



# SHOULD YOU SUE YOUR EMPLOYER?

*Points to Consider Before  
Deciding to Sue*

**AEA** Arizona  
Education  
Association

[arizonaea.org/helpdesk](http://arizonaea.org/helpdesk)



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(877) 828-1983

## Note

**The AEA Defense Fund primarily funds legal services to defend active members facing negative employment actions, such as dismissals and certificate revocation proceedings.**

Funding for court action is very limited and must be approved by the AEA General Counsel and the AEA Board of Directors. The following factors, as well as other reasonable criteria, are used to determine whether to fund court cases: (a) completion of a Defense Fund Application; (b) evaluation of the case by an Organizational Consultant; (c) current active membership and active membership at the time of the occurrence, giving rise to the issue; (d) meeting the guidelines of the Defense Fund and the NEA reimbursement program; (e) exhaustion of all local and governmental remedies; (f) a viable legal theory; (g) reasonable likelihood of success; (h) the action complained of resulted in actual prejudice or injury to the member's employment rights; (i) statewide impact; and (j) adequate funding.



## Before Taking Legal Action

An employee should carefully consider the circumstances and alternatives before deciding to sue his or her employer. An employer should not treat an employee unfairly. Even if an employee has been treated unfairly, however, that unfair treatment may be difficult to prove or may be insufficient to support a winning lawsuit. On television, one often sees exciting legal victories. In real life, court battles often are stressful, expensive, time-consuming, and frustrating. The following are a few things to consider before taking legal action. If you get hurt at work, you cannot sue your employer except under extremely rare circumstances. Instead, you must file a workers' compensation claim. See the AEA Legal Advocacy Booklet *Hurt or Sick at Work*.

### 1. What facts must be proven?

In order to win, a person filing a lawsuit must prove certain facts, called the “elements,” for each type of claim or cause of action. For example, some unfair employee dismissals do not qualify as a legal claim against the employer, while other unfair dismissals fulfill the elements of claims such as racial discrimination or breach of contract. An employee should know what he or she has to prove in order to win.

### 2. Is there supportive evidence?

An employee should consider the available witnesses, documents, and other evidence. People may gossip that “everyone knows” a supervisor acts in a certain way, but gossip is not sworn testimony. Individuals generally cannot testify if they have no personal knowledge. Some potential witnesses also may be very concerned about their jobs and reluctant to testify on behalf of a co-worker.

### 3. When is the deadline?

Each type of legal claim has a deadline or “statute of limitations.” For more information on various statutes of limitations, see the AEA Legal Advocacy Booklet *Deadlines for Legal Action*.

In addition, some claims require that you follow certain procedures before filing a lawsuit. For example, most claims against a school district must be submitted **within 180 days** after they have “accrued.” A claim accrues when a person realizes he or she has been damaged and knows or reasonably should know the cause of the damage. This notice of claim is a prerequisite for most lawsuits against school districts.<sup>1</sup>

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<sup>1</sup> See A.R.S. §12-821.01. A claim which must be submitted to a dispute resolution process pursuant to a statute, administrative regulation, or contractual term does not accrue until all such procedures have been exhausted.



#### **4. What defenses will be available to the employer?**

The employer may raise a number of defenses to defeat an employee's claim. For example, an employer may be able to prove that an employee gave up or "waived" a contractual right or that firing a disabled person was justified due to safety concerns. The employer may argue that you failed to exhaust your administrative remedies as required by some employment laws.

#### **5. What will the case cost, financially and emotionally?**

Lawyers are expensive, and it is difficult to predict future legal costs. It can take years to resolve a lawsuit. A person who files a lawsuit must be prepared to stick it out for a very long time.

Win or lose, an employee may find it difficult to continue working for an employer he or she has sued. The supervisor may find legitimate reasons for disciplining the employee or simply may be unpleasant.

#### **6. What can be gained? What can be lost?**

An employee can win a case and still obtain little or no "damages" or money. The amount of damages depends upon the type of claim and the harm done. It is difficult to prove emotional damages and even more difficult to collect any money for them.

In contract cases, the losing party generally pays the winner's legal fees. This is good news if the employee wins. This is very bad news if the employee loses.

Some attorneys will take cases on a "contingency" basis, and then the legal fees are a percentage of the damages awarded. If the case is lost, the attorney receives no fee but filing fees, expert witness fees, and other out-of-pocket expenses still must be paid and are the employee's responsibility. Attorneys usually take cases on a contingency basis only if the case involves substantial damages.

#### **7. Is there a reasonable alternative?**

Employees may resolve some employment disputes by using internal grievance or staff complaint procedures. Sometimes an employer will agree to mediate or arbitrate a dispute. On other occasions, an employer may be persuaded to act appropriately after contact by a government agency or association representative.



## Resources

Talk to your Association representative about alternatives. Your situation may qualify for a one-time consultation with the AEA General Counsel or designee.

If you are emotionally distraught about the situation, take advantage of your employer's Employee Assistance Program or health insurance coverage for mental health services.

Ask your Association representative or contact [arizonaaea.org/helpdesk](http://arizonaaea.org/helpdesk) for referral information to employment attorneys. Most employment attorneys charge a consultation fee. Many will consult with you over the telephone. While you can file a lawsuit on your own, it is not recommended. Modern litigation is expensive and complicated.

See the AEA Advocacy booklet *Employment Discrimination* for information about required governmental processes before filing a lawsuit.

AEA Advocacy booklets are available through your Organizational Consultant or by contacting [arizonaaea.org/helpdesk](http://arizonaaea.org/helpdesk).



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## A Final Note

For more information and assistance, contact your local association, [arizonaaea.org/helpdesk](http://arizonaaea.org/helpdesk), or your AEA Organizational Consultant.

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This booklet is a general guide for AEA members and is not intended to provide complete information or legal advice on specific problems. Changes in laws and cases may modify the information provided. To find Arizona statutes on the Internet, go to [www.azleg.gov](http://www.azleg.gov).



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