Legal Rights and Interests in the Workplace

Statutory Supplement and Materials
Legal Rights and Interests in the Workplace

Statutory Supplement and Materials

Clyde W. Summers
Jefferson B. Fordham
Professor of Law, Emeritus
University of Pennsylvania

Kenneth G. Dau-Schmidt
Willard and Margaret Carr
Professor of Labor and Employment Law
Indiana University-Bloomington

Alan Hyde
Professor of Law
and Sidney Reitman Scholar
Rutgers University-Newark

Carolina Academic Press
Durham, North Carolina
Contents

Norris-LaGuardia Act of 1932 3
Sec. 1. (§ 101) Issuance of restraining orders and injunctions; limitation; public policy 3
Sec. 2. (§ 102) Public policy in labor matters declared 3
Sec 3 (§ 103) Nonenforceability of undertakings in conflict with public policy; “yellow dog” contracts 3
Sec. 4. (§ 104) Enumeration of specific acts not subject to restraining orders or injunctions 4
Sec. 5. (§ 105) Doing in concert of certain acts as constituting unlawful combination or conspiracy subjecting person to injunctive relief 4
Sec. 6. (§ 106) Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents 4
Sec. 7. (§ 107) Issuance of injunctions in labor disputes; hearing; findings of court; notice; temporary restraining order; undertakings 5
Sec. 8. (§ 108) Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief 6
Sec. 9. (§ 109) Granting of restraining order or injunction as dependent on previous findings of fact; limitation on prohibitions included in restraining orders and injunctions 6
Sec. 10. (§ 110) Review by Court of Appeals of issuance or denial of temporary injunctions; record 6
Sec. 11. and Sec. 12 (§ 111 and § 112) Repealed June 25, 1948 6
Sec. 13. (§ 113) Definitions of terms and words used in chapter 6
Sec. 14. (§ 114) Separability of provisions 7
Sec. 15. (§ 115) Repeal of conflicting Acts 7

National Labor Relations (Wagner) Act of 1935 8
§ 1. (§ 151) Findings and Policies 8
§ 2. (§ 152) Definitions 9
§ 3. (§ 153) The National Labor Relations Board 10
§ 4. (§ 154) The National Labor Relations Board 11
§ 5. (§ 155) Principal Office of the Board 12
§ 6. (§ 156) Rules and Regulations 12
§ 7. (§ 157) Rights of Employees 12
§ 8. (§ 158) Unfair Labor Practices 12
§ 9. (§ 159) Representatives and Elections 17
§ 10. (§ 160) Prevention of Unfair Labor Practices 19
vi CONTENTS

§ 11. (§ 161) Investigatory Powers 23
§ 12. (§ 162) Offenses and Penalties 24
§ 13. (§ 163) Limitations 25
§ 15. (§ 165) Conflict of Laws 25
§ 16. (§ 166) Separability 25
§ 17. (§ 167) Short Title 25
§ 18. (§ 168) Validation of Certificates and other Board Actions 25
§ 19. (§ 169) Employees with Religious Convictions 26

Labor Management Relations (Taft-Hartley) Act of 1947 27
§ 1. (§ 141) Short Title and Declaration of Policy 27
Title I—National Labor Relations Act (49 Stat. 449 (1935)) 27
Title II—Conciliation of Labor Disputes in Industries
Affecting Commerce; National Emergencies 27
§ 201. (29 U.S.C. § 171)  27
§ 202. (§ 172)  28
§ 203. (§ 173) Functions of the Service 28
§ 204. (§ 174)  29
§ 205. (§ 175)  30
§ 205A. (§ 175a) Assistance to Plant, Area, and Industrywide Labor
Management Committees 30
§ 206. (§ 176) National Emergencies 31
§ 207. (§ 177)  31
§ 208. (§ 178)  31
§ 209. (§ 179)  32
§ 210. (§ 180)  32
§ 211. (§ 181) Compilation of Collective-Bargaining Agreements, etc. 32
§ 212. (§ 182) Exemption of Railway Labor Act 32
§ 213. (§ 183) Conciliation of Labor Disputes in the Health Care Industry 33
Title III: Suits by and against Labor Organizations 33
§ 301. (§ 185) Suits by and against Labor Organizations 33
§ 302. (§ 186) — Restrictions on Payments to Employee Representatives 34
§ 303. (§ 187) Boycotts and Other Unlawful Combinations 37
§ 304. (2 U.S.C. § 441b) Contributions or Expenditures by National
Banks, Corporations, or Labor Organizations 37
Title IV—Creation of Joint Committee to Study and Report on Basic
Problems Affecting Friendly Labor Relations and Productivity 40
Title V 40
§ 501. (§ 142) Definitions 40
§ 502. (§ 143) Saving Provision 40
§ 503. (§ 144) Separability 40

Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959 41
Section 2 (29 U.S.C. § 401) Congressional declaration of findings, purposes, and policy 41
Section 3 (§402) Definitions 42
TITLE 1—Bill of Rights of Members of Labor Organizations 44
Section 101 (29 USC 411) 44
CONTENTS

Section 102 (412) Civil action for infringement of rights; jurisdiction 45
Section 103 (413) Retention of existing rights of members 45
Section 104 (414) Right to copies of collective bargaining agreements 45
Section 105 (415) Information to members of provisions of chapter 45

Title II — Reporting by Labor Organizations, Officers and Employees of Labor Organizations, and Employers 46
Section 201 (431) Report of labor organizations 46
Section 202 (§ 432) Report of officers and employees of labor organizations 47
Section 203 (433) Report of employers 48
Section 204 (§ 434) Exemption of attorney-client communications 50
Section 205 (§ 435) Reports and documents as public information 50
Section 206 (§ 436) — Retention of records 50
Section 207 (§ 437) Time for making reports 51
Section 208 (§ 438) Rules and regulations 51
Section 209 (§ 439) Criminal provisions 51
Section 210 (§ 440) — Civil enforcement 51
Section 211 (§ 441) — Surety company reports 52

Title III — Trusteeships 52
Sec. 301 (29 USC 461) Reports 52
Section 302 (§ 462) Purposes for establishment of trusteeship 53
Section 303 (§ 463) — Unlawful acts relating to labor organization under trusteeship 53

Section 304 (§ 464) Civil action for enforcement 53
Section 305 (§ 465) Report to Congress 54
Section 306 (§ 466) Additional rights and remedies 54

Title IV — Elections 54
Section 401 (29 U.S.C. 481) Terms of office and election procedures 54
Section 402 (§ 482) — Enforcement 55
Section 403 (§ 483) — Application of other laws 56

Title V — Safeguards for labor organizations 57
Section 501 (29 U.S.C. 501) Fiduciary responsibility of officers of labor organizations 57
Section 502 (§ 502) — Bonding 57
Section 503 (§ 503) — Making of loans 58
Section 504 (504) — Prohibitions against certain persons holding office 58
SEC. 505. Amendment to Section 302, Labor Management Relations Act, 1947 60

TITLE VI — Miscellaneous Provisions 60
Section 601 (29 U.S.C. 521) — Investigations 60
Section 602 (§ 522) — Extortionate picketing 60
Section 603 (§ 523) — Retention of rights under federal and state laws 60
Section 604 (§ 524) — Effect on state laws 61
Section 605 (§ 525) — Service of process 61
Section 606 (§ 526) — Administrative procedures act 61
Section 607 (§ 627) — Other agencies and departments 61
Section 608 (§ 528) — Criminal contempt 61
Section 609 (§ 529) — Prohibition on certain discipline by labor organization 61
CONTENTS

Section 610 (§ 530) — Deprivation of rights by act of violence 62
Section 611 (§ 531) — Separability provisions 62
Title VII — Amendments to the Labor Management Relations Act, 1947, as Amended 62

Title VII of the Civil Rights Act of 1964 63
Sec. 701 [§ 2000e]. Definitions 63
Sec. 702 [§ 2000e-1]. Applicability to foreign and religious employment 65
Sec. 703 [§ 2000e-2]. Unlawful employment practices 65
Sec. 704 [§ 2000e-3]. Other unlawful employment practices 69
Sec. 705 [§ 2000e-4]. Equal employment opportunity commission 69
Sec. 706 [§ 2000e-5]. Enforcement provisions 70
Sec. 707 [§ 2000e-6]. Civil actions by the attorney general 74
Sec. 708 [§ 2000e-7]. Effect on state laws 75
Sec. 709 [§ 2000e-8]. Investigations 75
Sec. 710 [§ 2000e-9]. Conduct of hearings and investigations pursuant to section 161 of Title 29 76
Sec. 711 [§ 2000e-10]. Posting of notices; penalties 77
Sec. 712 [§ 2000e-11]. Veterans’ special rights or preference 77
Sec. 713 [§ 2000e-12]. Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission 77
§ 717 [2000e-16] — Employment by federal government 77

Nineteenth Century Civil Rights Acts (as amended) 80
§ 1981 Equal rights under the law 80
§ 1981A Damages in cases of intentional discrimination in employment 80
§ 1983 Civil action for deprivation of rights 82
§ 1988 Proceedings in vindication of civil rights 82

Rehabilitation Act of 1973 83
§ 7 (§ 705) Definitions 83
§ 501 (§ 791) Employment of individuals with handicaps 84
§ 503 (§ 793) Employment under federal contracts 84
§ 504 (§ 794) Nondiscrimination under federal grants and programs 84
§ 505 (§ 794a) Remedies and attorney’s fees 85

Americans with Disabilities Act of 1990 87
Sec. 2 [§ 12101]. Congressional statement of findings and purposes 87
Sec. 3 [§ 12102]. Definitions 88
Title II — Employment 89
Sec. 101 — [§ 12111]. — Definitions 89
Sec. 102 [§ 12112]. Discrimination 90
Sec. 103 [§ 12113]. Defenses 92
Sec. 104 [§ 12114]. Illegal use of drugs and alcohol 93
Sec. 105 [§ 12115]. Posting notices 94
Sec. 106 [§ 12116]. Regulations 95
Sec. 107 [§ 12117]. Enforcement 95
Title V — Miscellaneous Provisions 95
CONTENTS

Sec. 501 [§ 12201]. Construction 95
Sec. 502 [§ 12202]. State immunity 96
Sec. 505 [§ 12203]. Prohibition against retaliation and coercion 96
Sec. 507 [§ 12205]. Attorney’s fees 96
Sec. 508 [§ 12208]. Transvestites 96
Sec. 510 [§ 12210]. Illegal use of drugs 97
Sec. 511 [§ 12211]. Definitions 97
Sec. 513 [§ 12212]. Alternative means of dispute resolution 97

Age Discrimination in Employment Act of 1967 98
Sec. 2. (§ 621) Congressional statement of findings and purpose 98
Sec. 3. (§ 622) Education and research program; recommendation to Congress 98
Sec. 4 (§ 623) Prohibition of age discrimination 99
Sec. 6 (§ 625) Administration 105
Sec. 7 (§ 626) Recordkeeping investigation, and enforcement 105
Sec. 8 (§ 627) Notices to be posted 107
Sec. 9 (§ 628) Rules and regulations; exemptions 107
Sec. 10 (§ 629) Criminal penalties 107
Sec. 11 (§ 630) Definitions 107
Sec. 12 (§ 631) Age limits 109
Sec. 14 (§ 633) Federal-State relationship 110
Sec. 15 (§ 633a) Nondiscrimination on account of age in federal government employees 110

Occupational Safety and Health Act of 1970 112
§ 2 (§ 651) Congressional statement of findings and declaration of purpose and policy 112
§ 3 (§ 652) Definitions 113
§ 4 (§ 653) Geographic applicability; judicial enforcement; applicability to existing standards; report to congress on duplication and coordination of federal laws; workmen’s compensation law or common law or statutory rights, duties, or liabilities of employers and employees unaffected 114
§ 5 (§ 654) Duties of employers and employees 115
§ 6 (§ 655) Standards 115
§ 7 (§ 656) Administration 119
§ 8 (§ 657) Inspections, investigations, and recordkeeping 120
§ 9 (§ 658) Citations 123
§ 10 (§ 659) Enforcement procedures 123
§ 11 (§ 660) Judicial review 125
§ 12 (§ 661) Occupational safety and health review commission 126
§ 13 (§ 662) Injunction proceedings 128
§ 14 (§ 663) Representation in civil litigation 128
§ 15 (§ 664) Disclosure of trade secrets; protective orders 129
§ 16 (§ 665) Variations, tolerances, and exemptions from required provisions; procedure; duration 129
§ 17 (§ 666) Civil and criminal penalties 129
§ 18 (§ 667) State jurisdiction and plans 131
### Employee Polygraph Protection Act of 1988
- § 2 (§ 2001) Definitions
- § 3 (§ 2002) Prohibitions on lie detector use
- § 4 (§ 2003) Notice of protection
- § 5 (§ 2004) Authority of the Secretary
- § 6 (§ 2005) Enforcement provisions
- § 7 (§ 2006) Exemptions
- § 8 (§ 2007) Restrictions on use of exemptions
- § 9 (§ 2008) Disclosure of information
- § 10 (§ 2009) Effect on other laws and agreements

### Wiretap Act (1968) and Stored Communications Act (1986)
- § 2510. Definitions
- § 2511. Interception and disclosure of wire, oral, or electronic communications prohibited
- § 2520. Recovery of civil damages authorized
- § 2701. Unlawful access to stored communications
- § 2702. Voluntary disclosure of customer communications or records
- § 2707. Civil action
- § 2708. Exclusivity of remedies

### Worker Adjustment and Retraining Notification Act of 1988
- § 2. (§ 2101) Definitions; exclusions from definition of loss of employment
- § 3 (§ 2102) Notice required before plant closings and mass layoffs
- § 4 (§ 2103) Exemptions
- § 5 (§ 2104) Administration and enforcement of requirements
- § 6 (§ 2105) Procedures in addition to other rights of employees
- § 7 (§ 2106) Procedures encouraged where not required
- § 8 (§ 2107) Authority to prescribe regulations
- § 9 (§ 2108) Effect on other laws
- § 10 (§ 2109) Report on employment and international competitiveness

### Model Employment Termination Act
- § 1. Definitions
- § 2. Scope
- § 3. Prohibited terminations
- § 4. Agreements between employer and employee
- § 5. Procedure and limitations
- § 6. Arbitration; Selection and powers of arbitrator; Hearings; Burden of proof
- § 7. Awards
- § 8. Judicial review and enforcement
- § 9. Posting
- § 10. Retaliation prohibited and civil action created
- § 11. Severability clause
- § 12. Effective date
- § 13. Repeals
- § 14. Savings and transitional provisions

APPENDIX
Alternative A 169
SECTION 5. ADMINISTRATIVE PROCEEDINGS 169
SECTION 6. REMEDIES 169
Alternative B 170
SECTION 5. JUDICIAL REMEDIES 170

State Whistleblower Protection Statutes 172
New Jersey Conscientious Employee Protection Act 172
NJ Stat. Ann 34:19-1 to 34:19-8 172
34:19-1. Short title 172
34:19-2. Definitions 172
34:19-3. Employer retaliatory action; protected employee actions 173
34:19-4. Disclosure to public body; requirement of notice and opportunity to correct 173
34:19-5. Violations; civil action 174
34:19-6. Award of attorney’s fees and costs to employer; action without basis in law or fact 174
34:19-7. Informing employees of protections and obligations under act; name of person designated to receive notices 174
34:19-8. Effect of act on rights, privileges, or remedies of employees under other laws, regulations, or agreements 174

California Whistleblower Protections 175
Cal. Lab. Code 1102.5-1106 175
§ 1102.5 Employer prohibition of disclosure of information; Retaliation 175
§ 1102.6. Civil Actions; Burden of proof 175
§ 1102.7. Whistleblower hotline; Confidential information; Office of the attorney general 175
§ 1102.8. Display of employees’ rights and responsibilities 176
§ 1103. Violation; Misdemeanor; Penalty 176
§ 1104. Responsibility of employer for actions of agent 176
§ 1105. Employee’s action for damages 176
§ 1106. Employee 176

State Law Exceptions to the Employment at Will Doctrine 177
Chart A: Public Policy Exceptions to the Employment At Will Doctrine By State 179
Chart B: Generally Contract-Based Exceptions to the Employment At Will Doctrine 194
Chart C: Intentional Infliction of Emotional Distress in Employment At Will 201