

Table of Contents

PREFACE	V
ACKNOWLEDGMENTS	VII
ABOUT THE AUTHORS	IX
Chapter 1. Perspectives; Early Doctrines; Current Applications	1
Section 1:1 Introduction: Perspectives	1
Section 1:2 Historical Context: The Criminal Conspiracy Doctrine	7
Section 1:3 Historical Context: The Contractual Interference Doctrine	10
Section 1:4 Historical Context: Early Applications of the Sherman Act	15
Section 1:5 Injunctions and the Clayton and Norris-LaGuardia Acts	17
Section 1:6 Continuing Impact of Antitrust Laws	22
Chapter 2. Congress, Administrative Agencies, and the Courts	27
Section 2:1 Introduction	27
Section 2:2 Open Operations of Administrative Agencies	28
Section 2:3 Agency "Regulations" as Law	28
Section 2:4 The Adjudicatory Function	30
Section 2:5 Exhaustion of Administrative Remedies	30
Section 2:6 Court Review of Agency Findings of Fact	31
Section 2:7 Court Review of Agency Determinations on Law and Policy: The Chevron Framework	31
Section 2:8 The Federal Court System	34
Chapter 3. Railway and Airline Labor Relations Law	41
Section 3:1 Introduction	41
Section 3:2 Bargaining Representation	42
Section 3:3 Mediation, Arbitration, and Emergency Boards	43
Section 3:4 Major and Minor Disputes	45
Section 3:5 Railroad and Airline Boards of Adjustment	49
Section 3:6 The Surface Transportation Board	52
Section 3:7 Strike Injunctions	53
Section 3:8 Jurisdictional Issues: The RLA and the NLRA	53
Chapter 4. The National Labor Relations Act	59
Section 4:1 Introduction	59
Section 4:2 Historical Development	60
Section 4:3 Administration	63
Section 4:4 Procedures	66
Section 4:5 Jurisdiction: Employers Under the Act	68
Section 4:6 Agency Law, Independent Contractors, "Contingent" Workers	74
Section 4:7 Jurisdiction: Employees Under the Act	79
Section 4:8 Jurisdiction: Preemption	90
Section 4:9 Majority Bargaining Rights	96
Section 4:10 The Appropriate Bargaining Unit	99

Section 4:11	Multiemployer Bargaining Units	104
Section 4:12	Craft Severance and Micro Units.....	107
Section 4:13	Determining Employees' Choice.....	108
Section 4:14	Election Conduct and Free Speech.....	118
Section 4:15	Election Propaganda and Misrepresentations	125
Section 4:16	Bargaining Rights Based on Authorization Cards	128
Section 4:17	Remedial Powers	132
Chapter 5.	Employer Unfair Labor Practices	149
Section 5:1	Protection of Employee Rights.....	149
Section 5:2	Freedom from Interference.....	154
Section 5:3	Domination of Labor Organizations	163
Section 5:4	Discrimination as to Hire and Tenure.....	171
Section 5:5	Discriminatory Lockouts	174
Section 5:6	Permanent Shutdowns.....	176
Section 5:7	Discrimination for Concerted Activities	180
Section 5:8	Union Security and "Right-to-Work" Laws.....	183
Section 5:9	Discrimination for NLRB Action.....	185
Section 5:10	Duty of Employer to Bargain.....	185
Section 5:11	Successor Employers' Obligations Under the NLRA.....	201
Section 5:12	Rejection of Labor Contracts Under Chapter 11 of the Bankruptcy Code.....	209
Chapter 6.	Regulation of Union Activities.....	221
Section 6:1	Union Unfair Labor Practices	221
Section 6:2	Picketing: Types and Constitutional Parameters.....	229
Section 6:3	Mass Picketing	234
Section 6:4	Union Access to Private Property	239
Section 6:5	Organizational and Recognitional Picketing: Informational Picketing.....	246
Section 6:6	Jurisdictional Disputes.....	249
Section 6:7	Secondary Activity: "Ally" and "Common Situs" Doctrines.....	251
Section 6:8	Secondary Activity: Consumer Product Picketing, Handbilling, and Bannering.....	254
Section 6:9	Hot Cargo Agreements	263
Section 6:10	Damages from Boycotts and Picketing	268
Chapter 7.	Legality of Strikes.....	275
Section 7:1	Types of Stoppages	275
Section 7:2	Employer Unfair-Labor-Practice Strikes	277
Section 7:3	Permanent Replacement of Strikers	281
Section 7:4	Unprotected Strike Activity	287
Section 7:5	Effects of Strikes in Violation of NLRA Notice Requirements.....	291
Section 7:6	No-Strike Agreements	293
Section 7:7	Norris-LaGuardia and No-Strike Injunctions	294
Section 7:8	National Emergency Strikes	299
Chapter 8.	Dispute Settlement Law.....	309
Section 8:1	Introduction	309
Section 8:2	Definitions and Terms.....	309

Section 8:3	Assisting Negotiations.....	313
Section 8:4	Grievance Arbitration and the NLRA.....	313
Section 8:5	The Courts and the Arbitration Process	319
Section 8:6	Labor Arbitration of Statutory Discrimination Claims	320
Section 8:7	Judicial Review of Arbitration Decisions.....	323
Section 8:8	Arbitration for Non-Union Employees	326

Chapter 9. Regulating Internal Union Conduct: DFR, ERISA, and RICO 331

Section 9:1	Introduction.....	331
Section 9:2	Union's Duty of Fair Representation (DFR)	332
Section 9:3	Members' Rights Under the Union's Constitution	340
Section 9:4	Union Discipline: Section 8(b)(1)(A).....	341
Section 9:5	Rights of Members	345
Section 9:6	Union and Management Reporting Requirements.....	348
Section 9:7	Employee Retirement Income Security Act (ERISA)	349
Section 9:8	Political Contributions and Expenditures.....	357
Section 9:9	Antiracketeering Laws.....	357

Chapter 10. Public Employment and Labor Law 365

Section 10:1	Introduction.....	365
Section 10:2	Federal Employment.....	365
Section 10:3	State and Local Employment.....	377
Section 10:4	Congressional Power over State Employment Standards.....	388

Chapter 11. Occupational Safety and Health Law 393

Section 11:1	Purpose and Scope	393
Section 11:2	Administration.....	394
Section 11:3	Standards	395
Section 11:4	Employer Duties	404
Section 11:5	Protection from Retaliation.....	408
Section 11:6	Inspection.....	412
Section 11:7	Citations and Penalties	416
Section 11:8	Overlapping Jurisdiction.....	421
Section 11:9	Violence in the Workplace	421
Section 11:10	State Programs.....	423
Section 11:11	State "Right-to-Know" Legislation.....	423

Chapter 12. Discrimination Laws: Protected Classes Under Title VII and the Constitution 429

Section 12:1	Introduction.....	429
Section 12:2	Title VII as Amended.....	430
Section 12:3	Race and Color.....	445
Section 12:4	Religion.....	454
Section 12:5	Sex	461
Section 12:6	Employer Liability for Sexual Harassment.....	465
Section 12:7	Employer Liability for Coworker and Nonemployee Sexual Harassment	485
Section 12:8	National Origin Discrimination and "English Only" Rules	486
Section 12:9	Protection Against Retaliation	489
Section 12:10	Title VII: Section 703 Exceptions.....	494

Section 12:11 Selected Constitutional Theories on Discrimination.....	502
Chapter 13. Procedures and Remedies	511
Section 13:1 Mixed-Motive Cases.....	511
Section 13:2 Statistical Cases	516
Section 13:3 Title VII Court-Ordered Remedies.....	518
Section 13:4 Consent Decrees and Voluntary Affirmative Action Plans	521
Section 13:5 Reverse Discrimination and Affirmative Action Plans	528
Section 13:6 The Arbitration Option.....	533
Section 13:7 Executive Order 11246: Affirmative Action Programs	536
Section 13:8 Other Remedy Options	540
Chapter 14. Pay Equity; Age Discrimination.....	545
Section 14:1 Equal Pay for Equal Work.....	545
Section 14:2 The <i>Gunther</i> Decision and Comparable Worth	552
Section 14:3 Age Discrimination	556
Section 14:4 Prohibited Practices and Damages	564
Section 14:5 The Older Workers Benefit Protection Act; ADEA Exemptions and Defenses.....	571
Chapter 15. Disability Discrimination Laws—Workers' Compensation, SSDI and the ADA—Medical and Military Leaves	579
Section 15:1 Discrimination Against Disabled Workers	579
Section 15:2 The Rehabilitation Act of 1973.....	581
Section 15:3 The Amended Americans with Disabilities Act.....	586
Section 15:4 Workers' Compensation: Relationship to the ADA.....	603
Section 15:5 Accommodation Between SSDI and the ADA	612
Section 15:6 Family and Medical Leaves of Absence.....	613
Section 15:7 Military Leaves and Reemployment Rights.....	619
Chapter 16. Employment Relationships: Contractual and Tort Theories	627
Section 16:1 Employment at Will, Exceptions, and Discrimination Claims	627
Section 16:2 Whistleblower Protection Under the Sarbanes-Oxley and Dodd- Frank Acts	638
Section 16:3 Noncompetition Agreements.....	645
Section 16:4 Employer Liability for Torts of Employees.....	649
Section 16:5 Proper Classification of Workers.....	652
Section 16:6 Negligent Hiring and Retention of Employees	654
Chapter 17. Employee Privacy Topics	663
Section 17:1 Historical Background, Introduction to Employee Privacy	663
Section 17:2 Public Employees' Privacy Rights	665
Section 17:3 Private-Sector Employees: Property Searches	671
Section 17:4 Invasion of Privacy	671
Section 17:5 Monitoring Employee Telephone Conversations and E-Mail.....	678
Section 17:6 Drug Testing	683
Section 17:7 Alcohol Abuse and Employee Assistance Programs	693
Section 17:8 Polygraph Examinations	695
Section 17:9 Employee Defamation Claims	701
Section 17:10 Developing Law: Protection of Employee Data.....	705

Chapter 18. Wage and Hour Law—Plant Closings and Unemployment—	
Foreign Workers.....	713
Section 18:1 Developing Law Regulating Wages and Hours	713
Section 18:2 Plant Closing Laws: The Warn Act.....	726
Section 18:3 Unemployment Compensation.....	730
Section 18:4 Employment-Related Immigration Laws: Introduction.....	735
Section 18:5 Employer Sanctions and Verification Responsibilities.....	735
Section 18:6 Employer Discrimination	740
Appendices.....	745
Appendix A. Labor Management Relations Act, 1947, as Amended by Public	
Laws 86–257, 1959 and 93–360, 1974.....	747
Appendix B. Excerpts from the Labor-Management Reporting and	
Disclosure Act of 1959	777
Glossary.....	785
TABLE OF CASES	797
INDEX.....	811