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Principles of Employment Law

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PRINCIPLES OF EMPLOYMENT LAW
Second Edition

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for
THE LABOR LAW GROUP

CONCISE HORNBOOK SERIES™

WEST ACADEMIC PUBLISHING
To my late husband Stan Meyer, our children, Deb and Chuck, Elizabeth and Keith, and Lisa, and our precious grandchildren, Rory and Eirnin.

—ACH

To my wife Yoko Frances Ito-Gely and our three very special children Sebastian, Yumiko and Pablo.

—RG
Preface

The employment relationship is increasingly regulated by law. For many years, the employment relationship was primarily contractual, with terms and conditions of employment set by agreement of the parties. The law of the workplace was labor law, which dealt chiefly with union organizing and collective bargaining. The 1960s saw the enactment of statutes prohibiting employment discrimination, dividing the law of the workplace into the subjects of labor law and employment discrimination law. The enactment of federal employment discrimination statutes and the decline of collective bargaining, along with changing conditions in the economy and the workplace, unleashed a plethora of employment regulation through both statute and common law, leading to a dynamic and rapidly developing body of law now known as employment law.

Employment law does not incorporate only relatively new statutes and claims, however. It includes laws enacted in the early twentieth century such as workers’ compensation statutes and the Fair Labor Standards Act governing minimum wage, overtime and child labor. In addition, it overlaps in many areas with the traditional subjects of labor and employment discrimination law. This book will assist anyone interested in the study of today’s workplace in understanding the laws that govern its operations. The traditional subjects of labor law and employment discrimination are not a focus of the book, although discussion of these laws is included where they overlap with the concepts covered. Employee benefits law, sometimes the subject of a separate course in the curriculum, is included in the employment laws covered here.

The book is designed to provide a basic understanding of employment law and is a useful supplement to any of the current employment law casebooks. It does not follow the structure of any one book, but rather is divided into seven substantive chapters. Chapter 1 discusses the question of who is an employee and who is an employer, a centrally important issue for almost all areas of employment law. Chapter 2 follows with an analysis of the employment-at-will doctrine and job security claims, an area of law that has developed exponentially in the last 35 years through both statutory and common law. Chapter 3 focuses on privacy, autonomy and dignity in the workplace, a topic that includes speech and association claims as well as legal challenges to intrusive employment practices. While most of the book concentrates on legal claims commonly filed by employees against employers, Chapter 4
PREFACE

analyzes the claims that employers may have against employees including, for example, claims relating to intellectual property rights and violations of the duty of loyalty. Chapter 5 discusses the increasing number of employment terms and benefits that are either directly mandated by law, like the minimum wage, or strongly encouraged and regulated by law, such as pensions. Chapter 6, reviews the laws relating to workplace health and safety. The final chapter addresses the increasingly important issue of the use of arbitration to resolve employment disputes.

Employment law seeks to balance the rights and interests of employers, employees and society. To understand employment law, it is essential to understand the interests of each of these groups. This theme runs through each of the chapters. Additionally, we have attempted to do the following:

(1) Provide a basic understanding of the existing law. In areas governed by state law, we have provided examples to illustrate the range of legal approaches in the states.

(2) Highlight areas of the law where there is disagreement among the courts in legal interpretation and explain the rationales underlying those varying interpretations.

(3) Demonstrate how the law has evolved in response to changes in the workplace.

(4) Point out major criticisms of existing law and direct readers to further resources to explore those critical perspectives.

(5) Provide cross references to other sections to show the interrelatedness of the various areas of employment law.

(6) Relate each subject area to labor and employment discrimination law, where relevant, to assist the reader in attaining a fuller understanding of the law of the workplace.

The authors wish to thank the members of the Labor Law Group for their support and editorial review and their co-authors on the first edition, Peggie R. Smith and Susan J. Stabile, whose work remains an important part of the second edition. Additionally, we wish to thank our research assistants for their excellent work: Lisa A. Allen and Adam F. Wall at the University of Richmond School of Law; and Samantha Groark and Michele Moyer at the University of Missouri.
Foreword

The Labor Law Group had its origins in the desire of scholars to produce quality casebooks for instruction in labor and employment law. Over the course of its existence, the hallmarks of the Group have been collaborative efforts among scholars, informed by skilled practitioners, under a cooperative nonprofit trust in which royalties from past work finance future meetings and projects.

At the 1946 meeting of the Association of American Law Schools, Professor W. Willard Wirtz delivered a compelling paper criticizing the labor law coursebooks then available. His remarks so impressed those present that the Labor Law Roundtable of the Association organized a general conference on the teaching of labor law to be held in Ann Arbor in 1947. The late Professor Robert E. Mathews served as coordinator for the Ann Arbor meeting, and several conferees agreed to exchange proposals for sections of a new coursebook that would facilitate training exemplary practitioners of labor law. Beginning in 1948, a preliminary mimeographed version was used in seventeen schools; each user supplied comments and suggestions for change. In 1953, a hardcover version was published under the title Labor Relations and the Law. The thirty-one “cooperating editors” were so convinced of the value of multicampus collaboration that they gave up any individual claims to royalties. Instead, those royalties were paid to a trust fund to be used to develop and “provide the best possible materials” for training students in labor law and labor relations. The Declaration of Trust memorializing this agreement was executed November 4, 1953, and remains the Group’s charter.

The founding committee’s hope that the initial collaboration would bear fruit has been fulfilled. Under Professor Mathews’s continuing leadership, the Group’s members produced Readings on Labor Law in 1955 and The Employment Relation and the Law in 1957, edited by Robert Mathews and Benjamin Aaron. A second edition of Labor Relations and the Law appeared in 1960, with Benjamin Aaron and Donald H. Wollett as coeditors of the book and cochairs of the Group, and a third edition was published in 1965, with Jerre S. Williams at the helm.

In June 1969 the Group, now chaired by William P. Murphy, sponsored a conference to reexamine the labor law curriculum. Practitioners and full-time teachers, including nonmembers as well as members of the Group, attended the meeting, held at the University of Colorado. In meetings that followed the conference, the Group decided to reshape its work substantially. It restructured itself
Marion Crain became chair of the Group at the beginning of 2011. That same year, the Group sponsored a one-day conference on the crisis confronting public-sector employment, the proceedings of which were published in the *ABA Journal of Labor and Employment Law*. In 2011 the Group also hosted a meeting of experts in Chicago to consider the ongoing Restatement of Employment Law project. In June 2012, the Group met in Asheville, North Carolina, and approved the formation of an editorial policy committee charged with establishing policies to ensure that the Group’s products continue to reflect its tradition of close collaboration and high standards. The Asheville meeting served as the genesis for a labor arbitrator training workshop for academics in Chicago in December 2012. In February 2013, the Group cosponsored a symposium at the University of California–Irvine School of Law on alternatives to the Wagner Act and employment law models of workplace protection. The proceedings of the conference, called “Re-imagining Labor Law: Building Worker Collectivities After the NLRA,” will be published in the *UC Irvine Law Review*. In June 2014, the Group met in Ithaca, New York.

Steve Befort and Melissa Hart became Co-Chairs of the Group at the beginning of 2015. In that year, Group members voted to approve a partnership between the Group and the Chicago-Kent Law School to oversee the publication of the Employee Rights and Employment Policy Journal. In December 2016, the Group met in Los Angeles, California.

At any one time, roughly twenty-five to thirty members are actively engaged in the Group’s work; this has proven to be a practical size, given the challenges of communication and logistics. Coordination and editorial review of the projects are the responsibility of the executive committee, whose members are the successor trustees of the Group. Governance is by consensus; votes are taken only to elect trustees and to determine whom to invite to join the Group. Since 1953, more than eighty persons have worked on Group projects; in keeping with the original agreement, none has ever received anything more than reimbursement of expenses.

FOREWORD

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