


Lesson 1: The Employment Relationship and Selection Process

In this lesson, you will learn the basics of the employment relationship, including the rights and responsibilities of the parties and the resulting liabilities if these responsibilities are not fulfilled. This lesson will also cover the first step in establishing an employment relationship—the process of selection.

LEARNING OBJECTIVES

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- ✓ **Objective 1** Distinguish between an employee and an independent contractor.
 - ✓ **Objective 2** Outline the duties that employees and employers owe each other.
 - ✓ **Objective 3** Describe situations in the employment relationship that could lead to liability for breach of contracts and tort claims.
 - ✓ **Objective 4** Explain what actions are considered discriminatory in the selection and promotion processes.
 - ✓ **Objective 5** Identify the variety of legal methods employers may use in the selection and promotion processes.

Text Readings

Employment Law: New Challenges in the Business Environment, Chapters 1 and 2

Additional Readings

Required Readings

- Schultz v. Capital International Security, Inc(<http://www.ca4.uscourts.gov/Opinions/Published/051192.P.pdf>)
- Grove v. Brown(<http://search.proquest.com.ashworth.idm.oclc.org/docview/1716891737/AC50F7CD2B8248F1PQ/1?accountid=45844>)

Supplemental Readings

- U.S. Department of Labor(<http://www.dol.gov/>)
- The Human Resources Social Network(<http://www.hr.com/>)

Lecture Notes

Welcome to your first lesson of Employment Law! You may be dreading this course, thinking that it will be a dry recitation of legal rules. It's true that some legal subjects can be somewhat dry, but that's not the case with employment law. Although technically most employers are entities, they can only act through people. Like Human Resources, employment law is really about people. Interesting issues arise in the workplace. No doubt you have experienced some unusual situations yourself if you have been gainfully employed!

The legal regulation of the employment relationship has changed tremendously over the past several decades. Title VII, passed in 1964, brought about massive and sometimes painful changes for employers in the United States. Whether you ultimately become a manager or opt to remain an employee, this course will help you gain the knowledge needed to handle workplace situations appropriately and in a way that reduces the risk of a lawsuit. To arm you with the necessary knowledge and skills for this challenge, we'll set the stage by exploring the employment relationship itself and its meaning for the parties involved.

Your textbook includes a number of cases on the various subjects we will cover. In these cases, courts interpret and apply laws to the facts presented by the parties before them. It is important that you read these cases carefully because, as you will see, the statutes the courts are called upon to interpret often raise as many questions as they provide answers. You will often find yourself working in gray areas without clear answers. You will need to apply legal principles to specific situations.

One last point needs to be made: If you diligently work through this course, you will have a good, basic grounding in employment law. Your learning, however, does not stop at the end of this course. To be successful, you must keep up with the ever-changing and evolving legal environment in which we work. Fortunately, we don't have to depend on a law library today to keep up with recent developments. Hundreds of sites on the Internet provide cases, analysis, and new developments. Some sites are listed in your textbook. In addition, favorites will be provided as we work through the material.

Let's plunge in.

Who is an Employee?

Employment is defined as “the rendering of personal service by one person on behalf of another in return for compensation” (Moran, J. J., 2014). Employment has its roots in agency theories of law. In the *employer-employee relationship*, an employee (agent) is given power by a *principal* (employee to act on behalf of an employer). An *employer* has full control over its employees.

An *independent contractor*, however, is not an *employee*. He or she is hired to perform a specific task, and an employer has no control over the methods an independent contractor uses to accomplish any assigned tasks. The laws of contracts govern employment law. Employment contracts can be created expressly through written or verbal communications, or impliedly via actions of the parties.

Duties of Employers, Employees, and Independent Contractors

Both employees and independent contractors owe certain duties to their employers. These include a *duty of loyalty*, *duty of good faith*, and *duty of accountability*. In exchange, employers owe their employees and independent contractors the *duty to compensate* and the *duty to maintain safe working conditions*.

Whom Shall We Hire?

Employers are legally permitted to discriminate among candidates based on their interpersonal relations, communication skills, training, and education during the recruitment process. Employers also have the liberty of testing potential employees' range of skills and abilities through aptitude testing or mock performances – provided the tasks are indeed related to the job. Why? Employers want to choose the most qualified candidates and those who will perform best for their businesses. Employees are valuable assets and employers often spend a good deal of money training employees for a given position.

Some jobs demand certain physical strengths, and employers can legally require an applicant to be capable of meeting those demands. Police officers, firefighters, and postal workers, for example, must be able to run, carry bodies from a burning building, or walk great distances. Office employees can be tested for their typing skills, and salespeople can be assessed to see if they are aggressive enough to work in sales. It is *not* permissible, however, for an employer to consider protected characteristics such as race, religion, gender, age, disability, and national origin.

Workplace Violence

According to statistics kept by the U.S. Department of Labor, workplace violence accounts for only a small portion of work-related nonfatal injuries. Between the years 2004 and 2008, an average of 564 work-related homicides occurred each year. Roughly four out of five homicide victims were men, and, on average, two people died per incident. Most of these shootings occurred in the private sector (86%), and 14% occurred in government settings. Service-providing industries such as retail, trade, transportation, and utilities were most vulnerable (<https://www.bls.gov/iif/oshwc/cfoi/osar0014.htm>). Other acts of

violence include assaults and rapes. Often these incidents garner national media attention. And while the numbers are “small,” employers must do what they can to protect their employees from workplace violence.

Non-Compete Agreements

A *non-complete agreement* is a contract wherein the employer provides employment or a severance package in exchange for the employee’s promise that he or she will not work for a competitor or open a competing business within the geographic area in which the employer conducts business. Non-compete agreements must last for a reasonable length of time. What is reasonable is always up for debate. Not surprisingly, there is a body of case law that addresses this question. To prevail, the employer must establish that its business will suffer harm if the non-compete is not enforced.

Nondisclosure Agreements

Did you ever wonder what exact blend of herbs and spices the Colonel uses in his Kentucky Fried Chicken recipe? Certain information, such as trade secrets and other types of confidential information, have commercial value and could result in harm to the employer if made public or released to competitors. In order to prevail on a *nondisclosure agreement*, an employer must show that it is protecting legitimate business interests. Both *non-compete* and *nondisclosure* agreements are prevalent in high-tech industries, in product development, or in sales and financial services where employees have *proprietary information* or access to customer lists. Intellectual property laws and employment laws work in conjunction to govern these types of disputes.

As we move through this course, we will delve deeper into some of these complex employment laws and issues. Note that key words are italicized throughout the lessons. Many changes have taken place in the United States with regard to labor laws, and many of the changes have occurred in the last 60 years or so. In March of 2015, the late Senator Edward M. Kennedy will be inducted into the Labor Hall of Honor in recognition of his efforts over the years to better the working conditions and wages of America’s working families (<https://www.dol.gov/dol/media/webcast/live/>). What changes do you predict will take place in the next decade? Why?

References

<http://www.bls.gov/iif/oshwc/cfoi/osar0014.htm>

<http://www.dol.gov/dol/media/webcast/live>

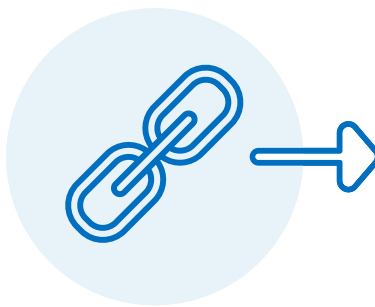
Moran, J. J. (2014). *Employment Law: New Challenges in the Business Environment* (6th ed.). Upper Saddle River, NJ: Prentice Hall.

PowerPoint Lecture Notes

Use the lecture notes available in PowerPoint as you study this chapter by CLICKING THE LINK BELOW. These notes will help you identify main concepts and ideas presented in this chapter.

If you do not have PowerPoint on your computer, you can download a free viewer from Microsoft by clicking [here](http://www.microsoft.com/downloads/details.aspx?FamilyID=048dc840-14e1-467d-8dca-19d2a8fd7485&DisplayLang=en)(<http://www.microsoft.com/downloads/details.aspx?FamilyID=048dc840-14e1-467d-8dca-19d2a8fd7485&DisplayLang=en>).
Chapter 1(https://courses.portal2learn.com/content/enforced/9112-R01V_20_1/course-system-files/Lesson_01/../../V3/PowerPoints/chapter01.ppt).
Chapter 2(https://courses.portal2learn.com/content/enforced/9112-R01V_20_1/course-system-files/Lesson_01/../../V3/PowerPoints/chapter02.ppt).

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