

CONTENTS

Preface xiii

Foreword xvi

About the Author xvii

PART I Employment Relationships and Procedure 1

Chapter 1 Employment Relationship 1

Introduction 1

Independent Contractor 2

 Behavioral Control 3

 Financial Control 3

 Relationship Type 3

Elements of an Employment Contract 4

Duties of Employees and Independent Contractors 4

 Duty of Loyalty 4

 Duty to Act in Good Faith 5

 Duty to Account 5

Employer's Duties 6

 Duty to Compensate 6

 Duty to Maintain Safe Working Conditions 6

Noncompete Agreements 6

Nondisclosure Agreements 6

Sample Noncompete and Nondisclosure Agreements 7

 Injunction 7

 Contractual Conditions 8

 Tort Liability 8

Chapter Cases 10 • Summary 23 • Human Resource Advice 24 • Human Resource Dilemmas 24 • Employment Scenario 24 • Employee Lessons 25 • Review Questions 25 • Case Problems 26

Chapter 2 Selection 29

Introduction 29

Discrimination in Selection 29

 Selection Process 30

Advertising and Recruiting 30

 Questioning 31

 Uniform Guidelines on Employee Selection Procedures 32

 Selection Procedure 33

 Investigation and Record Keeping 33

 Samples 33

 The Bottom Line 33

Discrimination in Promotions 34

 Promotion Criteria 34

 Nepotism and Promoting from Within 35

Negligent Hiring 35

References 35

Workplace Violence 36

Background Checks 36

Chapter Cases 36 • Summary 58 • Human Resource Advice 58 • Human Resource Dilemmas 58 • Employment Scenario 59 • Employee Lessons 60 • Review Questions 60 • Case Problems 60

Chapter 3 Testing 64

Introduction 64

Aptitude Tests 64

Residency Requirements 65

Physical and Skills Tests 65

Personality and Integrity Tests 65

Honesty Tests 66

Psychological Tests 66

Medical Exams 66

Polygraph Tests 66

Employee Polygraph Protection Act of 1988 67

Polygraph Licensing 67

Drug Testing 67

Fourth Amendment 68

Reasonable Suspicion Drug Testing 68

Suspicionless Drug Testing 68

Drug-Free Workplace Act 69

Job Relatedness 70

Lab Testing 70

Drug-Testing Procedure 70

Drug Treatment Programs 70

Chapter Cases 71 • Summary 88 • Human Resource Advice 88 • Human Resource Dilemmas 88 • Employment Scenario 88 • Employee Lessons 89 • Review Questions 89 • Case Problems 89

Chapter 4 Privacy, Theft, and Whistle-Blowing 94

Introduction 94

Employee Privacy 95

Access to Personnel Records 95

Employee Phone Conversations 95

Employee E-mail 95

Credit Checks 96

Defamation 96

Invasion of Privacy 97

Interference with Business Relations 98

Employee Theft 98

Conversion 99

Embezzlement 99

Theft of Time 100

Surveillance	100
Security	100
Office Searches	100
Company Policy	101
Fourth Amendment	101
Whistle-Blowing	101
Whistleblower Protection Act	101
False Claims Act	101
Sarbanes-Oxley Act	101
<i>Chapter Cases</i>	102
<i>Summary</i>	116
<i>Human Resource Advice</i>	116
<i>Human Resource Dilemmas</i>	117
<i>Employment Scenario</i>	117
<i>Employee Lessons</i>	118
<i>Review Questions</i>	118
<i>Case Problems</i>	118

Chapter 5 Termination 121

Introduction	121
Termination of Employment	121
Employment at Will	121
Reason for Discharge	122
Worker Adjustment and Retraining Notification Act	122
Employment Handbooks	122
Breach of Contract	122
Severance Pay	123
Model Employment Termination Act	123
Contesting the Termination	124
Public Policy Exceptions	124
Wrongful Discharge	124
Retaliatory Discharge	124
Constructive Discharge	125
<i>Chapter Cases</i>	125
<i>Summary</i>	141
<i>Human Resource Advice</i>	141
<i>Human Resource Dilemmas</i>	141
<i>Employment Scenario</i>	142
<i>Employee Lessons</i>	142
<i>Review Questions</i>	142
<i>Case Problems</i>	142

Chapter 6 Alternative Dispute Resolution 146

Introduction	146
Arbitration Process	146
Federal Arbitration Act	147
Fee Splitting	148
Arbitrating Statutory Rights	148
State Law	150
Modifying an Arbitration Agreement	150
Awarding Attorney's Fees	150
Arbitrating an EEOC Claim	150
Mediation	151
Judicial Conferences	151
<i>Chapter Cases</i>	151
<i>Summary</i>	160
<i>Human Resource Advice</i>	160
<i>Human Resource Dilemmas</i>	160
<i>Employment Scenario</i>	160
<i>Employee Lessons</i>	161
<i>Review Questions</i>	161
<i>Case Problems</i>	161
<i>Endnotes</i>	161

PART II Employment Discrimination 163**Chapter 7 Civil Rights Act 163**

- Introduction 163
- Federal Law 164
- State Law 164
- Disparate Treatment 165
- Disparate Impact 165
- Equal Employment Opportunity Commission 165
- Filing a Claim 166
- Civil Rights Act of 1991 166
- Compensatory and Punitive Damages 166
- Business Necessity 167
- Glass Ceiling 167
- Veteran Discrimination 167
- Military Leave 167
- Exemptions 167
- Bona Fide Occupational Qualification 167
- Communists 168
- Drug Addicts 168
- Merit Pay 168
 - Chapter Cases 168 • Summary 186 • Human Resource Advice 186 • Human Resource Dilemmas 186 • Employment Scenario 187 • Employee Lessons 187 • Review Questions 187 • Case Problems 188*

Chapter 8 Affirmative Action 190

- Introduction 190
- History of Affirmative Action 190
- Title VII Violators 192
- Voluntary Action 192
- Equal Employment Opportunity Act of 1972 193
- Affirmative Action Plan Guidelines for the Private Sector 194
- Reverse Discrimination 195
 - Requirements of an Affirmative Action Plan 195
 - Chapter Cases 196 • Summary 214 • Human Resource Advice 214 • Human Resource Dilemmas 214 • Employment Scenario 215 • Employee Lessons 215 • Review Questions 215 • Case Problems 215*

Chapter 9 Race Discrimination 218

- Introduction 218
- Discrimination by Association and Advocacy 219
- Racial Harassment 219
- Color Discrimination 220
- Reconstruction Era Act 220
- U.S. Constitution 221
 - Chapter Cases 221 • Summary 236 • Human Resource Advice 237 • Human Resource Dilemmas 237 • Employment Scenario 237 • Employee Lessons 238 • Review Questions 238 • Case Problems 238*

Chapter 10 Sex Discrimination 242

Introduction 242

Sex Plus Discrimination 243

Bona Fide Occupational Qualification (BFOQ) 243

Customer Preferences 244

Equal Pay 244

Comparable Worth 245

Dress and Grooming Policies 245

*Chapter Cases 246 • Summary 260 • Human Resource Advice 260 • Human Resource Dilemmas 260 • Employment Scenario 261 • Employee Lessons 261 • Review Questions 261 • Case Problems 261***Chapter 11 Sexual Harassment 265**

Introduction 265

Requirements 265

Tort Claims Against the Harasser 266

Vicarious Liability 267

Reasonable Person Standard 267

Damages 268

Hostile Work Environment 268

Severe and Pervasive 269

A Model Sexual Harassment Policy 270

*Chapter Cases 271 • Summary 289 • Human Resource Advice 289 • Human Resource Dilemmas 289 • Employment Scenario 290 • Employee Lessons 290 • Review Questions 290 • Case Problems 290***Chapter 12 Pregnancy Discrimination and Family and Medical Leave 295**

Introduction 295

Pregnancy Discrimination 295

Pregnant Women in the Workplace 296

Fetal Protection Policies 296

Family and Medical Leave 297

Eligibility 298

Defense Authorization Act of 2009 298

Airline Flight Crew and Medical Leave Act of 2009 299

Paid Leave 299

Serious Health Condition 299

Maintenance of Health Benefits 300

*Chapter Cases 300 • Summary 316 • Human Resource Advice 317 • Human Resource Dilemmas 317 • Employment Scenario 317 • Employee Lessons 317 • Review Questions 317 • Case Problems 318***Chapter 13 Sexual Orientation 320**

Introduction 320

Available Protection 321

Homosexual Partners 322

Federal Government Policy on Gays and Lesbians 323

Acceptance or Tolerance 323

Chapter Cases 324 • Summary 334 • Human Resource Advice 334 • Human Resource Dilemmas 334 • Employment Scenario 335 • Employee Lessons 335 • Review Questions 335 • Case Problems 335

Chapter 14 Religious Discrimination 337

Introduction 337

Accommodating Religious Beliefs 338

Bona Fide Occupational Qualification 339

Workplace Religious Freedom Act of 2012 339

First Amendment Protection 340

Religious Harassment 340

Chapter Cases 341 • Summary 355 • Human Resource Advice 355 • Human Resource Dilemmas 355 • Employment Scenario 356 • Employee Lessons 356 • Review Questions 356 • Case Problems 356

Chapter 15 National Origin Discrimination 358

Introduction 358

Immigration Reform and Control Act 359

Verification of Documents 360

Ethnic Harassment 360

English-Only Rule 360

Chapter Cases 360 • Summary 373 • Human Resource Advice 374 • Human Resource Dilemmas 374 • Employment Scenario 374 • Employee Lessons 375 • Review Questions 375 • Case Problems 375

Chapter 16 Age Discrimination 378

Introduction 378

Discrimination Requirements 378

Mandatory Retirement 379

Damages 379

Filing Requirements 379

Employer's Justification for Layoffs 380

Retirement Packages 381

The Older Workers Benefit Protection Act 381

Comparative Treatment of the Elderly 381

Chapter Cases 382 • Summary 394 • Human Resource Advice 394 • Human Resource Dilemmas 394 • Employment Scenario 394 • Employee Lessons 394 • Review Questions 395 • Case Problems 395

Chapter 17 Disability Discrimination 397

Introduction 397

Reasonable Accommodations 398

Americans with Disabilities Act Amendments Act (ADAAA) 398

Disability Harassment 399

Disclosure of Disability 399

Preventative Planning 399

A Model Company Policy Dealing with Disabled Employees 400

The Future for Disabled Workers 401

Chapter Cases 401 • Summary 417 • Human Resource Advice 417 • Human Resource Dilemmas 417 • Employment Scenario 417 • Employee Lessons 418 • Review Questions 418 • Case Problems 418

PART III Employment Regulation 421

Chapter 18 Unions and Collective Bargaining Agreements 421

Introduction 421

Sherman Antitrust Act 422

Clayton Act 422

Railway Labor Act 422

Norris-La Guardia Act 422

National Labor Relations Act 422

Taft-Hartley Act 423

NAFTA and GATT 423

Collective Bargaining 423

Key Terms 423

Purpose 424

Unfair Labor Practices 424

Chapter Cases 425 • Summary 435 • Human Resource Advice 435 • Human Resource Dilemmas 435 • Employment Scenario 435 • Employee Lessons 436 • Review Questions 436 • Case Problems 436

Chapter 19 Wage and Hour Regulation 439

Introduction 439

Fair Labor Standards Act 439

Exemptions 441

Child Labor 441

Relocating Jobs 442

Chapter Cases 442 • Summary 456 • Human Resource Advice 456 • Human Resource Dilemmas 456 • Employment Scenario 456 • Employee Lessons 456 • Review Questions 456 • Case Problems 457

Chapter 20 Occupational Safety and Health 459

Introduction 459

Administrative Agencies 459

Secretary of Labor 460

Permanent Standards 460

Inspections 461

Citations and Penalties 462

Emergency Standards 462

Partial and Permanent Disability 463

Ancillary Expenses 463

Employer Defenses 464

Record Keeping 464

Chapter Cases 464 • Summary 475 • Human Resource Advice 475 • Human Resource Dilemmas 476 • Employment Scenario 476 • Employee Lessons 476 • Review Questions 476 • Case Problems 476

Chapter 21 Workers' Compensation 479

Introduction 479

Purpose 479

Reporting a Claim 480

Workers' Compensation Board 481

False Representations 481

Employer Defenses 482

Chapter Cases 482 • Summary 495 • Human Resource Advice 495 • Human Resource Dilemmas 495 • Employment Scenario 496 • Employee Lessons 496 • Review Questions 496 • Case Problems 496

Chapter 22 Employee Benefits 499

Introduction 499

Defined Benefit Plan 499

Defined Contribution Plan 499

Eligibility 500

Vesting 500

Purpose 501

Minimum Funding Requirements 501

Fiduciary Duties 502

Inflation 502

Tax Incentives 503

COBRA 503

HIPAA 503

Chapter Cases 504 • Summary 517 • Human Resource Advice 518 • Human Resource Dilemmas 518 • Employment Scenario 518 • Employee Lessons 518 • Review Questions 518 • Case Problems 519

Glossary 521

Case Index 523

Subject Index 526