TOPIC 15: EMPLOYMENT LAWS

Overview

Employment laws concern the federal and state statutes governing the practices of employers and the rights of employees. Labor laws, a subset of employment laws, concern the ability of employees to organize and collective bargain for employment rights and benefits. This chapter identifies the primary employment and labor laws protecting employee interests and putting affirmative obligations upon employers. It gives a cursory explanation of the laws, explains the laws objectives, and identifies specific employee rights and employer obligations affected by the law.

VIDEO LESSON - INTRODUCTION

VOCABULARY & CONCEPTS

- Employee & Independent Contractor
- At-Will Employment
- Internal Revenue Code
- Fair Labor Standards Act
- Family Medical Leave Act
- Worker Readjustment and Retraining Act
- Employee Retirement Income Security Act
- Worker's Compensation Act
- Occupational Safety and Health Act
- Consolidated Omnibus Budget Reconciliation Act
- Health Insurance Portability and Accountability Act
- Affordable Care Act
- Immigration Reform and Control Act
- Privacy Laws
- Labor Laws
- Norris-LaGuardia Act
- National Labor Relations Act
- Taft-Hartley Act
- Labor Management Reporting & Disclosure Act

TOPIC 15: EMPLOYMENT LAWS - QUESTIONS & ANSWERS

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1. What is an "employee"?

An employee is a stakeholder and representative agent of a firm. She may also be an owner of the firm, but her role as employee is generally separate from that of owner. For purposes of employment law, it is important to distinguish an employee from an independent contractor. Most of the employment laws apply to the relationship between employer and employee, and specifically exclude the independent contractor relationship. In a dispute concerning whether an individual is an employee or an independent contractor, administrative agencies and courts generally employ some version of the following tests:

- *Control Test* - The control test applies numerous factors regarding the extent of an employer's control over the employee or independent contractor. This test seek to measure the extent to which the agent is an extension of and answerable to the employer. An employee is engaged by a business to perform services under the guidance and supervision of the employer. These tasks are generally part of the core operations of the business. The employer will control the place, hours, and method of work. The employee generally works exclusively for the employer. An independent contractor, on the other hand, is an individual hired as an outside professional to perform services to a business. The employer maintains far less control over the independent contractor, who generally controls her own time and manner of performing services. Frequently, the independent contractor may have other clients and may employ her own employees.

    - *Note*: The control test is most notably employed by the Internal Revenue Service to determine employee status. Factors the IRS employs in making this determination include the employer's behavioral and financial controls over the agent. Further, it looks at the nature of the employer-agent relationship, such as the nature of the work agreement between the parties.

- *Economic Realities Test* - This tests seeks to determine the economic situation under which the individual performs services for the employer. It focuses on whether an agent is taking advantage of an employer's opportunity or whether an individual has their own business and is performing a necessary service to the employer. Factors examined in this determination include:

    - Does the agent have her own equipment and employees?
    - How much control over the agent does the employer exercise?
    - To what extent is the agent exposed to the opportunity for profit or loss?
    - Is the relationship temporary or permanent in nature?
    - How integrated in the employer's business is the agent's activity?
    - How much independent thought, decision making, and initiative is charged to the agent?
    - How independent is the agent's business organization?

    - *Note*: This test is primarily used by the Department of Labor to determine employee status.

- *Example*: A business may hire a marketer, accountant, attorney, etc., to perform work for the business. These individual are not employees. They have their own businesses.

- ***Discussion***: Do you think the status of an independent contractor or employee should matter for purposes of employment laws? Why or why not?

- ***Practice Question***: ABC Corp is considering hiring someone to perform auditing functions for the corporation. What do you need to know to determine whether ABC should hire an outside firm as an independent contractor or an internal employee to carry out the duties?

- ***Resource Video***: http://thebusinessprofessor.com/how-to-determine-employee-status/

2. What are the legal obligations regarding the terms of employment between an employer and employee?

The terms of an employment relationship will either be determined by the employment agreement between employer and employee or pursuant to the legal duties established under state law. All states in the US, except Montana, recognize the "at-will" employment doctrine. This doctrine allows for an employer to discharge or fire an employee for any non-discriminatory or retaliatory reason without cause or justification. Further an employee may resign from or quit her employment at any time without legal liability. This doctrine seeks to promote free movement of employment. Each state, however, recognizes limited exceptions to the principle of at-will employment. That is, these states either pass statutes or have common laws protecting the employee from discharge in certain situations:

- *Public Policy Exception* – Most states in the United States prohibit an employer from firing an employee if the reason for the action violates some readily accepted public policy. This prevents an employer from terminating an employee for exercising a legal right or failing to perform a legal act for the employer.

    - *Example*: Firing an employee for performing some public duty (showing up to jury duty), for exposing illegal conduct (such as reporting violation of some law to the employer or government agency), or exercising her rights as a US or state citizen (such as voting) are all against public policy.

- *Implied Contract Exception (Good Cause Exception)* - Some states see the employer employee relationship as a contract that cannot be undone without specified or "good cause". The terms of the contractual relationship consist of any representations or assurances made by the employer prior to or during the term of employment.

    - *Example*: If an employer provides an employee handbook to a new employee, the provisions in the handbook may be considered part of the contractual relationship. Often, these handbooks will outline a procedure for performance review, discipline, and discharge of the employee. An employer who fails to live up to these obligations prior to discharging an employee could be liable.

- *Good-Faith and Fair-Dealing Exception* - Some states impose upon the employer a duty to exercise good faith and fair dealing with regard to all employees. This doctrine, to varying degrees, means that an employer must treat an employee fairly in the decision to fire her. This generally means that an employee violates these duties by firing an employee without due cause of justification.

As stated above, these doctrines exist to varying degrees in all states. A pure, at-will state will not recognize or recognize these principles to a lesser extent.

- ***Discussion***: How do you feel about the at-will employment doctrine? Is it fair to employees and employers? Why or why not? Why do you think states vary as to the at-will employment exceptions they recognize? Can you think of any other exceptions to the at-will doctrine you believe should exist?

- ***Practice Question***: Heather is a consultant and joins AVG, a local consulting firm in Chicago. She does not sign an employment contract and is considered and at-will employee. After working for the company for two years, she is transferred to work under a new boss. The new boss does not like that Heather's involvement in a local social club and decides to fire Heather. What do you need to know about state law and Heather's employment relationship to determine if she has a cause of action against AVG for wrongful termination?

- ***Resource Video***: http://thebusinessprofessor.com/at-will-employment-state-employment-laws/

EMPLOYMENT LAWS

3. What are the major employment laws?

There are many federal and state employment laws. Federal laws controlling a particular type of employer conduct set minimum standards for conduct. States may pass laws that place additional requirements on employers, so long as these laws do not conflict with or hinder the execution of federal laws. That is, if not in conflict, the state laws may be more restrictive upon employer practices than similar federal statutes. The major federal laws controlling the employer-employee relationship are as follows:

- Internal Revenue Code
- Fair Labor Standards Act
- Family Medical Leave Act
- Worker Readjustment and Retraining Act
- Uniformed Services Employment and Reemployment Rights Act
- Employee Retirement Income Security Act
- Worker's Compensation Act
- Occupational Safety and Health Act
- Consolidated Omnibus Budget Reconciliation Act
- Health Insurance Portability and Accountability Act
- Affordable Care Act
- Immigration Reform and Control Act
- State Laws

The Department of Labor may also require employers that meet certain criteria to prominently display information about employment laws and employee rights.

- *Note*: Laws prohibiting discrimination in the workplace are discussed in detail in a separate topic section.

4. What tax and other compensation withholding requirements do the state and federal governments place on employers with regard to employees?

Employers are obligated to comply with statutes and IRS regulations regarding the withholding of:

- *Income Taxes* - Employers have an obligation to withhold income taxes from employee compensation based upon an employee's election. The employer then submits the withheld funds to the IRS and state taxing authority on behalf of the employee each month.

    - *Note*: The employee elects an amount to be withheld on IRS form W-4. This is done by indicating the number of employee claimed dependents and indicating any desire for additional withholdings.

- *Payroll Taxes* - Employers are required to withhold Medicare and Social Security taxes from the employee's salary pursuant to the Federal Income Contributions Act (FICA). The employer combines these withheld funds the employer's FICA tax obligations for the employee and submits the funds to the IRS each month.

    - *Note*: Self-employed individuals must withhold self-employment taxes, which consist of the employer's contribution and employee's FICA tax responsibilities.

- *Federal Unemployment Tax Act* (FUTA) & *State Unemployment Tax Act* (SUTA) - Employers are required by state and federal law to pay for unemployment insurance to cover events in which an employee loses her employment for any covered reason. FUTA is common to all employers across the United States. SUTA varies among the states. Some states allow an employer to be self-insured; while other states require employers to pay into a private or state-funded insurance plan or policy.

    - *Note*: FUTA and SUTA taxes do not apply to self-employed individuals.

- *Worker's Compensation* - Worker's Compensation is a state law regime that requires employers to maintain insurance that provides wage and benefit replacement in the event an employee is injured in the scope of her employment. Federal worker's compensation laws, primarily the Federal Employee Compensation Act, provide the same protections to federal, non-military employees. Workers compensation covers lost wages, medical expenses, disability payments, and costs associated with rehabilitation and retraining.

    - *Note*: Application of worker's compensation laws varies from state to state based upon the number of employees. Also, states may offer state-provided plans or allow for private worker's compensation plans.

- ***Discussion***: Why do you think state and federal governments have the obligation to withhold taxes from employee compensation? Do you agree with this system? Why or why not? What are the advantages and disadvantages of this type of system?

- ***Practice Question***: Isabelle starts a business and hires her first employee. What are her obligations under state and federal law with regard to withholding from her employee's compensation.

- ***Resource Video***: http://thebusinessprofessor.com/employer-withholding-requirements/

5. What is the "Fair Labor Standards Act"?

Overview

The Fair Labor Standards Act (FLSA) is a law administered by the Wage and Hour Division of the Department of Labor. The FLSA places limitations and requirements on the rate and method of pay for public and private employees who are covered by the law. Specifically, it lays out the national minimum wage, age limitations, and over-time pay requirements for employees. Currently the federal minimum wage is $7.25 per hour, with a higher rate of 1 and ½ times an employee's hourly wage for each hour worked beyond 40 hours in a given work week. The minimum wage law does not apply to certain classes of employees or certain types of jobs. Further, there are other exemptions based on ancillary benefits and privileges provided to the employee, such as meals, insurance, retirement benefits, etc. The FLSA generally prohibits minors under the age of 14 years from working for compensation outside of a family business or agriculture. It further limits the number of hours that an adolescent between the ages of 14 and 16 can work in a given workweek. It may also proscribe employing minors below the age of 18 years in certain positions (such as dangerous positions or positions charged with handling controlled substances or alcohol).

- *Note*: The FLSA applies to hourly employees. Salaried employees may, in some instances, work a number of hours for a rate of pay that violates minimum FLSA requirements. The rate of salaried pay for employees who are managers or supervisors that exempts these employees from overtime pay is $47,476.

Enforcement

The FLSA primarily provides for civil causes of action by employees or the Department of Labor against employers who violate the provisions. The FLSA also provides for an optional complaint system whereby the Department of Labor will review the complaint and determine whether to seek action or redress. Plaintiffs may file an FLSA lawsuit against an employer in federal or state court in the jurisdiction in which the employer is organized or carries on business. Any suit must commence within 2 years from the date of the claimed violation of the law. A plaintiff may seek damages in the form of any lost or back pay associated with the violation. Further, the court may asses a penalty in the amount of any actual damages, plus court costs and reasonable attorney's fees.

- ***Discussion***: Why do you think the Federal Government seeks to establish standards for employee work hours and compensation? Should the Federal Government (or state governments) regulate this area? Why or why not?

- ***Practice Question***: Mark runs a small business with his business partner, Frank. His daughter, Amy, wants to make some extra money and asks her father for a part-time job. What information do you need to know about this situation to determine if Mark could face liability under the FLSA if he employs Amy?

- ***Resource Video***: http://thebusinessprofessor.com/fair-labor-standards-act/

6. What is the "Family Medical Leave Act"?

Overview

The Family Medical Leave Act (FMLA) was passed to provide covered employees (both male and female) with time away from work in the event of medical necessity. Specifically, covered employees can take up to 12 weeks of unpaid leave from work during any 12-month period in any of the following situations:

- *Health Conditions* - The covered employee is unable to work due to a serious health condition;

- *Family Members* - An immediate family member of the employee has a serious health condition that requires the employee's care;
    - *Note*: An immediate family member of a covered employee includes a spouse, minor child, or individual over whom the employee has legal guardianship (such incapacitated individuals).
- *Birth* - Upon the birth of a newborn child of the employee;
- *Adoption/Guardianship* - Upon acquiring physical guardianship of child pursuant to adoption or foster care; or
- *Military Injury* - A family member is injured pursuant as part of military activity or medical necessity arises pursuant to notice of a family member's pending deployment.

The employer cannot take any negative actions against the employee for taking the unpaid leave and must allow the employee to return to her same job at the end of the period. The employee does not have to take the entire time off. Further, the period is independent of any paid time off or vacation time accrued and taken by the employee.

Covered Employees and Employers

When determining whether the FMLA applies to an employer or covers a particular employee, there are two separate tests. First, the FMLA applies to employers employing:

- *50 + Employees* - The employer must employ 50 or more part or part-time or full-time employees,
- *Daily Employees* - The 50 or more employees only includes those who work each working day (whatever days of the week that may be),
- *20 + Weeks of Employment* - The 50 + employees must work for 20 or more weeks during the current or preceding calendar year.

If any of the above elements are missing, the FMLA does not apply to the employer. Second, the FMLA provides benefits to employees who meet the following conditions:

- *12-Month Period* - The employee must have worked for the employer for at least 12 months;
    - *Note*: The 12-month period does not have to be consecutive. That is an employee can work for a time, stop, and then restart. The question is whether the employee has worked for a total period of 12-months.
- *1250 + Hours* - The employee must have worked at least 1250 hours during the proceeding 12 months; and
    - *Note*: Look back 12 months and see if the employee has a combined 1250 hours.
- *50 + Employees* - The employee must work at a location where at least 50 employees work.
    - *Note*: This requirement excludes employees in satellite offices for larger companies.

If all of these elements are present, an employee of a covered employer is eligible for FMLA benefits. The onus is on employers to notify eligible employees of their eligibility for such leave and to document any request for leave by the employee. The employer may require a medical certification that a qualifying event has occurred prior to granting the leave.

- ***Discussion***: How do you feel about each of the requirements for an employer to be regulated by the FMLA? How do you feel about the requirements for an employee to be covered? Why do you think the law allows for these employer and employee exemptions? Do you agree with these limitations? Why or why not?

- ***Practice Question***: Sandra works for ABC Corp. She recently learned that she is pregnant. She knows that she will want to take some time away from work after having her baby to build the mother-child bond. She has 5 weeks of paid leave and 1 week of sick leave available. What do we need to know to determine how much time Sandra could possibly take off from work?

- ***Resource Video***: http://thebusinessprofessor.com/family-medical-leave-act-fmla/

7. What is the "Worker Adjustment and Retraining Act"?

Overview

The Worker Adjustment and Retraining Act (WARN Act) was passed to protect employee rights and interests in the event of large-scale layoffs as a result of operational closures by businesses (such as plant closure). The law provides that covered employers must provide adequate notice (a minimum of 60 days) to employees in the event of such a pending layoff. The WARN Act is applicable to employers with 100 or more part-time and full-time employees. A part-time employee is one who works a minimum 20 hours per week. If the WARN Act applies to an employer, all employees, including hourly and part-time employees, must be given notice.

Employee Protections

The provisions of the WARN Act are made to protect individuals who will suffer a loss of employment as a result of the layoff or operational closure. Loss of employment for purposes of the WARN Act includes:

- termination of employment,

- layoff exceeding 6 months, or

- a reduction in employee's work time of more than 50% in each month for 6 months.

The broader definition of loss of employment prevents employers from skirting the rules through structural shifts that have the same effect as immediate termination. Any of the following situations qualify as mass layoff events triggering WARN Act notice provisions:

- *Plant Closing* – This includes closing an employment site resulting in loss of 50 employees within a 30-day period. This applies also if there are more than one plant location closings for the business that combine to equal the number.

- *Mass Layoff* – This is when 500 or more employees lose their job within a 30-day period, or when more than 50 employees lose their job and it comprises 33% of the employer's total workforce. Employees that work less than half time do not count toward the 50-employee requirement.

Failure to comply with the provisions of the WARN Act allows for a cause of action by affected employees. The limitations on what constitutes a mass layoff prevents the WARN Act from applying to routine firings and operational downsizing across a business.

Enforcement

There is no governmental agency cause of action, investigation, or other enforcement of the WARN Act provisions. Employees protected by the WARN Act must bring a civil action for violation of the statute. Under the law, these employees are entitled to pay for 60 days from receipt of notice. If notice is not given 60 days prior to the operational closure, the employee receives pay past the date of closure (or layoff) until reaching the 60-day requirement. Further, failure to notify local government in accordance with the provisions of the WARN Act may lead to court-ordered fines up to $500 per day for each day of violation (along with court costs and attorney's fees).

- *Note*: The employer may generally avoid penalties if the entire amount owed to employees is paid within 3 weeks of the closing.

Exceptions from WARN Act Provisions

A few limited exceptions to the notice provisions of the WARN Act exist that allow an employer to give less than 60 days notice to protected employees. The primary exceptions are as follows:

- *Strikes* - An employee may execute a mass layoff and rehiring to replace employees who are striking, so long as such actions do not violate other labor laws.

- *Refinancing* - Exception to notice may be applicable if an entire business is failing and giving the required notice could disqualify or cause the business to not to be able to secure financing to continue operations.

- *Force Majeure* - If a natural disaster disrupts the business's operations leading to a mass layoff.

These exceptions provide for fairness to the employer in the event of happenings that are beyond its control and the equities justify limiting the notice provided to protected employees.

- ***Discussion***: Why do you think the government requires notice of a pending mass layoff or plant closing? Do you agree with the objectives of this law? How do you feel about the exemptions from notice?

- ***Practice Question***: ABC Corp is considering a consolidation of manufacturing sites to cut costs. It currently has 5 manufacturing facilities. ABC is considering closing the two smallest facilities and ramping up production in the three larger facilities. The downside of this plan is that lots of employees will be let go. What do you need to know about each facility to determine whether the WARN Act requires 60-days notice of the pending foreclosure?

- ***Resource Video***: http://thebusinessprofessor.com/worker-adjustment-and-retraining-act/

8. What is the "Occupational Safety and Health Act"?

Overview

The Occupational Safety and Health Act (OSHA) was passed to regulate safety conditions for employees in the work places of private employers with 20 or more employees. The Occupational Safety and Health Administration is the federal agency charged with overseeing OSHA compliance. The agency develops rules and regulations concerning workplace safety, inspects business premises, fields and investigates complaints of hazardous conditions, and may take administrative and judicial actions for failure to comply.

- *Note*: Certain types of industries are exempt from regulation under OSHA due to regulation under other federal statutes. OSHA also allows for state programs that regulate industries pursuant to OSHA guidelines, which may also cover state or public employees. The state guidelines may be stricter and place additional requirements on the business beyond the OSHA guidelines.

Employer Requirements

The primary employer requirements under OSHA are as follows:

- *Safe Work Environment* - Employers must "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

- *Notification* - Employers must inform employees of certain potential dangers of the workplace to which they are exposed.

- *Right to Complain* - Employees may report or file a complaint with OSHA regarding any non-compliance with OSHA provisions.

- *Retaliation* - Employers cannot retaliate against employees for exercising their rights or protections under OSHA.

Enforcement

Employees may file an OSHA complaint against the employer. Complaints alleging an imminent danger in the workplace are likely to result in an OSHA inspection. If there are issues of retaliation for filing an OSHA complaint, employees must file a retaliation complaint within 30 days of the violation. In the event of any OSHA violations, the OSHA inspector may refer the matter to the Department of Labor to investigate and potentially file suit against the employer. Employees cannot bring an action directly against the employer under OSHA.

- ***Discussion***: Why do you think the Federal Government passed health and safety regulations for private company workers? Do you think these regulations are necessary? Why or why not? Do you believe the employee protections are sufficient? Why or why not? Should an employee be able to bring a private OSHA compliance action? Why or why not?

- ***Practice Question***: ABC Corp manufactures steel. The manufacturing facility contains smelters that are very hot to the touch and large machines with moving parts. What are the potential OSHA compliance issues ABC Corp may encounter?

- ***Resource Video***: http://thebusinessprofessor.com/occupational-safety-and-health-act/

9. What is the "Employee Retirement Income Security Act"?

Overview

The Employee Retirement Income Security Act (ERISA) was passed to protect employees' rights with regard to pension, retirement, and other benefit plans offered or provided by employers. Portions of the plan are administered by the Department of Labor, the Internal Revenue Service, and the Employee Benefits Security Administration. Important provision of ERISA include:

- *Disclosure and Reporting* - Title I establishes disclosure and reporting requirements for sponsors of pension and benefit plans.

- *Fiduciary Standards* - The Act establishes fiduciary standards for administrators of pension and benefit plans.

- *Insurance Benefits* - Title IV requires certain employers to pay premiums to the Pension Benefit Guaranty Corporation, which is an insurance fund to secure certain retirement benefit plans.

Importantly, ERISA does not require employers to offer any particular benefits or pension plan; rather, it applies the above rules to employers who voluntarily provide such plans to employees.

Types of Pension Plans

There are two basic categories of pension plan covered under ERISA.

- *Defined Benefit Plan* - A defined benefit plan provides recurring payments to an employee upon retirement. The amount of payment is calculated using a formula based upon the years of service and the employee's salary during a specified period prior to retirement. The payments generally continue for the remainder of the employee' s life.

- *Defined Contribution Plan* - A defined contribution plan allows an employee to make contributions to a retirement account. The employer generally matches a portion of these contributions. The fund is invested to allow growth (often on a tax-free basis) until the time of retirement. The employee may then withdraw any amount of the funds at any time. Early withdrawal of retirement funds generally results in a penalty to the employee. The funds are taxed at the employee's marginal tax rate at the time of withdrawal.

Employee Protections & Employer Requirements

The three primary protections afforded employees with defined benefit plans are as follows:

- *Funding* - An employer must adequately fund defined-benefit plans. Employers typically employ the services of actuaries to calculate the required amount of funding to meet future projected pension payment demands.

- *Vesting* - A pension plan must vest ownership in the employee within a specified time. That is, the employee becomes entitled to receive benefits under the pension plan after a specified period. The percentage or rate of benefit entitlement is calculated as a percentage of full benefits based on the period or length of employment.

- *Guarantee* - Employees pay premiums to the Pension Benefit Guaranty Corporation to insure the defined benefit plan against loss.

- ***Discussion***: Why do you think the government heavily regulates retirement accounts or plans and the companies that sponsor them? What are some arguments against this form of regulation? Do you believe these provisions are sufficient to achieve the government objectives? Why or why not?

- ***Practice Question***: ABC Corp decides to offer a retirement plan for its employees. The plan provisions will apply equally to everyone in the company. Can you write a short memo explaining the difference between a defined benefit and defined contribution pension plan? Also, can you explain the primary requirements that the employer must ascertain to protect employee interests in the plan?

- ***Resource Video***: http://thebusinessprofessor.com/employee-retirement-income-security-act-erisa/

10. What is the Consolidated Omnibus Budget Reconciliation Act?

Consolidated Omnibus Budget Reconciliation Act **(**COBRA) was passed to protect employees from the loss of healthcare coverage in certain situations. Specifically, it allows an employee or an employee's dependent who is a beneficiary under an employee's healthcare plan to maintain health coverage when a qualifying event causes a loss of coverage. COBRA applies to employers with 20 or more employees.

- *Note*: Some states have passed "mini-COBRA" statutes to help an employee maintain coverage when the federal law does not apply.

Qualifying Events - A qualifying event is defined as:

- Death of a covered employee;

- Voluntary or involuntary termination, layoff, strike, reduction of hours, etc.;

- Divorce from a defendant beneficiary; or

- Dependent minor reaches an age of non-coverage under the employee's plan.

Situations where an employee remains employed but voluntarily cancels healthcare coverage or when an employee loses coverage for not paying are not qualifying events.

Period of Employee Protection - COBRA allows the employee to purchase continuation coverage for the following periods:

- Up to 18 months under no extenuating circumstances,
- 29 months if a person is disabled, and
- 36 months in case of divorce or widow(er).

The continued coverage can be equal to the terminated plan or any form of lesser coverage. COBRA, however, does not allow for an increase in coverage.

- ***Discussion***: Why do you think the Federal Government is interested in protecting employee health coverage? How do you feel about additional state regulations in this area? Do you think the list of "qualifying events" is sufficiently broad to achieve these objectives? Why or why not? Is the time period for benefit protection sufficient? Why or why not?
- ***Practice Question***: Marco works for ABC Corp., a large employer in New York state. Marco pays for health coverage for himself and his wife, Julie, under a plan that is sponsored by ABC Corp. After several years of marriage, Marco and Julie decide to divorce. After the divorce, Julie will no longer be an eligible beneficiary on Marco's health plan. What benefits does COBRA offer to Julie?
- ***Resource Video***: http://thebusinessprofessor.com/consolidated-omnibus-budget-reconciliation-act-cobra/

11. What is the "Health Insurance Portability and Accountability Act"?

The Health Insurance Portability and Accountability Act (HIPAA) is the primary law governing the protection of health information by employers and healthcare providers. Notably, it prevents providers of health insurance or group health plans from discriminating against individuals who transfer from one insurance plan or provider to another. If an employee leaves or is discharged from employment, HIPAA allows that employee to enter into a subsequent health plan with a new employer without having any elements of her prior coverage denied for preexisting conditions. The employee, however, must maintain coverage during the period of transition. This is often done by purchasing interim insurance under COBRA. If an employee leaves an employer without continuing insurance from another provider, the new insurer can only exclude pre-existing conditions arising during the previous 12 months (18 months if the employee is a late enrollee). HIPAA also protects the new employees from extensive hikes in premiums. In such a situation, the insurer cannot charge more for adding an individual to the plan because of health status, medical condition or history, genetic information, or disability. The insurer can, however, charge more for the entire plan – which is paid for by the employer or group of insured employees.

- *Note*: The Affordable Care Act in 2014 (ACA) makes numerous changes to the rules regarding insurance and pre-existing conditions. For example, ACA requires all US citizens to purchase insurance either privately or through their employers. Failure to do so results in a fine or tax penalty. As part of this mandate, an insurer cannot deny an individual coverage for pre-existing conditions. These rules provide employees with protection beyond that provided by HIPAA.

- ***Discussion***: Why do you think the Federal Government seeks to regulate health insurers in the provision of health benefits under employee health plans? How do you feel about the extent and nature of protections afforded under

HIPAA and COBRA collectively?

- ***Practice Question***: Ervin is an employee at ABC Corp, which sponsors his individual health plan. Ervin decides to leave ABC Corp and go to work for 123 Corp. Ervin is a diabetic and has suffered numerous ailments related to his medical condition. What do you need to know about Ervin's move from ABC Corp to 123 Corp to determine whether Ervin could be prejudiced by the move?

- ***Resource Video***: http://thebusinessprofessor.com/health-insurance-portability-and-accountability-act-hipaa/

12. What are "Worker's Compensation" laws?

Worker's Compensation laws are either state or federal statutes designed to protect employees and their families from the risks of accidental injury, death, or disease resulting from their employment. It is a form of insurance for the employee that is paid for by the employer. Specifically, if an employee suffers an accidental injury in the course of performance of her work obligations, the administering worker's compensation board or commission will pay the employee a pre-determined percentage of her wages during the period of temporary disability. The governing commission also administers claims and makes determinations as to the validity of claims for injuries allegedly suffered in the course of employment.

Worker's compensation laws protect employers as well as employees. It assures that an employee will be compensated in the event of a work-related injury. This protects the employee from the consequences of working for an insolvent employer that may not be able to continue paying the employee or that may go out of business in the event the employee sues the employer. Worker's compensation payments are generally the exclusive remedy available to the injured employee. That is, the employee cannot sue the employer unless the conduct of the employer that injured the employee was intentional.

- *Note*: The Federal Employee's Compensation Act (FECA) establishes a worker's compensation scheme for federal employees. The FECA program is administered by the Office of Workers' Compensation Programs (OWCP). All states have statutes establishing similar plans and state-run commissions or boards to administer the program. Some states allow employers to self-insure for worker's compensation claims, while other states require employers to make recurring payment to a state-funded, worker's compensation plan. The premiums paid by employers are the funds used to compensate injured employees making worker's compensation claims.

- ***Discussion***: How do you feel about federal and state regulation of injuries employees suffer while on the job? Are these regulations justified? Why or why not? Who enjoys a greater benefit, employees or employers? Why?

- ***Practice Question***: Martha is an employee of ABC Corp. She is walking down the stairs in the corporate office, trips, and breaks her ankle. Because of the nature of her work requires standing and walking, she is unable to work for several weeks. What benefits do worker's compensation laws provide to her and her employer? What are the disadvantages to Martha?

- ***Resource Video***: http://thebusinessprofessor.com/workers-compensation-laws/

13. What are the "employee verification laws"?

The primary employment law concerning employee verification is the Immigration Reform and Control Act of 1986 (IRCA). The IRCA requires that all employers complete and retain Form I-9 Employment Eligibility Verification forms for each individual they hire in the US. These forms seek to verify that individuals are legally permitted to hold employment within the United States based upon their citizenship or immigration status. Generally, an employee must be a citizen, lawful permanent resident, or holder of a work visa to qualify to hold employment. The employer is required to examine the employment eligibility and examine the documents an employee presents to determine whether the document(s) reasonably appear to be genuine. The employer must retain these forms and information for 3 years after the date of hire or for one year after employment is terminated, whichever is later.

- *Note*: The new, federal E-verify program makes the I-9 employee verification process easier. An employer can enter an employee's pertinent information and receive verification of employment eligibility.

- ***Discussion***: How do you feel about these federal regulations require verification of employment eligibility? Who or what is the government attempting to deter with this regulation? Do you believe these regulations are effective? Why or why not?

- ***Practice Question***: Gary is from Russia and recently moved to the United States to attend school. After graduating, he wants to remain in the United States and find employment. He approaches ABC Corp about a posted job. What procedure will ABC Corp undertake in verifying that Gary may legally work in the country?

- ***Resource Video***: http://thebusinessprofessor.com/employment-verification-laws/

14. What "worker privacy laws" apply to the workplace?

Two primary federal acts provide for rights of privacy of employees with regard to their personal communications.

- *Electronic Communication Privacy Act* (ECPA) - The ECPA prohibits the recording or monitoring of employee's private conversations without the employee's knowledge. That is, an employee has an expectation of privacy with regard to her personal communications in the workplace. As such, an employer cannot infringe upon an employee's privacy by monitoring those communications. There are, however, several glaring exceptions to this rule.

    - *Business Equipment* - An employee has no right to privacy when employing the employer's equipment to communicate.

        - *Example*: An employer can monitor employee communications, such as emails, chat logs, search history, etc., if done on a business computer, phone, copier, etc.

    - *Security* - An employer may undertake reasonable monitoring of employee conversations if done for purposes of security or operational quality. The best manner to comply with this law is to disclose to employees any monitoring of communications.

        - *Example* - An employer may have surveillance cameras in the workplace, but the ability to record audio is limited.

- *Employee Polygraph Protection Act* (EPPA) - The EPPA prohibits private employers from using a polygraph while screening job applicants. That is, an employee or prospective employee cannot be compelled to submit to a polygraph as a condition of employment. There are certain exceptions for current employees who may be the subject of inquiry or personnel in sensitive industries.

    - *Example*: In some instances, private security firms and firms that manufacture or sell controlled substances may subject employees or applicants to polygraph examination based upon the sensitive nature of the position.

- *Drug Testing* - Some states place limits on the ability of an employer to conduct drug tests of employees. These laws generally do not apply to job applicants.

- ***Discussion***: How do you feel about the federal or state governments regulating the ability of private businesses to infringe upon the privacy of workers? Are these provisions too restrictive or not protective enough of employees? Why? Do you believe that these laws accomplish the underlying objectives?

- ***Practice Question***: Erin is applying to work as a government contractor for Halliburton oil consulting. This position will require her to embed in US military units to negotiate oil contracts in war-torn, Middle-Eastern countries. Does Halliburton have the ability to require Erin to submit to a polygraph during the application process or once she is an employee?

- ***Resource Video***: http://thebusinessprofessor.com/workplace-privacy-laws/

LABOR RELATIONS AND LAWS

15. What are "labor laws"?

Labor laws control the relationship between employers and employees with regard to such things as benefits, obligations, and bargaining rights. Labor law is generally grouped together with all employment laws, but it is frequently used to refer to the group of laws affecting collective bargaining rights of and unionization by employees. Numerous federal and state laws govern labor relations. There are also specific laws designated to govern the collective bargaining and unionization rights of public sector employees of the federal and state governments.

- ***Discussion***: Why do you think state and federal governments are concerned with the rights of employees to organize and collectively bargain with employers? What are the arguments for and against regulating this sort of activity?

- ***Practice Question***: What is the difference between employment laws and labor laws?

- ***Resource Video***: http://thebusinessprofessor.com/what-are-labor-laws-2/

16. What are the major federal labor laws?

- *Norris-LaGuardia Act* - This law prevents courts from issuing injunctions (stop orders) to individuals or groups of striking employees.
- *National Labor Relations Act* (or *Wagner Act*) - This law takes affirmative steps to allow unionization of employees.
- *Taft- Hartley Act* - This law regulates a wide range of employer-employee conduct and is administered by the National Labor Relations Board.
- *Labor Management Reporting and Disclosure Act* - This law took steps to protect the rights of union members with regard to union actions.

As stated above, states frequently pass laws that govern labor relations between employers and employees. These laws cannot conflict with federal law, but they may regulate labor relations in a way that is more restrictive than federal law.

- ***Discussion***: What do you notice about the evolution of labor laws from the simply descriptions above? Why do you think the legal approach to labor relations has taken this course?

17. What is the "Norris-LaGuardia Act"?

The Norris-LaGuardia Act of 1932 was the earliest federal law broadly protecting the rights of employees to organize and bargain collectively. Section 2 states the Act's purpose is to protect the individual worker's right to organize. More specifically, the Act prohibits certain practices by federal courts with regard to collective bargaining rights. Early in the development of labor-relations law, courts would issue injunctions (orders to stop doing an activity) against individuals and collective groups of employees that prohibited certain collective bargaining practices, such as picketing or striking. Individuals or groups who engaged in these practices could be arrested and fined for contempt of a court order. In response to this judicial activity, Section 4 of the Act limited the ability of a federal court from enjoining the following activity:

- striking or discontinuing work in protest;
- unionizing, organizing, or becoming a members of a group dedicated to collective labor relations;
- receiving or issuing unemployment benefits or pay as part of a strike;
- offering legal assistance to those involved in a labor dispute (including court representation);
- picketing or other public displays support or dissension for labor practices (except as where such publicity executes fraud on the public); and
- assembling privately or publicly (when done peacefully).

Section 7 of the Act outlined the specific procedures that a federal court must follow when issuing an injunction (or a temporary restraining order) prohibiting any of the above labor practices. Basically, the court may issue a temporary

restraining order for a limited number of days. The court must then hold a hearing during which each party (labor and employer) can present evidence as to why the conduct at issue should be allowed or enjoined. This procedure is in line with the rules of civil procedure governing temporary restraining orders in federal and state courts. The limits placed on the ability of employers to request such injunctions in federal court had the effect of limiting the ability of employers to thwart collective bargaining practices through the court.

- *Note:* Employers can, however, still bring actions seeking injunctions in state courts. Also, federal common law allows the employer to seek injunctions in federal courts if a collective bargaining agreement between employers and the organized labor allows for a grievance procedure through arbitration.

- ***Discussion***: Do you think the Federal Government was justified in regulating the practice of granting injunctions against collective bargaining practices? Why or why not? Do the regulations go far enough in protecting employees? Why or why not? Does the ability of state courts to hear an injunction request thwart the intent behind the federal law? Should a contract arbitration clause in a collective bargaining agreement between employer and union or organized labor affect the ability of a court to hear an injunction against the above-referenced activities? Why or why not?

- ***Practice Question***: Donna is an employee of ABC Corp and president of the employee union. The union is in a dispute with ABC Corp and has decided to stage a picket and protest. What right does ABC have to seek an legal order (injunction) against the planned picket and demonstration?

- ***Resource Video***: http://thebusinessprofessor.com/labor-union-laws-norris-laguardia-act/

18. What is the "National Labor Relations Act"?

The National Labor Relations Act of 1935 **(**NLRA), also known as the Wagner Act, was passed in 1935 to strengthen the protections afforded private-sector employees to organize or bargain collectively. The fundamental premise behind the Norris-LaGuardia Act was to allow employers and labor organizations to work out their disputes through negotiation and existing legal channels. The NLRA adopted the principle that organized labor groups could not successfully protect its interest in conflicts with employers without additional government protections. The major provisions of the NLRA protecting labor are as follows:

- *Section 7*: "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Under this provision, an employee is allowed to undertake a boycott if:
    - there is a labor dispute between employees and employer that is made public, and
    - the boycott does not disparage the employer's product or service.
- *Section 8(a)*: Provides numerous limitations on an employer's ability to thwart collective bargaining or worker organization efforts. The relevant subsections are as follows:
    - Subsection (1) prohibits a number of practices by employers designed to interfere with employees

exercising their Section 7 rights.

- Subsection (2) prohibits companies from forming unions among themselves.
- Subsection (3) prohibits an employer from discriminating against employees for taking part in Section 7 protected activity.
- Subsection (5) prohibits an employer from refusing to recognize and negotiate through an organized group's duly appointed representative.

The provisions of the NLRA are administered by the National Labor Relations Board (NLRB). Employees alleging that their rights under the NLRA are violated by their employer may file an action with the NLRB within 6 months of the violation. Unions may file complaints pursuant to section 8(a)(5). The complaint must explain the alleged discriminatory conduct and how it violates rights protected by the NLRA. If the NLRB believes there is a violation, it will issue a complaint against the employer. The matter will then go before an administrative law judge for resolution.

- ***Discussion***: What do you think the Federal Government was attempting to accomplish in passing the NLRA? Why do you think the NLRA vested regulatory authority to oversee the Act in the NLRB? What do you think is the significance of the specific employer activity prohibited under the NLRA?
- ***Practice Question***: ABC Corp is a large corporation with lots of employees. In recent months, there has been lots of rumors that a significant number of employees are disgruntled with work condition and are considering forming a union. ABC wants to fight the unionization of the employees for a number of reasons. ABC asks your advice on what conduct is prohibited in attempting to dissuade unionization. Can you explain to ABC the prohibited practices?
- ***Resource Video***: http://thebusinessprofessor.com/national-labor-relations-act-of-1935/

19. What is the "Taft-Hartley Act"?

The Taft-Hartley Act of 1947 is a group of amendments to the NLRA. Since the passage of these amendments, the NLRA is commonly known as the Labor Management Relations Act (LMRA). Though the name is modified, the provisions of the NLRA make up the core of the LMRA, which is still administered by the NLRB. The major additions of the Taft-Hartley Act include:

- *Right to Work Laws* - Perhaps most notable addition of the Taft Hartley Act was Section 14(b). This provision allows states to pass laws prohibiting mandatory membership in a union or mandatory union dues for an employee. These state laws are known as "right-to-work" laws. These statutes are a huge detriment to unions, which depend on employee dues. Approximately 25 states have passed these types of laws.
- *Unfair Discharge* - The Taft-Hartley Act added Section 8(b) to prohibit additional unfair labor practices by employers and employees. Section 8(b)(2) prohibited union employees from causing an employee to be fired for any union-related reason.
- *Employer Protections* - Many of the provisions of the Taft-Hartley Act offer protections to employers, as well as

employees. Notably, Section 8(b)(7) prohibits employees of one company from picketing on behalf of the employees of another company (known as a "secondary boycott"). Another example is Section 301, which recognizes a collective bargaining agreement as a valid contract. Also, employers may sue a unionized group for failure to comply with the terms of a previously executed agreement. So, if an agreement contains provisions prescribing a procedure for dealing with disputes (such as an arbitration clause) or strikes in violation of a no-strike clause, the employer may seek an injunction against the strike and recover any monetary damages suffered as a result.

- ***Discussion***: Do you notice a different tone and purpose behind the Taft-Hartley amendments in comparison to the objectives of the NLRA? Why do you think the Federal Government took these steps to curtail the protections granted organized labor in existing law?

- ***Practice Question***: State A is concerned that union activity is likely to cause large corporations that resent union activity to locate in other states. State A passes a "right-to-work" law that prohibits unions from mandating all corporate employees pay union dues. ABC Corp is located in State A and has an active union. ABC is concerned that the union is unduly pressuring employees to join the union, pay union dues, and are threatening negative actions if the employee fails to comply. What are the ABC and employee rights in this situation?

- ***Resource Video***: http://thebusinessprofessor.com/labor-management-relations-act-taft-hartley-act/

20. What is the "Labor Management Reporting and Disclosure Act"?

The Labor Management Reporting and Disclosure Act of 1959 (LMRDA), also known as the Landrum-Griffin Act, was passed to provide greater protections to individual union members. The prominent provisions of the LMRDA are as follows:

- *Section 101(a)(1)* - This provision allows union members the right to vote for union representatives, to nominate candidates, and to take part in union meetings. These rights are "subject to reasonable rules and regulations in such organization's constitution and bylaws." Depending upon what the union constitution provides for member rights, general members must have equal rights. If, however, the constitution withholds specific authority to a group or board of individuals, the Act does not grant this right or authority to all members.

- *Section 101(a)(2)* - This provision protects the right of each member to meet with or assemble with any other or all members of the union. It also protects freedom of expression (including criticism or dissension) with regard to union activity.

- *Section 101(a)(3)* - This provision protects union members from being subject to raises in union dues without first going through established procedures.

- *Section 101(a)(4)* - This provision protects union members from retribution or discharge for bringing suit against the union or any of its members. The member must generally follow any internal or administrative procedures in place to resolve union disputes prior to filing suit.

- *Section 101(a)(5)* - This provision provides due process rights for union members in disciplinary actions. Except for instances of non-payment of dues, members cannot be subject to disciplinary action by the union without being given notice of the charged misconduct, a reasonable time to prepare for the proceeding, and a formal

hearing before the union's board or adjudicative body.

- *Title IV* - Title IV of the Act places requirements on union elections. Similar to corporate board procedures, it allows candidates for election the right to inspect certain documents, to obtain membership lists, and the right to campaign or advertise equally in union newsletters. Failure to follow these rules can cause the DOL to invalidate an election.

- *Title V* - Title V of the Act places fiduciary standards upon union officers. Particularly, officers must avoid self-interested transactions at the expense of the union and report any dealings (such as financial expenditures) to the members.

The LMRA allows union members to bring an action in federal court for any violations of these provisions. This is subject to any requirements in the constitution to first pursue administrative remedies for disputes.

- ***Discussion***: What do you think was the Federal Government's purpose in passing greater protections for individual union members as against the union organization? Do you think these provisions are warranted or effective? Can you think of any other protections that union members should be afforded as part of their union membership?

- ***Practice Question***: William is an employee of ABC Corp and a member of the worker's union. He has been very outspoken against the union's stance on new hiring salaries. William believes that the salary system should be more tiered in favor of experienced employees as apposed to affording new employees such extensive benefits. Is William protected if the union (or its members) takes any negative actions against him for his position?

- ***Resource Video***: http://thebusinessprofessor.com/labor-management-reporting-and-disclosure-act/