benefit of this rule, it must establish that the position that you turned down with another firm or company was of a comparable nature. Whether the position is of a comparable nature requires the opinion and evaluation of a competent employment-discrimination attorney.

In order to assert a claim of failure to accommodate based upon a disability, you must request the necessary accommodation in writing.

The request should detail the nature of and reason for the accommodation and, should include documentation of need from your medical or psychological provider.

After a claim of discrimination has been presented to your employer on your behalf, the employer may offer to reinstate you to your former position. Failure to accept the offer of reinstatement, without a legally-justifiable excuse, may bar your later claims for economic damages against your former employer. Once again, whether your claim for economic damages will be barred depends on an assessment of your situation by a competent employment-discrimination attorney.