

DATE: **2008 June 24**  
PODCAST: **The Undercover Lawyer**  
TITLE: **The Hostile Work Place Podcast #1, by The Undercover Lawyer**

Welcome to episode one of The Undercover Lawyer's "Hostile Work Place" podcast. In this show, we are going to be talking about the trials and tribulations of all sorts of different types of workers who experience a bullying boss, a hostile co-worker, some sort of backstabber at work that causes their job to turn from something that is good and enjoyable to a trip to the hostility circus.

With our economy, the way it currently is, the number of people who are living through this hostile, harassing workplace is only getting greater. There are legal tools and legal rights that you can use to fight back at work, and that is what this podcast is going to be about. Even if you are an at-will employee with no contract, no union representation, you have many rights - federal right, state rights - that can protect you at work. The problem is, employment law has become such a Byzantine tangle of law that to just assert your rights, to mix metaphors here, you have to go through some strange Kabuki dance and hire a lawyer who charges \$250.00 an hour to do it. However, most people are smart, most people can understand their rights if they are just explained in a non-legal talk way, and that is what I am here to do for you. You are going to learn how to find protective classes that will protect you, how you can fight back against the bully boss or a toxic co-worker. You will also learn how to fully utilize your protected leaves and remain employed even you are experience health challenges. Our first few episodes are going to be about 10 tips if you were facing termination.

Before we go through the 10, a little bit about myself, The Undercover Lawyer, and what kind of background I bring to this podcast. Before I became an attorney, I worked in Human Resources for a company with 500 stores and over 20,000 employees. I was one of the people who advised store managers on how to handle employee issues everyday. As an HR person, I would advise both managers and employees about how to deal with sexual harassment, how to deal with age discrimination, race discrimination, how to deal with employees who were not showing up, how employees should deal with bosses who seem to have it out for the employee. It is when I was working at this company that became the go-to person for using the legal books we had there in the HR office, and trying to find answers before we call the attorneys.

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I got pretty good at it. Even so, occasionally we would call up the attorney. You know what they always said? They would say, "I would look that up and get right back to you." One day when I heard this answer for about the umpteenth time, I looked at the phone and said to myself, "I could be on the other end of the line. I am good at looking up answers in books." That little epiphany started my journey toward law school. It was, however, a winding path. I spent two years getting a Master's Degree thinking I wanted to be a professor, and then went to law school for an additional three years beyond the Master's Degree. Since law school, I have worked in two separate large firms for 11 years. I have been a litigator the entire time, an employment litigation specialist the entire time as well. As times gone on and people have got to know me through the litigation, I have had companies return asking my advice, and thus have built an advice practice in addition. But I tell you, it does not make me happy. Law firms are not too different than any other workplace. There are bully bosses. For the bullingist, law has a way of gathering together a bunch of people who are overly aggressive and have giant egos. It does not always make for the best place to work.

That is not the real reason that I have gone undercover and I am giving advice directly to employees. The real reason is because of situations my own sister and my own mother went through. I advise them because they knew I was an employment lawyer. I felt better about advising them and helping them, those individuals that were close to me than any client that I had ever helped, than any of the companies that I had ever helped. It was at this most recent time with my sister that convinced me that I had to start making a move, I wanted to help individuals. It is hard to up and switch sides, and that is where The Undercover Lawyer was born. I read a book, Work Laws Exposed, it details my entire system for fighting back at work no matter who you are or where you work. Through this podcast, I will provide the broad strokes of that system, and keep you up on the changing face of the law that happens so frequently in employment. New Supreme Court cases were handed down just law month and this month. By listening to this podcast, you will know more about employment law than your manager or your HR person, and legal knowledge truly is power.

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So, before we dive into the main presentation for today, one announcement, and we will regularly have announcements at this stage in the show. I have been hard at work with the help of a talented programmer of a new Undercover Lawyer website that is going to feature forums, a link to this podcast as well as tips, blog and links to helpful resources for people in all 50 states. It is going to be great for anyone who wants to learn more about their workplace rights and how to assert their workplace right. The big announcement for today, however, is that there is going to be contest when the forums open. The contest will be for whomever makes the most posts in the forum, posts the most in there.

There will three prizes for the top three posters. First prize is going to be, I kid you not, a 3G Apple iPhone. I can hear your excitement. The only rub on that is that I am not providing a contract, you will have to pay for the contract with AT&T. However, if you just do not want it, I will give the cash equivalent. In fact, it will probably be the via a gift card to the iTunes store so you can go ahead and get the iPhone or something of equivalent value. Also, a copy of the Work Laws Exposed book to go along with the iPhone for first prize. Second Prize, almost as good, an iPod Shuffle and the Bad Boss Folio book. Third prize to the person who post the third most during the month of July will be an iTunes gift certificate and a copy of the Bad Boss Folio book. So, three excellent prizes. Unlike other contests, you are not just putting in our name and hoping that it is drawn out of a hat. In this contest, you have absolute control whether you win or not. It is up to you, if you post enough, you win. If you decide to not post that much, then you do not get the prizes. This is truly an example of work hard or participate a lot, and your participation is rewarded directly. There will be numbers to see where you are and who has posted the most. So, you can find out more information about the contest at [UndecoverLaywer.com](http://UndecoverLaywer.com), and it will start on July 1, 2008. I hope that you will participate.

Now for our feature segment, it is the story of Randall, an hourly employee for a major state university. Randall recently wrote to me, and I was so moved by what he had been through that I decided that it really should be our focus of podcast number one. I had had actually four other topics that I was debating between starting with, but his story really sums up what this is all about. Randall worked for a major state

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university, one that you would recognize, for 15 years in the computer department. Before that, he had eight years of computer experience at one employer. So he has 23 years of experience with one interruption between the two jobs. That lets you know he is competent, stable employee. On top of that, the current employer, the university, spent literally hundreds of thousands of dollars training Randall, providing him with equipment, giving him everything he would need to be a success. He was, he got great reviews, he got raises and he moved up in rank until he was one of the lead IT people for the university. But then Randall got a new boss, and the new boss had different ways of doing things. He seemed to think that he was going to prove himself by changing the way everything in IT was done, and it was his way or the highway. Well, Randall was an at-will employee.

At-will, if you are not familiar with the term, basically just means at-whim. It is the starting place for every employment relationship in America. If you do not have a contract with your employer that promises you can only be terminated for just cause or good cause, then you are an at-will employee just like Randall was. So, he is butting heads with his supervisor. One day he was called in to HR, the HR person places a letter up on his desk. The letter is one paragraph long and it details 30-day administrative leave notice, and states that - this is beautiful language here. By beautiful, I mean it is sickening - Randall was being "non-retained." In essence, Randall's 30-day leave was a 30-day termination notice, where he did not show up at the university for 30 days but had to be on-call the entire time. At that meeting, the first he had ever heard of any of this, the HR person took his pager, his cell phone, his keys, his security clearance, his staff ID badge and told him to leave the university premises immediately.

Randall went to an attorney, and the attorney simply said, "You are an at-will employee, there is nothing I can do for you." That is just the kind of advice that just drives me crazy because there is almost always something that you can do for them. As a 15 year employee, Randall was just five years short, he was 75% of the way toward retirement. Remember how I mentioned that even some union contracts can allow for at-will employment, they do not formally negotiate a change to just-cause or a for-cause, Randall was one of those. So he has a union, but it was still an at-will

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situation. So he used the union to grieve the termination, and that lasted nine months long. At the end, the arbitrator actually said the university should take him back, but because it was at-will it was not binding arbitration. The university just said, "No, we are not going." The most Randall's boss ever said as to why Randall was being let go and not being hired back was something to the effect of, "I just do not think he can really change." To me, that hints at age discrimination, and I would just be so surprised if there is not more there about that.

Randall started looking for work in his field, but it was not a good time. He eventually found a very low paying job that was not even in his field. He wound up using his pension and purse money to try to survive, and that was four years ago. During that time, Randall had - get this - 75 interviews. He was just not sitting around, living on the dole or burning out his retirement money. He was trying to find work, beating the pavement. He would take low paying jobs, he would do work for friends, do anything to try to generate some money while looking again for a true career position. With so many interviews though, and interviews that seem to go well, Randall became suspicious of what his former employer was saying during reference checks, and it cannot be verified. But 75 interviews, that tells you something in and of itself where most of them seem to go good and at the last moment someone does not make the hire.

Randall's a fighter though. Despite all that, he kept applying, kept trying and found another career position in information technology with a university just this March. His goal was actually to repay his retirement funds, all the monies that he used to make up the difference between his small paying jobs and what he and his family needed to live on now that he does have work. But the sad thing is, it is starting to happen again. Randall got paired up with someone who is used to working alone and does not want Randall's help and feels like Randall being assigned to work with him was an insult to his ability to help everyone in their computing needs.

As it turns out, this person that he is paired with is well-known in the department as sort of the resident jackass. There is a post on The Undercover website that is titled, "Are you being bullied at work," and had some questions to identify whether you are

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being bullied. It was actually that post that prompted Randall to contact me and tell me his story because so many of them rang true with his own situation. I will put a link to that post in the show notes if you want to take a look at it. But here are some of the things. Now in the current job, three months through a six-month probationary period, he has just to get through three more months - but even right now, Randall's physically sick the night before the work week starts, but he has got this co-worker, not really a boss but a co-worker who insults him, tries to humiliate him in front of other people. If Randall should make some sort of innocent mistake, instead of catching it and pointing it out to Randall he will purposely let it go through so that Randall will look bad, and of course Randall does not do that to him. So then, these things are brought up again and again as some kind club pounding him on with rather than here is a way you can improve. It is just something to bring up over and over to insult him.

The same co-worker will try to schedule meetings when he knows that Randall is going to be gone, and then will actually try to take credit for things that Randall has accomplished. Then even though he works in a cubicle right next to Randall's, he will tell gossip stories, even lies, to other co-worker there when Randall can overhear him right next door in his own cubicle. So what kind of home life does that lead to? No surprise that when Randall is off work he feels exhausted and lifeless, cannot help but think about work and even obsesses about it, trying to figure a way out. That should be the time that we are dedicated toward family, toward reenergizing for work and other pursuits rather than obsessing about the negatives and how we can save ourselves from it.

I am going to have a lot to say about how to deal with a bullying boss or a bullying co-worker in future episodes. But for right now, let me just say that what Randall needs to do is get himself into a protective class and then use that status, legally protected status, to shield himself from the co-worker and from negative employment actions. Meaning, emotion termination, reducing your [at-worst], giving you the worst schedule possible. Used that protective class to shield himself from those kinds of things that are directed at him by the co-worker or by some supervisor who is buying into the lies pulled by the jackass.

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Now I am going to try to keep this podcast in the 20-minute range, and that is about where we are out right now. So, I am not going to go on and on about protective classes and how to put that armour on this podcast. However, if you do not want to wait for the next one, you can go to The Undercover Lawyer website and there is a box where you can sign up for a free mini course that comes to you via e-mail. It is not just a course but it is my e-mail list, and you will get seven e-mails over the course of the first 10 or so days. Then you will get an e-mail from me about every two weeks after that, just letting to you know what is up when there is a new post, when there is a new podcast that comes out. But the first seven, the mini course, talks at great length about how to go about wrapping yourself in the protection of a protective class. Then if you are in a truly urgent situation, just get the book, either the Bad Boss Folio or the Work Laws Exposed book. If you know that you need a lot more help than the e-mail mini course can provide over a period of 10 days, then get the book. The link is also on The Undercover Lawyer website.

I am not going to do a bunch of sales talk here. I obviously think the book is good and helpful because I wrote it and it has already helped people that are sending me e-mails of thanks. I hope to have some of those on, some interviews. Not so they can say, "Go buy the book." but so they can tell their stories. I think they are encouraging for people to hear out there, to know that you are not alone in experiencing what is basically psychological torture at the hands of just these jerk bosses or co-workers, it is not limited. There are ways to fight back, hear from people who have done it and succeeded, to just know that there is a way out, you are not trapped. That is the main message of this podcast that I want to get across. We will go through, if you can be patient in waiting for the podcast and the blog post to come out. You will learn a lot of that same material that is in the book.

So, with that, this is The Undercover Lawyer. You can expect the next instalment in about two weeks. Thank you for listening to the show. If you have liked it or appreciated it, I would appreciate you going into iTunes and subscribing via RSS or writing some comments, letting me know what you think of the show.

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