

---

## PREFACE

Few institutions receive greater attention in Americans' private lives and in public policy debates than employment. Employment is everywhere: It is the means by which most Americans make their living; it is, for many, where they spend the majority of their waking hours and develop most of their interpersonal relationships; and it provides the primary economic input ("human capital") firms and government agencies rely on to produce their goods and services.

Because of its pervasiveness and importance, employment-related issues receive significant public attention. More profoundly, many of the fundamental policy disputes of the day—immigration, COVID-19 policy and health care more broadly, civil rights, bias, economic inequality, environmental regulation, information privacy, globalization, social security, and tax policy—are either inherently entangled with employment or heavily influenced by employment-related considerations.

Thus, the institution of employment is paramount not just for individual workers and employing firms and government agencies, but also for society as a whole. Correspondingly, then, the legal rules governing the employment relationship have profound implications beyond the two parties to that relationship. This book will introduce you to the core aspects of this body of law and its implications.

As you work your way through the book, you will discover that the structure of employment law is complex and varied. It derives from multiple sources, including contract, tort, agency law, state and federal statutes, and, at least for government workers, federal and state constitutions. In addition, its application varies greatly depending upon a number of factors, including type of worker (e.g., employee vs. nonemployee, unionized vs. nonunionized, white collar vs. blue collar, disabled vs. nondisabled); type of employer (large vs. small, public vs. private); type of industry; and jurisdiction (state vs. state). Moreover, because American employment law leaves fundamental aspects of the relationship largely for the parties to determine, the "law" governing the American workplace is subject to immense individual variation. Indeed, for many workers, the most important terms of their relationship—including wage levels, benefits, hours, job security, and privacy considerations—are far more likely to be determined by market forces than by externally imposed legal mandates. Finally, like the structure of the workplace itself, the law of employment is ever-changing.

Given its intricate and dynamic nature, employment law is challenging to understand and apply. This is what makes your study of it so critical. Workers and firms must rely heavily on counsel for advice on how to (1) structure working relationships to protect their interests and minimize their risks and (2) advocate on behalf of these interests when disputes arise. Similarly, employment policymakers need a solid understanding of the legal doctrines that govern employment, their implications and limitations, and how the varied aspects of the law interact with one another. This need for employment law expertise extends well beyond those engaged in employment-related work since employment and its legal rules have implications for a wide range of other areas and disciplines.

This text provides an accessible and comprehensive introduction to the study of employment law. Following the Introduction, the book contains 12 chapters exploring various employment law topics. You will be introduced immediately to our unifying theme of private

ordering and its limitations—that is, the core tension in the law between the terms the parties themselves establish and publicly imposed mandates. In pursuing this theme through the various subtopics that make up our discipline, not only will you master (sometimes abstruse) doctrine but you will also be asked repeatedly to consider the law from transactional, counseling, litigation, and policy-making perspectives.

We have included standard cases to provide you with a solid background in each topic area. These are supplemented with more recent decisions addressing cutting-edge issues, including the growth of outsourcing and “contingent” (semi- or nonpermanent) work arrangements, the role of new federal and state whistleblower protections, privacy in the workplace, new developments for noncompetition agreements, important changes in antidiscrimination law, the law’s role in facilitating work/life balance, and the growth in various risk-management techniques by employers. We also provide extensive notes and commentary that offer further background and probe deeper into difficult employment developments of the day. Finally, each chapter contains problems designed to expose you to the real-world challenges employment counsel face as both planners and litigators. If you want to sample even more recent developments in employment law, visit the casebook’s website at [http://law.shu.edu/private\\_ordering](http://law.shu.edu/private_ordering).

We believe this text offers a cohesive, thorough, and fascinating first look at employment-law theory and practice. We hope you enjoy it.

## A NOTE ON EDITING

---

In cases and law review excerpts, all omissions are indicated by ellipses or brackets, except for footnotes and citations, many of which have been deleted or shortened without notation to enhance readability. The footnotes that remain retain their original numbers.

Timothy P. Glynn  
Charles A. Sullivan  
Charlotte S. Alexander  
Rachel S. Arnow-Richman  
December 2022