

11: EMPLOYMENT LAW

- *employment-at-will*
 - employer can terminate employee at any time for any or no reason
 - exceptions
 - public policy
 - if firing would violate public pol
 - examples where you can't be fired:
 - refusing to commit perjury at employer's request
 - filing workers comp clm
 - applying for medical leave that is provided by law
 - refusing to participate in illegal price-fixing
 - refusing to violate a customer's or coworker's privacy
 - reporting employer's legal infractions
 - implied contract
 - when there were specific terms surrounding employment implied by actions
 - ex: if HR manual says employees are only fired for "just cause"
 - covenant-of-good-faith (ex: firing long time employee right before eligible for retirement)
 - statutory
 - when firing is prohibited by law
 - ex: employees can't discriminate & fire someone over skin color, gender, religion, disability, age, etc.
 - wrongful discharge: cause of action against employer for illegal termination
- anti-discrimination laws
 - age
 - Age Discrimination in Employment Act (ADEA)
 - age 40+
 - applies to employers w/ 20+ employees
 - extends to all aspects of employment (hiring, pay, terms, privileges, etc.)
 - employer may establish age limit for bona fide occupational qualification (ex: pilots, showgirls)
 - applies to apprenticeship programs too
 - forbids mandatory retirement based on age except for:
 - public safety officers (ex: firefighters, police) who have mandatory retirement age of 55 or older as set by govt
 - high-ranking employees after reaching 65 yrs old who are entitled to pension exceeding min amt per yr
 - administered by Equal Employment Opportunity Commission (EEOC)
 - Older Workers Benefit Protection Act (OWBPA)
 - amended ADEA
 - may reduce benefits to older workers if there is justified cost consideration (ex: life ins)
 - may offer less benefits to older employees if govt makes up shortfall
 - allows voluntary waivers of benefits
 - 21 days to think about it
 - employee must be told to get legal consultation
 - 7 day right to revoke waiver

- Civil Rights Acts of 1866 & 1871 (aka Section 1981)
 - prohibited discrimination, initially for contracts but later extended to all aspects of employment
 - initially applied for African-Americans but later extended to other classes often discriminated against
 - does **NOT** apply to sex/religion
 - **does** require employer to be of certain size
 - **does NOT** require plaintiff to file with the EEOC
- Civil Rights Act of 1964, Title 7 – Equal Employment Opportunity (EEO)
 - extended act to apply to sex/religion/nat'l origin
 - many states extended even more protections (ex: political affiliation, sexual preference, body weight)
 - applies to any co w/ 15+ employees in industry involving interstate commerce
 - EEOC oversees compliance
 - disparate treatment theory: plaintiff proves employer **intentionally** treats him differently b/c plaintiff is of protected class
 - disparate impact theory:
 - plaintiff must prove employer's seemingly neutral practice unintentionally affected a protected class
 - ex: implementing written test when certain group has far greater rate of illiteracy
 - employer's intent is irrelevant
 - employer must prove biz need for practice
 - *sexual harassment*
 - **unwelcome** (from perspective of victim) advances/requests/conduct of a sexual nature, where agreeing or disagreeing to engage affects person's employment or work environment
 - quid pro quo sexual harassment: employer demands/expects sexual favors for continued employment, advancement, or benefits
 - hostile work environment: environment subjecting employee to harassment so that it becomes abusive
- Civil Rights Act of 1991
 - allowed recovery of compensatory & punitive dmgs in suits alleging intentional discrimination
 - changed burden of proof for disparate impact cases to defendant, making case easier for plaintiffs
 - allowed jury trials when plaintiff seeks compensatory dmg under Title 7 or ADA
- Executive Order 11246
 - bans job discrimination based on sex/race/color/religion/national origin
 - applies to fed contractors who do more than \$10k biz w/ govt in 1 yr period
 - affirmative action plan:
 - plan for giving priority to groups that used to be discriminated against
 - required of contractors who do more than \$50k biz w/ govt
 - later amendments:
 - allows contractors of certain religion to show religious preference
 - prohibits retaliation against employees who disclose details of their compensation
 - prohibits discrimination based on gender identity or sexual orientation

- gender wage gap
 - Equal Pay Act
 - prohibits paying lower wages to one sex
 - affirmative defenses (acceptable reasons for differentiating pay)
 - seniority system
 - merit system
 - pay system that measures by quality or quantity
 - ability tests
 - employees working in diff locations
 - any factor other than gender
 - Lilly Ledbetter Fair Pay Act of 2009
 - resets statute of limitations every time unequal paycheck is issued
 - why gender wage gap still exists despite many laws:
 - employers present hard to refute claims (ex: "he negotiated his salary better")
 - employees hesitant to share their salaries
- Immigration Reform & Control Act of 1986
 - prohibits hiring/employing/referring aliens not auth to work in US
 - bars discrimination based on national origin & citizenship status
 - requires employers to attest they've verified ID of their employees & right to work
- disability
 - Rehabilitation Act of 1973
 - prohibits discriminating against disabled persons otherwise qualified to fulfill contract w/ reasonable accommodation
 - Section 508:
 - requires federal agencies to make internet & other info technology products fully accessible to disabled
 - cos that supply such products to Federal gov must also comply
 - Americans w/ Disabilities Act (ADA)
 - applies to all employers w/ 15+ employees
 - defines *disability* as a physical/mental impairment that substantially limits 1+ major life activities
 - employer can avoid dmgs by showing it made good faith effort in consulting employee to make reasonable accommodations
- Vietnam Era Veterans' Readjustment Act of 1974
 - prohibits terminating employees who leave to serve in military
 - requires employees w/ fed contracts of \$25k+ to implement affirmative action for Vietnam vets
- Uniformed Services Employment & Re-employment Rights Act of 1994
 - requires co to promptly re-employ guard members in civilian jobs upon return from active duty
 - cannot discriminate against based on military service
- Jury Systems Improvement Act (protects employee serving jury duty)
- Consumer Credit Protection Act (prohibits termination due to garnishment of wages)
- labor mgmt relations & unions
 - collective bargaining: process by which a union negotiates labor contract w/ employer
 - Norris-LaGuardia Act of 1932
 - prohibits fed court from issuing injunction on labor dispute until all efforts to negotiate exhausted
 - prohibits employees from promising employer not to join union

- Nat'l Labor Relations Act (NLRA) of 1935 (Wagner Act)
 - **is primary law governing unions**
 - administered by Nat'l Labor Relations Board (NLRB)
 - purposes:
 - to prevent & remedy unfair labor practices
 - to determine if certain groups of employees want organized representation (union) & if so, help them select their union
 - grants employees right to be rep'd by union & participate in collective bargaining
 - employees are given authorization cards to sign if they want to vote for unionizing
 - union can then go directly to employer to initiate collective bargaining
 - if over 50% vote yes, employers usually agree to collective bargaining
 - if employer refuses, union can file petition w/ NLRB if it has over 30% YES votes
 - if over 50% of employees vote YES during election, union is certified
 - once majority of unit workers vote for union, all employees bound by collective bargaining agreement
- process
 - illegal for either employer or union to refuse to bargain collectively on mandatory issues
 - wages/benefits
 - hours
 - working conditions
 - either party can initiate or refuse to bargain on non-mandatory issues
 - prohibited bargaining actions:
 - cannot bargain over illegal activities (ex: discrimination)
 - agreement that violates laws/regulations
 - closed shop provision: requiring workplaces to only hire a particular union's members
 - union clauses in right-to-work states (states where employees are allowed to work in unionized workplaces w/o joining union or paying dues)
 - hot cargo agreement: agreement that employer will not engage in biz with any party that the union has a dispute with
 - employees must still agree by majority vote before settlement ratified
 - economic tactics (if negotiations stall)
 - union/employees
 - strike/cease work (but must completely be off property & not working)
 - boycott
 - primary – when customers/vendors encouraged to stop doing biz w/ employer
 - secondary – when union boycotts one employer to put pressure on them to stop doing biz w/ another
 - *sympathy strike*: one union striking against their own employer that they have no grievances against to support another union
 - Taft-Hartley Act of 1947 (Labor-Mgmt Relations Act) – made secondary boycotts & sympathy strikes illegal
 - employer
 - for strike over labor contract, employer can hire replacement employees & refuse to reinstate striking employees
 - lockout (only if strike/sabotage is threatened/imminent)

- employee welfare laws
 - work safety issues
 - raising awareness of safety conditions
 - helping to pass health & safety regulations
 - working to ensure unionized workplaces were actually safer
 - creating safety committees to improve dialogue btwn mgmt & unions
 - improve overall safety policies/procedures
 - strengthening safety education efforts
 - implementing needed safety programs
 - benefits
 - workers feel safer & stay longer w/ employer
 - fewer ins clms
 - fewer accidents/losses
 - avoid bad reputation & negative publicity
 - Occupational Safety & Health Act of 1970 (OSHA)
 - state must get OSHA's perm before they can override federal OSHA act
 - Fair Labor Standards Act (FLSA)
 - minimum wage
 - Davis-Bacon Act
 - Walsh-Healey Public Contracts Act
 - Service Contract Act of 1965
 - overtime
 - non-exempt: hourly pay & can earn overtime
 - exempt: doesn't earn overtime (usually salaried, but not always)
 - child labor
 - equal pay for men/women
 - Family Medical Leave Act (FMLA) (up to 12 wks unpaid leave in 1 yr period w/ no loss of employment benefits)
 - Employee Retirement Income Security Act (ERISA) (regulates employer duties for retirement plans)
 - Consolidated Omnibus Budget Reconciliation Act (COBRA) (continuation of health ins after lose job)
 - Health Care & Education Reconciliation Act of 2010 (financial penalties for employers who don't offer group health ins)
- employee privacy
 - Drug-Free Workplace Act of 1988 – requires establishment of drug prevention programs & to maintain drug-free workplace
 - Employee Polygraph Protection Act of 1988 – prohibits employers from requesting/considering lie detector tests w/ limited exception
 - Omnibus Crime Control & Safe Streets Act of 1968 + Electronics Communications Privacy Act of 1986 – prohibit interception of wire/oral communication unless 1 party has consented to recording
 - Fair Credit Reporting Act – governs permissible disclosure of background info
 - Health Insurance Portability & Accountability Act (HIPAA)
 - medical record privacy
 - grants patients right to see, copy, and request amendment to their records
 - applies to records for past 6 yrs
 - doesn't apply when records were disclosed for treatment, payment & health care operations
 - providers have to acct for disclosures of patients' health info