

Labor Law

A Basic Guide to the
National Labor Relations Act



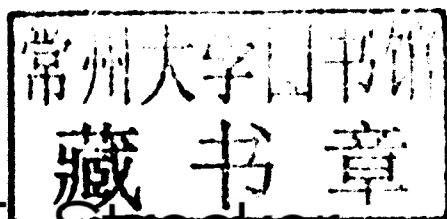
David E. Strecker



CRC Press
Taylor & Francis Group

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Taylor & Francis Group
Boca Raton London New York

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This book, *Labor Law: A Basic Guide to the National Labor Relations Act*, is designed for employers, students, and others interested in labor law. The information presented should prove extremely useful in understanding the issues raised and their legal context. This book is not, however, a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues which invariably arise during any employment-related dispute. Although we have attempted to cover the major developments in the National Labor Relations Act, this book is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.

CRC Press

Taylor & Francis Group

6000 Broken Sound Parkway NW, Suite 300

Boca Raton, FL 33487-2742

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CRC Press is an imprint of Taylor & Francis Group, an Informa business

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Printed in the United States of America on acid-free paper

10 9 8 7 6 5 4 3 2 1

International Standard Book Number: 978-1-4398-5594-2 (Hardback)

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Library of Congress Cataloging-in-Publication Data

Strecker, David E.

Labor law : a basic guide to the National Labor Relations Act / author, David E. Strecker.

p. cm.

Includes bibliographical references and index.

ISBN 978-1-4398-5594-2

1. Labor laws and legislation--United States. 2. Collective bargaining--Law and legislation--United States. 3. Labor unions--Law and legislation--United States. I. Title.

KF3369.S77 2011

344.7301--dc22

2010036241

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A Basic Guide to the
National Labor Relations Act

For Katherine

About the Author



David E. Strecker, JD, has been practicing labor and employment law for over thirty years. He is admitted to practice in New York and Oklahoma and represents clients from all sectors of industry and business. His legal experience encompasses the full range of employment law, including labor relations, employment discrimination, wrongful termination, workplace safety, wage/hour matters, policy/handbook preparation, employment contracts, noncompete covenants, and employee benefits. He is an experienced advocate before state and federal courts and administrative agencies.

Strecker is a regular speaker at Continuing Legal Education (CLE) seminars and has published several articles on labor and employment law issues. He teaches labor relations at Oklahoma State University in Stillwater, Oklahoma and negotiation and management skills at the University of Tulsa in Tulsa, Oklahoma. Strecker graduated from Cornell University in Ithaca, New York with a Juris Doctorate (cum laude) and a master's degree in Industrial and Labor Relations. He received his undergraduate degree (magna cum laude) from Westminster College in Fulton, Missouri. He is a member of the American Bar Association and the Oklahoma Bar Association. He is also a member of the Society for Human Resource Management. His name appears in *The Best Lawyers in America* and *Who's Who in America*. He is a lieutenant colonel (retired) in the U.S. Army Judge Advocate General's Corps.

Preface

This book is about labor law. Whether you are a supervisor, a business owner, or a student, *Labor Law: A Basic Guide to the National Labor Relations Act* will help you understand one of the most important aspects of the workplace: the laws and rules governing how one treats employees. In particular, the area of labor law is crucial to understand. It is often counter-intuitive. Your common sense will not always provide the right answer.

To many, labor law is a difficult subject: intimidating to some and misunderstood by others. The goal of this book is to give you a solid, basic understanding of this area of the law. It will not make you an expert, but it will educate you enough to let you manage with the confidence that comes from knowing the rights and obligations of employees, the company, and supervisors.

Labor and employment law has assumed an increasingly important role in our society. New laws, such as the Family and Medical Leave Act, the Americans with Disabilities Act, and various state enactments, create new rights and problems. Older laws, such as the Fair Labor Standards Act, have been recently amended or been supplemented by new regulations. Court cases constantly expand or limit the scope of the laws and attempt to define ambiguous parts of these laws. The trend of employment law in the past sixty-five years has generally been to give employees greater rights and limit those of the employers. Gone are the days when the boss could fire an employee and have absolutely no fear of a lawsuit.

Yet, employers still enjoy tremendous power over the workplace, unlike in some other industrialized nations. The author firmly believes, after over thirty years of practicing in this field, that employers usually can accomplish most of their employee relations goals lawfully, and successfully manage this aspect of their business more or less as they would like. The key to this is making labor and employment laws work for you rather than viewing it as an obstacle.

With the resurgence of labor unions, this often neglected subject of manager education deserves to be studied anew. Unions have developed new tools of organizing and are prepared to expand to industries and workers not heretofore targeted by labor. Unions have become sophisticated and, quite frankly, have a lot to offer employees in many—although certainly not all—situations. Some studies show

that almost 60 percent of American workers want a union to represent them, but are fearful of confrontations with management if they take action to organize.

Although most of my experience has been representing management in this area, I have had the opportunity to develop some different perspectives. I have worked in factories, retail stores, and other employments. I have been a union member. I have worked in a human resources department of a large employer who had employees represented by unions, and I have a master's degree in labor relations as well as a law degree. Both in my military and civilian careers, I have been a supervisor myself. I have seen the workplace from almost every angle. I believe I can help you understand labor law.

In *Labor Law: A Basic Guide to the National Labor Relations Act*, "labor law" will be used to designate those laws governing the relationship between a company and unions. "Employment law" will generally refer to everything else, such as discrimination laws, wage/hour laws, safety laws, etc. This book deals only with private sector labor law arising under the National Labor Relations Act. It does not deal with public sector labor law or the Railway Labor Act.

This book is primarily an introduction to labor law. Nevertheless, we will discuss some aspects of employment law and also give a brief introduction to the legal system itself.

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Chapter 1

Introduction to Labor and Employment Law

The Importance of Labor and Employment Law in Our Society

Once upon a time, the owners of a business were like gods in the sense that they had total authority over all that took place within the confines of their establishments. Employees were no exception to this rule, and they often suffered at the hands of supervisors who were insensitive, if not outright hostile, to the needs and feelings of their subordinates. Hours of work, pay, safety, time off, and other terms and conditions of employment were dictated by the company. Employees could be discriminated against or refused employment altogether because of sex, race, religion, or age. Any employee who was a union member (or thought to be) would be terminated. Job classifications and lines of promotion were often segregated by race or sex. Safety rules and protective equipment were virtually unheard of and many employees suffered horrible injuries or death with little or no compensation to them or their families. Most employers had absolutely no sympathy for an employee's family obligations and time off was a rare commodity. There were no human resource departments and no employee assistance programs. Employees who complained about any of the above could be fired at will.

Things are different now. Largely as the result of the abuses summarized above, today's employers are confronted with a vast quilt-work of laws regulating how they treat their employees.

Probably the two most important sets of laws are (1) those dealing with discrimination in the workplace and (2) those dealing with labor union–management relations. Antidiscrimination laws have opened up workplace opportunities and resulted in a more diverse workforce.

Labor relations laws have contributed to industrial peace and largely freed our economy from crippling strikes and labor turmoil. A lot of people complain about these laws, claiming they interfere with a company's right to run its business as it pleases. It is widely recognized, however, that these laws have done our society a lot of good. They are not going away. Regardless of how you feel about these and other employment laws, it is best to learn them—and learn to live with them.

From an employee's viewpoint, many of the workplace laws that exist today are taken for granted. All employees expect, for instance, that they will receive time and one half their regular rate for hours worked in excess of forty per week. The right to join a union, although controversial in some quarters, is largely accepted and taken as a given. The right to apply for a job regardless of the color of your skin is now well entrenched in our society. These and other rights have come to be an integral part of the fabric of society. You, as a supervisor, should not expect to be commended for complying with these laws or applauded by your employees. Compliance is expected. This is how central labor and employment law have become in our society.

Think of how the workplace would operate (or would not operate) if these laws were not in place. Initially, you might say that it would be a good thing: that you would not be shackled with regulations and rules. On the other hand, consider what kind of workplace we would have if employees could be trampled on at leisure or where personal bias and prejudice could run rampant. You might not be in the job you are in now if such were the case.

Think also of how many deserving, talented people might not get to demonstrate their talents because of their sex or skin color. Consider, from the employer's point of view, how many good employees would not be able to advance (or never would have been hired) and thus deprive the employer of their talent and energy.

Think of how you could run your department, plant, or business if your employees could walk out on strike any time they wanted to do so. What if labor unions could deny members even the most basic of rights to elect officers or approve dues?

The upshot of all of this is that labor and employment law (along with other laws) help our economy run smoothly. If you do not believe me, look at the labor turmoil seen in other countries in the past few years that do not have a similar legal system.

In sum, by regulating the workplace and those in it, labor and employment law helps our economy function and, in turn, this helps our society and its members enjoy the fruits of our labors.

The Importance of Labor and Employment Law in Running a Business

Most people look at labor and employment laws (or any laws for that matter) as impediments to running a business. To some extent, this is true. Nevertheless, much of what the law requires us to do is to treat people fairly. Most supervisors want to do this anyway. It is in the nature of most people to be fair (or to think they are being fair).

In my years of practice, however, I have not encountered a law that prevents a business from being run in an efficient manner. To be sure, sometimes we must accommodate the law in our business planning, but we should not confuse this with inefficiency. If we correctly factor the law into our planning operations, the company will be money ahead. Why do I say this? Because the law will not go away. If we operate in ignorance or in defiance of it, we will eventually lose. This may take the form of lawsuits, administrative charges, fines, low morale, high turnover, low productivity, or a combination of the above.

Employees are a crucial component of any business and good employee relations are necessary to obtain and retain good people. Recruiting, hiring, pay systems, bonuses, corrective action, benefits, safety, discharge, and other employment actions must be planned and attended to just as carefully as marketing or production. The law is intertwined with all employment actions. For instance, discrimination laws influence how we advertise for openings, interview the applicants, and make the hiring decisions. Wage/hour laws govern whether we pay people for on-call time or when we must pay overtime. Workplace safety rules may affect how we build an addition to the facility or the placement of machinery.

If we try to do any of the above things without taking the law into account, trouble of one type or another is bound to result. On the other hand, if our planning and execution are consistent with legal requirements, we can do pretty much what we want. But first, you must have a good working knowledge of the law.

Aims of This Book

This book is about labor law, one of the oldest and, arguably, the most important of all workplace laws. The main purpose of this book is to explain the basics of labor law in simple terms. Beyond this, however, it is my aim to show you how to work with our labor laws and to view them as an aid, rather than as an obstacle, to accomplishing your goals as a supervisor.

After finishing this book, hopefully, you will understand:

- How labor unions come into the workplace.
- What a company can and cannot do under the law when a union is organizing its workforce.