

Preface

At the end of a job interview, a potential employer asks an applicant, “And what starting salary are you looking for?”

The applicant responds, “In the neighborhood of \$200,000 a year, depending on the benefits package.”

The interviewer sits back in her chair a moment, considers the statement, and responds, “What would you say to a package of six weeks’ vacation, 14 paid holidays, fully paid medical benefits, a defined benefit retirement plan equal to 50% of your salary, a corner office, and a company car?”

The applicant stands up from his chair and responds, “Wow! Are you kidding?”

And, to that, the potential employer replies, “Yes, but you started it.”

People need to work to live, and yet it is never as simple as performing services in exchange for compensation. The employer-employee relationship is actually incredibly complex, and despite this, employers and employees often enter into working relationships absent a clear understanding of their mutual expectations. Quite often the parties also enter into working relationships without a basic understanding about the laws that govern the creating, maintaining, and ending of those employment relationships. This lack of awareness has the potential to place both parties at a significant disadvantage when discussing employment issues, because they will not have an appreciation of their rights and obligations under the law.

Employment Law: A Guide to Hiring, Managing, and Firing for Employers and Employees is designed to address this situation by providing an overview of employment law and identifying the most significant rights and obligations that employers and employees have during the key phases of the employment relationship. The textbook begins with a discussion about the prohibition against workplace discrimination, and then tracks the employment process — from job creation, to recruitment, to compensation and benefits, to leave entitlements, and to performance management, all the way to the conclusion of the employment relationship.

I. TEXTBOOK STRUCTURE

This book is divided into four parts, covering workplace discrimination and the hiring, managing, and firing of employees. The information is further divided into 20 chapters, which explain basic legal principles in clear and concise language.

A. Part I, Workplace Discrimination

Part I, Workplace Discrimination, focuses on Title VII, which makes it illegal for employers to discriminate against individuals on the basis of their race, color, religion, sex, national origin, and genetics; the Age Discrimination in Employment Act (ADEA), which makes it illegal for employers to discriminate against individuals who are 40 years of age or older on the basis of their age; and the Americans with Disabilities Act (ADA), which makes it illegal for employers to discriminate against qualified individuals with disabilities and requires employers to provide a disabled job applicant or employee with a reasonable accommodation, unless doing so would cause an undue burden. The purpose of this part of the textbook is not to educate litigators or to provide detailed guidance about the mechanics of presenting a case in a judicial forum. Instead, the goal is to alert employers to the types of workplace behavior that may subject them to liability for discriminatory conduct and to alert applicants and employees to the types of workplace behavior that may infringe upon their rights.

The chapters covering workplace discrimination should be thought of as the umbrella that you remember to bring with you to school or work on the days when it never rains. Armed with this basic knowledge about the litigation process, the hope is that you will never be placed in a situation where you have to use it — either by having a need to file a claim alleging discriminatory conduct or having a need to present a defense to an allegation that an employment decision was based upon improper motivations. If, however, you become a party to a legal claim, you will be a well-informed participant in the process.

B. Part II, Hiring

Part II, Hiring, lays out the components of a nondiscriminatory recruitment and hiring process and provides employers with guidance about soliciting candidates for an open position from a diverse applicant pool and collecting information (through the use of employment applications and interviews) in a manner to minimize potential claims for workplace discrimination. Both employers and applicants will learn how to distinguish appropriate employer conduct from conduct that suggests an employer used improper motivations as the basis for an adverse employment decision, which could be the basis for the filing of a discrimination claim. Further, employers will learn best practices that are not only legally compliant but also will assist them to recruit top talent and a diverse workforce.

C. Part III, Managing

Part III, Managing, covers issues relating to terms and conditions of employment, focusing on compensation and benefits, leave entitlements, performance management, harassment, and privacy rights. This part includes an extensive discussion about the appropriate use of performance management tools, including probationary periods, progressive discipline policies, and performance evaluations, geared toward minimizing the potential for their use to constitute discriminatory employer conduct. The balance that must be achieved between the rights of employers to manage their businesses and the rights of employees to be free from employer intrusions, both while at work and also when engaging in conduct outside their regularly scheduled work hours (often within the context of privacy rights), is also discussed in detail.

D. Part IV, Firing

Part IV, Firing, the final part in this textbook, focuses on the ending of employment relationships. It examines the concept of employment at will, which is the legal doctrine that governs most working relationships and provides the parties with the right to terminate their employment relationship for any reason at any time, but that is subject to a number of limitations. There is also a significant discussion about layoffs and the just-cause standard for terminations, as well as how employers can minimize the potential for liability once a relationship ends. The significance of separation packages (including the use of knowing and voluntary waivers of employees' rights) and restrictive covenants is also explored.

II. TEXTBOOK RESOURCES

As you move through this book, you will find that each of the 20 chapters includes illustrative examples, key terms and definitions, and a number of discussion questions to test students' knowledge of the most significant concepts presented. A comprehensive index and glossary of the key terms can also be found at the end of this book. In addition, the product page for this textbook at <http://www.AspenPublishing.com/Rassas-EmploymentLawGuideToHiring5> includes additional resources for students and instructors. Instructor resources that accompany this text include a comprehensive Instructor's Manual, Test Bank, and Microsoft PowerPoint slides.

Employment law is a challenging area of law, but it is also an exciting field that has widespread relevance to all individuals who receive compensation in exchange for the providing of a service. There are certainly times when employers and employees have similar interests and truly benefit from each other's success. However, it would be naive to ignore the reality that there are times when their

interests diverge. Both parties have a vested interest in possessing a basic understanding of their entitlements and obligations in order to anticipate the types of employment issues that might materialize, expend efforts to resolve them at the earliest stage possible, and be prepared to defend their interests in the absence of a mutually agreeable resolution. This book is designed to be a teaching tool for both parties to an employment relationship who want to obtain a solid foundation of knowledge to further each of these goals.

III. FIFTH EDITION ENHANCEMENTS

This fifth edition builds on its predecessors' strengths by keeping material that students found useful and relevant and also adding new material reflective of the changing employment law landscape in a number of different areas. For example, states continue to expand the rights of employees to take leave for specific purposes. Some states now require employers to grant employees the right to take time off from work to vote, and other states have modified their state laws to allow certain leaves to be used for childcare obligations in the event that schools are closed.

You will also find new content responsive to legal developments in areas of the law that may seem unrelated to the study of employment law but which actually have a significant trickle-down impact. For example, employers now have to review processes related to hiring and reasonable accommodations to ensure that they account for any applicable state laws that may allow the medical and/or recreational use of marijuana.

Also included in this edition is new material responsive to the significant attention being paid to diversity and inclusion in our workplaces. These enhancements can be found in a number of different chapters throughout the text. First, there is foundational content related to diversity initiatives and affirmation action plans, which includes EEOC guidance on best practices for employers to diversify their workforce while minimizing legal risk under Title VII. The ongoing effort to pass a version of the CROWN Act (a California law that prohibits hair discrimination) in every state is covered, as well as the ways employers can reduce or minimize the unintentional barriers to equal access to employment opportunities in order to enhance the diversity of their workforce.

You will also see expanded coverage of sex discrimination. This includes the definition of a number of key terms that have become increasingly relevant in light of the landmark Supreme Court case that held that discrimination against an individual because of gender identity, including transgender status, or because of sexual orientation, constitutes sex discrimination in violation of Title VII. Legislative efforts designed to address broader pay equity issues among and between a number of different protected classes (i.e., race, gender, and national origin), including trends in prohibiting employers from asking applicants for salary histories and requiring employers to post salary ranges to provide wage transparency, are also addressed.

And, finally, it should come as no surprise that this edition provides coverage of the rights and obligations of employers and employees who have been living and working through a global pandemic. This includes detailed guidance related to applicant, pre-employment, and employee medical inquiries and examinations, as well as extensive information related to an employer's obligation to accommodate individuals with disabilities and those who have religious beliefs and practices that conflict with mandatory vaccination policies. Included are new exhibits to offer practical tools to navigate these challenging issues.

While many of these developments materialized during the pandemic, this new content has a widespread application and will continue to be relevant to any future situations of a similar nature. This situation parallels the universal acceptance of the fact that as our society evolves, our laws change to account for this evolution. (By way of an example, for some time we have seen significant legal developments in response to technological developments, and it is likely that new laws will continue to be passed and updated as these advancements continue.) Further, the Equal Employment Opportunity Commission (EEOC), which is the agency that enforces workplace discrimination laws, reinforces this reality, noting that some of its guidance was originally issued in 2009, during the spread of the H1N1 virus, and has now been subject to further adjustments in response to COVID-19. So while this edition includes guidance related to the COVID-19 pandemic, it should be reviewed with the understanding that it is relevant to the handling of a wide range of health conditions that may pose a risk to prospective employees, employees, and to those around them.¹

These substantive additions are bolstered by additional tools to enhance the learning experience, including the introduction of new *Check It Out!* scenarios, which involve true and often outlandish real-life employment cases. They are scattered in the margins throughout the text, and designed to ask thought-provoking questions and initiate both legal and policy discussions. Each situation is designed to reinforce a legal concept or stakeholder consideration. At the end of each respective chapter, directly under the list of the chapter's key terms, you will find supplemental information about the situation described in each *Check It Out!* scenario, as well as the link to the article or video that was the source of the fact pattern. These scenarios may lead you to wonder whether a situation *really* happened (it did!), but more important, the illustrative example will increase the likelihood that you will remember the legal principle the situation was intended to reinforce.

1. See U.S. Equal Employment Opportunity Commn., Laws, Guidance, Pandemic Preparedness in the Workplace and the Americans with Disabilities Act Guidance (retrieved from <https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act> on Aug. 4, 2022).