

Business Law

Text & Exercises *6th Ed.*

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Chapter 28: Discrimination & Labor Law

Learning Outcomes

- LO1** • List the major employment discrimination laws.
- LO2** • Identify the steps in the process of union organization.
- LO3** • Discuss issues that are appropriate for collective bargaining.

Learning Outcomes

LO4

- **Describe aspects of labor strikes.**

LO5

- **List unfair labor practices in labor-management relations.**

Employment Discrimination

- **Treating employees or job applicants unequally on the basis of race, color, gender, national origin, religion, or age; prohibited by Title VII of the Civil Rights Act of 1964 and other statutes.**

Title VII of the Civil Rights Act of 1964

- **Title VII is the most important statute relating to employment discrimination.**
 - Prohibits job discrimination against any “class” of people, including employees, job applicants, and union members on the basis of race, color, national origin, religion, and gender at any stage of employment.



Title VII

- **Protected Class:** group of persons with identifiable characteristics (age, color, gender, national origin, race, and religion) who historically have been discriminated against.
- **Applies to employers with 15 or more employees.**
- **Compliance by EEOC.**

Disparate Treatment Discrimination

- **Intentional discrimination against individuals on the basis of color, gender, national origin, race, or religion. Plaintiff must show:**
 - 1. Member of a protected class.
 - 2. Applied and was qualified for the job.
 - 3. Rejected by the employer.
 - 4. Position filled with non-protected person.

Disparate-Impact Discrimination

- **Discrimination that results from certain employer practices or procedures that, although not discriminatory on their face, have a discriminatory effect.**
 - Intent not necessary.
 - Plaintiff must show connection between the practice and disparity.

Constructive Discharge

- **A termination of employment brought about by making the employee's working conditions so intolerable that the employee reasonably feels compelled to leave.**

Sexual and Online Harassment

- **Demanding of sexual favors in return for job promotions or other benefits, or language or conduct (including online) that is so sexually offensive that it creates alters conditions of working environment.**
 - Employers can avoid liability if timely remedial measures are taken.

Retaliation by Employers

- **Prohibited by Title VII. In a *retaliation claim*, plaintiff asserts she suffered harm due to making a charge, testifying, or participating in a Title VII proceeding.**
 - Plaintiff must show the challenged action was one that would likely have dissuaded a reasonable worker from making or supporting a charge of discrimination.

Defenses

- **Business Necessity Defense:** employment practice that discriminates against members of a protected class based on relationship to job performance.
- **BFOQ:** identifiable characteristics reasonably necessary to the normal operation of a particular business (e.g., gender, national origin, and religion, but not race.)



Defenses

- **Seniority System:** In regard to employment relationships, a system in which those who have worked longest for the company are first in line for promotions, salary increases, and other benefits; they are also the last to be laid off if the workforce must be reduced.

Age Discrimination

- **Age Discrimination in Employment Act of 1967:** prohibits employment discrimination on the basis of age against individuals forty years of age or older.
- **Application:** Employer must have twenty or more employees. ADEA protects against intentional (disparate-treatment) age discrimination and unintentional (disparate-impact) age discrimination.

Age Discrimination

- **Prima Facie Case:**
 - Plaintiff was forty years old or older,
 - He was qualified for the job, and
 - He was discharged or otherwise rejected in circumstances that imply discrimination.

Discrimination Based on Disability

- **The Americans with Disabilities Act (ADA) of 1990.**
- **The ADA defines persons with disabilities as persons with a physical or mental impairment that “substantially limits” their everyday activities.**

Discrimination Based on Disability

- **Employers must make “reasonable accommodations” such as:**
 - installing ramps for a wheelchair, establishing flexible working hours, creating new job assignments, and creating or improving training procedures.
- **Such accommodations can be avoided only if they will cause “undue hardship.”**

Federal Labor Law

- **Norris-LaGuardia Act (1932):** protects peaceful strikes, picketing, and boycotts.
- **National Labor Relations Act (NLRA):** private sector employees to form unions, negotiate with employers, and strike.
 - Created NLRB to oversee union elections and labor practices.

Federal Labor Law

- **Labor-Management Relations Act (Taft-Hartley):** certain union practices illegal. Gives US President authority to intervene on behalf of the nation.
 - Outlawed closed shop, but allows union shop, and right to work laws.
- **Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act).**

Union Organizing

- **Gauging Union Support.**
 - 30% of workers signing authorization cards can petition NLRB to conduct election.
 - If over 50%, employer can recognize union without election.
- **Appropriate Bargaining Unit:** group of employees defined by their job duties, skill levels, and other occupational characteristics and covered by a collective bargaining agreement.

Conduction a Union Election

- **NLRB conducts the election.**
- **Nondiscrimination Rule:**
 - Ability of employer to regulate union presence. Employers must treat a union the same way it would treat any other entity with regard to on-site contact with workers.
- **NLRB may invalidate the election based on unfair labor practices.**

Collective Bargaining

- **The process by which labor and management negotiate the terms and conditions of employment, including such things as hours and workplace conditions.**



Collective Bargaining: Terms and Conditions

- **Wages.**
- **Hours.**
- **Safety.**
- **Employee discounts.**
- **Healthcare.**
- **Pension.**
- **New Technologies.**

Collective Bargaining

- **Featherbedding:** requiring the employment of more workers than necessary to do a particular job.
- **Severance pay:** funds in excess of normal wages or salary paid to an employee on termination of his or her employment.

Collective Bargaining: Good Faith

- **Employer's actions may show bad faith:**
 - Rejecting a proposal without offering a counterproposal.
 - Engaging in a campaign among workers to undermine the union.
 - Unilaterally changing wages or terms and conditions of employment during the bargaining process.
 - Constantly shifting positions.
 - Sending bargainers who lack authority.

Strikes

- **Employer and union may reach a deadlock or impasse in negotiations.**
- **Union has the Right to Strike.**
- **Congress can make certain types of strikes as unlawful.**
- **Picket Line:** workers not on strike have the right to cross the picket line.

Illegal Strikes

- **Illegal:** violence or threat of violence, barring management or nonunion workers entry, sit-down strikes.
- **Secondary Boycotts:** illegal.
 - *But common situs* picketing: legal.
 - Hot-Cargo Agreements: illegal.
- **Wildcat Strikes:** unauthorized strike is illegal.

Hiring Replacement Workers

- **Economic Strike:** called by a union to pressure an employer to make concessions relating to hours, wages, or other terms of employment.

Lockouts

- **The closing of a workplace to employees by an employer to gain an advantage in collective bargaining negotiations.**

Employer's Unfair Labor Practices

- **Employer's refusal to recognize and negotiate.**
- **Employer's Interference in Union Activities.**
- **Discrimination.**

Union Unfair Labor Practices

- **Using coercion or restraint to influence an employee's decision to participate (or not participate) in union activities.**
- **It is unlawful for a union to threaten an employee or a family with violence, or with the loss of a job, for failure to join the union.**