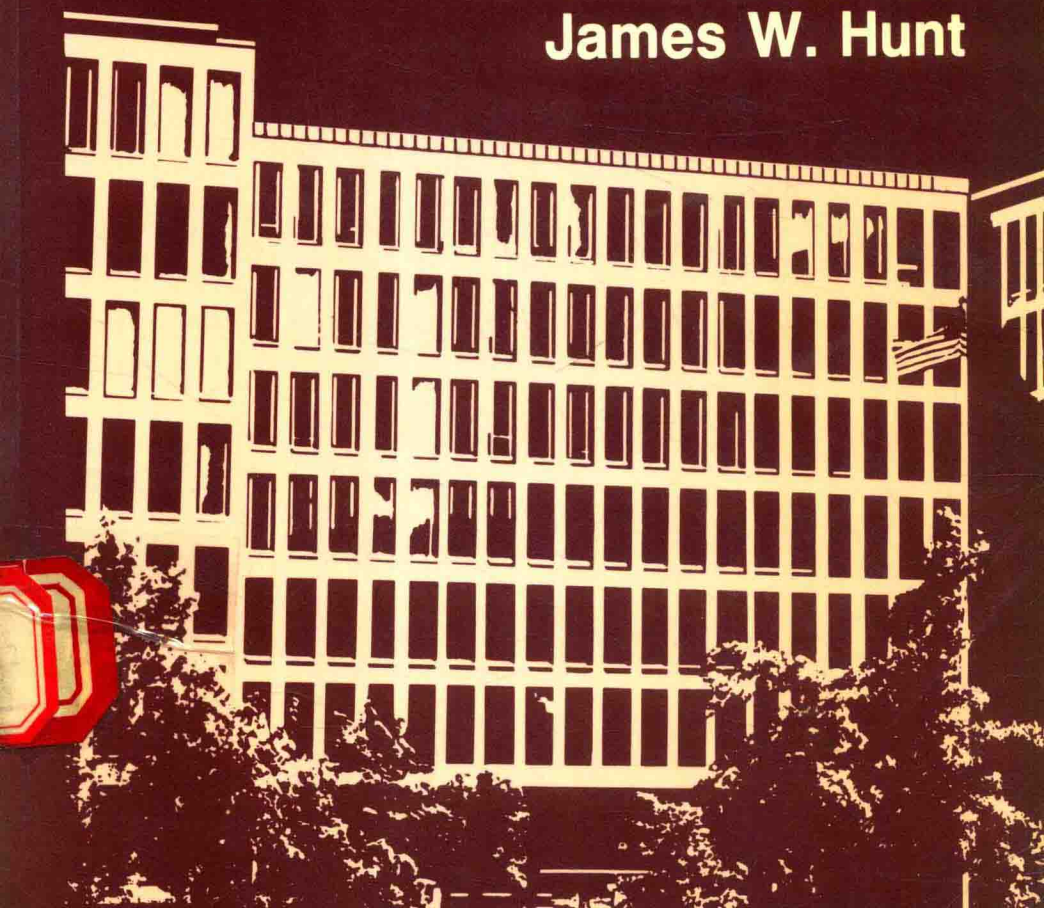

THE LAW OF THE WORKPLACE

Rights of Employers and Employees

Second Edition

James W. Hunt



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The Bureau of National Affairs Inc., Washington, D.C.

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Library of Congress Cataloging in Publication Data

Hunt, James W.

The law of the workplace.

Includes index.

1. Labor laws and legislation—United States.

I. Title.

KF3319.H83 1984

ISBN 0-87179-574-4

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International Standard Book Number: 0-87179-574-4
Printed in the United States of America

INTRODUCTION

More than 100 million Americans work for a living. Some are self-employed, but most work for others in offices, stores, schools, factories, mines, and other facilities.

While their jobs may differ, virtually all workers and their employers are directly affected by the laws that extend to all types of jobs and all aspects of employment and indeed affect most working men and women from the time before they are hired until after they retire.

More specifically, these work-related laws:

- Expand employment opportunities for job seekers through job training programs.
- Provide persons who are out of work with assistance in finding jobs.
- Regulate entry into certain occupations.
- Require nondiscriminatory hiring, pay, and other employment practices.
- Restrict the circumstances in which employees can be fired.
- Allow workers to join or form unions.
- Provide financial assistance to workers who lose their jobs or become disabled.
- Establish minimum wage rates and job safety standards.
- Regulate private pension plans and provide workers with a basic retirement income through Social Security.

Many employers and employees, however, are unfamiliar with the extent to which these laws affect their rights and responsibilities. There is also a lack of a government source for working people to contact for information about the overall scope of the laws and programs that affect them, largely because of the specialization of each of the federal and state agencies involved with employment-related matters.

The purpose of this book is to fill this informational gap for employers and employees by providing them with a summary of current workplace laws, the ways these laws affect them, and the agencies and programs involved.

These laws generally fall into one of two categories. The first covers on-the-job occurrences, such as employment discrimination, union activity, and safety practices.

Laws relating to these matters, and the regulations issued by government agencies, establish ground rules that govern the conduct and practices of employers, employees, and unions in the workplace. They are often enforced as adversary proceedings that start with a person charging an employer or a union with violating a law or regulation, followed by an investigation or hearing by an agency, and then a decision by the agency determining whether or not the alleged violation occurred, with the accused party being ordered to take corrective action if the agency finds that it did engage in prohibited conduct.

The other general category of employment law covers those programs providing services for persons seeking work, or benefits for former job holders, such as training for job seekers, and unemployment and Social Security benefits for the jobless, disabled, or retired worker.

These laws for the most part involve nonadversary proceedings: An individual files a claim or application with an administrative agency which then determines the person's entitlement to the requested service or benefit. Or, as discussed in Chapter 1, the agency's function may simply be one of providing basic information about job opportunities to a job seeker.

This book does not intend to make any claim to answer the vast number of legal questions that can arise relating to a person's job. Competent legal or other professional help should be sought for advice and guidance in specific situations.

THE DEVELOPING LAW OF THE WORKPLACE

Today's far-reaching workplace laws have their origin in federal and state labor laws dating back to the last century.

Indeed, the states, rather than the federal government, were the first to enact labor laws, starting with Massachusetts' 1836 statute regulating child labor. Massachusetts was also the first state to adopt a minimum wage law (1912). Wisconsin also had two "firsts": It was the first state to put into effect a workers' compensation program (1911), and the first to enact an unemployment insurance law (1932).

The federal government began enacting most of its labor laws in the last 50 years. These laws, referred to in this book, are listed below according to the year in which they became law. The title and section numbers of the U.S. Code containing these laws are also noted.

1883 Civil Service Act, 5 U.S.C. §2101

1926 Railway Labor Act, 45 U.S.C. §151

1935 Davis-Bacon Act, 40 U.S.C. §276a

1935 National Labor Relations Act, 29 U.S.C. §151

(amended by the Labor Management Relations Act in 1947)

1936 Social Security Act, 42 U.S.C. §301

1938 Fair Labor Standards Act, 29 U.S.C. §201

(amended by the Equal Pay Act in 1963)

1959 Labor Management Reporting and Disclosure Act, 29 U.S.C. §401

1962 Work Hours and Safety Act, 40 U.S.C. §327

1964 Title VII, 1964 Civil Rights Act, 42 U.S.C. §2000e

1965 McNamara-O'Hara Service Contract Act, 41 U.S.C. §351

1967 Age Discrimination in Employment Act, 29 U.S.C. §621

1970 Occupational Safety and Health Act, 29 U.S.C. §651

1972 Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. §2011

1973 Vocational Rehabilitation Act (handicapped employment amendment), 29 U.S.C. §793

1974 Employee Retirement Income Security Act, 29 U.S.C. §1001

1982 Job Training Partnership Act, U.S.C. §1501

1986 Immigration Reform and Control Act, 8 U.S.C. §1324a

This list, while current, is not complete. The laws of the workplace continue to evolve and develop. Each year federal and state legislators make changes to the laws, ranging from modifications of existing statutes, such as changes in the minimum wage, to the enactment of entirely new laws, such as those regulating smoking in the workplace. Still other areas are being considered by federal and state lawmakers as the subjects of proposed future legislation. Matters under consideration include proposals to allow workers to take extended parental leave and measures requiring mandatory health insurance for all employees. Rulings and decisions by administrative agencies and courts also frequently have a profound impact on the law.

Keeping current with these frequent changes is not always an easy task, but there are various sources available for this purpose. The publisher of this book, The Bureau of National Affairs, is one of several private companies providing up-to-date information on changes in workplace laws by legislators, agencies, and courts.

In addition, an excellent source of information on legislative activity in the states is the *Monthly Labor Review*, a publication of the U.S. Department of Labor. Its annual January issue contains a complete summary of the workplace laws enacted by state legislators in the preceding year. The *Monthly Labor Review* is available in most libraries.

ACRONYMS

AAP	Affirmative Action Program
AFDC	Aid to Families With Dependent Children
AFL-CIO	American Federation of Labor-Congress of Industrial Organizations
ALJ	Administrative Law Judge
BFOQ	Bona Fide Occupational Qualification
CETA	Comprehensive Employment and Training Act
CFR	Code of Federal Regulations
CLEP	College-Level Education Program
DHHS	Department of Health and Human Services
DIB	Disability Insurance Benefits
DOL	Department of Labor
DUA	Disaster Unemployment Assistance
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
EPA	Equal Pay Act
ERISA	Employee Retirement Income Security Act
ESA	Employment Standards Administration
ETA	Employment and Training Administration
FEP	Fair Employment Practices
FICA	Federal Insurance Contribution Act
FLRA	Federal Labor Relations Authority
FLSA	Fair Labor Standards Act
FMCS	Federal Mediation and Conciliation Service
GED	General Education Development
IRA	Individual Retirement Account
JTPA	Job Training Partnership Act
INS	Immigration and Naturalization Service
LMRDA	Labor Management Reporting and Disclosure Act
LMSA	Labor Management Services Administration
MSPB	Merit Systems Protection Board
NLRA	National Labor Relations Act
NLRB	National Labor Relations Board
NMB	National Mediation Board
OFCCP	Office of Federal Contract Compliance Programs
OPM	Office of Personnel Management
OSHA	Occupational Safety and Health Administration

OWCP	Office of Workers' Compensation Programs
RIB	Retirement Insurance Benefits
RIF	Reduction in Force
RLA	Railway Labor Act
SEP	Simplified Employee Pension Plan
SES	Senior Executive Service
SSA	Social Security Administration
SSI	Supplemental Security Income
TAA	Trade Adjustment Assistance Act
UC	Unemployment Compensation
UEP	Unfair Employment Practice
UI	Unemployment Insurance
ULP	Unfair Labor Practice
USES	U.S. Employment Service
WC	Workers' Compensation
WIN	Work Incentive Program

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PROGRAMS FOR JOB SEEKERS

A basic requirement for getting a job is the ability to perform the work required. Although many entry-level positions require only that a person be able to perform simple tasks, greater qualifications are needed to advance to more responsible and better paid positions.

Most job training for these positions is provided by employers to those employees having the aptitude and willingness to do the work. But federal and state governments, often through joint efforts, also offer a variety of programs to equip both job holders and job seekers with the means to qualify for higher level positions.

Job Information Services

Many persons, whether young workers new to the labor market or experienced workers looking for a new line of work, are unfamiliar with the range of available career opportunities that they may be qualified to pursue with the necessary education and training. An information source that can help is the U.S. Department of Labor's *Occupational Outlook Handbook*, which describes different jobs, the education and training requirements needed for these jobs, expected earnings, and career potential in these positions.

The *Handbook* provides detailed information on more than 250 occupations—from production and service jobs to administrative, managerial, and professional positions—and lists the names and addresses of state agencies to contact for information about each state's job situation, as well as the names of public and private organizations covering a wide range of jobs and careers. Suggestions on how to look for a job are also included.

A related Labor Department publication, the *Dictionary of Occupational Titles*, while not providing the comprehensive job descriptions contained in the *Handbook*, does list the nearly 20,000 jobs that exist.

Most public libraries have the *Handbook* and the *Dictionary*. They can also be bought from:

U.S. Superintendent of Documents
Washington, D.C. 20402

U.S. Employment Service

The U.S. Employment Service, a federal-state system of more than 1,700 local Job Service offices nationwide, offers "no fee" assistance to all job seekers and employers who ask for it. Local Job Service offices, through a job matching system that is computerized in many cities, provide up-to-date information on jobs currently in demand, from entry-level positions to technical and professional occupations, and information on where such jobs are located, the training needed, and their rates of pay. In some instances even out-of-state jobs are listed.

The Job Service also helps employers obtain workers for their general work force as well as for jobs requiring special skills and experience. The Job Service is listed in the telephone directory under that name, or as the Employment Security Commission, or Employment Service, depending on what each state calls its service. A Job Service office can also provide information on the training programs referred to in this chapter.

Education Assistance

In today's competitive labor market the lack of a high school diploma or college degree can frustrate the career advancement of many otherwise qualified workers. Therefore, local school systems have developed programs for working adults to give them the opportunity to obtain the formal educational qualifications they lack without spending long hours in the classroom. Some programs, for example, allow adults to earn high school equivalency certificates through the General Educational Development (GED) program, while college credit can be obtained through such systems as the College-Level Education Program (CLEP). More information about these and other programs can be obtained through a local school system or by writing to:

GED Testing Service
One Dupont Circle, N.W.
Washington, D.C. 20036

CLEP College Board
Department C
88 7th Avenue
New York, N.Y. 10019

Apprenticeships

Apprenticeship programs operated under federally approved standards provide combined on-the-job and classroom training to persons learning to perform the work of a highly skilled occupation, such as automotive mechanic, electrician, or carpenter. There are literally hundreds of apprenticeship trades, with the training lasting from one to six years, depending on the trade, until the worker becomes a full-fledged journeyman.

The programs are usually employer-sponsored, with many co-sponsored by labor unions. Qualifications generally require that an applicant be at least 16 years old and have a high school diploma