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Principles of Employment Law

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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 six 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 25 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 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. The final chapter, Chapter 6, reviews the laws relating to workplace health and safety.

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.

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