

Preface xxi
Preface to the Second Edition xxiii
Acknowledgments xxv

Part I. Introduction to Labor and Employment Law

CHAPTER 1 ***STURM UND DRANG: THE ORIGINS OF LABOR AND EMPLOYMENT LAW IN AMERICA*** **3**

Introduction 3
Industrial Revolution 3
Emergence of Unions 4
Early Judicial Repression of Labor 11
Protection by Statute 14
The Role of the Paralegal in Labor and Employment Law 18
Summary 19
Discussion Questions and Exercises 20
 Exercises 20
 Discussion Questions 20
 Enrichment Exercises 21
Cases 22
 Commonwealth v. Hunt 22
Suggested Additional Case Readings for Further Study 24

CHAPTER 2**THE EMPLOYMENT RELATIONSHIP 25**

Introduction	25
Employee	25
Employer	27
Single Employer	27
Joint Employer	29
Alter Ego	30
Double-Breasted Operations	31
Public Employers	32
The Nature of the Employment Relationship	33
Termination of Employment	34
Public Policy Exception	36
Implied Covenant of Good Faith and Fair Dealing	37
Implied Contract Exception	37
Tort Remedies	38
Just Cause Standard	39
Wages, Hours, and Other Terms and Conditions of Employment	40
The Role of the Paralegal in the Employment Relationship	45
Summary	45
Answers to Scenarios	45
Discussion Questions and Exercises	50
Exercises	50
Discussion Questions	50
Enrichment Exercises	51
Cases	51
<i>Skinner v. Maritz, Inc.</i>	51
Suggested Additional Case Readings for Further Study	53

PART II. LABOR-MANAGEMENT RELATIONS IN THE UNION SETTING

CHAPTER 3**SELECTION OF REPRESENTATIVES 57**

Introduction	57
Section 7 Rights	58
National Labor Relations Board (NLRB)	60
Scope of Protection	61

Selection of Bargaining Representatives	64
Appropriate Collective Bargaining Units	67
Elections	70
Election Bar Rules	76
NLRB Ancillary Petitions	77
Public Employees	79
The Role of the Paralegal in the Employee Representation Process	80
Summary	82
Answers to Scenarios	82
Discussion Questions and Exercises	89
Exercises	89
Discussion Questions	90
Enrichment Exercises	91
Cases	91
<i>Local 627, International Union of Operating Engineers v. NLRB</i>	92
Suggested Additional Case Readings for Further Study	95

CHAPTER 4

EMPLOYER UNFAIR LABOR PRACTICES 97

Introduction	97
Procedures	97
Statute of Limitations	100
Interference, Restraint, and Coercion	100
Domination of or Assistance to a Labor Organization	102
Employment Discrimination	105
Union Security Clauses	107
Retaliation	109
Refusal to Bargain	110
Gissel Bargaining Orders	115
Public Employees	115
The Role of the Paralegal in Unfair Labor Practice Cases	116
Summary	116
Answers to Scenarios	116
Discussion Questions and Exercises	125
Exercises	125
Discussion Questions	126
Enrichment Exercises	126
Cases	127
<i>Crawford Door Sales Company, Inc.</i>	127
Suggested Additional Case Readings for Further Study	130

CHAPTER 5**UNION UNFAIR LABOR PRACTICES 131**

Introduction	131
Procedures	131
Restraint or Coercion of Employees	133
Violence and Threats of Violence	135
Remedies	136
Restraint or Coercion of Employers	136
Remedies	138
Employment Discrimination	138
Remedies	141
Refusal to Bargain	141
Remedies	142
Involving Neutrals in a Labor Dispute	142
Hot Cargo Agreements	144
Construction Industry Exception	145
Remedies	147
Secondary Boycotts	148
Construction Industry Exception	150
Remedies	151
Forced Recognition or Bargaining	152
Remedies	152
Jurisdictional Disputes	152
Remedies	154
Ally Doctrine	154
Excessive Fees	156
Remedies	157
Featherbedding	157
Remedies	158
Recognitional Picketing	159
Remedies	160
Doctrine of Preemption	160
The Role of the Paralegal in Unfair Union Labor Practices	163
Summary	164
Answers to Scenarios	164
Discussion Questions and Exercises	173
Exercises	173
Discussion Questions	173
Enrichment Exercises	174

Cases	175
<i>United Food and Commercial Workers Local 1996 (Visiting Nurse Health System, Inc.)</i>	175
Suggested Additional Case Readings for Further Study	180

C H A P T E R 6

ECONOMIC WEAPONS: STRIKES, PICKETING, LOCKOUTS, AND BOYCOTTS 181

Introduction	181
Strikes	183
The Right to Strike	184
Replacement of Strikers	186
Sympathy Strikes	188
Notice Requirements	189
Picketing	190
Picketing on Private Property	191
Common Situs Picketing	193
Moore Dry Dock Standards	193
Reserved Gate Doctrine	194
Area Standards Picketing	197
Consumer Picketing	200
Observing Strangers' Picket Lines	201
Preemption	203
Publicizing Non-Union Status	203
Handbilling	204
Lockouts	206
Implementing a Final Offer	207
Special Remedies	208
The Role of the Paralegal in Strikes and Picketing	209
Summary	209
Answers to Scenarios	209
Discussion Questions and Exercises	217
Exercises	217
Discussion Questions	217
Enrichment Exercises	218
Cases	218
<i>Citizens Publishing and Printing Company v. National Labor Relations Board</i>	219
Suggested Additional Case Readings for Further Study	225

CHAPTER 7**LABOR CONTRACTS 227**

Introduction	227
Nature of the Labor Agreement	228
Duty of Fair Representation	235
Hot Cargo Agreements	238
Prehire Agreements	241
Successor Employers	243
Union Security Clauses	244
Management Rights	246
Grievance Procedures and Dispute Resolution	247
No-Strike Pledges	249
Seniority and Bidding	252
Work Preservation Clauses	254
Employee Benefits	255
Duration	256
The Role of the Paralegal in Labor Contracts	256
Summary	257
Answers to Scenarios	257
Discussion Questions and Exercises	267
Exercises	267
Discussion Questions	268
Enrichment Exercise	269
Cases	270
<i>Teamsters Local 863 v. Jersey Coast Egg Producers, Inc.</i>	270
Suggested Additional Case Readings for Further Study	274

PART III. EMPLOYMENT DISCRIMINATION**CHAPTER 8****THE CIVIL RIGHTS ACT OF 1964 277**

Introduction	277
Exclusions from Coverage	278
Sovereign Immunity	279
Employment Discrimination	279
Disparate Treatment Discrimination	280
Bona Fide Occupational Qualification (BFOQ)	281
Disparate Impact Discrimination	282
Hostile Environment Discrimination	283

Equal Employment Opportunity Commission (EEOC)	285
Administrative Procedures	285
Deferral Agencies	287
Time Limits for Filing Charges of Discrimination	287
Notice of Right to Sue	288
Methods of Proof	288
Retaliation	294
Pattern and Practice Cases	295
Civil Rights Act of 1991	296
Summary Judgment in Employment Discrimination Cases	297
Class Actions	299
Remedies	299
Alternate Dispute Resolution (ADR)	301
Sexual Orientation	304
The Role of the Paralegal in Title VII Cases	304
Summary	305
Answers to Scenarios	305
Discussion Questions and Exercises	313
Exercises	313
Discussion Questions	313
Enrichment Exercises	314
Cases	315
<i>Henry John Fernandes v. Costa Brothers Masonry, Inc.</i>	315
Suggested Additional Case Readings for Further Study	321

CHAPTER 9

RACE DISCRIMINATION 323

Introduction	323
Constitutional Protections	325
Section 1981	326
Section 1983	328
Evaluating Race Discrimination Claims	329
Consent Decrees	332
Reverse Race Discrimination	333
Affirmative Action	334
The Role of the Paralegal in Race Discrimination Cases	335
Summary	335
Answers to Scenarios	336

Discussion Questions and Exercises	339
Exercises	339
Discussion Questions	339
Enrichment Exercises	339
Cases	340
<i>Local Number 93, International Association of Firefighters, AFL-CIO,</i>	
<i>C.L.C. v. City of Cleveland</i>	340
Suggested Additional Case Readings for Further Study	346

CHAPTER 10

SEX DISCRIMINATION 347

Introduction	347
Constitutional Protections	348
Equal Rights Amendment	349
Equal Pay Act	350
Gender Discrimination under the Civil Rights Act	351
Pregnancy Discrimination	356
Sexual Harassment	358
Quid Pro Quo Sexual Harassment	360
Hostile Environment Sexual Harassment	361
Reporting Sexual Harassment	362
Proof of Sexual Harassment	362
The Lily Ledbetter Case	363
Summary	364
Answers to Scenarios	365
Discussion Questions and Exercises	371
Exercises	371
Discussion Questions	372
Enrichment Exercises	372
Cases	373
<i>Equal Employment Opportunity Commission v. Dial Corporation</i>	373
Suggested Additional Case Readings for Further Study	377

CHAPTER 11

RELIGIOUS AND NATIONAL ORIGIN DISCRIMINATION 379

Introduction	379
Constitutional Protections	380
Reasonable Accommodation	384
National Origin Discrimination	385

The Role of the Paralegal in Religious and National Origin Discrimination Cases	387
Summary	388
Answers to Scenarios	388
Discussion Questions and Exercises	393
Exercises	393
Discussion Questions	393
Enrichment Exercises	394
Cases	395
<i>Oscar Aguilar v. Avis Rent A Car System, Inc.</i>	395
<i>Leslie Cowan v. Stafford R-VI School District</i>	397
Suggested Additional Case Readings for Further Study	399

CHAPTER 12

DISABILITY DISCRIMINATION 401

Introduction	401
Coverage	402
Disability	403
Actual Disability	403
Qualified Person with a Disability	405
Reasonable Accommodation	406
Undue Hardship	407
Record of Disability	408
Perceived Disability	409
Family and Medical Leave Act	409
Genetics Information Discrimination	411
Medical Marijuana	412
The Role of the Paralegal in Disability Cases	412
Summary	413
Answers to Scenarios	413
Discussion Questions and Exercises	418
Exercises	418
Discussion Questions	418
Enrichment Exercises	419
Cases	420
<i>Matthew Head v. Glacier Northwest, Inc.</i>	420
Suggested Additional Case Readings for Further Study	422

CHAPTER 13

AGE DISCRIMINATION 423

- Introduction 423
- Coverage 424
- Enforcement 425
 - Older Workers Benefit Protection Act 426
 - Defenses to Age Discrimination 426
- Scope of Protection 427
- Remedies 430
- The Role of the Paralegal in Age Discrimination Cases 431
- Summary 432
- Answers to Scenarios 432
- Discussion Questions and Exercises 435
 - Exercises 435
 - Discussion Questions 435
 - Enrichment Exercises 436
- Cases 437
 - Vernon E. Spencer v. Stuart Hall Company, Inc.* 437
- Suggested Additional Case Readings for Further Study 440

APPENDICES

Appendix A. How to Brief a Case 441**Appendix B. Legal Journals 453****Appendix C. Contract Clauses 455****Table of Cases 485****Index 491**