

# THE DOMINGUEZ FIRM<sup>LLP</sup>



*Lawyers*

## EMPLOYMENT LAW

GET THE JUSTICE YOU DESERVE



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# TABLE OF CONTENTS

<b>Introduction - Employee Justice</b>	<b>3</b>
<b>Employment Law Violations - Key Statistics</b>	<b>4</b>
<b>What Should I Do if My Rights Have Been Violated?</b>	<b>6</b>
<b>Overview of Employee Rights</b>	<b>7</b>
Wrongful Termination	<b>7</b>
Workplace Discrimination	<b>8</b>
Workplace Harassment	<b>8</b>
Wage and Hour Violations	<b>10</b>
Whistleblower Protections	<b>12</b>
<b>Internal Exhaustion</b>	<b>13</b>
<b>Employment Contracts</b>	<b>13</b>
<b>Important Deadlines</b>	<b>14</b>
<b>Your Lawsuit - The Civil Court Process from Beginning to End</b>	<b>15</b>
<b>Know Your Opponent - Common Defenses and Arguments</b>	<b>18</b>
<b>Hitting Them Where it Hurts - Your Legal Remedies</b>	<b>19</b>
<b>Conclusion and Key Takeaways</b>	<b>21</b>
<b>About the Author</b>	<b>22</b>



# INTRODUCTION

## EMPLOYEE JUSTICE

Here in Greater Los Angeles and beyond, we spend the majority of our lives working. Our jobs not only provide a paycheck, but a sense of pride, achievement, and identity. When everything is going great at work, it makes the rest of our lives that much better. On the other hand, when things at work are stressful, it can keep us up at night and negatively impact our lives, relationships, and families. Work stress is one thing, but if your employer breaks the law and takes advantage of you, it can turn your work environment into a nightmare.

At the root of most employer violations is a power dynamic in which the employer thinks it can get away with these violations and that you, the employee, will tolerate the violations or quietly move on, without holding them accountable. Fortunately for employees who have suffered an employment law violation, the laws in California are on your side and provide the tools to fight back against employers, supervisors, and coworkers that try to exploit you or violate your rights.

Employment laws, in the hands of a skilled and experienced employment law attorney, can turn the tables against unscrupulous employers and make them pay for the harm they cause. After all, when you spend most of your waking life at work, it should be a pleasant and gratifying experience, not a fearful one.

**This resource guide informs you about the law, your rights, and your legal remedies.**

This e-book is designed to help you take your power back by providing a detailed overview of the laws, legal processes, and remedies that allow you to stand your ground, enforce your rights, and hold perpetrators, and the employers and organizations that employ them, accountable for their wrongdoing. Through the justice system, you can find your feet again and step back onto the path toward the future you've always wanted.





# KEY STATISTICS

## Employment Law Violations

Despite an intense framework of state and federal laws, employment law violations are rampant, as the following statistics show. On the national level, statistics from the [Equal Employment Opportunity Commission \(EEOC\)](#) for 2016 show:

A study showed **\$8.8 billion** was paid out by more than 500 large corporations since 2000 on wage-theft claims, with California having the highest amount of wage and hour violations.

According to the [Orange County Register](#).

**42,018 charges** of retaliation.

**32,309 charges** of discrimination based on race.

**28,073 charges** of discrimination based on disability.

**26,934 charges** of discrimination based on sex/gender.

**20,857 charges** of discrimination based on age.

**9,840 charges** of discrimination based on national origin.

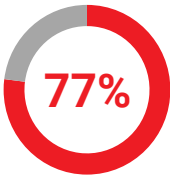
**3,825 charges** of discrimination based on religion.

**3,102 charges** of discrimination based on color.

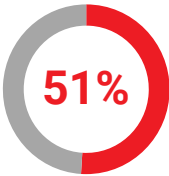
**1,075 charges** of discrimination based on the Equal Pay Act.

# Sexual Harassment

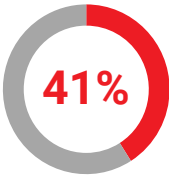
Employment law violations as they relate to sexual harassment experienced by women and the #metoo movement:



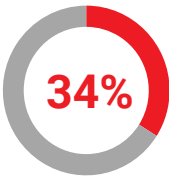
report verbal sexual harassment



report unwelcome touching



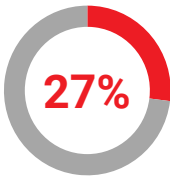
report cybersexual harassment



report being physically followed



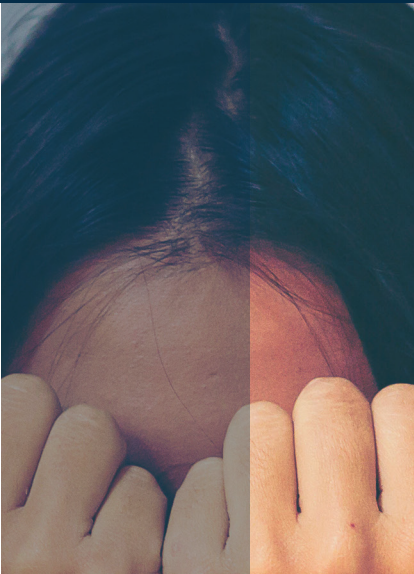
report genital flashing



report sexual assault

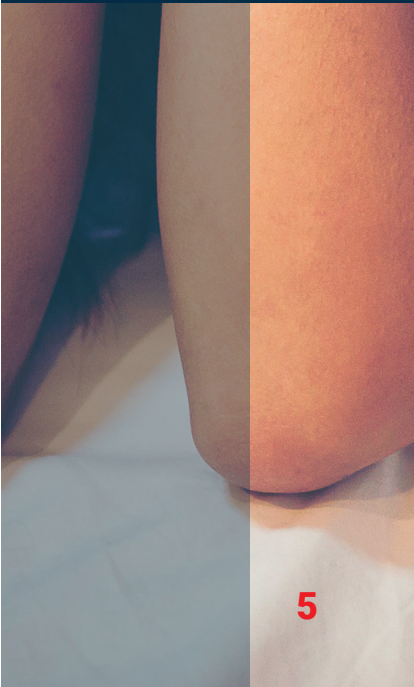
Source: [Stop Street Harassment](#)

To reduce these alarming statistics, it is up to all of us to be aware of our rights, to report violations, and to enforce the law so that bad actors are held accountable and their illegal behavior can be stopped.



In total, **38% of women** report having been sexually harassed in the workplace.

Source: [Stop Street Harassment](#)



# WHAT SHOULD I DO IF MY RIGHTS HAVE BEEN VIOLATED?

If your employment rights have been violated, it's important to take action. As soon as you seek help and report the violation, then you can start the process to rectify it. Here are some tips to help you through the initial process of addressing your employment law situation:

- 1. REPORT THE VIOLATION TO A TRUSTED SUPERIOR OR YOUR HUMAN RESOURCES DEPARTMENT IMMEDIATELY.**
- 2. KEEP DETAILED RECORDS AND PRINT ALL RELATED EMAILS AND DOCUMENTS.**
- 3. DO NOT TALK TO COWORKERS OR FRIENDS ABOUT YOUR SITUATION.**
- 4. DO NOT PROVIDE INTERVIEWS OR GIVE A STATEMENT UNTIL YOU ARE REPRESENTED BY AN ATTORNEY.**
- 5. ENLIST THE HELP OF A PROVEN EMPLOYMENT LAW FIRM WITH THE SKILL AND RESOURCES TO GO TOE-TO-TOE WITH POWERFUL EMPLOYERS AND THEIR INSURANCE COMPANIES.**



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Once you have an attorney on your side, they will handle all of the details of your case, provide guidance and legal counseling, and enforce your rights to get you the justice you deserve. Because of the complexities of employment law, it is strongly advised you seek legal counsel immediately if you believe you have suffered an employment law violation.





# OVERVIEW OF EMPLOYEE RIGHTS

“Employment law” is an umbrella term that covers several sub-categories of specific types of employment laws. The following is an overview of employee rights in the most common practice areas.

## WRONGFUL TERMINATION

California is an “at-will” state, meaning the employer-employee relationship can be terminated by either party with or without notice for any reason so long as the reason was not illegal. If an employer terminates an employee because they are a member of a protected class or in retaliation, then the termination may be considered illegal, which is another way of saying wrongful.

### Protected Classes Under California’s Fair Employment and Housing Act (FEHA)

- ▶ Race, color
- ▶ Sex, gender identity, gender expression
- ▶ Sexual orientation
- ▶ Religion, creed
- ▶ Age (over 40)
- ▶ Mental disability
- ▶ Physical disability
- ▶ Pregnancy (childbirth, breastfeeding, etc.)
- ▶ National origin, ancestry
- ▶ Medical condition
- ▶ Genetic information
- ▶ Marital status
- ▶ Military and veteran status



Another common type of wrongful termination is when an employee is fired in retaliation for asserting or exercising a legal right or refusing to do something for their employer that they know is illegal.

## WORKPLACE DISCRIMINATION

Discrimination can occur at two points in time: during the hiring process and/or during the employment period. Discrimination is the act of treating someone of a protected class unfairly. The general rule is that if you are part of a protected class and you feel like you have been singled out for reasons that do not relate to job performance, then you may have suffered workplace discrimination.

### Discriminatory Acts

- ▶ Refusing to interview
- ▶ Refusing to hire
- ▶ Refusing or failing to promote a qualified person
- ▶ Demoting
- ▶ Issuing a pay decrease or other adverse action
- ▶ Withholding benefits

## WORKPLACE HARASSMENT

Workplace harassment is verbal or physical behavior that is hostile, intimidating, or offensive to another. Harassment can be non-sexual or sexual. Non-sexual workplace harassment can include intimidation, revealing private information, inappropriate jokes (especially related to race or religion), name-calling, or any conduct that is hostile or mean-spirited. For more information, please take a look at our free e-book, [Take Your Power Back: Legal Rights for Victims of Sexual Harassment or Molestation](#).

Sexual harassment is a specific type of workplace harassment and is defined as, "Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature that explicitly or implicitly affects an individual's employment."





# TWO TYPES OF WORKPLACE HARASSMENT

## QUID PRO QUO

This Latin phrase means, “This for that” or “Give something to get something.” Quid pro quo violations are the type in which a supervisor or coworker promises you a favorable employment action (such as being hired, being promoted, or given a raise) or that they will forego an adverse employment action (such as a demotion, pay decrease or termination) in exchange for certain behavior or conduct, including going on a date or sexual favors.

## HOSTILE WORK ENVIRONMENT

This is when the behavior or conduct becomes so frequent, severe and pervasive that it prevents you from performing your work duties, alters the condition of your employment, or rises to the level of abuse.

A close-up photograph of a person's hand holding a black fountain pen, poised to write on a page of an open book. The book is white with blue binding. The background is dark and out of focus.

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### Common Types of Workplace Harassment

- ▶ Inappropriate jokes, like racial or dirty jokes
- ▶ Subtle hints and gestures
- ▶ Bullying
- ▶ Cyber stalking, cyber bullying, or cyber harassment
- ▶ Sexual advances
- ▶ Explicit requests or demands
- ▶ Inappropriate touching
- ▶ Groping
- ▶ Exhibitionism

A general rule about workplace harassment is that if something feels off, offensive, or wrong, it most likely is.

The employer can be held liable directly for the misconduct of a supervisor or managers. If the harassment is by a “rank and file” employee, then the employer or management must be aware of the misconduct and fail to do anything about it before liability attaches to the employer.

### WAGE AND HOUR VIOLATIONS

Wage and hour laws protect “non-exempt” employees from employers that abuse working hours and conditions.

For non-exempt employees, the California Labor Code and Federal statutes work together to form the rules that govern the employer-employee relationship.





# MOST COMMONLY VIOLATED WAGE AND HOUR LAWS IN CALIFORNIA

- ▶ **Minimum wage and wage rates** (\$12/hour for employers with 1-25 employees and \$13/hour for employers with more than 26 employees in 2020)
- ▶ **Overtime** (more than 40 hours in a week or 8 hours in a given day)
- ▶ **Pay periods** (twice monthly, and if applicable, at the time of termination)
- ▶ **Withholdings issues** (it is illegal to withhold payment for things such as gratuities)
- ▶ **Rest breaks** (a 10-minute paid rest break for every 4 hours of work)
- ▶ **Meal breaks** (a 30-minute unpaid meal break if you work more than 5 hours in a day)
- ▶ **Pay stub and record keeping compliance** (must be itemized with hours worked, pay, deductions, withholdings, and other important information listed)
- ▶ **Required postings** (labor law information is to be posted in a common area so employees are aware of their rights)
- ▶ **Specific laws may apply to specific industries**, like commercial trucking and agricultural, that will be taken into account on a case by case basis



If an employer fails to comply with the requirements of the Labor Code and other laws, they subject themselves to “wage and hour” litigation, which can often become a “class action” case if the employer’s illegal activity is widespread and impacts multiple employees.

### WHISTLEBLOWER PROTECTIONS

The California Whistleblower Protection Act protects anyone who comes forward to expose what they reasonably believe to be a company’s violation of state or federal law, noncompliance with a local, state, or federal rule or regulation, or unsafe working conditions or practices. This type of activity can include things like corruption, fraud, unethical conduct, illegal activities, disregard for worker safety and health, violation of environmental laws, and any other conduct that is improper or illegal that may harm people or the environment.

**The California Whistleblower Protection Act makes it illegal for an employer to retaliate against a whistleblower or to retaliate against an employee who refuses to carry out an improper or illegal activity.**

This protection extends to people who exercised their rights as a whistleblower in any former employment as well. This means that former employers cannot blacklist you and future employers cannot hold the fact that you blew the whistle in the past against you.





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## INTERNAL EXHAUSTION

Knowing what to do and who to provide notice to can become even more complicated if your employer requires you to “internally exhaust” your remedies. This requirement typically occurs within public entities or quasi-public entities. It is always a good idea to check with your supervisor and/or human resources department about any internal procedures.

Moreover, it is a good idea to do this in writing (email), or if there is a conversation, to confirm what was discussed by email to ensure there are no miscommunications or misunderstandings, as well as to memorialize the conversation in writing.

## EMPLOYMENT CONTRACTS

These days, especially with freelancing and with more employees working remotely, your employment may be governed by an employment contract. If so, the contractual language will control the employment relationship so long as it is not illegal. A contract can be illegal in whole or in part and courts will typically dissect a contract if a party seeks to challenge or enforce it in court.

Black and white illegalities, like when an employer attempts to undermine the Labor Code by specifying that the hourly wage be

less than the minimum wage, are obviously unenforceable. Matters become more grey with subtle illegalities, like when an employer tries to enforce a non-compete clause (restraint of labor is typically found to be illegal) in certain circumstances.

The general rule is that every employment contract must be analyzed on a case by case basis to determine whether its provisions are enforceable or not.



# IMPORTANT DEADLINES

The complexities involved around employment law deadlines illustrates the need to have a proven, highly skilled employment law attorney in your corner to make sure you navigate this intricate arena successfully. With that said, it's important to know that every legal matter has various dates and deadlines throughout the pendency of the case, but initial deadlines

are the most important because if you miss the time limit to make a claim or you blow the statute of limitations, your case ends (with certain exceptions) and you are precluded from recovering compensation for your losses. Here are some important dates to keep in mind:

## Deadlines to file your pre-lawsuit claim:

**EEOC:** within 300 days after the unlawful act

**DFEH:** within 1 year (365 days) after the unlawful act

## Deadlines to file your civil lawsuit:

**EEOC:** within 90 days of receipt of your "Right to Sue" letter

**DFEH:** within 1 year (365 days) of receipt of your "Right to Sue" letter

With all deadlines, it's critical not to wait until the last minute. Instead, you'll want to file your claim and subsequent civil lawsuit well within the above noted deadlines to ensure compliance and to avoid the pitfalls and mistakes that tend to happen under time pressure.

Also of note, if your employer is a public entity, then your FEHA claim form must be far more detailed to meet strict notice requirements

that apply only to governmental employers as opposed to non-governmental employers. Again, this serves to show you that there may be pitfalls involved with your employment case and it is always best to seek legal counsel immediately.

Our law firm can help you with meeting these important deadlines.







# YOUR LAWSUIT

## THE CIVIL COURT PROCESS FROM START TO END

Once we clear all the hurdles to file your civil employment lawsuit, we enter the court system and formal litigation. In California, most employment law cases will take about 12 to 18 months from the time you file your civil workplace lawsuit until your case is scheduled for trial (which typically marks the end of your case).

In our system, you, the victim or injured person, are known as the “plaintiff” and the entity or person(s) you are suing is called the “defendant.” The plaintiff has the burden to prove both liability and the value of damages by a standard known as “more likely than not.”

You only have one shot to recover the money it will take to make you “whole,” so it is very important to make sure you target all potential at-fault parties, conduct thorough investigations, and prove up all of your damages.

### In Order to Win Your Case & Get The Justice You Deserve...

- ▶ **Prove liability (that your employer violated the law and was therefore at fault)**
- ▶ **Prove your damages (how you were harmed and the monetary quantification)**



### Key Steps in a Civil Employment Lawsuit

**1**  
**Pre-Lawsuit**

**2**  
**Filing a Claim**

**3**  
**Filing Your Lawsuit**

**4**  
**Written Discovery**

**5**  
**Depositions**

**6**  
**Expert Witness Discovery**

**7**  
**Trial Preparation**

**8**  
**Trial**

**9**  
**Post-Trial Motions**

**1 Pre-Lawsuit** - Investigation, interviews, and fact gathering.

**2 Filing a Claim** - File a claim with DFEH and/or EEOC (exhaust administrative remedies).

**3 Filing Your Lawsuit** - This officially begins the formal litigation phase of your case in the court system.

**4 Written Discovery** - This is when the plaintiff and defendant exchange written questions and answers as well as documents to gather facts and evidence.



**5 Depositions** - These are in-person question and answer sessions, under oath, in front of a court reporter so each side can gather additional facts and evidence, as well as assess how you will do as a witness while testifying in front of a jury.

### **6 Expert Witness Discovery -**

This is when both sides hire legal and damages experts in relevant fields to review the evidence to make opinions about the liability and damages aspect of your case.

**7 Trial Preparation** - If settlement negotiations are unsuccessful, the parties must then prepare to go to trial before a judge and jury.

**8 Trial** - Trial consists of jury selection, opening statements, direct and cross examinations of plaintiff, defendant, lay witnesses, and expert witnesses, closing arguments, jury deliberation, and the verdict.

### **9 Post-Trial Motions or Appeals -**

This is when both sides have an opportunity to review the trial and determine if there are any appealable issues or need for post-trial motions.

Although cases can settle at any time, some employment law cases are hard-fought battles in which the opposition employer and/or its insurance company pull out all the stops to try to defeat or minimize your claim. A great attorney will discuss all of this with you, will seek your input on key decisions, and will answer any questions you may have along the way. Two-way communication is key in an attorney-client relationship.





# KNOW YOUR OPPONENT

## Common Arguments Used As Defense and Opposition Techniques

- ▶ **Blaming you, the victim, for your own harm.**
- ▶ **You breached an employment contract.**
- ▶ **Your claim is subject to arbitration.**
- ▶ **The employer engaged in fruitful remedial conduct and accommodations.**
- ▶ **You have not mitigated your damages.**
- ▶ **You did not prove liability by a preponderance of the evidence.**
- ▶ **Your damages were not linked to your claim.**
- ▶ **Attacking your credibility and character.**
- ▶ **You did not exhaust administrative remedies.**
- ▶ **You missed the statute of limitations.**
- ▶ **Filing a motion for summary judgment, arguing you “failed to state a cause of action.”**
- ▶ **The named defendants are not the proper parties.**
- ▶ **Arguing a lack of knowledge on the part of the “employer.”**
- ▶ **Removing your case to federal court if certain factors exist and you filed your suit in state court.**

Employment law cases are often fact-intensive and can often come down to verbal accounts of what happened or what didn't happen. Within each case, the defense lawyers have several defenses and techniques at their disposal to try to oppose your case and defeat or minimize your claims.

While many other defenses and techniques exist, the previous illustrates that employment law cases can be fraught with obstacles. Having an award-winning trial team on your side, however, is your best antidote to a tough defense, as experienced employment law attorneys will be aware of the wide range of defenses and position your case to counteract these defense strategies.

# HITTING THEM WHERE IT HURTS

## LEGAL REMEDIES AVAILABLE TO YOU

In the legal world, your “damages” entitle you to “remedies,” which are meant to make you whole again after you have suffered a wrong or a loss. Your remedies will depend on the different types of legal theories, called “causes of action,” you bring in support of your case.

A skilled legal team will be sure to include as many applicable causes of action to address all acts of wrongdoing and ensure you are compensated to the fullest extent that the law provides.

### Types of Possible Monetary Compensation

- ▶ Pain and suffering
- ▶ Dollar value of benefits
- ▶ Loss of past income
- ▶ Loss of future income
- ▶ Statutory penalties that can be as high as \$10,000 per violation
- ▶ Out-of-pocket expenses related to your adverse employment action
- ▶ Punitive damages (to teach defendant(s) a lesson)
- ▶ Attorney fees



### **Injunctive Compensation That Can Make Your Employer...**

- ▶ **Reinstate you**
- ▶ **Promote you**
- ▶ **Reverse a demotion**
- ▶ **Transfer you or a bad actor to a different department**
- ▶ **Fire, terminate, or suspend a bad actor**
- ▶ **Provide you with an accommodation (for example, to accommodate a physical or mental disability)**
- ▶ **Change its policies, procedures, and practices to comply with the law**
- ▶ **Institute training to educate employees how to conform with the law**
- ▶ **Shut down or suspend work until the illegality or violation is fixed**

These remedies serve two purposes. First, they ensure that the wrong you suffered is made right and that justice is served. Second, they work to make sure employers address problem areas so future violations are avoided. This is why it is so important for each individual to know their rights, to report violations, and to get an attorney to enforce the law.

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# CONCLUSION

Your employment and career should be a happy and gratifying experience. If your employer or coworker breaks the law, however, you need to take action to stop the misconduct and to enforce justice. Here are some reminders to take away:

## Key Takeaways

- ▶ **California law supports employee rights so it is important to know your rights**
- ▶ **Report violations immediately**
- ▶ **Immediately contact a powerhouse law firm that can handle all the details of your case**
- ▶ **Make sure you exhaust your administrative remedies**
- ▶ **File all necessary claims in a timely manner**
- ▶ **Name all potential at-fault parties in your claims and lawsuit**
- ▶ **Seek redress through all available legal theories and causes of action**
- ▶ **File your civil lawsuit in a timely manner**
- ▶ **Engage in the process with your attorney and follow their advice**
- ▶ **If possible and applicable, seek new employment**
- ▶ **Enforce your rights so others do not suffer the same violations**
- ▶ **If you suspect you are the victim of a workplace violation, take action immediately**



Together we can work to make sure employers follow the law, respect their employees, and maintain a safe, productive, and welcoming work environment where individuals and careers can flourish. We spend a majority of our lives at work, so knowing your rights and utilizing the laws that protect you can be the difference to a happy and content life. If you suffer an employment law violation, the law is on your side and empowers you to take action against unfair employers. The Dominguez Firm has experienced employment law attorneys that can assist you with all of the above on a no recovery, no fee basis.

# ABOUT THE AUTHOR



**J.J. Dominguez**, the founder, CEO and Managing Partner of The Dominguez Firm, LLP (TDF) has dedicated his life’s work to enforcing the rights of workers, fighting for the individual, and leveling the playing field. TDF is founded on three core ideals: compassion, service, and results that translate to personal, friendly, and custom service for each client.

For his efforts inside and outside of the courtroom, Dominguez has been honored with many awards and accolades. In 2011, CAOC nominated Mr. Dominguez for its Attorney of the Year Award. In 2013, The Hispanic National Bar Association named Mr. Dominguez its Attorney of the Year.

In 2015, the *Los Angeles Business Journal* awarded him its Latino Business Award for setting the example of excellence. In 2020, Super Lawyers selected Mr. Dominguez to its esteemed Southern California Super Lawyers list for the 11th time. Only 5 percent of attorneys are selected to the Super Lawyers list after a stringent multi-phase selection process.

TDF is one of the most widely recognized and successful law firms in Southern California. Attorneys at TDF have an accumulated and proud record of over \$750 million dollars in recovery for clients.

If you or a loved one has been subject to an employment law violation, please do not hesitate to call us at 800-818-1818 for a free and confidential consultation with one of our experienced employment law attorneys. There is no obligation, and if there is no recovery, there is no fee.

**The Dominguez Firm is here to help.**

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EMPLOYMENT LAW