

■ Lori B. Rassas

EMPLOYMENT LAW

A Guide to Hiring, Managing, and Firing for Employers and Employees

SECOND EDITION



Wolters Kluwer
Law & Business

Employment Law: A Guide to Hiring, Managing, and Firing for Employers and Employees

Second Edition

LORI B. RASSAS



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Employment Law

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In Memory of My Grandparents

Debora and Isak Diamond

Molly and Ben Rassas

And to My Parents

Marge and Aaron Rassas

Who All Said I Could

*** * * * ***

And, a Special Shout-out to My Nieces and Nephew

Danica & Jamie Rosenbloom

Logan & Davis Klinge

Who Love to Pull this Book Off Their Bookshelves

Over and Over and Over and Over Again.

About the Author

Lori B. Rassas, Esq., has more than a decade of experience working on employment and labor issues. She received a LL.M. in Labor and Employment Law from New York University Law School, a J.D. from the George Washington University Law School, and a B.A. from Tufts University. She is also certified as a Senior Professional in Human Resources (SPHR).

Throughout her career, the author has provided extensive legal and human resources guidance and counsel on all phases of the employment process to both employers and employees. She has developed a pragmatic approach to the navigation of employment relationships that is derived from her experience working to resolve complex legal issues that have arisen on both sides of the bargaining table.

Not only does the author's vast practical experience inform this textbook, but her work as an adjunct faculty member also provides additional perspectives. Whether she is teaching healthcare executives at Columbia University's Mailman School of Public Health; aspiring arbitrators, mediators, and human resources professionals at Cornell University's Scheinman Institute on Conflict Resolution; law students at Fordham University School of Law; or college students at Berkeley College, she is always gaining new perspectives on how both employees and employers view and work through employment law issues. The author welcomes such diverse feedback as she is continually thinking about how to make this textbook a relevant tool in helping both parties in an employment relationship make informed workplace decisions.

Preface

At the end of a job interview, a potential employer asks an applicant, “And what starting salary are you looking for?”

The applicant responds, “In the neighborhood of \$150,000 a year, depending on the benefits package.”

The interviewer sits back in her chair a moment, considers the statement, and responds, “What would you say to a package of six weeks’ vacation, 14 paid holidays, fully paid medical benefits, a defined benefit retirement plan equal to 50% of your salary, a corner office, and a company car?”

The applicant stands up from his chair and responds, “Wow! Are you kidding?” And, to that, the potential employer replies, “Yes, but you started it.”

People need to work to live, and yet it is never as simple as performing services in exchange for compensation. The employer-employee relationship is actually incredibly complex, and despite this, employers and employees often enter into working relationships absent a clear understanding of their mutual expectations. Quite often the parties also enter into working relationships without a basic understanding about the laws that govern the creating, maintaining, and ending of those employment relationships. This lack of awareness has the potential to place both parties at a significant disadvantage when discussing employment issues because they will not have an appreciation of their rights and obligations under the law.

Employment Law: A Guide to Hiring, Managing, and Firing for Employers and Employees is designed to address this situation by providing an overview of employment law and identifying the most significant rights and obligations employers and employees have during the key phases of the employment relationship. The textbook begins with a discussion about the prohibition against workplace discrimination, and then tracks the employment process—from job creation, to recruitment, to compensation and benefits, to leave entitlements, and to performance management, all the way to the conclusion of the employment relationship.

I. TEXTBOOK STRUCTURE

This book is divided into four parts, covering workplace discrimination and the hiring, managing, and firing of employees. The information is further divided into 20 chapters, which explain basic legal principles in clear and concise language.

A. Part I, Workplace Discrimination

Part I, Workplace Discrimination, focuses on Title VII, which makes it illegal for employers to discriminate against individuals on the basis of their race, color, religion, sex, national origin, and genetics; the Age Discrimination in Employment Act (ADEA), which makes it illegal for employers to discriminate against individuals who are 40 years of age or older on the basis of their age; and the Americans with Disabilities Act (ADA), which makes it illegal for employers to discriminate against qualified individuals with disabilities and requires employers to provide a disabled job applicant or employee with a reasonable accommodation unless doing so would cause an undue burden. The purpose of this part of the textbook is not to educate litigators or to provide detailed guidance about the mechanics of presenting a case in a judicial forum. Instead, the goal is to alert employers to the types of workplace behavior that may subject them to liability for discriminatory conduct, and to alert applicants and employees to the types of workplace behavior that may infringe upon their rights.

The chapters covering workplace discrimination should be thought of as the umbrella you remember to bring with you to school or work on the days when it never rains. Armed with this basic knowledge about the litigation process, the hope is that you will never be placed in a situation where you have to use it—either by having a need to file a claim alleging discriminatory conduct, or having a need to present a defense to an allegation that an employment decision was based upon improper motivations. If, however, you become a party to a legal claim, you will be a well-informed participant in the process.

B. Part II, Hiring

Part II, Hiring, lays out the components of a nondiscriminatory recruitment and hiring process and provides employers with guidance about soliciting candidates for an open position from a diverse applicant pool, and collecting information (through the use of employment applications and interviews) in a manner to minimize potential claims for workplace discrimination. Both employers and applicants will learn how to distinguish appropriate employer conduct from conduct that suggests an employer used improper motivations as the basis for an adverse employment decision, which could be the basis for the filing of a discrimination claim.

C. Part III, Managing

Part III, Managing, covers issues relating to terms and conditions of employment, focusing on compensation and benefits, leave entitlements, performance management, harassment, and privacy rights. This part includes an extensive discussion about the appropriate use of performance management tools, including probationary periods, progressive discipline policies, and performance evaluations, geared toward minimizing the potential for their use to constitute discriminatory

employer conduct. The balance that must be achieved between the rights of employers to manage their businesses and the rights of employees to be free from employer intrusions, both while at work and also when engaging in conduct outside their regularly scheduled work hours (often within the context of privacy rights), is also discussed in detail.

D. Part IV, Firing

Part IV, Firing, the final part in this textbook, focuses on the ending of employment relationships. It examines the concept of employment at will, which is the legal doctrine that governs most working relationships and provides the parties with the right to terminate their employment relationship for any reason at any time, but that is subject to a number of limitations. There is also a significant discussion about layoffs and the just-cause standard for terminations as well as how employers can minimize the potential for liability once a relationship ends. The significance of separation packages (including the use of knowing and voluntary waivers of employees' rights) and restrictive covenants is also explored.

II. TEXTBOOK RESOURCES

As you move through this book you will find that each of the 20 chapters includes illustrative examples, key terms and definitions, and a number of discussion questions to test students' knowledge of the most significant concepts presented. A comprehensive index and glossary of the key terms can also be found at the end of this book. In addition, there are a number of other available resources.

- The companion website for this textbook at www.aspenparalegaled.com/rassas_employment includes additional resources for students and instructors.
- The textbook comes packaged with four months of prepaid access to Loislaw's online legal research database, at <http://www.loislawschool.com>.
- Blackboard course materials are available to supplement this text. This online courseware is designed to streamline the teaching of the course, providing valuable resources from the book in an accessible electronic format.
- Instructor resources to accompany this text include a comprehensive Instructor's Manual, Test Bank, and PowerPoint slides. All of these materials are available for download from our companion website.

Employment law is a challenging area of law, but it is also an exciting field that has widespread relevance to all individuals who receive compensation in exchange for the providing of a service. There are certainly times when employers and employees have similar interests and truly benefit from each other's success. However, it would be naïve to ignore the reality that there are times when their

interests will diverge. Both parties have a vested interest in possessing a basic understanding of their entitlements and obligations in order to anticipate the types of employment issues that might materialize, expend efforts to resolve them at the earliest stage possible, and be prepared to defend their interests in the absence of a mutually agreeable resolution. This book is designed to be a resource for both parties to an employment relationship who want to obtain a solid foundation of knowledge to further each of these goals.

Acknowledgments

I have always wanted to write a book, and the fact that just a few short years after this book's initial publication there was an interest in a second edition is an incredibly exciting prospect. Just as with the first edition, there were a number of people who provided me with invaluable guidance and support throughout this process. First, I want to thank my family: my parents Marge and Aaron Rassas; Stacey, Jeff, Logan, and Davis Klinge; Jessica, Eric, Danica, and Jamie Rosenbloom; and Melissa Rassas. Each of you has always been incredibly supportive of everything I set out to do and encouraged me to continue to pursue my goals even when others suggested I pursue a different path.

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commitment to making sure I keep everything in perspective. I also have you to thank for the introduction to David Herzig, who became the executive editor for this book. (By the way, yes, a promise is a promise, and I am confident that some day the introduction we discussed will materialize.)

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I also want to pay a special tribute to my friend Jen Giegerich, who lost her courageous battle with cystic fibrosis just a few short years ago. Jen was not only a treasured daughter, sister, and friend, but also a passionate teacher who inspired each of the students who were lucky enough to be assigned to her class. Her unwavering dedication and passion for teaching was known to everyone who came in contact with her and particularly to her colleagues and students at Accomsett Elementary School located in Smithtown, New York, which renamed a fifth-grade hallway the "Miss G Wing" in her memory. Jen, I will always remember how incredibly supportive you were of my writing of this book, and I am just sorry you never had the chance to finish your own.

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