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An Introduction to Workplace Law

There are many laws that are important for any business executive. U.S. employment laws are of particular significance. Executives are responsible for abiding by these workplace laws on a day-to-day basis in managing their workforces. Ignorance of these laws is not a defense to a worker's lawsuit. Ill-informed or uninformed executives risk exposing their businesses to significant monetary liability by failing to "stay ahead of the curve" in this context.

Employment-related litigation has reached epidemic proportions in the United States. Such claims have increased at a phenomenal rate. In the decade of 2010–2020, employment discrimination claims filed with the U.S. Government increased each year, and the backlog of discrimination charges awaiting resolution more than doubled. At the same time, workplace discrimination lawsuits are estimated to represent more than one-fifth of all federal civil lawsuits filed in the United States.

Against this backdrop, the Internet revolution has changed the landscape of employer–employee relations in a profound way. Lawyers representing workers maintain websites featuring downloadable documents on workplace rights and strategies for suing employers. Unions conduct organizing campaigns and disseminate decidedly pro-labor views as well as negative information about companies and industries on union-sponsored web pages. Employees, ex-employees, or third parties post complaints about employers, their personnel policies and benefits packages, and even individual personnel decisions on Internet message boards. Worse still, an increasingly destructive tactic has been the creation of websites by ex-employees (or by their lawyers) devoted to employee-initiated litigation against a company; these websites aggregate and catalog workplace complaints and often invite the viewer to download more

information on suing the company. Plaintiff's lawyers also host websites devoted to a particular employment discrimination class action and invite the viewer "to join the lawsuit." Not to be outdone, other websites invite postings about the "boss from hell" or the "worst employer on Earth" and provide links to do-it-yourself kits on "how to sue your employer" or "keep your boss in line."

In this climate, it is not uncommon for a discharged worker to sue their former employer or supervisor simply out of a feeling that they were treated unfairly. Sometimes the lawsuit is for the purpose of "getting back" at their ex-employer or former boss. Such claims impose significant costs and expenses on employers. In turn, executives and supervisors spend enormous amounts of time, energy, and money in the defense of employment-related litigation. In recognition of this environment of litigiousness, more than 100 insurance companies in the United States now offer coverage for employment practices liability insurance.

The increase in employment-related litigation is attributable to several factors. Lagging business growth in the early 1990s led many employers to trim their workforces and terminate large numbers of workers. The same phenomenon continues to this day as mergers, acquisitions, and greater competition prompt companies to effectuate large-scale reductions-in-force and operate more "lean and mean." Corporate re-engineering, outsourcing, and consolidation of industries has accelerated this phenomenon. New federal and state laws providing additional rights to workers likewise have contributed to the volume of litigation. Large jury verdicts and seven-figure settlements have also created a new willingness on the part of employees and ex-employees to seek legal redress for alleged employment-related injuries. As a result, there is no longer any stigma attached to a person suing their ex-employer or former boss. Indeed, learning how to sue your boss is just a few clicks on a mouse down the information superhighway. Some characterize this phenomenon as "workplace litigation for sport," as workers can sue a company and its executives at little expense and without the risk of paying attorney's fees or court costs even if they lose.

Employers of all sizes and in every area of the country have experienced an increase in employment-related lawsuits. Management personnel are not immune from these types of claims either; attorneys for workers often "sue the boss" over personnel decisions too. As should be self-evident, an executive's career may be damaged irreparably by allegations of discrimination or harassment.

This book seeks to arm and empower management personnel and corporate counsel to identify and avoid legal risks and negative business consequences caused by violation of workplace laws. I believe that knowledge of these exposures and risks and strategies to minimize or avoid them are essential to management personnel. Increased productivity, a solid corporate reputation, and fiscal responsibility are directly related to and impacted by the prevention of employment-related claims and litigation. Creating the best possible employer-employee relations also enables an employer to

have a competitive edge. Indeed, as an employer's human capital assets are often its most valuable resources, managing those assets to their fullest potential is at the heart of an executive's responsibilities. Put another way, a manager's responsibility to leverage the full capacity of the human capital at their direction is inextricably tied to the prevention of workplace legal problems.

The sheer volume and complexity of workplace laws represent a compliance challenge even for well-intentioned employers. This book attempts to explain and simplify the laws of the workplace. The goal is to assist management personnel in understanding these potential liabilities so that exposures can be identified, avoided, and managed. The purpose of this book is to suggest effective human resource practices as well as loss control and risk management strategies to maximize workplace productivity and lessen or minimize potential liabilities for employment-related problems. Employees with gripes and grievances have several options. They can suffer in silence and simmer in discontent. They can complain to co-workers and adversely impact employee morale. They can quit and thereby impose significant costs upon their employer due to employee turnover. They can file a legal claim or go outside the company by contacting a lawyer or union representative. Each of these options is negative and costly for employers.

There is another option. It may seem counterintuitive, but the most desirable option is for the employee to complain to the company or for management to recognize the underlying currents of employee problems. If executives and supervisors are sensitized to situations from which employment-related claims can arise, lawsuits can be avoided, or their likelihood can be reduced. Practical and effective management strategies also encourage the early identification and prompt resolution of any workplace problems while maximizing productivity and creating a workplace characterized by trust, fairness, and good employee relations. In this respect, business executives and supervisors can reduce the number of employment disputes that develop into lawsuits. When and if lawsuits do arise, the same management strategies and decision-making protocols are designed to enable employers to assert the best possible defenses against any such claims, thereby making the lawsuits easier (and cheaper) to defend.

In the following chapters, this book explains the laws that impact managing the workplace and making personnel decisions. Legal "hot spots" and "danger zones" are identified in the hiring, discipline, evaluation, and termination of employees. Practical solutions for avoiding these problems are explained with examples from real workplaces (only the names have been changed to protect the innocent or keep the guilty anonymous).

As a "survival guide," this book is designed to keep executives and their companies out of the courthouse and focused on managing productive and efficient workplaces. The lessons to be learned are at the heart of creating a corporate work environment based on mutual trust, respect, and dignity for all employees. The goal is to foster a workplace where workers will regard their company as an "employer of choice" and their boss as a "boss of choice."

