



THE AMERICAN BAR ASSOCIATION

G U I D E T O

WORKPLACE LAW

EVERYTHING YOU NEED
TO KNOW ABOUT YOUR
RIGHTS AS AN EMPLOYEE
OR EMPLOYER

THE AMER



GUIDE TO
.....
WORKPLACE
LAW



*Everything You Need to Know
About Your Rights as an Employee
or Employer*

T I M E S



B O O K S

R A N D O M H O U S E

Points of view or opinions in this publication do not necessarily represent the official policies or positions of the American Bar Association.

This book is not a substitute for an attorney, nor does it attempt to answer all questions about all situations you may encounter.

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FOREWORD



Howard Vogel, *Chair*
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WORKPLACE LAW AFFECTS ALMOST EVERYONE in this country. Obviously, most adults work at wage-paying jobs, and so are directly affected by the laws and rules that touch on everything from minimum wages to leave time. But millions of retirees are also affected by workplace law governing their pension rights. And the spouses and dependents of workers could be directly affected by laws covering health benefits, as well as indirectly by the laws affecting workers.

Both employers and employees are at a big disadvantage if they're not familiar with the law of the workplace. Since the New Deal, workers and companies have been increasingly governed by law. Just about every aspect of the employment relationship is covered, from the first day on the job to the last (and possibly beyond in the case of retirement and health benefits, to say nothing of severance pay, non-compete agreements, and references).

In plain language you can understand, this book looks at everything from avoiding discrimination in hiring to avoiding sexual harassment on the job. It looks at all the issues relating to unions, and the special considerations affecting government workers. It suggests steps for resolving workplace problems quickly and inexpensively, and if these steps fail, a comprehensive listing at the end of the book shows you how you can make use of the major federal laws on labor and employment.

To make this book as helpful as possible, we define all the key terms in everyday language, use plenty of examples drawn from ordinary life, and accompany the text with short articles highlighting additional points of interest.

Sometimes a problem is so complex, or so much is at stake, that you'll want to seek legal advice from someone who knows the facts of your particular case and can give you advice tailored to your situation. But this book will give you a solid grounding in workplace law that will help you whether you are an employer or an employee. Armed with the information in this book, you can be sure that the actions you take will be in your best interest.

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Their careful review assured that the manuscript accurately and thoroughly covered this important subject. We thank the Section for its interest and involvement in this project.

Howard H. Vogel is the managing partner of a Knoxville, Tennessee, law firm. He is a former member of the ABA Board of Governors, and he served as President of the Tennessee Bar Association in 1995-96.

PREFACE



Robert A. Stein, *Executive Director*
American Bar Association

THE AMERICAN BAR ASSOCIATION legal guides are designed to provide guidance for people on important legal questions they encounter in everyday life. When American families are asked to describe their legal needs, the topics that come up repeatedly are housing, personal finance, family and domestic concerns (usually in conjunction with divorce and child support), wills and estates, and employment-related issues. In addition, more and more Americans have questions about operating a business, often out of the home.

These are the topics that *The American Bar Association Legal Guides* cover in plain, direct language. We have made a special effort to make the books practical, by using situations and problems you are likely to encounter. The goal of these books is to give helpful information on a range of options that can be used in solving everyday legal problems, so that you can make informed decisions on how best to handle your particular question.

The American Bar Association wants Americans to be aware of the full range of options available when they are confronted with a problem that might have a “legal” solution. The Association has supported programs to eliminate delay in the courts, and has worked to promote fast, affordable alternatives to lawsuits, such as mediation, arbitration, conciliation, and small claims court. Through ABA support for lawyer referral programs and pro bono services (where lawyers donate their time), people have been able to find the best lawyer for their particular case and have received quality legal help within their budget.

The American Bar Association Legal Guides discuss all these alternatives, suggesting the wide range of options open to you. We

hope that they will help you feel more comfortable with the law and will remove much of the mystery from the legal system.

Several hundred members of the Association have contributed to *The American Bar Association Legal Guides*—as authors and as reviewers who have guaranteed the guides' accuracy. To them—and to the ABA's Standing Committee on Public Education, which was the primary force behind the publications—I express my thanks and gratitude, and that of the Association and of lawyers everywhere.

Robert A. Stein is executive director of the American Bar Association. He was formerly dean of the University of Minnesota Law School.

P R E F A C E

INTRODUCTION



AT ANY GIVEN TIME, about half of all Americans—over 128 million—are earning wages. Most adults now work for wages or at some point will hold a wage-earning job. Thus, laws regulating the workplace potentially affect almost everyone. There are federal and state laws that touch on the whole employment relationship. How these laws affect either the worker or the employer depends on a lot of factors, including how many workers the employer has, the particular facts of the situation, the state in which the work is performed, and the type of job. Workplace law potentially covers everything from hiring to terms and conditions of employment to firing and other endings to employment. A basic understanding of what the law requires can help both the employer and employee develop realistic expectations, anticipate problems and avoid trouble.

This book describes federal and state labor and employment laws, detailing the rights and protections available to employees, the limitations placed on employers, and the ways of enforcing these laws. It provides an overview of the legal rights and duties that affect both workers and managers in the workplace.

We hope that this book will help you understand the legal environment of the workplace, whether you are an employer or an employee. We answer basic questions you might have about employment law, explain the application of the law in certain situations, and provide sources for obtaining additional information. This book will help employees determine if the law can help them resolve problems they encounter at work, and it will help employers determine if their policies are consistent with the law.

CONTENTS



Foreword	xi
Preface	xiii
Introduction	xv
CHAPTER ONE: How Law Affects the Workplace <i>From Government Regulation to Private Agreements</i>	3
CHAPTER TWO: The Hiring Process <i>Ads, Tests, Interviews—and More</i>	14
CHAPTER THREE: Terms and Conditions of Employment <i>Everything from Wages to Sexual Harassment, Leave Time, and Health Insurance</i>	39
CHAPTER FOUR: Ending the Employment Relationship <i>Leaving Your Job—Voluntarily or Not</i>	78
CHAPTER FIVE: Retirement <i>Your Pension and Social Security Rights</i>	97
CHAPTER SIX: Unions in the Workplace <i>Rights for Both Workers and Employers</i>	106
CHAPTER SEVEN: Government Employment <i>Civil Service, Constitutional Protections, and Other Special Features</i>	128
CHAPTER EIGHT: Enforcing Workplace Rights <i>Guidelines for Resolving Workplace Problems</i>	138

APPENDIX I: Defining the Terms Found in Federal Law	149
APPENDIX II: Labor and Employment Laws	154
Index	181

THE AMERICAN BAR ASSOCIATION



GUIDE TO

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WORKPLACE
LAW



CHAPTER ONE



How Law Affects the Workplace

From Government Regulation to Private Agreements

WE TALK ABOUT “THE LAW” of the workplace, but it’s more of a patchwork quilt than a single fabric. There are many federal and state laws that cover different aspects of work, but they don’t necessarily affect every business and every worker. For example, federal laws could apply to worksites all over the country, but they typically exempt businesses that employ fewer than a certain number of workers—and that number varies from law to law. It may be 15, or 20, or even 50. So if you work for a small business, you may be covered by some laws and not covered by others.

Maybe your state has stepped in to fill the gap by covering workers of smaller businesses—but maybe it hasn’t. And perhaps your state has simply duplicated the federal provisions and applied them to workers like yourself, or perhaps it has expanded these provisions for workers in the state, giving you more protections (it can’t give you fewer protections than federal law provides, as explained later in this chapter). Perhaps your locality has a law on the subject—or perhaps not.

Even when federal law does apply to your company, it does not regulate *every* aspect of the employment relationship. For example, federal law prohibits employers from discharging employees based on race, but it does not require employers to have just cause before firing someone. That means that as far as federal law goes most of us are what the law terms **employees at will**. We can be refused employment, be disciplined or fired for many reasons (or perhaps for no reason), even though federal and state laws make some reasons illegal.

And this is not all of “the law.” These are just the **statutes**, the laws enacted by Congress, state legislatures, and local government. The law of the workplace is also affected by **employment contracts** between an individual worker and employer; an example would be a contract between a professional athlete and a team. More common are **collective bargaining agreements** between a company and a union. These can deal with everything from rate of pay to working conditions and protections against arbitrary dismissal. (Contracts like these usually give you protections and make you something more than an “at-will” employee.)

Then there is **case law**, the decisions of state and federal courts that interpret the law and serve as precedent for other courts. **Company personnel handbooks** may be a factor in a case, as might employer practices. If you’re a government worker, **civil service rules** are probably a very important aspect of “the law.”

At first glance, all this might appear to be very confusing, but don’t despair. There are many sources of employment law, and much potential for confusion, but there’s help too. This book will

WHO IS AN EMPLOYEE?

Before workplace laws can apply, there’s the issue of whether you are an employee in the first place. The focus of this book is on the laws that regulate the relationship between employers and employees. We don’t discuss laws dealing with **independent contractors**, who are not considered to be employees and don’t have the benefit of the many laws that protect employees. (See “The Trend to Contingent Workers” on page 6 for why companies are turning to independent contractors.)

What is the difference between an employee and an independent contractor? One difference is that an employee gets a salary or wage, rather than being paid on a per project basis. Another is that an employee is furnished the equipment used in the performance of the work; the independent