



NEW YORK POST

MONDAY, NOVEMBER 29, 2010 / Sunny, 51 / Weather: p. 28 ★

SPORTS EXTRA

www.nypost.com

@WORK

37



Steven Mitchell Sack,
author, "The Employee
Rights Handbook"

60 SECONDS WITH

What are recent changes in employment law that folks don't know about?

Recently, the Supreme Court has become favorably disposed to recognizing retaliation in the workplace. I often tell my clients that whenever you feel victimized by discrimination, you should make a complaint with HR, because even if they investigate and do not find that there was any discrimination, once you file a complaint, if the company takes an adverse action against you — they demote you, they fire you — you have a much better chance of winning a retaliation claim than you do on the underlying discrimination act.

What should an applicant say when asked an illegal interview question, like "Are you married?" or "Have you ever been arrested?"

First, you bone up on what questions are discriminatory or illegal. And you say to the interviewer, "I believe that question is discriminatory, and I decline to answer for that reason." And don't be afraid. Some employers might appreciate your candor and be impressed by your knowledge of the law. Others may feel you're a threat and decline to offer you the job. But if you feel you were denied a job based on your refusal to answer discriminatory questions, you can go to a regional office of human rights or the EEOC and file a complaint.

What are your options if you get fired but are asked to sign a letter of resignation?

Never resign from a job. Never! You know why? You will not get unemployment. When you file, they'll say, "We don't owe this person any money. He resigned. Here's his letter of resignation." And then you're out of luck. Make the company fire you. If you're close to a vested pension or a profit-sharing plan or a commission or a year-end bonus, you don't forfeit it. Or you're trying to get severance pay.

So you can negotiate your own firing?

You can say to your employer, "Look, as part of my severance package, we'll agree that you won't contest my unemployment and, by the way, if someone asks for a reference, I'm going to tell them I resigned for personal reasons and don't disagree with me." And they'll say fine. That's how to do it.

—Brian Moore