

Chapter 3: Legal and Ethical Issues

Overview

This chapter is very important for all students and employees to understand. There are a lot of laws and acts introduced, and it is critical that students can differentiate between them and understand the details of each. Some of the rulings impact all organizations and employees, while others are specific to union environments.

Lecture Notes

A. Laws Regulating the Workplace

1. **Fair Labor Standards Act** is also known as the Wage and Hour Law.
 - a. The act covers employers involved in interstate commerce or producing goods for interstate commerce. There are similar state laws that cover most employers that are not part of this.
 - b. Minimum wage is set by Congress; it can include room and board, tips, commissions, and bonuses.
 - c. Overtime pay is due time-and-a-half for hours over 40 worked in a week, not for more than 8 hours in a day.
 - d. Some industries are exempt from minimum wage and overtime pay, including fishing, seasonal employees, executive and management employees, and outside salespeople. There are partial exemptions for learners, apprentices, students, and handicapped personnel.
 - e. Child labor laws restrict children in the workplace. Fourteen- and fifteen-year olds may do light work; exemptions are for newspaper delivery, actors, working for parents, and agriculture.
 - f. Equal Pay for Equal Work means men and women should be paid the same for the same work; this amendment was added in 1963.
2. **Unemployment Insurance** is part of the Social Security Act. It is intended for workers who become unemployed by no fault of their own.
 - a. Unemployment insurance is paid by the employer; the amount paid depends on claims made against them.
 - b. There are special exemptions for family businesses and agricultural employees.
 - c. Employees must work a minimum number of weeks and be ready, willing, and able to take new employment in order to be eligible for unemployment.
 - d. An employee who is released for good cause is not eligible to receive unemployment benefits.
3. **Social Security** (FICA) has been changed to try and preserve its financial stability.
 - a. It covers Medicare, retirement, disability, and death benefits.
 - b. Most employees are covered; there is not a choice to opt out of coverage.

- c. Withholding rates are set by Congress; the employer pays a share as well, and withholding is required to an earnings limit.

4. **Employee Retirement Income Security (ERISA)** was passed to regulate private pension plans, but it does not require pension plans.

- a. The primary purposes include.
 - Ensures management is not favored
 - Employees vested in reasonable time
 - Establishes financial control rules related to pension trust funds
 - Proves pension termination insurance
- b. Pension Benefit Guaranty Corporation provides protection in case pension plan has insufficient assets to make payments to beneficiaries.
- c. Health maintenance organizations are overseen by this act; it continues to be an area of debate.

5. **Occupational Safety and Health Act** was established in 1970.

- a. Purposes include:
 - Ensure safe workplace for employees
 - Establish safety and health standards
- b. Provides guidelines for inspections.
 - Employers are not made aware of inspections prior to the visit.
 - Investigations may be started due to employee complaints or HSHA.
 - An employer can require a search warrant.
 - Citations are given for violations.
- c. Employee health concerns and complaints focus on health problems or discomfort from the job. Complaints tend to relate to repetitive strain injuries, visual dysfunction, musculoskeletal problems, emotional disturbance, and psychological disturbance.
- d. The entire organization is responsible for health and safety; however, immediate supervisors have direct responsibility.
- e. Penalties may be in the form of fines, injunctions, and criminal actions.
- f. OSHA has been reorganized to reduce inspections and focus on health standards more.

6. **Workers' Compensation** provides coverage to employees who are incapacitated because of accidental injury, disease, or death while on the job.

- a. Employer payments based on claims and number of employees.
- b. Employee is eligible if injury happens on the job; the interpretation continues to be liberal and negligence on the part of the employee does not disqualify him or her.

B. Employment Discrimination

1. **Title VII of the Civil Rights Act** was enacted in 1964; it regulates companies with 15 or more employees.

- a. The act prohibits discrimination based on race, color, religion, gender, national origin.
 - b. Companies cannot discriminate in hiring, retaining, promoting, or laying off employees.
 - c. Bona fide occupational qualifications may play a role in legal discrimination.
 - d. Enforcement is handled by the EEOC.
 - e. The burden of proof is on employee or the EEOC on the employee's behalf.
 - f. Remedies may include injunctions, back pay, reinstatement, or promotion.
2. **Equal Pay for Equal Work Act** requires equal pay regardless of gender, as long as the employees are doing equal work under similar conditions.
- a. Pay differences are permitted if pay is based on quantity produced in a piecework environment.
 - b. The remedy for violation raises lower-waged employee to the level of favored employee.
3. **Age Discrimination in Employment Act** originally applied to workers between 40 and 70 years old, but now it applies to those 40 and over.
- a. The act prohibits discrimination based on age when workers are at least 40 years old.
 - b. There are exceptions for certain jobs like airline pilots, police, and firemen because of the reliance on physical skills for third parties.
 - c. Damages can include reinstatement, back pay, and attorney fees.
4. **Rehabilitation Act of 1973** is enforced by the EEOC.
- a. The act covers federal government employees or those working on government contracts.
 - b. Employers who participate in contracts of \$2,500 per year or more are required to take affirmative action in hiring handicapped individuals.
 - c. Handicapped individuals must show they are otherwise qualified for the job.
 - d. Damages can include severance, hiring or reinstatement, or payment of back wages.
5. **Americans with Disabilities Act** is an extension of the Civil Rights Act (1964). It requires businesses to make reasonable accommodations that don't create a hardship on the business.
- a. The general areas of the act range from public services and building codes to employment practices concerning disabled persons.
 - b. The legislation applies to businesses with 25 or more employees.
6. **Family and Medical Leave Act** was enacted because employment policies lacked such opportunities.
- a. Enacted because of changes in household makeup and possible discrimination could have occurred. Some of the situations were because of the large number of households where all parents (one- or two-parent

households) work outside the home, inadequate job security for those with illnesses, and the increase in women in the workforce

- b. It is designed to balance business and family needs, allow for reasonable medical leave, and promotion of equal employment opportunities.
- c. In order to be eligible, you must be employed for 12 months or 1,250 hours during the previous 12 months.
- d. Employers with 50 or more employees who work 20 weeks a year are covered.
- e. The employee is entitled to 12 workweeks in a 12 month period for birth or adoption of a child, care of employee or a family member with a serious health problem.

7. **Pregnancy Discrimination Act** prohibits discrimination based on pregnancy and protects jobs during maternity leave (including benefits and seniority).

C. Labor-Management Relations (Private Employers)

1. **National Labor Relations Act** (NLRA) covers labor-management relations of private employers.

- a. The act is enforced by the National Labor Relations Board (NLRB).
- b. It covers employers engaged in private business affecting commerce (interstate selling and/or purchasing).
- c. It protects employees interested in forming, joining, and being members of unions (or not), ensures fair elections, enforces collective bargaining, and oversees unfair labor practices on either side.

2. **Wagner Act** (1935) was the first comprehensive federal labor legislation.

- a. It established the NLRB to oversee union-management relations, including elections.
- b. It gave employees the right to assist, form, and join a union.
- c. It also established of unfair labor practices on the part of the employer.

3. **Taft-Harley Act** (1947) established the NLRA, which combined the Wagner Act and Taft-Harley Acts.

- a. The act identified additional unfair labor practices on the part of the employer.
- b. It also identified unfair labor practices on the part of the union.
- c. The act permitted a union shop and accompanying provisions.
- d. Free speech was established on the part of the employer.
- e. Right to work law established the right of states to outlaw union shops in their state.

4. **Landrum-Griffin Act** (1959) deals with the internal operation and management of unions and establishes rights.

- a. Union members have a right to vote in an election of union officers.
- b. Conduct of meetings allowed union members the right to attend and vote.

c. Management of union funds was outlined.

5. Means and Effect of Union Recognition

- a. Voluntary recognition of the union is acceptable, but not required. The employer can force the union to seek an NLRB union election.
- b. Union recognition means the union represents all employees within the bargaining unit.

6. The Election Process includes:

- a. Order for election occurs when authorization cards are received from 30 percent or more of the employees.
- b. A union election is declared by the NLRB if it is appropriate.
- c. A majority vote is required from the employees.
- d. Union campaign protects employees from certain activities on the part of the employer like spying, polling them, offering new benefits or working conditions, firing employees with union sympathy, and forbidding solicitation and distribution of information about union.
- e. A new election is ordered if any activities (management or union) interfere with the election.

7. Unfair Labor Practices by Employer occur if there is:

- a. Interference with employee's rights
- b. Domination of union
- c. Discrimination because of union
- d. Refusal to bargain in good faith

8. Unfair Labor Practices by Union occur if there is:

- a. Refusal to bargain in good faith
- b. Striking with a no-strike clause intact
- c. Certain types of picketing

9. Union Management Relations

- a. Collective bargaining is a process that brings together representatives from both sides to work out a contract. The contract will include a compensation plan, employee benefits, vacation days and holidays, training programs, and retirement benefits.
 - There are four basic types of labor relationships: closed shop, union shop, agency shop, open shop.
 - The ultimate goal of the contract is one that is equitable for both sides.

10. Role of the arbitrator relates to settling disputes.

- a. If there is an arbitration clause, the union may not strike.
- b. Arbitrator's ruling is law.

11. Potential NLRB Remedies include:

- a. An injunction may be issued.

- b. A new election may be ordered.
 - c. An employer may be required to recognize the union.
 - d. Good-faith bargaining may be ordered.
12. **Trends in unionization** show quite a bit of change over the last few decades.
- a. Union membership has changed to include a diverse group of people in a variety of fields.
 - b. A declining industrial base in the U.S. has reduced union jobs.
 - c. Use of robotics and technology affects number of workers, and many of them have been retrained in the advanced fields.
 - d. There has been a decline in total union membership to 15% of today's workers. That is down from 36 percent in 1945 and 17 percent in 1980.

D. Discipline, Counseling, and Grievances

1. **Discipline** is defined as any action directed toward an employee who fails to follow policies, procedures, or rules. It is essential to any organization, and it must be enforced consistently.

- a. Administration of discipline can be difficult. The biggest problem is in determining how much is appropriate and what form it should take.
 - Progressive discipline uses a series of steps that increases the amount and type.
 - i. Informal discussion
 - ii. Informal warning
 - iii. Formal warning (written)
 - iv. Suspension
 - v. Dismissal
 - Discipline without punishment is for employee awareness.
 - b. Random discipline reprimands on a random basis; it uses fear to correct problem behaviors. Its lack of consistency can produce more fear and uncertainty in the organization.
2. **Counseling** involves the confidential exchange of ideas and feelings that affect the employee's attitude toward the job. Counseling is used when the employee has the ability to do the job, but his or her attitude is getting in the way.
- a. Directive counseling is used when the counselor listens to the employee's problem, decides what should be done along with the employee, and then helps the employee through it.
 - b. Nondirective counseling emphasizes changing or reorienting the person rather than dealing with the immediate problem.
 - c. Participative counseling involves a cooperative exchange of ideas to solve the problem.
3. **Grievances in a Nonunion Setting** are not necessarily handled the same way as in a union environment. These firms do not have official grievance policy, although some organizations have established their own policy.
- a. Open-door policies allow the employee to discuss the problem with a supervisor above their own. Decisions are made from there.

- b. Peer review policies allow an employee to take his or her concern to a board of his or her peers for discussion. The board is empowered to take or recommend action.
 - c. Arbitration may be used if the meetings and peer review do not work.
4. **Grievances in Union Settings** have policies clearly defined in the contract.

E. Employee Separation

1. **Separation** types and numbers may be a sign of managerial effectiveness.
 - a. Resignation is the process of leaving a firm voluntarily.
 - b. Layoff is a temporary separation resulting in a slowdown of sales, relocation, or changes in the plant.
 - c. Suspension is a temporary separation due to disciplinary action.
 - d. Dismissal is an involuntary job separation usually resulting from performance, rule violations, or staff reductions.
 - e. Retirement occurs after a number of years on the job or reaching an acceptable retirement age.
2. **Responsibility for Separation** may be on either side; policies are in place for various types of separation.
 - a. Employee reasons for separation may vary; insight into why can be gained from an exit interview.
 - b. Employee benefits or services at separation may be because of the separation. A process should be in place for separation, just like an orientation takes place for an incoming employee.
3. **Legal separations** based on employment-at-will doctrine as long as contracts or other provisions are not being violated. Employment-at-will is a common law that states employers have the right to hire, fire, promote, or deny any employee they choose at any time, unless there is a law or contract to the contrary.
 - a. Involuntary separations due to downsizing or plant closure may require an organization to provide certain services like paying severance, offering time and assistance to find a new job, offering outplacement services, providing training, offering COBRA health insurance.
 - b. Violations of agreements may lead to discharge from a job, but care must be made to be sure that the policy is being carried out legally.
4. **Document Separations** to analyze them. An increase in voluntary separations may indicate internal problems. For involuntary separations, the documents may be needed if legal action is taken.
5. **Handbook and Contract Statements** specify that employment is not guaranteed.
6. Provide **reasonable cause** for termination of employee in writing for protection. The discharged employee may seek damages through the courts or union.

F. Emerging Employment Issues

1. Decline of the Employment-at-Will Doctrine

- a. Employer powers have been limited based on discrimination laws, court cases, state statutes, and employee handbooks.
- b. An emphasis on proper employment practices has resulted from changes in laws and the eroding employment-at-will doctrine.

2. Employee Privacy Issues have evolved.

- a. Lie detector tests cannot be used in most employment situations.
- b. Drug testing has increased, although the process is still being defined.
- c. Privilege against defamation has evolved from the increased number of lawsuits filed by terminated employees. As a result, employers are hesitant about what they will say about previous employees.
- d. Invasion into personal privacy is prohibited.

3. Alternative Dispute Resolution has become popular because of the backlog in the American legal system.

- a. Mediation invites a third party in to help find a solution to the problem; the mediator is a source of ideas and possible solutions.
- b. Arbitration invites a third party to aid in the resolution process; the arbitrator hears both sides and then makes a decision. The parties agree ahead of time to accept the arbitrator's decision.

4. Sexual Harassment handling has changed based on recent court cases.

- a. The Reasonable Woman Test assists in determining what a reasonable woman would find as acceptable and unacceptable conduct.
- b. Affirmative defense liability can be established for harassment if two elements are in place: the employer exercised reasonable care to prevent or correct the behavior, AND the employee failed to take advantage of opportunities provided for harm prevention.

5. International Law has changed. In 1999, Japan granted equal employment opportunities for women, banned the use of gender-specific ads, and prohibited sexual harassment in the workplace.

Additional Resources for Students

Recommended readings (no texts should be more than two years old):

- Aldag and Stearns. *Management*. South-Western Publishing Co.
- Bedeian, Arthur G. *Management*. The Dryden Press.
- Bittel, Lester R. and John W. Newstrom. *What Every Supervisor Should Know*. McGraw-Hill Book Co.
- Carrell, Michael R., Daniel F. Jennings, and Christina Heavren. *Fundamentals of Organizational Behavior*.

- Carrell, Michael R. *Human Resources Management*. John Wiley & Sons, Inc.
- Certo, Samuel C. *Human Relations Today: Concepts and Skills*. Richard D. Irwin, Inc.
- Champoux, Joseph E. *Organizational Behavior: Integrating Individuals, Groups, and Processes*.
- Davis, Fruehling, and Oldham. *Psychology: Human Relations and Work Adjustment*. McGraw-Hill Book Co.
- DeCenzo, David A. and Stephen P. Robbins. *Human Resource Management*. John Wiley & Sons.
- Dessler, Gary. *Human Resource Management*. Prentice-Hall.
- Donnelly, James, James Gibson, and John Ivancevich. *Fundamentals of Management*. Richard D. Irwin, Inc.
- DuBrin, Andrew J. *Essentials of Management*.
- DuBrin, Andrew. *Human Relations: A Job Oriented Approach*. Prentice-Hall, Inc.
- Gillespie, Karen R. *Creative Supervision*. Harcourt Brace Company.
- Gomez-Mejia, Luis, David Balkin, and Robert Cardy. *Management Human Resources*.
- Haimann and Hilgert. *Supervision*. South-Western Publishing Co.
- Harris, Michael. *Human Resource Management*.
- Hellriegel, Don and John W. Slocum Jr. *Management*. Addison-Wesley Publishing Co.
- Hersey, Blanchard, and Johnson. *Management of Organizational Behavior: Utilizing Human Resources*.
- Higgins, James M. *The Management Challenge: An Intro to Management*. Macmillan Publishing Co., Inc.
- Hilgert, Raymond L. and Theo Haimann. *Supervision*. South-Western Publishing Co.
- Ivancevich, John M. *Human Resource Management*. Irwin/McGraw Hill.
- Milkovich, George T. and John W. Boudreau. *Human Resources Management*.
- Mondy, Noe and Premeaux. *Human Resource Management*. Prentice-Hall.
- Northcraft, Gregory B. and Margaret A. Neale. *Organizational Behavior*. The Dryden Press.
- Pearce, John A. II and Richard B. Robinson Jr. *Management*. McGraw-Hill Book Co.
- Pride, William and O. C. Farrell. *Marketing*. Houghton Mifflin.
- Robbins, Stephen P. and Mary Coulter. *Management*. Prentice-Hall.
- Robbins, Stephen P. *Organizational Behavior*. Prentice-Hall.

- Rue, Leslie W. and Lloyd Byars. *Supervision-Key Link to Productivity*.
- Schermerhorn, John R. Jr. *Management*. John Wiley & Sons, Inc.
- Sherman, Arthur W. Jr. and George W. Bohlander. *Managing Human Resources*. South-Western Publishing Co.
- Steers, Richard M. *Introduction to Organizational Behavior*. Harper Collins Publishers, Inc.
- Wagner, J. A. and J. R. Hollenbeck. *Organizational Behavior*.

Current issues of periodicals or business publications are also an excellent resource. Some of the following periodicals have an accompanying Web site.

Current Periodical	Web Address
<i>BusinessWeek</i>	http://www.businessweek.com
<i>IAAP Complete Office Handbook</i>	http://www.iaap-hq.org/products/handbook.htm
<i>Modern Office Technology</i>	
<i>OfficePro</i>	http://www.iaap-hq.org/officepro/toc.htm
<i>The Office</i>	
<i>The Wall Street Journal</i>	http://www.wallstreetjournal.com