

About the Authors xxix
What's New in the Fifth Edition xxxi
Preface to the Instructor xxxv
Acknowledgements xxxvii

Part I: The Employment Relationship

Chapter 1: Employment Law Overview 3

■ Introduction 4
Sources of Employment Law 4
□ Rights and Duties 5
□ Substantive and Procedural Law 6
■ The Role of Government 6
□ The Legislative Branch Role 6
■ Concept Summary: Preemption 8
☐ The Judicial Branch Role 8
■ Concept Summary: Stare Decisis — Two Principles 9
□ Federal Court System 9
□ District Courts 10
□ Circuit Courts of Appeal 10
□ Supreme Court of the United States 10
■ Concept Summary: Federal Court Jurisdiction 11
Classifying the Worker 11
■ Tests Determining Employment Status 13
Case 1.1 Lemmerman v. A.T. Williams Oil Co. 13
☐ The Common Law Agency Test 15
$\hfill\Box$ Statutes Intended to Protect Employees — The Economic Realities Test $\hfill\Box$
Case 1.2 Brant v. Schneider National, Inc. 17
□ State Employment Statutes — The ABC Test 20
 Management Application: One State's Approach — The Hybrid Employee 21

ix

X Contents

□ Tests Involving Employment Discrimination 22	
□ Internal Revenue Service Test 22	
□ Right to Control Test 23	
 Management Application: Common Problems in Classifying Workers 23 	
□ Section 530 Safe Harbor 24	
■ A Special IRS Classification — The Statutory Employee 25	
■ Independent Contractors 25	
■ Independent Contractor Status: Advantages and Disadvantages 26	
□ Independent Contractor Advantages 26	
□ Independent Contractor Disadvantages 27	
■ Liability for Reclassification of the Worker as an Employee 27	
■ Concept Summary: Common Tests for Employee Status 28	
Case 1.3 Murray v. Principal Financial Group 29	
■ The Single Employer Theory 30	
■ Joint Employers 31	
■ Leased Employees 32	
■ AI Feature: Drafting a PEO Agreement 33	
Key Terms 33 Chapter Summary 34	
■ Chapter Summary 34 ■ Applying the Law 35	
■ End Notes 37	
Chapter 2:	
Managing Risk from Recruitment	
Through Termination 39	
■ Introduction 40	
■ Framing the Job Opportunity 41	
☐ Job Qualifications: Business Necessity and BFOQ 41	
Case 2.1 Griggs v. Duke Power Co. 43	
■ Concept Summary: Permissible Employment Discrimination 46	
Case 2.2 Dothard v. Rawlinson 47	
■ Concept Summary: What Business Necessity and BFOQ Mean 4	9
■ Selection Criteria 49	
□ Citizenship, National Origin, and Ancestry 49	
□ Residency 50	
□ Age 50	

Contents xi

☐ Financial Circumstances 51
□ Arrest Records 52
Case 2.3 Shimose v. Hawai'i Health Systems Corp. 53
□ Dress and Grooming Standards 55
Case 2.4 EEOC v. Abercrombie & Fitch Stores, Inc. 56
□ Rehabilitated Drug and Alcohol Abusers 59
□ Education 59
□ English Fluency 60
□ Physical Requirements 60
□ Veterans or Military Status 60
■ Recruiting and Interviewing 61
□ Advertising and § 704(b) of Title VII of the Civil Rights Act of 1964 61
□ Internet Advertising 62
□ Word-of-Mouth Advertising 62
■ Management Application: Pre-Employment Inquiries 63
■ Management Application: Selecting Qualified Candidates 64
■ Testing 64
Management Application: Records Not to Be Kept in Personnel Files 67
■ EEOC Compliance Reporting 68
■ Termination of Employment 68
■ AI Feature: Exit Interview Questions 69
■ Key Terms 69 ■ Chapter Summary 70
■ Applying the Law 71
■ End Notes 73
Summary Chart: Recruitment, Selection, and Testing (federal law only) 74
Chapter 3: Contract and Tort Claims
in Employment 75
■ Introduction 76
■ Employment "At-Will" 77
■ Constructive Discharge 77
■ Exceptions to the "At-Will" Rule 78

Case 3.1 Casale v. Nationwide Children's Hospital 79

☐ Express and Implied Contracts 78

ELAW_FM_pi-xxxviii_proof4.indd 11 04/07/24 12:22 PM

xii Contents

■ Concept Summary: Employer's Implied Contractual Liability 83
■ Concept Summary: Promissory Estoppel 83
☐ Implied Covenant of Good Faith and Fair Dealing 84
 Management Application: Do Employee Handbooks Create Too Much Liability? 84
□ Statutory and Public Policy Exceptions 85
□ Protection for Whistleblowers 86
 Management Application: Are the Whistleblower's Disclosures Protected by Free Speech? 87
□ False Claims Act 88
□ Sarbanes-Oxley Act (SOX) 88
Case 3.2 Dietz v. Cypress Semiconductor Corporation 89
■ Concept Summary: Whistleblower Protection Under Sarbanes-Oxley 91
□ Dodd-Frank Act 92
□ Other Federal Statutes 92
■ Business Torts: The Companion Claims to Employment Disputes 92
□ Vicarious Tort Liability and <i>Respondeat Superior</i> 93
Case 3.3 Domino's Pizza, LLC v. Wiederhold 94
□ Tort Liability Due to Apparent Authority or Ratification 95
□ Negligent Hiring, Retention, and Supervision 96
□ Fraud and Misrepresentation During Recruitment 97
□ Employee Raiding: Interference with Contractual Relations 98
☐ Infliction of Emotional Distress 99
Case 3.4 Wagner v. Texas A&M University 99
□ Defamation 101
☐ Invasion of Privacy Claims 103
□ False Imprisonment 103
□ False Arrest 104
■ Management Application: Is There Insurance Coverage? 104
Fiduciary Duties of Employees 105
■ Restrictive Covenants and Trade Secrets 105 □ Creatures of State Law 106
☐ Trade Secret Agreements 108 Case 3.5 PPG Industries v. Jiangsu Tie Mao Glass Co. 110
■ AI Feature: Creating an At-Will Employment Agreement 111
■ Key Terms 112
Chapter Summary 113
■ Applying the Law 113 ■ End Notes 115

ELAW_FM_pi-xxxxviii_proof4.indd 12 04/07/24 12:22 PM

xiii

Chapter 4: Equal Employment Opportunity Laws and Affirmative Action 117

- Introduction 118
- Reconstruction (Post-Civil War) Era Amendments 118
- Civil Rights Act of 1964 120
 - ☐ Features of the Civil Rights Act of 1964 120
 - ☐ Constitutionality of the CRA of 1964 121

Case 4.1 Heart of Atlanta Motel v. United States 121

- Title VII Prohibitions 123
- Amendments to Title VII 124
- Concept Summary: Comparing Section 1981 with Title VII 125
- Protected Classes of Individuals 125
 - ☐ Associational Discrimination 127
- Civil Rights Act of 1991 127
- Executive Order 11246 128
- The Nature of Affirmative Action 129
- Public Sector Race-Based Affirmative Action Plans 130
- The Evolving Views of the Supreme Court on Affirmative Action 130

Case 4.2 Wygant v. Jackson Board of Education 131

Case 4.3 Johnson v. Transportation Agency, Santa Clara County 133

■ Reverse Discrimination 136

Case 4.4 Ricci v. DeStefano 136

- American Indian Preference Under Title VII 138
- AI Feature: Drafting a Policy on Diversity, Equity, and Inclusion 139
- Key Terms 139
- Chapter Summary 140
- Applying the Law 141
- End Notes 142

Chapter 5: Employment Litigation and Dispute Resolution 145

- Introduction 146
- Definitions of Discrimination 147
- Size of Employer 147
- Two Types of Discrimination Claims 149

xiv Contents

■ Harassment 150
■ Proving a Discrimination Claim 152
□ A Prima Facie Case 152
□ Direct Evidence 153
☐ Circumstantial Evidence 153
□ Evidence and Motions for Summary Judgment 153
Case 5.1 McDonnell Douglas Corp. v. Green 154
■ Concept Summary: The McDonnell Douglas Test 155
Case 5.2 Said v. Mayo Clinic 156
■ Evolution of McDonnell Douglas 158
■ Statistical Proof of Employment Discrimination 158
■ The Four-Fifths or 80-Percent Rule 159
■ Disparate Impact Cases 160
■ Mixed Motive Evidence 161
Case 5.3 Desert Palace v. Costa 162
■ Cat's Paw Theory of Liability 164
Case 5.4 Staub v. Proctor Hospital 164
■ Management Application: Dealing with the Cat's Paw Theory 166
■ Retaliation Claims 166
Case 5.5 Burlington Northern & Santa Fe Ry. Co. v. White 167
■ Proving a Retaliation Claim with "But-For" Evidence 168
■ Concept Summary: Proving Unlawful Retaliation 169
■ The Role of the EEOC 170
□ Filing an EEOC Charge 170
■ The EEOC's Role for Federal Employees 172
■ Employment Discrimination Lawsuits 173
■ Alternative Dispute Resolution 174
□ Mediation 174
□ Arbitration 174
□ Resolving Employment Disputes Through Arbitration 175
Case 5.6 AT&T Mobility v. Concepcion 176
□ Arbitrators May Decide the Scope of Their Authority 178
■ The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 179
■ Class Action Lawsuits 179
Case 5.7 Wal-Mart Stores, Inc. v. Dukes 180
■ Are Class Action Arbitration Waivers Enforceable? 181
☐ The EEOC's Duty to Thoroughly Investigate Before Suing 182

ELAW_FM_pi-xxxviii_proof4.indd 14 04/07/24 12:22 PM

Contents XV

■ Management's Affirmative Defenses 183
☐ Mandatory Grievance Procedures 183
☐ Statute of Limitations 183
□ Job Relatedness 184
□ Seniority 184
□ Business Necessity 184
□ BFOQ 184
☐ After-Acquired Evidence 184
Case 5.8 McKennon v. Nashville Banner Publishing 185
□ Laches 186
☐ Mixed Motive Evidence 186
□ Tolling and Mitigation 187
□ Faragher/Ellerth Defense 187
■ Management Application: "No One Can Please This Boss" Defense 188
Remedies 188
□ Statutes 188
□ Recovery of Court Costs and Attorney's Fees 188
 AI Feature: Termination Checklist, Settlement Agreement, and General Release 190 Key Terms 190 Chapter Summary 191 Applying the Law 192 End Notes 194

Part II: Workplace Discrimination

Summary Chart: Post Hire Employment Discrimination Claims 196

Chapter 6: Race, Color, and National Origin Discrimination 201

- Introduction 202
- Legal Protections from Racial, Color, and National Origin Discrimination 202

Case 6.1 Barnes v. Board of Trustees of the University of Illinois 203 Case 6.2 Ash v. Tyson Foods, Inc. 205

■ Culture as Racial Identification 207

xvi Contents

■ Racial Harassment 207
Case 6.3 CBOCS West, Inc. v. Humphries 209
■ Color Discrimination 211
■ Concept Summary: Proving Color Discrimination 212
■ National Origin Discrimination 213
□ Facility with English 215
Case 6.4 Khalaf v. Ford Motor Company 218
■ National Origin Harassment 219
■ BFOQs Are Not a Defense to Race and Color Claims 220
■ AI Feature: Drafting a Lawful English-Only Workplace Rule 220
■ Key Terms 220
■ Chapter Summary 221 ■ Applying the Law 221
■ End Notes 223
Chapter 7:
1
Discrimination and Harassment Based
Upon Gender, Sexual Orientation, and
Gender Identity 225
defider identity 223
■ Introduction 226
■ Gender Pay Discrimination: The Equal Pay Act 227
□ Requirements of the EPA 227
□ Advantages of EPA Claims 229
■ Management Application: Pay Disparity Statistics 229
Case 7.1 Corning Glass Works v. Brennan, Secretary of Labor 230
, ,
■ Concept Summary: Proving an EPA Claim 231
■ Concept Summary: Proving an EPA Claim 231 ■ Lilly Ledbetter Fair Pay Act of 2009 232
■ Lilly Ledbetter Fair Pay Act of 2009 232
■ Lilly Ledbetter Fair Pay Act of 2009 232 ■ Sex Discrimination 233
■ Lilly Ledbetter Fair Pay Act of 2009 232 ■ Sex Discrimination 233 ■ Concept Summary: Proving Sex Discrimination 234
 Lilly Ledbetter Fair Pay Act of 2009 232 Sex Discrimination 233 Concept Summary: Proving Sex Discrimination 234 Management Application: Terminology 234
■ Lilly Ledbetter Fair Pay Act of 2009 232 ■ Sex Discrimination 233 ■ Concept Summary: Proving Sex Discrimination 234 ■ Management Application: Terminology 234 ■ Gender as a BFOQ 235
■ Lilly Ledbetter Fair Pay Act of 2009 232 ■ Sex Discrimination 233 ■ Concept Summary: Proving Sex Discrimination 234 ■ Management Application: Terminology 234 ■ Gender as a BFOQ 235 ■ Gender Stereotyping: Dress Codes and Grooming Standards 236
 ■ Lilly Ledbetter Fair Pay Act of 2009 232 ■ Sex Discrimination 233 ■ Concept Summary: Proving Sex Discrimination 234 ■ Management Application: Terminology 234 ■ Gender as a BFOQ 235 ■ Gender Stereotyping: Dress Codes and Grooming Standards 236 Case 7.2 Jespersen v. Harrah's Operating Company, Inc. 237
 Lilly Ledbetter Fair Pay Act of 2009 232 Sex Discrimination 233 Concept Summary: Proving Sex Discrimination 234 Management Application: Terminology 234 Gender as a BFOQ 235 Gender Stereotyping: Dress Codes and Grooming Standards 236 Case 7.2 Jespersen v. Harrah's Operating Company, Inc. 237 Sexual Harassment 240
 ■ Lilly Ledbetter Fair Pay Act of 2009 232 ■ Sex Discrimination 233 ■ Concept Summary: Proving Sex Discrimination 234 ■ Management Application: Terminology 234 ■ Gender as a BFOQ 235 ■ Gender Stereotyping: Dress Codes and Grooming Standards 236 Case 7.2 Jespersen v. Harrah's Operating Company, Inc. 237 ■ Sexual Harassment 240 Case 7.3 Meritor Savings Bank, FSB v. Vinson 241
 Lilly Ledbetter Fair Pay Act of 2009 232 Sex Discrimination 233 Concept Summary: Proving Sex Discrimination 234 Management Application: Terminology 234 Gender as a BFOQ 235 Gender Stereotyping: Dress Codes and Grooming Standards 236 Case 7.2 Jespersen v. Harrah's Operating Company, Inc. 237 Sexual Harassment 240 Case 7.3 Meritor Savings Bank, FSB v. Vinson 241 Employers' Vicarious Liability for Harassment 245
 ■ Lilly Ledbetter Fair Pay Act of 2009 232 ■ Sex Discrimination 233 ■ Concept Summary: Proving Sex Discrimination 234 ■ Management Application: Terminology 234 ■ Gender as a BFOQ 235 ■ Gender Stereotyping: Dress Codes and Grooming Standards 236 Case 7.2 Jespersen v. Harrah's Operating Company, Inc. 237 ■ Sexual Harassment 240 Case 7.3 Meritor Savings Bank, FSB v. Vinson 241

ELAW_FM_pi-xxxxviii_proof4.indd 16 04/07/24 12:22 PM

Contents xvii

☐ Liability Because of Supervisor's Actions 248
Case 7.5 Christian v. Umpqua Bank 249
■ Concept Summary: Proving Sexual Harassment 251
■ The Pregnancy Discrimination Act 252
■ The Pregnant Workers Fairness Act (PWFA) 252
■ Sexual Orientation and Gender Identity Discrimination and Harassment 254
☐ Sexual Orientation Discrimination 254
□ Same-Sex Discrimination and Harassment 255
□ Related Sex-Based Protections 256
Case 7.6 Bostock v. Clayton County, Georgia 257
■ Reverse Sex Discrimination 261
AI Feature: Drafting an Anti-Harassment Policy 262
■ Key Terms 262 ■ Chapter Summary 262
■ Applying the Law 263
■ End Notes 265
Chapter 8:
Religious Discrimination 267
rengious Discrimination 207
■ Introduction 268
■ Statutory Protection Against Religious Discrimination 269
 Management Application: Trends in Religion-Based Discrimination Claims 269
■ What Is Religion? 270
■ Management Application: Is This a Religion? 271
Case 8.1 Young v. Southwestern Savings & Loan Association 272
■ Religious Practices or Observances 274
■ Sincerely Held Belief 275
■ The Duties to Inform and of Reasonable Accommodation 277
■ Undue Hardship on the Conduct of the Employer's Business 278
Case 8.2 Groff v. DeJoy 279
■ Concept Summary: Proving Religious Discrimination 282
■ Accommodations by Unions to Their Members 282
■ Religious Harassment 283
Case 8.3 Huri v. Office of the Chief Judge of the Circuit Court of Cook County 284
■ Neutral, Generally Applicable Standards 285
■ Exemptions and Exceptions 286
Case 8.4 Our Lady of Guadalupe School v. Morrissey-Berru 288

ELAW_FM_pi-xxxviii_proof4.indd 17 04/07/24 12:22 PM

xviii	Content

 AI Feature: Draft a Request for a Religious Accommodation Policy 291 Key Terms 291 Chapter Summary 291 Applying the Law 292 End Notes 294 	
Chapter 9: Disability Discrimination 295	
 Introduction 296 Overview of Disability Discrimination 297 Impact of the ADA on Hiring 298 Definition of a Disability 299 Covered Employers 300 Qualified Individual with a Disability 300 Physical or Mental Impairment 302 Substantially Limits a Major Life Activity 303 Mitigating Measures 305 Management Application: Disability and Medical Exams 305 Concept Summary: What "Substantially Limits a Major Life Activity Means 306 Record of Impairment 307 Regarded as Having an Impairment 307 Limited Protection for Persons with Alcohol or Substance Use Disorders 3 Management Application: Disability and Medical Exams 309 Reasonable Accommodation and the Interactive Process 310 Case 9.1 Alston v. Park Pleasant, Inc. 313 Case 9.2 Dansie v. Union Pacific Railroad Co. 314 Associational Discrimination 317 	."
 ■ Concept Summary: Proving Disability Discrimination 317 ■ Remedies 318 ■ Employer Defenses 319 □ The Direct Threat Defense 319 □ Job-Related and a Business Necessity 321 □ Undue Hardship Under the ADA 321 ■ Social Security Disability Claims 322 ■ Case 9.3 Cleveland v. Policy Management Systems Corporation 322 ■ Rehabilitation Act of 1973 324 ■ Concept Summary: Comparison of the Rehabilitation Act to the ADA 326 	

ELAW_FM_pi-xxxviii_proof4.indd 18 04/07/24 12:22 PM

Contents xix

■ AI Feature: Checklist for a Reasonable Accommodation and an Employe Response 326	r's
■ Key Terms 327	
■ Chapter Summary 327	
■ Applying the Law 328	
■ End Notes 330	
Chapter 10:	
Age Discrimination 333	
■ Introduction 334	
Overview of Age Discrimination 335	
Covered Employers 335	
Covered Employees 335	
Case 10.1 O'Connor v. Consolidated Coin Caterers Corp. 336	
Case 10.2 General Dynamics Land Systems, Inc. v. Cline 338	
■ Management Application: EEOC Regulations on Age	
Discrimination 339	
■ Prohibited Acts 341	
■ Enforcement and Filing Deadlines 343	
■ Agreements to Arbitrate ADEA Claims 343	
■ Class Actions and ADEA Claims 344	
■ Proving Age Discrimination 344	
☐ Disparate Treatment Proof 344	
□ Disparate Impact Proof 345	
■ Mixed Motive Proof 346	
Case 10.3 Gross v. FBL Financial Services, Inc. 346	
■ Concept Summary: "But for" Causation 348	
■ The Gross Standard Does Not Apply in Federal Employment 3	48
■ Concept Summary: Proving Age Discrimination 349	
■ Employer Defenses to ADEA Lawsuits 349	
□ Reasonable Factors Other than Age (RFOA) 350	
■ EEOC Regulations on RFOA 351	
☐ Bona Fide Occupational Qualification (BFOQ) 352	
■ Concept Summary: BFOQ Defense in an ADEA Case 352	
☐ Experience as a Selection Factor 352	
□ Bona Fide Employee Pension Plan Exception 353	
Case 10.4 Kentucky Retirement Systems v. EEOC 354	
□ Good Cause 356	
□ Reduction in Force 357	

ELAW_FM_pi-xxxxviii_proof4.indd 19 04/07/24 12:22 PM

XX Contents

■ Remedies 357
■ Older Workers Benefit Protection Act (OWBPA) 358
■ Reverse Age Discrimination 360
■ AI Feature: Age-Based Discrimination or Harassment 360
Key Terms 360
■ Chapter Summary 361 ■ Applying the Law 361
■ End Notes 363
Chapter 11:
Employee Leaves and Other EEO
Protections 365
■ Introduction 366
■ Family and Medical Leave Act 366
☐ Employers Subject to FMLA Requirements 368
□ Covered Employees 368
□ Serious Health Condition 369
□ Employer's Response 370
☐ Consequences of FMLA Leave 370
□ Remedies 371
□ Proving an FMLA Retaliation Violation 372
Case 11.1 Lapham v. Walgreen Co. 372
□ COBRA Benefits During FMLA Leave 374
☐ Leave for Care of Servicemembers 374
■ No Federally Mandated Private Sector Sick Leave 375
■ Family Responsibilities Discrimination 375
Case 11.2 Phillips v. Martin Marietta Corp. 377
■ Marital Status Discrimination 378
Associational Discrimination and the ADA 378

■ Workplace Bullying 380 ■ Rights of Servicemembers and Their Families 381

Personal Appearance Discrimination 379Political Affiliation Discrimination 379

■ Concept Summary: Proving USERRA Discrimination 383

Case 11.3 Arroyo v. Volvo Group of North America, LLC 384

- Genetic Discrimination Laws 385
 - ☐ Genetic Information Nondiscrimination Act of 2008 386

Contents xxi

Case 11.4 Punt v. Kelly Services; GE Controls Solutions 389

- Concept Summary: GINA 391
- ☐ What GINA Does Not Cover 391
- AI Feature: Draft a Master Leave of Absence Form 392
- Key Terms 392
- Chapter Summary 392
- Applying the Law 393
- End Notes 395

Summary Chart: Leaves of Absence 397

Part III: Employee Protections and Benefits

Chapter 12: Privacy in the Workplace 401

- Introduction 402
- Overview of Employee Privacy Rights 403
 - □ What Is Privacy? 403
 - ☐ Constitutional Rights and Rights Under Tort Law 403

Case 12.1 Thomas v. University of Pittsburgh 407

- State Protection of Privacy Rights 409
- Management Application: Federal Right-to-Privacy Laws 410
- Collecting and Handling Employee Information 411

Case 12.2 NASA v. Nelson 413

- Post-Hiring Medical and Physical Exams 415
- **■** Employee Polygraphs 417
- **■** Employee Searches and Investigations 418
- Surveillance and Monitoring 419

Case 12.3 Reed v. Toyota Motor Credit Corp. 421

- Concept Summary: Proving a Privacy Invasion 424
- State Laws 425
- Controlling the Employee's Lifestyle 425
- **■** Executive Order on Artificial Intelligence 428
- Rights of Union Members 428
- Local Ordinances and Regulations 429
- AI Feature: Draft a Sample Employee Privacy Waiver 429

ELAW_FM_pi-xxxviii_proof4.indd 21 04/07/24 12:22 PM

xxii

Contents
Key Terms 429 Chapter Summary 430 Applying the Law 430 End Notes 432
Chapter 13:
Federal Labor Relations 435
Introduction 436
Railway Labor Act 436
■ The Norris-La Guardia Act 437
National Labor Relations Act (NLRA) 437
Case 13.1 MCPc, Inc. v. NLRB 439
■ Management Application: Union Membership Statistics 441
■ The Rights of Employees 442
□ Right to Strike 442
☐ Types of Strikers 442
□ Right to Picket 444
☐ Types of Picketing 444
■ Management Application: "Shop" Terminology 445
■ The NLRB's Jurisdiction 445

- Matters Outside the Jurisdiction of the NLRB 446

Case 13.2 Tesla v. NLRB 446

■ The Duty of Good-Faith Bargaining 449

Case 13.3 Dish Network v. NLRB 449

■ Alter Ego Liability (Dual Company Operation) 452

- Management Application: Lockouts 452
- Taft-Hartley Act 452
- Selecting a Bargaining Representative 454
- Prohibited Employer and Union Activities 457
- Duty of Fair Representation 458
- Social Media as Protected Activity 458
- Grievance Proceedings and Arbitration 460
- How Federal Labor Law Is Enforced 461
 - □ Overview of the NLRB 461
 - □ Proceedings Before the Board 462
 - ☐ Federal Preemption 462
- The Labor-Management Reporting and Disclosure Act (the "Landrum-Griffin Act") 463

ELAW_FM_pi-xxxviii_proof4.indd 22 04/07/24 12:22 PM

Contents xxiii

 Chapter Summary 465 Applying the Law 466 End Notes 467
Chapter 14: Wage and Hour Laws 469
■ Introduction 470
■ The Fair Labor Standards Act 471
■ State and Local Regulations 473
■ Employer Coverage 473
■ Employee Coverage 474
Case 14.1 Patel v. Quality Inn South 474
Case 14.2 Tony & Susan Alamo Foundation v. Secretary of Labor 476
■ Regulation of Wages and Hours 477
■ Exemptions from Minimum Wage and Overtime Requirements 482
□ White-Collar Exemptions 482
■ Overtime Rules 483
□ White-Collar Exemptions 484
Case 14.3 Encino Motorcars, LLC v. Navarro 489
□ Student Unpaid Internships and the FLSA 491
■ Concept Summary: FLSA Minimum Wage and Overtime Exemptions 492
■ The Portal-to-Portal Act 493
■ Management Application: De Minimis Doctrine and State Law 494
Case 14.4 IBP, Inc. v. Alvarez 495
■ Youth Employment 498
■ Miscellaneous FLSA Regulations 498
■ Enforcement 499
■ Employer Defenses 500
■ Worker Adjustment and Retraining Notification Act (WARN) 500
□ Davis-Bacon Act and the Walsh-Healey Act 502
■ Employment Taxes 502
□ FICA: Social Security and Medicare Contributions 502
□ FUTA: Federal Unemployment Tax 503
☐ Employment Tax Safe Harbor Provision 503

■ AI Feature: Recent Strikes in the Entertainment Industry 464 ■ Key Terms 464

ELAW_FM_pi-xxxxviii_proof4.indd 23 04/07/24 12:22 PM

xxiv	Contents
ALALIV	Contents

 Penalties for Misclassification 503 AI Feature: Draft a De Minimis Time Policy 504 Key Terms 504 Chapter Summary 505 Applying the Law 506 End Notes 507 Summary Chart: Wage and Hour Claims 509
Chapter 15: Occupational Safety and Workers' Compensation 513
■ Introduction 514
■ Federal Job Safety Laws 515
Occupational Safety and Health Act (OSH Act) 515
□ Covered Employers 516
□ Covered Employees 517
■ Duty Standards 517
OSHA Rulemaking 519
Case 15.1 American Textile Manufacturers Institute v. Donovan 519
■ Employee Rights 521
■ Concept Summary: An Employer's Duties Under the OSH Act 523
■ Reporting Requirements 523
■ Enforcement 524
□ OSHA Inspections 524
□ OSHA's On-Site Consultation Program 525
□ Citations 525
□ Administrative Hearings 525
OSHA Immunity 526
Case 15.2 Irving v. United States of America 526
OSHA Penalties 527
□ Other than Serious Violation 527
□ Serious Violation 527
□ Willful Violation 528
□ Repeat Violation 528
☐ Failure to Abate Prior Violation 528

ELAW_FM_pi-xxxviii_proof4.indd 24 04/07/24 12:22 PM

□ *De Minimis* Violations 528

 $\hfill\Box$ Officer and Director Liability \hfill 528

Contents XXV

■ Violence in the Workplace 528
Case 15.3 Ray v. Wal-Mart Stores, Inc. 529
□ Workplaces with Higher Risks of Violence 531
■ Employer Defenses to OSHA Citations 531
■ Due Process 531
□ Unpreventable Employee Misconduct 531
☐ Hazard Defense 532
□ Impossibility 532
□ Infeasibility 532
□ Other Applicable Standards 534
☐ Statute of Limitations 534
■ OSHA and the MSHA 534
■ Workers' Compensation 535
□ What Is Required to Recover Workers' Compensation Benefits 536
□ Relationship to an OSHA Violation 538
□ Employee Coverage 538
□ Course and Scope of Employment 538
□ Suing the Employer 539
■ Federal Workers' Compensation Laws 540
■ Employer Defenses to Workers' Compensation Claims 541
■ AI Feature: Draft a Whistleblower Complaint to Be Filed with OSHA 541
■ Key Terms 542 ■ Chapter Summary 542
■ Applying the Law 543
■ End Notes 545
Chapter 16:
Retirement and Employee Benefits 547
Retirement and Employee Denemis 347
■ Introduction 548
Overview of ERISA and Employee Benefit Plans 548
□ Benefit Plans 549
☐ Two Types of Plans 549
□ Federal Preemption 549
Case 16.1 Resilient Floor Covering Pension Trust Fund Bd. of Trs. v.
Michael's Floor Covering, Inc. 551
☐ Pension Benefit Guaranty Corporation (PBGC) 552
■ Employee Pension Benefit Plans 553
□ Defined Contribution Plans 553

ELAW_FM_pi-xxxxviii_proof4.indd 25 04/07/24 12:22 PM

xxvi Contents

	□ 401(k) Plans 554
	□ SIMPLE IRA 555
	□ Keogh Plans 555
	Employee Stock Ownership Plans 556
	Employers' Fiduciary Duties 556
	■ Concept Summary: Fiduciary Duties Under ERISA 558
	Case 16.2 Varity Corp. v. Howe 558
	Case 16.3 LaRue v. DeWolff, Boberg & Associates 561
	$\hfill\Box$ Plan Investments and the Tibble and Northwestern University Decisions $$ 563
	☐ Liability of Involved Third Parties 563
	Case 16.4 Metropolitan Life Insurance Co. v. Glenn 564
	Enforcement of Rights 566
	□ Statute of Limitations 566
	□ Exhaustion of Internal Remedies 566
	ERISA's Discrimination Provisions 567
	Nonqualified Deferred Compensation Plans 567
	Entitlement to Participation 568
	Vesting and Enforcement 568
	Welfare Benefit Plans 568
	Case 16.5 Rush Prudential HMO, Inc. v. Moran 570
	Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) 571
	■ Concept Summary: COBRA 573
	Health Insurance Portability and Accountability Act (HIPAA) 574
	Affordable Care Act (ACA) 574
	☐ Health Insurance Exchanges 575
	□ Employer Mandate 575
	□ Insurance Reforms 575
	Flexible Spending Account (FSA) 576
	Dissolution of Marriage 576
	Management Application: The Importance of Written Documentation 577
	AI Feature: Draft a Policy: Company Pension Benefit and Welfare
_	Health Plans 577
	Key Terms 578 Chapter Summary 578
	Applying the Law 579
	End Notes 581

ELAW_FM_pi-xxxxviii_proof4.indd 26 04/07/24 12:22 PM

Part IV: Special Topics

Chapter Summary 611Applying the Law 612End Notes 613

Chapter 17: Immigration Law in the Workplace 585

■ Introduction 586 ■ National Origin and Citizenship ■ Naturalized Citizens 587 ■ Application of the Civil Rights Laws 588 ■ Immigration and Nationality Act of 1965 ■ Constitutional Restraints on Alien Employment ☐ Political Function or Public Interest Exception ☐ The Evolving Regulation of Who Can Work Within the United States 590 ■ Immigration Reform and Control Act of 1986 591 ☐ Employment Recruitment and Retention 592 ☐ Employment Verification 592 ☐ Employer Penalties 592 ☐ Federal Enforcement 593 ■ Preemption and State Efforts to Regulate Unauthorized Workers 593 Case 17.1 Hoffman Plastic Compounds, Inc. v. NLRB Case 17.2 Chamber of Commerce v. Whiting 596 Case 17.3 Arizona v. United States ■ Concept Summary: IRCA 600 **■** Employment Verification and Enforcement 600 ☐ Employer's Duty to Examine Documents 603 Case 17.4 Mester Manufacturing Co. v. INS ☐ E-Verify Program 605 **■** ICE Investigations 606 ■ Immigration Employment Law Violations 607 ■ Other Related Federal Laws 609 Administrative and Judicial Review 610 AI Feature: Draft a Memorandum on IRCA Compliance 610 Key Terms 611

ELAW_FM_pi-xxxviii_proof4.indd 27 04/07/24 12:22 PM

xxviii Contents

Chapter 18: The Multinational Employer 615

- Introduction 616
- American Employees of U.S. Multinational Corporations 616
- Foreign Employers Operating in the United States 617

Case 18.1 Sumitomo Shoji America, Inc. v. Avagliano 617

Case 18.2 MacNamara v. Korean Air Lines 620

- Concept Summary: EEO Responsibilities of U.S. Multinational Employers 621
- Extraterritorial Application of U.S. Employment Laws 622
 - ☐ Title VII and the Americans with Disabilities Act 622

Case 18.3 Morelli v. Cedel 623

- Other Employment-Related U.S. Laws That Do Not Apply Overseas 624
- Employment Law in the European Union 625
 - ☐ The Necessity of Employment Contracts 626
 - ☐ Whose Law Governs the Employment Contract? 627
 - □ Directives Under Article 45 EC 627
 - ☐ Article 141: Equal Pay for Equal Work 628

Case 18.4 Defrenne v. SABENA 629

- □ Other EU Directives of Interest to the Global Employer 631
- European Convention on Human Rights in the European Union 632
- **■** Enforcement of Directives 633
- Employment Laws of Canada and Mexico 633
 - □ Canada 633
 - ☐ Mexico 638
- AI Feature: Draft a Pay Transparency and Equality Policy 642
- Key Terms 642
- Chapter Summary 643
- Applying the Law 644
- End Notes 645

Glossary 647 Table of Cases 675 Index 683