

Chapter 16 - Employment, Immigration, and Labor Law

Agency Relationships

- Agency is a “fiduciary” relationship based on trust and confidence.
- Employer-Employee Relationships
 - Employee is one whose physical conduct is controlled by the employer.
- Employer-Independent Contractor Relationships
 - Independent contractor is not an employee because employer does not have control over their physical performance.

- Determining Employee Status
 - Criteria used by the courts
 - 7 questions courts often consider to determine whether a worker has the status of an employee or independent contractor
 - Criteria used by the Internal Revenue Service
 - Own criteria to determine whether a worker is an employee or independent contractor

- Formation of Agencies
 - Consensual relationships
 - Agency by agreement of the parties
 - Agency by ratification
 - Agency by estoppel
 - Agency by operation of law

- Duties of Agents and Principals
 - Agent’s duties to the principal
 - Performance
 - Notification
 - Loyalty
 - Obedience
 - Accounting
 - Principal’s duties to the agent
 - Compensation
 - Reimbursement and indemnification
 - Cooperation

- Agent’s Authority
 - Express authority
 - Authority declared in clear, direct, and definite terms
 - Implied authority
 - To do what is reasonably necessary to carry out his or her express authority and accomplish the objectives of the agency
 - Apparent authority
 - Apparent, not real authority

- Liability in Agency Relationships
 - Liability for contracts
 - Authorized acts
 - Disclosed or partially disclosed principal
 - Undisclosed principal
 - Unauthorized acts
 - Liability for torts and crimes
 - Determining the scope of employment
 - Liability for agent's intentional torts
 - Liability for independent contractor's torts
 - Liability for agent's crimes

Wages and Hours

- 1930s Congress enacted several laws
 - Davis-Bacon Act
 - "Prevailing wages"
 - Walsh-Healey Act
 - U.S. government contracts; minimum wage and overtime 1.5 times regular pay rates
 - Fair Labor Standards Act (FLSA)
 - Extends wage-hour requirements to cover all employers engaged in interstate commerce plus selected other businesses
- Child Labor
 - FLSA prohibits oppressive child labor
- Wages and Hours
 - FLSA provides a minimum wage of \$7.25/hour be paid to employees in covered industries (minimum wage may be higher at present)
- Overtime Exemptions
 - Executive, administrative, professional employees

Family and Medical leave

- 1993 Congress passed Family and Medical Leave Act (FMLA)
- Allows employees to take time off from work for family and medical reasons
- Additional categories of FMLA have been created for military caregivers and emergencies that arise due to military service
- Coverage and Applicability of the FMLA
 - Requires employers with 50+ employees to provide up to 12 weeks of unpaid leave during any 12-month period
 - Expressly covers private and public employees who have worked for their employers for at least 1 year
- Violations of the FMLA
 - Employers who violate the FMLA can be required to provide remedies:
 - Damages to compensate an employee for lost benefits, denied compensation, and monetary losses up to an amount equivalent to the employee's wages for 12

- weeks
- Job reinstatement
- Promotion, if a promotion has been denied

Worker Health and Safety

- The Occupational Safety and Health Act
 - 1970 Occupational Safety and Health Act administered by Occupational Safety and Health Administration (OSHA)
 - Imposes on employers a general duty to keep workplaces safe
 - Requires employers to post notices, perform record keeping, and submit reports
- State Workers' Compensation Laws
 - 2 requirements for an employee to receive benefits under workers' comp law
 - The existence of an employment relationship
 - An accidental injury that occurred on the job or in the course of employment, regardless of fault

Income Security

- Federal and state governments participate in insurance programs to protect employees and families by covering financial impact of retirement, disability, death, hospitalization, and unemployment.
- Social Security
 - Social Security Act; OASDI
 - Employers and employees contribute under the Federal Insurance Contributions Act (FICA)
 - Retired workers are eligible to receive monthly payments
 - Benefits are fixed by statute but increase with cost of living increases.
- Medicare
 - Federal government health-insurance program
 - Administered by the Social Security Administration for people 65 years and older or under 65 and disabled
 - Under FICA, employer and employee contribute to Medicare
- Private Pension Plans
 - Employee Retirement Income Security Act (ERISA)
 - Governs employers that have private pension funds for their employees
 - Pension Benefit Guaranty Corporation (PBGC)
- Unemployment Insurance
 - Federal Unemployment Tax Act (FUTA)
 - Provides compensation to eligible people who have lost their jobs
 - Eligible: worker must be willing and able to work
 - Not eligible: workers fired for misconduct or have voluntarily left their jobs

- COBRA
 - Enables workers to continue their health-care coverage after their jobs have been terminated
 - Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Employer-Sponsored Group Health Plans
 - Health Insurance Portability and Accountability Act (HIPAA)
- Affordable Care Act (ACA)
 - Most employers with 50+ employees are required to offer health-insurance benefits
 - Any business offering health-insurance benefits may be eligible for tax credits
 - An employer who fails to provide benefits as required under the law can be fined

Employee Privacy Rights

- Electronic Monitoring
 - More than half of employers engage in some form of electronic monitoring of employees
 - Employee privacy protection
 - Was there a reasonable expectation of privacy?
- Other Types of Monitoring
 - Lie-detector tests
 - Drug testing
 - Public employers – constrained by Fourth Amendment
 - Private employers – Fourth Amendment does not apply

Immigration Law

- Most important laws governing immigration and employment
 - Immigration Reform and Control Act (IRCA)
 - Immigration Act
 - Estimated 12 million illegal immigrants live in the U.S.
- Immigration Reform and Control Act (IRCA)
 - I-9 employment verification
 - I-9: Employment Eligibility Verification
 - Must perform to comply with IRCA
 - Enforcement
 - U.S. Immigration and Customs Enforcement (ICE) investigative arm of U.S. Department of Homeland Security
 - Penalties
- The Immigration Act
 - I-551 Alien Registration Receipt
 - Company seeking to hire noncitizen worker may only do so if the worker is self-authorized (lawful permanent resident or has a valid temporary Employment Authorization Document)
 - The H-1B visa program

- Employee must be qualified in a “specialty occupation” (highly specialized knowledge and a bachelor’s degree or higher)

Labor Unions

- Federal Labor Laws
 - Norris-LaGuardia Act
 - National Labor Relations Act (NLRA)
 - National Labor Relations Board (NLRB)
 - Good faith bargaining
 - Labor-Management Relations Act (LMRA)
 - Labor-Management Reporting and Disclosure Act (LMRDA)
- Union Organization
 - Union elections
 - Union election campaigns
- Collective Bargaining
- Strikes
 - The right to strike – guaranteed by NLRA
 - After a strike ends