

# Introduction to Employment Law and the Employment Relationship

Welcome to employment law! Tackling this field of study is a challenging undertaking. However, it is also an exciting and dynamic topic that will likely be relevant to students regardless of the career path they decide to pursue.

## Chapter Objectives

**This chapter introduces employment law and explains its relevance to all individuals who intend to work in exchange for compensation. It also places the presented information in context and clarifies its intended use.**

**Upon completion of this chapter students should have a basic understanding of what the course will cover. Specifically, upon mastering the main objectives of this chapter, students should be able to**

- explain the potential relevance of employment law to their careers;
- explain the difference between employment law and labor law;
- explain why this textbook is not a substitute for legal advice;
- identify a number of sources of law; and
- list some characteristics of the employer-employee relationship that make it unique.

**After reading this basic introduction students will be prepared to learn about workplace discrimination and the rights and obligations of the parties in an employment relationship during each phase of the employment process.**

---



## RELEVANCE OF EMPLOYMENT LAW AND RELATED ISSUES

Every individual who studies employment law will find himself or herself in a number of situations during professional life that will be relevant to the issues presented in this text. First, there are an infinite number of job opportunities directly related to this field. For example, many attorneys and paralegals specialize in employment law and handle disputes that materialize within the context of employment relationships. In addition, these professionals often hire staff to support them in their work. There are also a number of job opportunities in the human resources departments of small and large companies that require the management of day-to-day employment issues relating to the recruiting, hiring, managing, and training of employees. Furthermore, there are individuals in every industry who are responsible for supervising other employees, and these professionals will benefit from possessing knowledge about how to effectively hire, manage, and fire employees in a manner consistent with the law.

For those individuals who have no intention of pursuing opportunities in the field of employment law or working in positions that include supervisory responsibilities, the issues presented here will still be relevant to their personal career paths. For example, even a basic job search involves employment matters, such as the information potential employers are legally permitted to solicit and to consider when making employment decisions, the obligations of job applicants to provide accurate information, and other rights and obligations of both parties who are considering entering into an employment relationship.

Once an individual accepts a position and starts to work, other employment issues could surface, such as whether employer conduct that has a negative impact on a working condition (i.e., the assignment of an undesirable work task to an employee, a demotion, or the giving of a negative performance appraisal) is motivated by discriminatory conduct, whether an employer has a legal obligation to provide an employee with a certain benefit, whether an employer has the legal right to end an employment relationship, and whether both parties continue to fulfill their post-termination obligations to one another.

Regardless of whether the knowledge individuals obtain from this book turns out to be relevant to the substance of a career choice, or whether they draw upon it as they pursue their employment goals, they will likely find that it is an interesting course of study. Before tackling the substantive components of the law, however, it is important to have a firm understanding of what the textbook does and does not cover, as well as how to use the information appropriately and to recognize its limitations.

---



## EMPLOYMENT LAW VERSUS LABOR LAW

This textbook focuses on employment law, which is a broad term that covers all areas of the employer-employee relationship. Despite the extensive scope of this

field of study, employment law generally does not include coverage of the collective bargaining process, the process by which employers and the labor unions that represent their employees reach an agreement about the employees' terms and conditions of employment. Issues related to collective bargaining would be covered in the study of labor law, which focuses on the National Labor Relations Act (NLRA) and other state laws that regulate the rights of employees who are, or want to become, members of a labor union.

Many employment law textbooks dedicate a number of chapters to labor law and provide information relating to the laws governing the relationship between employers and their unionized employees. For a number of reasons, the study of labor law is not covered extensively in this textbook.

## **A. SUBSTANTIVE DIFFERENCES**

Although many people refer to employment law and labor law interchangeably, these fields of law are substantively different. A labor law course would analyze the NLRA and the obligations that employers and labor unions have toward one another. Such a course would also explain the types of conduct that are appropriate for employers and labor unions to exert to further their respective goals.

There is no question that individuals employed in a unionized environment must have a working knowledge of labor law and the obligations of employers and labor unions with respect to dealing with one another. These obligations are extensive, and a failure to abide by these laws has the potential to have a significant impact on the operations of a business. Based on these stakes, a significant number of chapters would be needed to provide the level of coverage necessary to guide employers and employees through the process.

Because the relevance of information about labor law would be limited to individuals who are working in a unionized environment, and because the majority of workplaces in the United States are not unionized, this textbook does not devote a significant amount of attention to labor law. This choice was not intended to minimize the importance of this field of study but rather to steer those working in a heavily unionized environment to seek out more expansive resources that are specific to that area of the law.

## **B. CHANGING LANDSCAPE**

Another reason extensive coverage on labor law is not presented is that now, more than ever, this area of law is in a state of flux. Although laws are always changing, the Obama Administration has expressed what many have recognized as an unprecedented level of interest and support for a number of pieces of legislation that have the potential to dramatically impact how labor unions organize and how collective bargaining agreements (the contracts negotiated between labor unions and employers) are negotiated. The complexity of labor law, coupled with the fact that sweeping changes to the current laws are likely on the horizon, is another reason these topics are not presented in detail.

Even though this textbook does not provide extensive coverage of labor law, this does not detract from the value of this textbook for both unionized and nonunionized employees. This is because most major employment laws apply to employees regardless of whether or not they work in a unionized environment. In addition, the text does highlight those areas in which the most significant differences in the treatment of union and nonunion employees might materialize.

### **C. SIGNIFICANT UNION ISSUES ARE IDENTIFIED**

Although individuals working in heavily unionized environments should seek out additional sources of information, this textbook does not ignore the reality that labor unions play a significant role in employment relationships. Based on this, the text identifies and explains a number of the significant differences that may exist between the treatment of unionized and nonunionized employees. For example, Chapter 19, Ending the Employment Relationship, includes an extensive discussion about the just cause standard for terminations. When this standard applies, its elements are analyzed to determine whether a termination is appropriate. The just cause standard may apply to nonunionized employees, but it is most often negotiated as part of a collective bargaining agreement to apply to unionized employees. The purpose of these types of references is to highlight potentially significant issues so that those individuals working in a unionized environment will recognize the need to seek out more extensive and specialized knowledge about that particular area of the law.

---



### **TEXTBOOK IS NOT A SUBSTITUTE FOR LEGAL ADVICE**

This textbook focuses on the general legal parameters that govern each phase of an employment relationship — from the initial decision to solicit applicants and fill a position to the ultimate decision to end a working relationship. This includes information about how employers can minimize their potential liability for workplace discrimination claims, as well as how employees can assert their rights and receive the employment benefits available under the law. Although this information represents general trends that govern employment relationships in the United States, for a number of reasons, it is neither intended to be legal advice nor intended to be a substitute for it.

### **A. NUMBER OF SOURCES OF LAW**

As a starting point, one reason for the need to solicit legal advice to address an employment issue is the fact that the laws that govern employment relationships come from a number of sources. Some of the most significant sources include

statutory law, common law, administrative law, and federal and state constitutions. Each has the potential to alter the rights and obligations of the parties who enter into an employment relationship.

## 1. STATUTORY LAW

**Statutory law** refers to legislative acts passed by a controlling authority such as Congress or a state legislature.<sup>1</sup> Statutory law is a critical component of employment law and is covered extensively in this textbook. Examples of important federal statutory laws relevant to employment law are Title VII, which is the foundation of workplace discrimination law; the Family and Medical Leave Act (FMLA), which provides unpaid job-protected leave for employees to tend to family and medical (and under the recent amendments, some expanded military-related) issues; and the Americans with Disabilities Act (ADA), which prohibits discrimination against qualified individuals with disabilities.

**statutory law**  
laws passed by Congress  
and state legislatures

Federal statutory laws such as these are emphasized in this textbook and apply to employees working in any state. However, because states have the right to offer individuals greater benefits and protections than those offered by federal laws, some examples of state statutes will be referenced for illustrative purposes and to highlight significant differences that exist.

### a. Variations in Types of Issues Regulated

Because variations exist between federal and state laws, both must be considered when making decisions about an appropriate course of conduct. For example, as discussed in Chapter 12, Compensation and Benefits, the Fair Labor Standards Act (FLSA) is the federal law that governs minimum compensation and the payment of overtime. The FLSA does not regulate the number of hours an employee can be required to work in one day, nor does it define what constitutes a part-time or full-time employee. A seasoned employment attorney would know, however, that a number of state laws do regulate these terms and conditions of employment. Thus legal research must be performed before making a determination about whether certain conduct is permissible or whether it could subject an employer to liability.

### b. Variations on Available Causes of Action and Defenses

This textbook provides information on a broad range of claims an applicant or employee may file to address an employment issue, as well as a number of arguments an employer might assert to defend its conduct. However, laws relating to what claims and defenses are recognized in a particular jurisdiction vary from state to state. For example, as discussed in Chapter 18, Employment at Will, some states recognize that an employee may assert a **promissory estoppel** claim to enforce a promise made by an employer, such as a promise of continued employment for a certain length of time. The assertion of such a claim has the potential to result in the imposition of significant liability on an employer.

**promissory estoppel**  
legal theory that a promise  
should be enforced if an  
individual reasonably relied  
on the promise and injustice  
can only be avoided by  
enforcement of that promise

However, the availability of relief under a promissory estoppel claim would depend on whether the claim was filed in a jurisdiction that recognizes that

particular cause of action. This claim would not be an available option for an individual who filed the claim in a state such as New York, for example, because the state does not recognize a promissory estoppel cause of action.

## 2. COMMON LAW

Not only is it essential to research the laws passed by federal and state legislatures, but it is also important to gain a comprehensive understanding of the legal cases that have been decided on a particular issue to determine how the provisions of those laws have been applied. In some instances, there may not be a state or federal law that regulates a particular employment matter, but judicial decisions might impose obligations on the parties. **Common law**, also referred to as case law, refers to the principles that are established by courts through the issuance of judicial decisions.<sup>2</sup>

For example, within the context of a discussion about discrimination based on an individual's disability, a statement relating to how the Supreme Court defines the term *reasonable accommodation*, or a list of factors the courts will consider to make a determination as to whether a particular workplace accommodation is reasonable or whether it would represent an undue burden an employer would not be obligated to undertake, would be examples of principles established by common law. See Chapter 7, Disability Discrimination.

Common law refers to the general body of cases that interpret and apply certain legal principles, and the number of cases involving a particular matter may be extensive. However, particular attention is often paid to a court that is hearing an issue that has not been subject to prior judicial review. This is because the first time a court renders a ruling on a particular issue, the resulting decision establishes a **precedent**, which sets the framework for how the matter will likely be interpreted or applied in the future.<sup>3</sup>

## 3. ADMINISTRATIVE REGULATIONS

In other instances, guidance about a particular issue might be provided by a federal or state government agency through the issuance of an **administration regulation**, which is another source of law that has the potential to have a significant impact on the determination of whether particular employer or employee conduct is legally permissible. These rules passed by federal and state agencies, the administrative regulations, have the same effect as law.<sup>4</sup> Congress delegates this rulemaking authority to federal agencies, and state legislatures delegate this authority to state agencies.

For example, the regulations put forth by the Department of Labor (DOL), a federal agency, relating to how a provision of a federal law such as the FLSA should be interpreted, are administrative regulations. The Equal Employment Opportunity Commission (EEOC) is another federal agency that issues administrative regulations relating to the federal employment laws it is responsible for enforcing (such as Title VII, which is the foundation for workplace discrimination law and is discussed in detail throughout this textbook). The regulations put forth by a state agency such as the New York State Division of Human Rights (which is the New York equivalent of the EEOC on the state level) are another example of administrative law.

### **common law**

also referred to as case law; the principles established by the courts through the issuance of judicial decisions

### **precedent**

the decision by a court the first time the court hears an issue and makes a ruling, which establishes how that issue should be interpreted or applied in future cases

### **administrative regulations**

rules promulgated by federal and state agencies that have the powers delegated to them by Congress or a state legislature

## 4. FEDERAL AND STATE CONSTITUTIONS

Federal and state constitutions represent another source of law. A **constitution** is a group of principles that govern the relationship between the government and the people it represents.<sup>5</sup>

**constitution**  
group of principles that govern the relationship between a government and the people it represents

The United States **Constitution** establishes the structure of the federal government as well as its relationship to state governments and their citizens. The federal Constitution is applied only to the federal government; therefore, it applies only to employment relationships in the public sector because, under those circumstances, the government is the employer. The federal Constitution does not govern the relationships between individuals and private employers.

In limited instances, however, a federal (or state) constitutional provision may be referenced and used by arbitrators (neutral third parties who are retained to resolve employment disputes) as the basis for imposing obligations upon private-sector employers. For example, the U.S. Constitution includes a **due process clause**, which provides individuals with the right to a fair legal proceeding, including the opportunity to be heard.<sup>6</sup> Based on this provision, within the context of employment law, it has been suggested that an employer might be required to provide an employee with due process before imposing discipline on that employee, a topic covered extensively in Chapter 14, Performance Management.<sup>7</sup>

**due process clause**  
constitutional provision that, among other things, provides individuals with the right to a fair legal proceeding, including the opportunity to be heard

However, because the U.S. Constitution governs public-sector employment relationships, an individual who wants to apply a principle rooted in the federal constitution to an employment relationship between a private employer and employee must find an alternative source for any due process obligation or some legal support for the application of a due process requirement. This is a task that would be performed by an attorney or an individual with legal training and is another reason why individuals should seek legal advice for employment issues rather than relying on the broad principles presented in this textbook.

## B. LAWS APPLY TO DIFFERENT EMPLOYERS

Even if an individual is able to determine which sources of law would be substantively relevant to a particular situation, this knowledge will not necessarily determine the appropriate course of conduct. This is because not all laws apply to all parties, and this is another example of an issue that would likely need to be researched by an attorney or an individual with extensive legal training. For example, a law might cover only employers who employ a minimum number of employees. Title VII, which prohibits workplace discrimination based on race, color, religion, sex, and national origin, applies to private employers who have 15 or more employees who worked for the employer for at least 20 calendar weeks. In contrast, an employer will be covered by the Age Discrimination in Employment Act (ADEA) if it has 20 or more employees who worked for the company for at least 20 calendar weeks.<sup>8</sup> A law might also apply only to an employer with a certain amount of business. For example, the FLSA (which, as noted above, is the federal law that governs the payment of a minimum wage rate and overtime) generally

does not cover enterprises that do not have at least \$500,000 in annual dollar volume of business.<sup>9</sup> Furthermore, some laws apply to employers in certain industries or in certain geographic locations.

An attorney working to resolve an issue or to determine the appropriateness of pursuing a particular claim would research these variations in coverage and discuss her conclusions with her client. This level of detail falls outside the scope of the information provided in this textbook, the purpose of which is to provide a broad overview of the law. Nevertheless, such detailed analysis would be a necessary part of the decision-making process to determine how to proceed in an employment-related matter. If it is determined that an employer is covered by a particular law, seeking legal advice is also essential to understand and interpret the language of the law.

### **C. LAWS ARE COMPLEX**

Individuals who want to provide legal advice and counsel must undergo extensive training prior to receiving a license to practice law in the United States. The language of each law is often complicated, and the proper application of the terms of a particular law may be subject to interpretation and, in many cases, extensive litigation. This reality is another reason it is important to solicit advice from an attorney to handle an employment issue.

#### **1. DETERMINATIONS ARE FACT SPECIFIC**

One of the reasons for the complexity of laws governing employment relationships is the fact that the appropriateness of an employment decision is usually based on the specific details surrounding it. Thus, while overriding principles provide a foundation for making well-informed decisions, the presence or absence of what may seem like an insignificant detail might have an impact on whether a particular action is legally permissible. Thus, while the examples used in this text provide basic fact patterns to illustrate how a law would be applied, a legal determination as to the appropriateness of a response would require a more extensive fact-gathering process.

#### **2. DETERMINATIONS ARE SUBJECTIVE**

Even if extensive details about a situation are available, specialized legal advice is likely still necessary to assess the appropriateness of certain conduct. This is because employment law, like all other areas of law, is often open to varying interpretations, which are based on a number of subjective considerations.

For example, the law imposes obligations on employers with respect to the rights of employees to engage in religious conduct during work time. Specifically, as discussed in Chapter 4, Religious Discrimination, employers have an obligation to provide a reasonable accommodation to employees who request work relief to engage in such conduct, provided the granting of this relief does not impose an undue burden on the employer or the business operation.

The extensive litigation on these issues offers significant common law guidance relating to what is reasonable and what constitutes an undue burden, and this is a source of law emphasized throughout this text. However, the final determination relating to what conduct would fall within these parameters is an inquiry that would require an examination of subjective considerations. This is because what is reasonable to one person may be considered unreasonable to another, just as different people may have different opinions as to what constitutes an undue burden. In many cases, two parties may present logical but opposing views relating to the appropriateness of particular conduct, in which case a third party (a judge or arbitrator) might be asked to decide which interpretation should be sustained. This reality is another reason it is advisable to consult an attorney who has specialized knowledge about the common law interpretation of terms such as *reasonable* and *undue burden* (which, within the context of a legal dispute related to religious discrimination or disability discrimination, is often critical) for advice and counsel before deciding how to proceed.

## D. LAWS CHANGE

Another factor that necessitates the solicitation of legal advice on employment issues is the fact that the law is always in a state of flux, with courts continually shaping the interpretation of existing laws by issuing decisions, and Congress and state legislatures passing, amending, and in some cases repealing laws on the same rigorous schedule. Therefore, even if the legal information that is presented in the textbook is updated on the day an individual reads this text, it is always possible that a different version will be in effect at the time a legal issue arises, or that other judicial interpretations will have been rendered by the time a particular case is heard in a particular judicial forum.

## E. LAWS PLAY VARIOUS ROLES

All of the factors outlined above should be considered while moving through this text. Further, because there are a number of different sources of law, in many cases the rights and obligations of the parties to an employment relationship will be derived from a number of sources and may overlap. For example, Title VII and other sources of statutory law are central to the discussion relating to discrimination, but common law and administrative law each play a role in how those statutes are interpreted. Further, the principles presented represent the general trends across the country and are derived from a number of different sources that may or may not apply to a particular situation. Thus, the information provided should be viewed as a starting point for making legally sound employment decisions since the laws that apply to a particular issue that an individual seeks to resolve may be different than those discussed in this text.

In addition, when learning about these general employment law trends, it is important to realize that the information leading to their creation often materializes based on a number of factors that make the employment relationship unique.

**IV****EMPLOYMENT RELATIONSHIP**

The employer-employee relationship has many unique characteristics, and each must be considered when trying to resolve employment issues.

**A. CONSISTENT AND INCONSISTENT GOALS**

First, unlike other relationships, when two individuals enter into an employment relationship, their interests may be consistent and inconsistent at the same time. On the one hand, in a traditional employer-employee relationship, success for an employer could translate into success for an employee because higher profits could lead to the offering of higher salaries and enhanced benefits. On the other hand, however, these improvements may not materialize because if an employer increases the salaries of its employees, it will decrease its own profits.

In addition, even if an employer decides that earned profits will be reinvested into a business, the employer might decide to use the funds for something other than the salaries of its employees. This might include, for example, using the profits for workplace renovations, technological upgrades, or additional advertising aimed at earning even greater profits. Decisions such as these could actually have a negative impact on employees if, for example, a technological enhancement leads to increased efficiency, or some functions previously performed by an employee are automated; either of these changes could result in the elimination of an employee's position.

**B. UNSTABLE RELATIONSHIP**

Another source of tension in the traditional employer-employee relationship is its inherent instability. First, the needs of employers may change over time, which could result in the reduction of the number of individuals employed or in significant changes in job responsibilities and expectations for job performance. The needs of employees are just as dynamic. Individuals may decide to pursue new employment opportunities to enhance their skills or to earn more money, to move to a different part of the country, or to reprioritize their life goals.

**C. SYMBOLISM OF A JOB**

The emotions that are inextricably linked to employment relationships represent an additional challenge. On the most fundamental level, the majority of individuals work because they need to survive; people need money for food, shelter, and other necessities to live. Thus, when employees sense that their source of income is in jeopardy, emotions enter into the mix.

In addition, career choices are often based on both objective and subjective factors, and compensation represents only one component. For example, an

individual may place a high value on the prestige associated with a position (such as a specific job title or a geographically desirable office), opportunities for advancement, a flexible work schedule, or other perks. In other cases, people view their jobs as a measurement of self-worth or their ability to make a valuable contribution to society.

Each of these factors has the potential to impact an individual's job performance and commitment to a particular position. This could influence how both parties view the employment relationship and the importance they place on issues that arise with respect to it. Thus, the significance of these concerns should not be discounted as students move through this book, which as they will see, first provides an overview of workplace discrimination, followed by a chronological overview of the employment process.



## TEXTBOOK STRUCTURE

The first part of this textbook focuses on workplace discrimination and the pursuit of such a claim in a judicial forum. Because employees seek to pursue career opportunities without being hindered by workplace discrimination, and because employers seek to recruit, hire, manage, and terminate their employees without being hindered by discrimination litigation, it makes sense to start with an overview of Title VII and a number of other significant federal anti-discrimination laws that set the groundwork for the entire process.

Further, since litigation may be unavoidable, in the event it does occur employers who work within the parameters outlined in this book will be in the best position to defend their conduct, and employees who have gained a working knowledge of their rights and obligations will be in the best position to assert their rights. After the initial overview, the textbook moves on to the significant stages of the employment process, which include the hiring, managing, and firing of employees.

With a firm understanding of the appropriate use of this textbook and the information presented within it, you are now prepared to jump into this exciting, interesting, and relevant area of the law. Good luck!

## KEY TERMS

- |                              |                      |                       |
|------------------------------|----------------------|-----------------------|
| ✓ administrative regulations | ✓ constitution       | ✓ promissory estoppel |
| ✓ common law                 | ✓ due process clause | ✓ statutory law       |
|                              | ✓ precedent          |                       |

---

**DISCUSSION QUESTIONS**

---

1. Provide some examples of different sources of employment law.
2. Explain some reasons why a law may apply to some employers and not to others.
3. Explain why an attorney should be consulted for legal advice related to employment law issues.
4. Explain some of the factors that make the relationship between employers and employees unique.
5. Stacey is a college student whose career goal is to become the CEO of a large company that designs and sells educational toys. She tells you she will not enroll in an employment law class because she wants to limit her course selections to those that are relevant to her goals. What do you think about her statement?
6. Jessica, the CEO of a large New York company, tells Stacey (from the question above) she should have a basic understanding of employment law. She also tells Stacey she can obtain the necessary knowledge by consulting the volumes of books Jessica has owned for years, which include the text of all New York laws. What do you think about this advice?

---

**ENDNOTES**

---

1. See Black's Law Dictionary 1180 (8th ed. abridged 2005).
2. Black's Law Dictionary 231 (8th ed. abridged 2005).
3. Black's Law Dictionary 986 (8th ed. abridged 2005).
4. See Black's Law Dictionary 40 (8th ed. abridged 2005).
5. The federal government consists of three branches. The legislative branch (Congress) makes the law, the executive branch (the President) enforces the laws, and the judicial branch (the courts) interprets the laws.
6. Black's Law Dictionary 424 (8th ed. abridged 2005).
7. See, e.g., *Cameron Iron Works*, 25 Lab. Arb. (BNA) (1955) (Boles, Arb.).
8. See U.S. Equal Employment Opportunity Commn., Coverage of Business/Private Employers (available at [http://www.eeoc.gov/employers/coverage\\_private.cfm](http://www.eeoc.gov/employers/coverage_private.cfm)).
9. Fair Labor Standards Act of 1938 (FLSA) (available at <http://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>), as amended, 29 U.S.C. §§ 201 *et seq.* (available at <http://www4.law.cornell.edu/uscode/29/201.html>); 29 C.F.R. pts. 510-794 (available at [http://www.dol.gov/dol/allcfr/ESA/Title\\_29/Chapter\\_V.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Chapter_V.htm)); U.S. Dept. of Labor, Employment Law Guide, Wages and Hours Worked: Minimum Wage and Overtime Pay (available at <http://www.dol.gov/compliance/guide/minwage.htm#who>).