

## Module 4: Agency and Employment Law

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## Lesson 4-1: Agency Formation

### Module 4-1.1. Agency Formation

## What Is Agency?

**I**

Two parties

**Principal**

**Agent**

In this lecture on Agency Formation, we're going to discuss what is this concept of agency, talk about some of the most common forms of agency relationships that you'll see in our society. Now, agency is a really, really important concept when it comes to business law. It is really actually pretty simple but there's a lot of sort of nooks and crannies in this field of agency that can trip us up sometimes. So at its core, agency is nothing more than the idea that you give somebody else authority to act on your behalf. So if it could be something as business centric as, I own some stock and I can't go to the shareholders meeting and vote so I give somebody else the authority to vote my share on my behalf. That's a form of agency. There are all sorts of agencies in the world that it happens all the time frequently in the employer-employee context but not all employees are agents although some are. So it's a key differentiation between an employee and an agent has to do with the level of control that the employer or what we call the principal has over that person. We'll get to that in a little bit later. But for now, just know that in terms of agency, you have a principal and that's the person in charge basically, and you have an agent, that's the person who takes on some responsibility from the principal.

## Types of Agency Relationships

I

Express ←

Implied

Ratification

Apparent

There are about four types of common agency relationships. The first and by far the most common is what's called an express agency, and that's probably what you think of when you think of the concept of agency most often. So if you're a famous athlete and you hire an agent to negotiate your contract for you, that's an express agency. You affirmatively tell this person that you want them to do this on your behalf. A really, really common type of express agency is called a power of attorney. If you have an estate plan or will, a trust, something like that, and you hired a lawyer to do it, they probably recommended that you draft a power of attorney along with it. If you don't, then maybe your parents do or uncle or grandparent or something like that. They probably have a power of attorney and that just gives somebody else the right to make decisions about your healthcare or your finances in the event that you are unable to, like you are sick or incapacitated or something like that. It's a really common form of express agency relationship.

## Types of Agency Relationships

I

Express

Implied 

Ratification

Apparent

Beyond the express agency, there are also implied agency relationships. Now, these are when the principal and the agent haven't specifically determined the scope of their agency relationship, but given the way they have acted towards each other, it's reasonable to assume that they would have wanted to have an agency relationship. So for instance, say you're getting sued in court and you hire a lawyer to represent you in the lawsuit, and during the course of the litigation, the other side comes to your lawyer and says, "Hey, let's discuss settlement options." Well, you haven't expressly hired the attorney to settle or negotiate the settlement but it's implied that if they're representing you in court, they have the implied authority to at least start the discussion for the settlement talks.

## Types of Agency Relationships



Express

Implied

Ratification 

Apparent

Now, the third type of agency relationship is far less common but it's worth knowing about. It's called agency by ratification. So imagine this, here's an example to explain how agency by ratification works. Suppose you really, really want to work for a company but you're not an employee there yet, so you think, "Hey, I got this great idea. I'll go out and I'll drum up some new business for this company, and then they'll have to hire me after they see how ambitious I am and how I can- I'm such a good sales person and I can bring in new business." So you go out and you find somebody, and say, "Hey you want to do business with this company?" And they say, "Yeah, I'd love to." And then you go to the company and you say, "Hey, guess what? I got you some business." Well, you weren't there agent at that time. The company is under no obligation to honor whatever deal you might have made with somebody else because there was no agency relationship at all. But if the company says, "You know what? We actually kind of like that deal. That works for us. We want to honor that." That's basically ratifying your previous actions that were done without any agency relationship. The ratification makes whatever you did effective and they are now bound by it.

## Types of Agency Relationships

**I**

Express

Implied

Ratification

Apparent 

The final type is called apparent agency. Apparent agency exists when a third party reasonably believes that someone is your agent even if they actually aren't. It's usually because you did something to make that third party believe that they're your agent. So consider this example, you are a manager at a company, you own the company maybe, and you bring in like an intern, not even an intern, someone just who's there to interview for a job. They're not your employee, they're not your agent, they're just there interviewing for a job, and suppose, during the course of the interview, you take them on a tour of your offices. You say, "Oh, there's the break room, here is the conference room. Oh, there's some people in the conference room. Everybody meet Joe. Hey, Joe, here's everybody." And you don't specifically say, "By the way, Joe doesn't work here, he's just on an interview." Maybe somebody in the conference room is a client, and after Joe's interview, he and the client happen to run into each other in the parking lot and they make some sort of deal on behalf of your company. Now, Joe's not your agent but you led your client to believe that he was. He was in your office, you took him around, you introduced him. Your client had a reasonable belief that he was your agent, and so, the doctrine of apparent agency could hold you liable as the principal for Joe's interactions with that third party because the third party reasonably believed, based on your actions, that Joe was your agent. So those are the common forms of agency relationships, and we'll move on to discuss some of the rights and duties of agents in this relationship with one another.

## Lesson 4-2: Rights & Duties of Principals & Agents

### Module 4-2.1. Rights & Duties of Principals & Agents

#### **Agent Duties**

**I**

##### Obedience

In this lesson on agency rights and duties we are going to talk about the rights and duties, the principals and agents owed to one another. So, what are an agent's rights and duties in this relationship? And what are the principles rights and duties with respect to the agent? So, let's begin by talking about the duties an agent owes to its principal. Now, first and foremost the duty of obedience. That's the entire reason this relationship exists right? The principal hires an agent to do something for them. If the agent doesn't do it, it negates the entire purpose. So, the first and most important duty of an agent is a duty to obey what the principal asks them to do.

## Agent Duties

**I**

Obedience

Notify

Second duty that agent owes to a principal is the duty to notify. Any knowledge the agent happens to come by in the scope of his or her duties is imputed to the principal. That means if an agent knows something, the principal is in a legal sense held to know that also. So for instance, say you hire a real estate agent to buy or sell property for you and they learn something about the property you're interested in, maybe it has some sort of defect or something like that. They have a duty to notify you of that because if you ever wind up in court about this thing the court will hold you to have known that if your agent knew it. So, the agent's duty is to notify the principal of any relevant information that comes their way.

## Agent Duties

**I**

Obedience

Notify

Account

Third duty is the duty to account. Now, the duty to account means that the agent has to be able to give the principal a complete accounting of how they are using the principles resources. So, maybe there's travel expenditures or a petty cash fund, or any resource even technological resources or vehicles, any resource the principal provides for the agent to use the agent must account for the use of that. So, the principal knows the agent isn't just using it purely for personal purposes, but using it on behalf of the principal.

## Agent Duties

**I**

Obedience

Notify

Account

Loyalty

And finally, a duty of loyalty. This is so important. Many people in the business world owe a duty of loyalty to one another, and agents owe this duty to their principal. Duty of loyalty means you can't enrich yourself at the expense of the other person. So, the agent can't use up the principals duties. That's one of my favorite legal words usurping. The agent also can't engage in self dealing, or otherwise harm the principal in order to benefit him or herself. Now, soporan, what are the agent's rights? Well, the agent's rights are flexible sometimes. Most of the time it depends on the agreement between the two parties.

## Agency Rights

**I**

Accounting

Now, the one right that agents always have is the right to an accounting. So, if the agent is unsure whether they've been adequately compensated or something like that, they just have a right to ask the principal for an accounting of how those things get calculated, and the principal must give it to them.

## Agency Rights

**I**

Accounting

Other tort and contractual rights

Now, other rights, tort and contractual rights which we'll discuss more in later lessons, usually depend on whatever the agreement is between the principal and an agent. So, if

they have an agreement between themselves for compensation say, like the principal agrees to pay the agent, well then that's a contractual right that the agent would have.

## Principal Duties



Compensate

Reimburse

Indemnify

Cooperate

Okay. Let's shift gears and talk about the principal and what their duties are. Now, the first duty is the duty to compensate. Most of the time the agent isn't doing this for free, and the principal has a duty to pay for the agent services. Now, sometimes you might have an agent doing something for free. If for instance, you have a power of attorney where you give your spouse the right to make decisions on your behalf if you're in a coma, you don't have to pay your spouse most of the time, well, maybe do. I probably wouldn't pay my spouse, but I might ask her to pay me. I don't know. But principals usually have the duty to compensate their agents. Also principals have the duty to reimburse their agents.

## Principal Duties

**I**

Compensate

Reimburse 

Indemnify

Cooperate

Now, reimbursement and compensation are different. They both involve the principal paying money to the agent, but whereas compensation is payment for your time or your services, reimbursement is compensation for money that you spent out-of-pocket on behalf of the principal. So, for instance, if my principal asked me to drive from here to Chicago and back, I spend gas money, wear, and tear on my car. The principal has a duty to reimburse me for those out-of-pocket expenses.

## Principal Duties

**I**

Compensate

Reimburse

Indemnify 

Cooperate

A third and similar duty is the duty to indemnify. Again, this is the principle paying for something that the agent had to pay for. The duty of indemnification arises if the agent gets sued for something that they did within the scope of this agency relationship. If the agent get sued for something they did for the principal, the principal has a duty to pay for their defense in court, and also pay for any judgment that might be rendered against them.

## Principal Duties

**I**

Compensate

Reimburse

Indemnify

Cooperate 

And finally, the principal has a duty to cooperate with the agent. It'd be pretty hard to be an agent if your principal doesn't provide you with the information you need or the resources you need. So, the principal has a duty to cooperate.

## Principal Rights

**I**

Indemnification

Avoidance

Constructive trust

So, let's wrap up with the principal's rights. And the first right that the principal has is the right of indemnification. This sort of the flip side of the duty of indemnification. So, in the duty of indemnification the principal has to pay for the agent's lawsuit related costs, and the flip side is that if the principal has to pay in a lawsuit for something that was caused by the agent, the agent might have to pay for the principal's fees and costs and claims and things like that. So, the principal can have the right of indemnification. Also the right of avoidance.

## Principal Rights



Indemnification

Avoidance 

Constructive trust

If the principal and the agent have any sort of contractual agreement with one another, and the agent breaches his or her duties to the principal like the duty of loyalty, the principal has the right to nullify any other agreements between the two parties in the event of a breach of that duty. And then finally, there's this sort of not frequently used, but sort of interesting right called the right of constructive trust. So, remember we talked about the agents duty of loyalty.

## Principal Rights



Indemnification

Avoidance

Constructive trust 

If the agent breaches that duty of loyalty, and gain some sort of profit for him or herself at the expense of the principal, the principal actually has a right to, it's called the right to a constructive trust, but in effect what happens is the principal has a right to those profits. So, if an agent has illicit gains because they screwed over their principal, the principal could actually go and take that money because the agent only earned it because they breached their duty of loyalty.

## Lesson 4-3: Principal & Agent Liability

### Module 4-3.1. Principal & Agent Liability

## Principal & Agent Liability



Two primary types of liability

Tort

In this lesson, we continue our discussion of principle and agent relationships by talking about liability. And the big questions are when are principals and agents liable for the torts that each other commit? And when are principles and agents liable in a contractual setting? Here the third of our four part series about principal and agent relationships, we're going to talk about liability, specifically torts and contracts. When are agents liable? When are principals liable? Now I just mentioned there's two types of liability that we care about; tort liability. If you don't know much about torts, it's okay to worry about it. It's a fancy French word that basically just means a wrongful action that causes damage or injury. So don't confuse it with torto which is the German word for cake, which is a lot more exciting than the French word. But a tort is nothing more than some sort of wrongful action that you do that causes injury or damage to somebody else or somebody else's property. And then obviously a contract, we know all about contracts, right?

## Principal & Agent Liability

**I**

Two primary types of liability

**Tort**

**Contract**

Contracts are agreements between two parties. So if you breach of contract or you commit a tort, as a principle or an agent, what's the liability situation here? So, let's talk about torts first.

## Tort Liability

**I**

Agent not liable for principal's torts

General rule: agents are not liable for torts committed by their principal. Now the real only exception to that is if the agent was also involved in that action and participated, then they're liable. You're always liable for what you do as an individual, but agents are not liable for torts committed by their principals.

## Tort Liability



Agent not liable for principal's torts

Principal liable for agent's tort  
within the scope of agency  
relationship

Now on the flip side, the principal is almost always liable for torts that agent commits as long as it's done within the scope of their agency relationship. So, if you're an agent, an employee and you go home at night and you commit a tort at home, that has nothing to do with your work, your employer or your principal is not liable for that. But say part of your job is to drive somewhere to deliver something and on your way as you're driving to deliver something for your job, you drive negligently and you cause an accident. That's a tort, negligence is a tort. Your principal, your employer will be liable for that because it was done within the scope of your agency relationship. Now, lawyers love fancy words for everything and we have a fancy word for this idea that principals are liable for their agents' torts and that's the Latin phrase of "Respondeat Superior". You can kind of parse those words together or say, "The superior party has to respond for the inferior party's activities." In English we also call this vicarious liability- liability for somebody else's actions.

## Special Tort Rules

I

Frolic & detour 

Dual-purpose missions

Coming and going rule

Intentional torts

Now a few special rules that apply to these tort situations. First is what's called the frolic and detour rule. So imagine that your job is to drive somewhere and deliver something. Now on your way, if you stop and just off the interstate and get gas and then get right back on the interstate, if you commit a tort while you're getting gas, you're probably still acting within the scope of your job, right? But what if you get off the interstate, get gas, and drive 50 miles out of the way to go visit your friend for lunch, and then 50 miles back, and then continue on your way? Well, while you're visiting your friend, that's enough of a detour that we're going to say you're not really acting within the scope of your agency duties anymore. So if you commit a tort while you're visiting your friend, your principal is not going to be liable for that. So, the frolic and detour rule means if as long as you're pretty much acting in the interest of your principal, then your principal will be liable for your torts. But as, if you take a long enough detour, we're going to break that causal chain.

## Special Tort Rules

I

Frolic & detour

Dual-purpose missions 

Coming and going rule

Intentional torts

Second special rule; dual-purpose mission. This is sort of a similar concept. If you are doing something that benefits yourself personally and also benefits your principal, and you commit tort while you're doing that, your principal will be liable. So example, say I'm going to go out to lunch, which benefits me and my belly obviously, but I'm also going to run a work errand while I'm doing it. So I got a dual-purpose mission. If I commit a tort while I'm driving out on this dual-purpose mission, my principal will be liable for it because part of my dual purpose mission was to do my job.

## Special Tort Rules

**I**

Frolic & detour

Dual-purpose missions

Coming and going rule 

Intentional torts

Okay. Third; the coming and going rule. This was really easy. Employees or other agents are liable for any torts they commit while going to work or coming home from work but the principal is not liable for that. And the rationale behind this is that your employer, your principal usually doesn't have any say over where you live, how you get to work, that kind of stuff. So we're not going to hold them liable because you can make that choice on your own. And the real core theory behind principal agent liability is that if the principal controls something, they should be liable for it. They have no control over this, so they're not liable for it.

## Special Tort Rules

**I**

Frolic & detour

Dual-purpose missions

Coming and going rule

Intentional torts 

And then finally, intentional torts. These are torts that, not like negligent, that you don't mean to do but you do, intentional torts like punching somebody in the face. That's an intentional tort. That's tort of battery, which is also the crime of battery but also the tort of battery. In really liability of the principal varies depending on what state you're in. Some states use this thing called the motivation test that says well, if you commit an intentional tort and you're trying to benefit your principal by doing that, I don't know how you get to benefit your principal by punching someone in the face, but imagine you could. In some states they say the principal will be liable because of that. If some states say well, was the intentional tort committed in a work related context like were you at work? Were you having a discussion with a co-worker? In that case, the principal might be liable for that. Now finally, let's talk about contract liability.

## Contract Liability



Agent liable

Principal liable

And there's again two facets to this; when is the agent liable? When is the principal liable?

## Contract Liability



Agent liable when principal is not disclosed

Principal liable

General rule is that agent will be liable for a contract of the principal only if the agent executes the contract on behalf of the principal and doesn't tell the other party who the principal is. So if you're an agent, you go to somebody else say you're helping your principal by say real estate. You say, "Hey, my client is Joe Schmo and I'm just here as

the agent to help buy this real estate. You execute the contract for your principal. Since the other party knows who your principal is, you're not liable as the agent. Only your principal is liable. But, say you tell the other party, "I'm an agent, but I'm not going to tell you who my principal is." Well, that puts the other party at a disadvantage. So you as the agent will be held liable for that contract. Now say you tell the other party, "I just want to enter in a contract." You don't even tell them that you're an agent. Again, same rule. You as the agent are liable, your principal is also liable but since the third party doesn't know who your principal is, you the agent will also bear liability for that. A great example of this in history was when George Washington Vanderbilt wanted to build this giant estate in North Carolina called the Biltmore. He wanted to buy a thousands of acres of land and he knew that if George Washington Vanderbilt pulled up to your house and say, "I want to buy your land," the prices is going to get jacked up. So he hired agents to engage in contracts with all these land owners without telling them that they represented George Washington Vanderbilt and then once the contracts were all signed and secured, they assigned all their contracts to him and he bought up the land himself. Now finally, when is the principal liable for contracts executed by the agent? Well, if the agency relationship actually does exist, the principal is always liable.

## Contract Liability



Agent liable when principal is not disclosed

Principal liable if:

Agency relationship exists, or

Principal made third party reasonably believe it exists

Now if the agency relationship does not exist but the purported agent enters into a contract, the principle is only liable if the principal gave the other party to the contract some reason to believe there was an agency relationship. Now think back a couple of lessons ago when we talked about apparent agency, that's this. This is apparent agency. If the principal gives the third party, the other party to the contract, some reason

to believe this guy or girl is his or her agent and the other party relies upon that reasonable belief, then the principal will be liable for performance of that contract.

## Lesson 4-4: Agency Termination

### Module 4-4.1. Agency Termination

## Agency Termination



### Notice requirement

In this lesson on agency termination, we're going to discuss a few general rules that apply when an agency relationship comes to its end. Then also discuss the various methods for terminating an agency relationship. We come at last to the final lesson on agencies, and agency relationships. We going to discuss how you terminate an agency relationship in this lesson. Now a couple of ground rules. First, whenever you terminate an agency relationship regardless of which method you use, you as the principal are always required to give notice to anybody else out there in the world, who might require notice. Who would require notice? Well, people that know that this person has been your agent, you have the obligation to tell them, "Hey, this person is not my agent anymore", because if you don't, what happens? Well, we talk about a parent agency a couple of times, that your ex agent could harm you by doing business with other people after you have terminated that agency relationship, if you don't give notice to those people. So, you've got to give notice.

## Agency Termination

**I**

Notice requirement

Wrongful termination

Second, you can terminate agency relationships and a lot of ways, but sometimes if you terminate the relationship when you specifically have said, you can't terminate it at this time, or in this manner. This is called a wrongful termination. A wrongful termination is a breach of contract. You can get sued for wrongfully terminating an agency relationship, whether you're the principal when you terminate it, or whether you're the agent when you terminate it. You have to do it in an acceptable manner and an acceptable time.

## Methods of Termination

**I**

Action of the parties

Unusual change in circumstances

So, what are the methods by which we can terminate an agency relationship? Well first and by far the most common is just by some action of the parties. So, I hire you as my lawyer to represent me in court, you do, the case is over, I say, "Thanks for your help. I don't need any more legal services". We terminate our agency relationship. Or you hire an agent to represent you in negotiating a contract, you negotiate the contract, it gets signed, you say, "Thanks for your help, we're done". That's a termination by action of the parties. You can also specify beforehand that, after a certain time period, it automatically terminates, or after the occurrence of some event it automatically terminates. That's all termination by action of the parties. Now, much less common is termination by an unusual change in circumstances. So, a crazy example of this might be you hire an agent to help you sell some land, and then the land gets swallowed up by a sinkhole. Well, you can't really sell it out anymore. Or maybe, more common would be, you hire an agent to sell some land and the government comes in and decides to exercise their right of eminent domain, and build a freeway on your land. Well, can't really sell it anymore, the government took it away. So, this unusual change of circumstances would just automatically kill your agency relationship.

## Methods of Termination



Action of the parties

Unusual change in circumstances

Operation of law

Then finally, an agency relationships can sometimes be terminated by what we call operation of law. So, depending on the laws in your state, this kind of varies from state to state, but in a lot of places, if one or both parties die or become incompetent, the agency relationship just automatically terminates, or if one party files for bankruptcy, or one of my favorites is if the country of residence of the agent and the country of residence of the principal declare war against each other, the agency automatically terminates by operation of law. I've never seen that happen but how exciting would that

be from a legal standpoint to have an agency relationship terminated by outbreak of war. Those are all the methods by which, the important about this by which agency relationships can be terminated.

## Lesson 4-5: Employee Rights

### Module 4-5.1. Employee Rights

## Right to Safety in the Workplace

**I**

### Workers' compensation

In this lesson on employee rights, we're going to discuss some of the really most important rights that employees have in the workplace, rights to privacy, rights to financial security, rights to safe workplaces, and other core rights that the federal government grants to employees. In this lesson on employee rights, we are going to be covering a lot of stuff. In fact, every slide in this lecture could be its own class in law school. And in fact, it is. So, this is the 30,000-foot overview, not even the 10,000-foot overview. We're doing the 30,000-foot overview of employee rights. So, we'll start with employee rights to safety in the workplace. The federal government and state governments care a lot here in America that we provide safe work spaces for employees. And so, the first way that state governments go about providing safe workplaces is through workers' compensation laws. Every state has adopted a workers' compensation statute, and it provides for the payment to employees for work-related injuries. You get paid for your medical bills, for the time out of work. And the workers compensation process is a little different in each state. But in general, you get injured on the job. You file a claim with the Workers Compensation Board. They review your claim. If they say, yes, you were injured on the job, they order your employer to pay you. Your employer has a workers' compensation insurance policy that pays you. Easy-peasy. It is the exclusive remedy for work-related injuries in all states. So, you can't sue your employer for your work-related injury unless you go through the workers' compensation

process and are given the right to sue by the state work coupon.

## Right to Safety in the Workplace

**I**

Workers' compensation

Occupational Safety and Health Administration (OSHA)

Second key agency that regulates your right to safety in the workplace is this federal agency called the Occupational Safety and Health Administration, OSHA. OSHA sets forth guidelines for all sorts of industries to provide for safe workplaces. So, they do broad things like, say, well, you're not allowed to use the asbestos in building new buildings because it's not safe for employees to be around asbestos. That's pretty general standard. They also set very specific standards. So, OSHA could say, "For this one type of machinery, this is the safety equipment you have to provide for employees using this one type of machinery."

## Right to Safety in the Workplace

**I**

Workers' compensation

Occupational Safety and Health Administration (OSHA)

Child labor (Fair Labor Standards Act)

And then third, there's this law called the Fair Labor Standards Act that regulates a lot of things. But with regard to safety in the workplace, the FLSA deals with child labor. In this country, don't want our children to be out there working, especially hazardous jobs and full time jobs. Children should be in school and playing on playgrounds, and whatever children do. So, the Fair Labor Standards Act provides that children under 14 are not allowed to work at all, with some exceptions. We'll talk about the exceptions in a second. Children age 14 and 15 can work part-time jobs, but only non-hazardous jobs. And the Department of Labor actually keeps a list of what it considers to be hazardous jobs. Then, once a kid is 16 or 17, they can work a full-time job, but still a non hazardous job. And then once you're 18, you can work wherever you want. So, some exceptions to this rule about child labor include family businesses. So, if you have a family restaurant or retail shops, something like that, your kids can work there. Agriculture jobs are accepted. So, if your family owns a farm, or if your neighbor owns a farm, your kid can work there. Child actors because obviously, we can't be without our entertainment. And then to sort of anachronistic exceptions in the FLSA, one is for newspaper delivery. Employees, children can have that job to the extent that it still exists. And my favorites, actually in the Fair Labor Standards Act, there is an exception that says, "Children who are engaged in the at home business of wreath making, making wreaths at home, are exempted from the Fair Labor Standards Act." So, put your kids to work making some wreaths, they'll make some money for you. Let's move on to talk about employee rights to financial security. So, again, we're going to talk about the Fair Labor Standards Act.

## Right to Financial Security

**I**

FLSA

Minimum wage

The FLSA is the federal statute that sets forth the federal minimum wage. It's currently \$7.25 an hour, or if you're a tipped employee like a server in a restaurant, minimum wage is actually two dollars and 13 cents an hour for tipped employees. Now, states and even local governments are free to make this higher, and you hear stories about this all, Seattle's phasing in their 15 dollar an hour minimum wage, things like this. But nobody can go lower than the federal minimum wage.

## Right to Financial Security

**I**

FLSA

Minimum wage

Overtime

FLSA also regulates overtime, which is generally, you have to pay employee one and a half times their hourly wage for any hours over 40 hours they work in a given week, and you cannot average this out over multiple weeks. So, you can't say, well, you worked 39 this week and 41 next week without to pay you any overtime. No, you have to pay them that one hour of overtime for the second week that they worked 41 hours. You go week by week by week.

## Right to Financial Security



### FLSA

Minimum wage

Overtime

Exemptions

Now, the bad news is that many of us will probably be exempted from the benefits of the Fair Labor Standards Act because exempt employees include executives, learned professionals, and most types of professionals, highly paid employees, generally over \$100,000 a year, administrative employees. Now, administrative doesn't mean like receptionists and administrative professionals. It means basically anybody who works in an office, for the most part are administrative employees. So, there are a lot of professions that are exempt from the protections of the FLSA.

## Right to Financial Security



FLSA

Minimum wage

Overtime

Exemptions

Family and Medical Leave Act  
(FMLA)

And then the final right to financial security law, we're going to talk about, is called the FMLA, Family and Medical Leave Act. The United States is sort of definitely an outlier worldwide when it comes to leave for medical issues, but the FMLA does give new parents, anyone dealing with health issue with respect to themselves or a close family member up to 12 weeks of paid leave. Now, states are free to require a pay leave. Companies are free to generously grant pay leave, but the federal statute only requires 12 weeks of unpaid leave, and you can come get your job back after that time.

## Right to Be Free from Discrimination

I

Right to be free from discrimination because of:

Race, color, national origin, sex, religion  
(Title VII)

Age (ADEA)

Disability status (ADA)

Other rights that employees are entitled to in the workplace, the right to be free from discrimination. Not all discrimination mind you. We all know that discrimination on the basis of race, color, national, origin, sex, or religion in the workplace is prohibited. That's prohibited by Title VII of the Civil Rights Act of 1964. Discrimination on the basis of age, under the Age Discrimination in Employment Act, is also prohibited, but not for everybody. Actually, it's only discrimination on the basis of age for people over the age of 40. So, if you want to refuse to hire someone who's 39 because they're too old or too young, feel free. Then also, discrimination on the basis of disability status is prohibited by the Americans With Disabilities Act. Now, this does include a bona fide job qualification exception, so that if the job you're hiring for is piano movers, and someone has to be able to lift 200 pounds, and someone is unable to do that because of their disability status, or their age, or something like that, you don't have to hire them. You could have bona fide occupational qualifications that are exceptions to some of these rules.

## Right to Privacy

**I**

Monitoring of electronic communications

Now, finally, an employee's right to privacy. This has become a huge, huge issue in recent years. And frankly, Congress is still trying to play catch up in a lot of ways with the developments in employee privacy. But as the situation currently stands, employers are generally not allowed to monitor employees' electronic communications with two big exceptions. Exception number one, if the employer provides the means of communication, they are allowed to monitor it. That means, your work email address; your employer can monitor, your work instant message chat system; your employer can monitor. If your employer provides you with a work phone, they can have access to everything on that phone. Be careful. Exception number two, if the employee consents to monitoring, then again the employer has the right to do so.

## Right to Privacy

**I**

Monitoring of electronic communications

Employee screening

Now, let's talk about employee screening, and there are lots of ways that employers screen employees or potential employees.

## Right to Privacy

**I**

Monitoring of electronic communications

Employee screening

Social media, lie detectors, drug testing, background checks

So, they could investigate your social media accounts, and this is generally permissible as long as all they're viewing is your publicly available information. So, be careful what you post on your social media accounts. Employers generally cannot force you to give

them passwords or show them your non-public social media information. What a lie detector tests? Employers are actually prohibited from giving you a lie detector test as a condition of employment, but not so with drug testing. As a general rule, employers are free to test prospective employees and current employees for drug use, and fire them or refuse to hire them if they test positive. And then finally, background checks are also usually freely permitted. This includes financial background checks like credit checks and also criminal background checks. Employers have the right to do this. And in fact, some jobs, a lot of government jobs, it's mandated that they perform background check on you.

## Right to Privacy



Monitoring of electronic communications

Employee screening

Social media, lie detectors, drug testing, background checks

Health records

And then finally, with respect to your right to privacy or rights your health records and your genetic information, there are a couple laws that have been passed fairly recently that are particularly applicable, HIPAA, GINA. GINA stands for the Genetic Information Non-Discrimination Act. They protect your health privacy and your genetic information. So, say, you have the genetic marker for hunting disease or some other hereditary disease, that could possibly cost a lot of money and medical bills and eventually force you out of your job. Your employer might want to know that because they might want to know are our health insurance premiums are going to go way up. But they don't have the right to know that. That information is private, and there are actually some pretty stiff penalties for violation of your health records privacy.

## Lesson 4-6: Basics of Labor Unions

### Module 4-6.1. Basics of Labor Unions

## Basics of Labor Unions

**I**

What is a labor union?

In this lesson we're going to discuss the basics of labor unions. What is a labor union? How are they formed? What are the consequences of forming a labor union? What are the different types of unionized companies? Welcome to the first of our two part series on labor unions. In this lesson and the next lesson we're going to talk about, what is a labor union? How are they formed? What are the consequences of forming a labor union? What types of companies are unionized? What actions can labor unions do to get what they want basically? So, let's start at the beginning. What is a labor union? A labor union is nothing more than a group of similarly situated employees that band together to demand wages, benefits, some sort of better treatment from their employer than they believe that they're getting at the current time.

## Basics of Labor Unions

**I**

What is a labor union?

Can anyone join/form a union?

Now, can anybody join or form a labor union? Well, this is kind of tricky, management in a company can usually not unionize, it's usually for the workers, it's traditionally been factory workers. But in recent decades it's expanded to, nurses are frequently unionized, teachers are almost always unionized. But the management so the principal at a school wouldn't be a union member but the teachers could be. Also a lot of States have adopted what are called Right to Work Laws. States with Right to Work Laws, prohibit an employer from requiring someone to join a union at their company, and also prohibit them from requiring a worker to pay what's called fair share fees. We'll talk about fair share fees here in a minute.

## Forming a Union



Bargaining units

Now, how do you form a union? Well, the first step is to identify a bargaining units, so a bargaining units in the parlance of labor law is just a group of similarly situated employees. So, if you're at a hospital and you are a nurse, well, the nurses at your hospital could be a bargaining unit, they are similarly situated employees. The nurses and the doctors probably couldn't be one bargaining unit because there are different roles, they can be separate bargaining units but not the same.

## Forming a Union



Bargaining units

Elections

So once you've identified your bargaining unit, the people in that bargaining unit hold an election to decide whether they would like to create a union. They vote, and this can be really controversial. There are frequently allegations of corruptions from both sides. The company side and the union side, because frequently union drives are participated in by the employees but also by outsiders who are trying to form a union at a company. So, the company management could resist and accuse the outside labor union of unfair practices. The labor union or the employees can accuse the management of unfair practices. So for this reason a government entity called the National Labor Relations Board, the NLRB usually oversees these contentious elections in a company.

## Forming a Union



Bargaining units

Elections

Collective bargaining → a CBA

But if an election happens and the employees vote to unionize, then they start the long and arduous process of collective bargaining. Collective bargaining is when the bargaining unit or its representatives sit down with management from the employer and hammer out an agreement. The final agreement is called a CBA or a collective bargaining agreement. Now, the collective bargaining agreement usually is a very thick document and there are certain subjects that it has to deal with.

## Collective Bargaining Agreement Subject Matter

**I**

Mandatory subjects ←

Permissive subjects

Illegal subjects

There are some subjects that it can deal with, and there are some subjects that is prohibited from dealing with. So, some of these mandatory subjects include things that you would think you would have to have in an employment agreement, right? Wages, hours, benefits, grievance procedures if you feel like your rights under the agreement have been violated, that has to be in there. Those are mandatory subjects.

## Collective Bargaining Agreement Subject Matter

**I**

Mandatory subjects

Permissive subjects ←

Illegal subjects

Now, some permissive subjects includes more ancillary things, like what's the format of

a bargaining procedure and negotiations? How do we conduct peer evaluations? What sort of employee committees will exist to provide advice and guidance to management or to the labor management? Those types of things. Those are permissive, you can have stuff in there if you want but you don't have to.

## Collective Bargaining Agreement Subject Matter



Mandatory subjects

Permissive subjects

Illegal subjects 

Then finally illegal subjects, these things cannot be in a collective bargaining agreement. These include any sort of discriminatory agreements, any agreements to engage in illegal behavior that's obvious, any agreement to create a Closed shop. What's a Closed shop?

## Types of Unionized Businesses

**I**

**Closed shop** – NOT legal

What's a type of unionized business that requires the company to only hire new employees who are already union members and that is illegal. So, having a closed shop in your collective bargaining agreement violates the law, you cannot operate a Closed shop.

## Types of Unionized Businesses

**I**

**Closed shop** – NOT legal

**Agency shop** – Joining is optional

What you can operate it's what's called an Agency shop or a Union shop. An Agency shop is an employer where new employees have the option to join the union, but they're

not required to. If they don't, they will have to pay what's called a fair share fee because they get some benefits from the union even if they're not members. Now, remember if you're in Right to Work State, you can't require someone to join the union and you can't require them to pay fair share fees. But in all other States, you can. So, here in Illinois, we are not a Right to Work State. So, if you go to work for a unionized employer, they can give you the option to join the union. But if you don't, they can force you to pay fair share union fees. Next door in Indiana, they are a Right to Work State, so they can also give you the option to join the union, and if you don't, they cannot force you to pay those fair share fees.

## Types of Unionized Businesses

**I**

**Closed shop** – NOT legal

**Agency shop** – Joining is optional

**Union shop** – Joining is mandatory

Then the last type of unionized business is what we call a Union shop, similar to an Agency shop except that every new employee must join the union, and therefore, must pay union dues. Again, if you're in a Right to Work state, you can't have a Union shop, you could only have Agency shops and Right to Work States. But in all other States Union shops are permitted. You can't require someone to already be a union member when you hire them, but you can require them to join the union once they are hired.

## Lesson 4-7: Labor Actions

### Module 4-7.1. Labor Actions

## Labor Actions

I

**Union Leverage** – Strikes and  
pickets (but mostly strikes)

In this lesson, we're going to discuss labor actions. Now, these are the actions taken by a unionized group of employees to get their way somehow. So, what are labor actions? What do they entail? And what are the employers options when a union does take such action? Now, if you're a union, what is your leverage to get your way when you're negotiating with management. Well, the answer is that your primary lever is the threat of not working. This is obviously risky because, if you don't work, you can lose your job. Well, we're going to talk about that in this lecture, and some related issues. So, strikes and picketing are really the two most common types of labor actions, mostly strikes, picketing comes after striking most of the time. So, what a strike is just a work stoppage by the employees, and what picketing is is employees or others, you've seen on TV right. Holding up signs, marching in front of the workplace. This is a public relations matter to try and get people on your side and against the employer.

## Labor Actions



**Union Leverage** – Strikes and pickets (but mostly strikes)

Not allowed if:

The cooling-off period has not expired

Strikes are allowed in various instances, but as a general rule, the union must give the employer 60 days notice before they strike, and this 60 day period is called the cooling-off period, and you're not allowed to engage in a strike during the cooling off period. Is meant to give the negotiators and both sides more incentive to get this thing figured out, because they know that the clock is now ticking, and the other time you're not allowed to strike is if in your collective bargaining agreement, you have a no strike clause.

## Labor Actions



**Union Leverage** – Strikes and pickets (but mostly strikes)

Not allowed if:

The cooling-off period has not expired

A no-strike clause has been adopted

If you strike when you have a no strike clause in your CBA, this is an unlawful strike or an illegal strike, and there are consequences for that. We'll, discuss those in just a moment. So, there are a number of different types of strikes that employees can engage in, and depending on the reason for the strike, there are different consequences that come as a result.

## Types of Strikes

**I**

Economic strike 

Unfair labor practice strike

Sympathy strike

Partial strike

Sickout

So, the first type of strike is what's called an economic strike. This is very common. This is when the union and the employer are engaged in negotiations, and it's very contentious a lot of the time, and so, the employees as a way to influence that negotiation engage in a strike.



So, the employer says "We don't want to pay you this much," and the unionized employees say, "Fine we just won't work at all." This is trying to influence the bargaining process. Now, in an economic strike, the employer is not allowed to permanently terminate the striking employees, but the employer is also not obligated to give them their old jobs back, and if they hire replacement workers and there aren't jobs for those striking workers when the strike ends, the employer actually in many instances can lay off a striking worker until a new job is available. Can't permanently terminate them, but they can't take some other actions against them.

## Types of Strikes

**I**

Economic strike

Unfair labor practice strike ←

Sympathy strike

Partial strike

Sickout

Now, contrast that with an unfair labor practice strike. This is not a strike to influence negotiations, instead this is a strike to protest some violation of labor laws.



When this happens, and these are not as common, but when they do happen, the workers are entitled to get their old jobs back immediately once the strike ends.

## Types of Strikes

**I**

Economic strike

Unfair labor practice strike

Sympathy strike 

Partial strike

Sickout

Next type of a strike is what's called a sympathy strike.



So, this is when a group of employees goes on strike not because of something that happened to them, but because something happened to somebody else and they want to stand in solidarity with them. So, if you work at a hospital and the nurses go on strike, maybe the doctors say we're going on strike too as a sympathy strike to put more pressure on management to engage in finding a settlement with the nurses who are in

this bargaining process.

## Types of Strikes

**I**

Economic strike

Unfair labor practice strike

Sympathy strike

Partial strike 

Sickout

A partial strike is when bargaining unit goes on strike maybe one day a week, or just for a morning or an afternoon or something like this.



Now, you've got to be really careful with partial strikes. If you call a one day strike and your employer knows you're going back to work after one day and you won't be striking again in the near future, that's usually all right. But, if you do partial strikes such that it

disrupts your employer's ability to carry on its business, this can be an illegal strike. So, you really careful if you try to pull off a partial strike, and then finally, not really a strike, but similar to a strike is what is called a sickout.

## Types of Strikes

**I**

Economic strike

Unfair labor practice strike

Sympathy strike

Partial strike

Sickout ←

A sickout is exactly what it sounds like, it's a coordinated effort of employees to call in sick. Now, you might say why would this ever happened?



Why should it go on strike? Well, some workers are not legally allowed to go on strike

ever. Like police are usually not allowed to go on strike. Why? As a society we think it's probably good to have police out there patrolling the streets. So, we just have a law that says you can't go on strike. But, what if police are negotiating a contract and they're not happy with it. Well, they can do a sickout. Now, sickouts can be illegal or illegal depending on what motivates the sickout. If it's economically motivated like we want a better contract with more money, a sickout would generally be illegal, and the workers could suffer consequences including termination for engaging in a sickout. But if the sickout is to make a political statement; protest an unfair labor practice, some other political statement, the courts have held that this is actually protected free speech and employers are not allowed to take consequences against employees engaging in a sickout because of that.

## Employer Options During Strikes



Ask employees to be strikebreakers

From the employer perspective, your employees are striking, your business is shut down, what can you do?



Well, the first and easiest thing is to ask your employees not to strike, and ask employees to break the strike if a strike actually occurs, and this happens a lot. The employer will send a message to all the employees saying "Hey. I know there's a strike called, but please come into work anyway. Maybe we'll treat you extra nicely, we'll bring donuts, who knows." So, you can ask the employees to be strikebreakers.

## **Employer Options During Strikes**

Ask employees to be strikebreakers

Hire replacement workers

If that doesn't work enough to get your people to keep your business running, you can

actually hire replacement workers. Professional baseball is famous for hiring replacement players for a season when the actual players were on strike.



You can imagine the quality of games was perhaps not as great. So, it depends on what your industry is whether this works well for you or not, but employers do have the right to hire replacement workers. They have to cross that picket line. So, some people might not want to do that or might actually be afraid to do it. So, that's one challenge of hiring replacement workers.

## Employer Options During Strikes

Ask employees to be strikebreakers

Hire replacement workers

Fire striking employees *only if* strike  
is unlawful

Now, the big question for the employer is, "Can I fire these no good Nicks who are out there striking? " And as a general rule, if the strike is illegal or unlawful, yes.



Employers can fire those striking employees. But otherwise, if the strike is lawful, the employer cannot fire them, but usually don't have the obligation to return them to their old positions. So, it's a give and take for employers in that situation.