

Employment law: an overview

Employment law is a broad area encompassing all areas of the employer/employee relationship except the negotiation process covered by labor law and collective bargaining. Employment law consists of thousands of Federal and state statutes, administrative regulations, and judicial decisions. Many employment laws (*e.g.*, minimum wage regulations) were enacted as protective labor legislation. Other employment laws take the form of public insurance, such as unemployment compensation.

Specific areas within the broad category of employment law covered under their own topical entries include:

- Employment discrimination
- Unemployment compensation
- Pensions
- Workplace safety
- Worker's compensation

Employment Discrimination: an overview

Employment Discrimination laws seek to prevent discrimination based on race, sex, religion, national origin, physical disability, and age by employers. There is also a growing body of law preventing or occasionally justifying employment discrimination based on sexual orientation. Discriminatory practices include bias in hiring, promotion, job assignment, termination, compensation, and various types of harassment. The main body of employment discrimination laws is composed of federal and state statutes. The United States Constitution and some state constitutions provide additional protection where the employer is a governmental body or the government has taken significant steps to foster the discriminatory practice of the employer.

The Fifth and Fourteenth Amendments of the United States Constitution limit the power of the federal and state governments to discriminate. The Fifth Amendment has an explicit requirement that the federal government not deprive individuals of "life, liberty, or property," without due process of the law. See U.S. Const. amend. V. It also contains an implicit guarantee that each person receive equal protection of the laws. The Fourteenth Amendment explicitly prohibits states from violating an individual's rights of due process and equal protection. See U.S. Const. Amend. XIV. In the employment context the right of equal protection limits the power of the state and federal governments to discriminate in their employment practices by treating employees, former employees, or job applicants unequally because of membership in a group (such as a race or sex). Due process protection requires that employees have a fair procedural process before they are terminated if the termination is related to a "liberty" (such as the right to free speech) or property interest. State constitutions may also afford protection from employment discrimination.

Discrimination in the private sector is not directly constrained by the Constitution, but has become subject to a growing body of federal and state statutes.

The Equal Pay Act amended the Fair Labor Standards Act in 1963. The Equal Pay Act prohibits paying wages based on sex by employers and unions. It does not prohibit other discriminatory practices bias in hiring. It provides that where workers perform equal work in jobs requiring "equal skill, effort, and responsibility and performed under similar working conditions," they should be provided equal pay. The Fair Labor Standards Act applies to employees engaged in some aspect of interstate commerce or all of an employer's workers if the enterprise is engaged as a whole in a significant amount of interstate commerce.

Title VII of the Civil Rights Act of 1964 prohibits discrimination in many more aspects of the employment relationship. It applies to most employers engaged in interstate commerce with more than 15 employees, labor organizations, and employment agencies. The Act prohibits discrimination based on race, color, religion, sex or national origin. Sex includes pregnancy, childbirth or related medical conditions. It makes it illegal for employers to discriminate in hiring, discharging, compensation, or terms, conditions, and privileges of employment. Employment agencies may not discriminate when hiring or referring applicants. Labor Organizations are also prohibited from basing membership or union classifications on race, color, religion, sex, or national origin.

The Nineteenth Century Civil Rights Acts, amended in 1993, ensure all persons equal rights under the law and outline the damages available to complainants in actions brought under the Civil Rights Act of 1964, Title VII, the American with Disabilities Act of 1990, and the Rehabilitation Act of 1973.

The Age Discrimination in Employment Act (ADEA) prohibits employers from discriminating on the basis of age. The prohibited practices are nearly identical to those outlined in Title 7. An employee is protected from discrimination based on age if he or she is over 40. The ADEA contains explicit guidelines for benefit, pension and retirement plans.

The Rehabilitation Act's purpose is to “promote and expand employment opportunities in the public and private sectors for handicapped individuals,” through the elimination of discrimination and affirmative action programs. Employers covered by the act include agencies of the federal government and employers receiving federal contracts over \$2,500 or federal financial assistance. The Department of Labor enforces section 793 of the Act which refers to employment under federal contracts. The Department of Justice enforces section 794 of the act which refers to organizations receiving federal assistance. The EEOC enforces the act against federal employees and individual federal agencies that promulgate regulation pertaining to the employment of the disabled.

The American with Disabilities Act (ADA) was enacted to eliminate discrimination against those with handicaps. It prohibits discrimination based on a physical or mental handicap by employers engaged in interstate commerce and state governments. The type of discrimination prohibited is broader than that explicitly outlined by Title VII.

The Black Lung Act prohibits discrimination by mine operators against miners who suffer from “black lung” (pneumoconiosis).

The Equal Employment Opportunity Commission (EEOC) interprets and enforces the Equal Payment Act, Age Discrimination in Employment Act, Title VII, Americans With Disabilities Act, and sections of the Rehabilitation Act. The Commission was established by Title VII. Its enforcement provisions are contained in section 2000e-5 of Title 42, and its regulations and guidelines are contained in Title 29 of the Code of Federal Regulations, part 1614.

State statutes also provide extensive protection from employment discrimination. Some laws extend similar protection as provided by the federal acts to employers who are not covered by those statutes. Other statutes provide protection to groups not covered by the federal acts. A number of state statutes provide protection for individuals who are performing civil or family duties outside of their normal employment.

Unemployment Compensation Law: an overview

Unemployment insurance provides workers, whose jobs have been terminated through no fault of their own, monetary payments for a given period of time or until they find a new job. Unemployment payments (compensation) are intended to provide an unemployed worker time to find a new job equivalent to the one lost without financial distress. Without employment compensation many workers would be forced to take jobs for which they were overqualified or end up on welfare. Unemployment compensation is also justified in for sustaining consumer spending during periods of economic adjustment.

In the United States, unemployment insurance is based on a dual program of federal and state statutes. The program was established by the federal Social Security Act in 1935. Much of the federal program is implemented through the Federal Unemployment Tax Act. Each state administers a separate unemployment insurance program, which must be approved by the Secretary of Labor, based on federal standards. The state programs are explicitly made applicable to areas normally regulated by laws of the U.S. There are special federal rules for nonprofit organizations and governmental entities. Which employees are eligible for compensation, the amount they receive, and the period of time benefits are paid are determined by a mix of federal and state law.

To support the unemployment compensation systems a combination of federal and state taxes are levied upon employers. State employer contributions are normally based on the amount of wages they have paid, the amount they have contributed to the unemployment fund, and the amount that their discharged employees have been compensated from the fund. Any state tax imposed on employers (and certain credits on that tax) may be credited against the federal tax.

The proceeds from the unemployment taxes are deposited in an Unemployment Trust Fund (the Fund). Each state has a separate account in the Fund to which deposits are made. Within the fund there are separate accounts for state administrative costs and extended unemployment compensation. During economic recessions the federal government has provided emergency assistance to allow states to extend the time for which individuals can receive benefits. This is accomplished by passing a temporary law authorizing the transfer of money to a state from its Extended Unemployment Account. The ability of a state to tap into this emergency system is usually dependent on the employment rate reaching a designated percentage within the state or the nation.

Some states provide additional unemployment benefits to workers who are disabled. Financing for the California disability compensation program, for example, comes from a tax on employees.

The Railroad Unemployment Insurance Act provides unemployment compensation for workers in the railroad industry who lose their jobs.

Workplace Safety: an overview

Workplace safety and health laws establish regulations designed to eliminate personal injuries and illnesses from occurring in the workplace. The laws consist primarily of federal and state statutes. Federal laws and regulations preempt state ones where they overlap or contradict one another.

The main statute protecting the health and safety of workers in the workplace is the Occupational and Safety Health Act (OSHA). Congress enacted this legislation under its Constitutional grant of authority to regulate interstate commerce. OSHA requires the Secretary of Labor to promulgate regulations and safety and health standards to protect employees and their families. Every private employer who engages in interstate commerce is subject to the regulations promulgated under OSHA.

In order to aid the Secretary of Labor in promulgating regulations and enforcing them the act establishes the National Advisory Committee on Occupational Safety and Health. The Secretary of Labor may authorize inspections of workplaces to ensure that regulations are being followed, examine conditions about which complaints have been filed, and determine what regulations are needed. If an employer is violating a safety or health regulation a citation is issued. The act establishes the Occupational Safety and Health Review Commission to review citation orders of the Secretary of Labor. The Commission's decision is also subject to judicial review. The Secretary of Labor may impose fines with the amounts varying according to the type of violation and length of non-compliance with the citation. The Secretary of Labor may also seek an injunction to restrain conditions or practices which pose an immediate threat to employees. The act also establishes the National Institute for Occupational Safety and Health which, under the Secretary of Health and Welfare, conducts research on workplace health and safety and recommends regulations to the Secretary of Labor. Federal agencies must establish their own safety and health regulations. The regulations that have been promulgated under OSHA are extensive, currently filling five volumes of the Code of Federal Regulations.

Under OSHA states are not allowed, without permission of the Secretary of Labor, to promulgate any laws that regulate an area directly covered by OSHA regulations. They may, however, regulate in areas not governed by federal OSHA regulations. If they wish to regulate areas covered by OSHA regulations they must submit a plan for federal approval. The amount of state regulation varies greatly. California is an example of a state that has chosen to adopt many of its own regulations in place of those promulgated under OSHA.

Workers' Compensation: an overview

Workers' Compensation laws are designed to ensure that employees who are injured or disabled on the job are provided with fixed monetary awards, eliminating the need for litigation. These laws also provide benefits for dependents of those workers who are killed because of work-related accidents or illnesses. Some laws also protect employers and fellow workers by limiting the amount an injured employee can recover from an employer and by eliminating the liability of co-workers in most accidents. State Workers' Compensation statutes establish this framework for most employment. Federal statutes are limited to federal employees or those workers employed in some significant aspect of interstate commerce.

The Federal Employment Compensation Act provides workers compensation for non-military, federal employees. Many of its provisions are typical of most worker compensation laws. Awards are limited to "disability or death" sustained while in the performance of the employee's duties but not caused willfully by the employee or by intoxication. The Act covers medical expenses due to the disability and may require the employee to undergo job retraining. A disabled employee receives two thirds of his or her normal monthly salary during the disability and may receive more for permanent physical injuries, or if he or she has dependents. The Act provides compensation for survivors of employees who are killed. The Act is administered by the Office of Workers' Compensation Programs.

The Federal Employment Liability Act (FELA), while not a workers' compensation statute, provides that railroads engaged in interstate commerce are liable for injuries to their employees if they have been negligent.

The Merchant Marine Act (the Jones Act) provides seamen with the same protection from employer negligence as FELA provides railroad workers.

Congress enacted the Longshore and Harbor Workers' Compensation Act (LHWCA) to provide workers' compensation to specified employees of private maritime employers. The Office of Workers' Compensation Programs administers the act.

The Black Lung Benefits Act provides compensation for miners suffering from "black lung" (pneumoconiosis). The Act requires liable mine operators to pay disability payments and establishes a fund administered by the Secretary of Labor providing disability payments to miners where the mine operator is unknown or unable to pay. The Office of Workers' Compensation Programs regulates the administration of the act.

California's Workers' Compensation Act provides an example of a comprehensive state compensation program. It is applicable to most employers. The statute limits the liability of the employer and fellow employees. California also requires employers to obtain insurance to cover potential workers' compensation claims, and sets up a fund for claims that employers have illegally failed to insure against.