



Second Edition

PERSONNEL
LAW

Kenneth L. Sovereign



SECOND EDITION

PERSONNEL LAW

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To my wife, Janet, who tolerates me

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PREFACE

In all things, success depends upon previous preparation, and without such preparation there is sure to be failure.

CONFUCIUS

Since the 1950s the personnel function has gone through some drastic changes. Each of its many subdivisions has been substantially affected by new federal and state laws plus regulations and local laws. Such common personnel terms as *man*, *attitude*, *probationary period*, *personality defects*, and *old* have different meanings under the law. Past practices not only are obsolete but also are now legally challengeable.

The intrusion of the law into the personnel function has left a knowledge gap, since most managers and personnel practitioners have not had formal training in the application of the new laws to the workplace. This is also true of most lawyers; their training may be in the law as applied to a business relationship, but not to employee relations. It is small wonder that both the manager and the legal counsel become “gun-shy” when facing a personnel law problem.

This “knowledge gap” has not been recognized by institutions of formal education. Most business and law schools do not require the completion of a single course in person-

nel law but have retained the traditional business law courses. As the late Professor Herb Heneman, Jr., stated in the foreword of the first edition of this book:

It is small wonder that so many managers are uninformed and lack understanding in these areas. It's not too surprising that they resent “government intrusion” into their “right” to manage. These managers seem singularly unaware of where these “rights” came from. . . .

. . . Fortunately, Ken Sovereign's book goes far in removing the barriers of ignorance in relationships between personnel and labor law in the United States.

The text is new and different in that it tells what to do, how to do it, when to do it, and why by an author who both has been a personnel executive corporate counsel who practiced law, and has taught the subject to management personnel since 1980.

The book is designed to be used as a course in colleges and universities, as well as by practitioners. A course in personnel law should be a part of the management and legal curriculum in the same sense as business law. Business failures to a large extent are caused by people problems, and in our “litigation-happy society” a devastating lawsuit with large damages and huge

legal fees plays an important part in a business "bottom line." If there is to be a stop to this employee litigation trend, preventive personnel law courses must be offered to students who some day will become managers and lawyers.

The book is written in simple, nonlegal, and practical language in order for the student to understand the marriage between the legal and the personnel concepts. The reader should still maintain an interest in the subject, yet it will send the college student into the real world of management preventive law.

Since the 1960s the law has made a serious attempt to resolve social problems at the work site. Because business success is largely dependent on a good relationship between employees and the organization, the additional rights given to the employee by court interpretation of the law have resulted in a new challenge to management. Some "lay" knowledge of these new rights is necessary if human resources are to be employed in the most economical way. Although the law has entered into all phases of personnel management activity, from recruitment through planning of the economic use of human resources, you don't have to be a lawyer to live with the situation.

With the increasing intrusion of the law into the personnel function in the last decade, there is considerable danger that the present stature and contribution of the personnel function to corporate goals will be replaced by the corporate legal counsel. A strictly legal approach to the solution of an employee relations problem could be devastating to the corporate and individual employees' well-being. The understanding by legal counsel of employee relations consequences and some knowledge of the law on the part of the manager are necessary for organizational survival. If the personnel function ignores the law and the legal counsel ignores the employee relations consequences of a decision, employee litigation is likely to take place.

Since the last edition of this book, two

major changes have taken place. The term *Human Resource Manager* has become more popular and personnel law has matured in several areas, but some new problem areas have developed. The term Human Resource Manager is just as inaccurate as the previous terms, such as Industrial Relations Director, Labor Relations Director, Personnel Director, and Employee Relations Manager. Since the generic term *personnel* best relates to people, it will be used throughout this book to include all the various titles of past, present, and future. Rather than being concerned with the latest fad of the proper job title for the personnel function, we will direct our efforts to finding an economical way for the activity to live with its new law partner. Management's "bottom line" will best be protected by preventing exposure to lawsuits through good employee relations and legal practices, regardless of the job title used.

The second major change since the last edition is the maturity of personnel law, which makes it imperative that this book be revised. The first edition was concerned with the substance and application of the social legislation passed in the 1960s and 1970s. The emphasis has now shifted to trying to solve the turmoil in the workplace caused by trying to balance management interests with the newly acquired employee rights.

ACKNOWLEDGMENTS

The author is deeply indebted to his many personnel and legal associates, too numerous to mention, for their encouragement and suggestions in combining the law with the personnel function. To the approximately one thousand lawyers and personnel practitioners who were participants in seminars conducted by the author and sponsored by professional associations and adult educational facilities of colleges and universities, a special thanks for their practical suggestions when field-testing this rel-

atively new subject of personnel law. However, it is only proper that I accept full responsibility for the conclusions, including errors, omissions, and other "goofs" that may occur.

The use of the excellent library facilities of the State of Minnesota Law Library and

the University of Minnesota Industrial Relations Reference Library and the cooperation from their component staffs made possible the necessary research and authoritative references contained in the book.

Kenneth L. Sovereign

ABBREVIATIONS USED IN THE TEXT

ADEA	Age Discrimination in Employment Act
ADR	Alternative Dispute Resolution
B.R.	Bankruptcy Reporter (West)
BFOQ	Bona Fide Occupational Qualification
CDC	Centers for Disease Control
CEO	Chief Executive Officer
COBRA	Consolidated Omnibus Budget Reconciliation Act
EEOC	Equal Employment Opportunity Commission
EPA	Equal Pay Act
ERISA	Employee Retirement Income Security Act
et al.	and others
et seq.	First page and section that follows
FLSA	Fair Labor Standards Act
IRCA	Immigration Reform and Control Act
LMRA	Labor Management Relations Act
MBO	Management by Objectives
NIOSH	National Institute for Occupational Safety and Health
NLRA	National Labor Relations Act

NLRB	National Labor Relations Board
OFCC	Office of Federal Contract Compliance
OSHA	Occupational Safety and Health Administration
WAB	Weighted Application Blank

ABBREVIATIONS USED IN CITATIONS

A.2d	Atlantic Reporter, Second Series
BNA	Bureau of National Affairs—a looseleaf service
CCH	Commerce Clearinghouse—a looseleaf service
CFR	Code of Federal Regulations
Cal.Rptr.	California Reporter
EPD	Employment Practices Decisions (CCH)
F.2d	Federal Reporter, Second Series
FRD	Federal Rule Decisions
F.Supp.	Federal Supplement
FEP Cases	<i>Federal Employment Practices Cases</i> (BNA)
LA	Labor Arbitration Reports (BNA)
LRRM	Labor Relations Reference Manual
NLRB	National Labor Relations Board Decisions and Orders
NLRB No.____	National Labor Relations Board Decisions and Orders Advance Citations
N.E.2d	Northeastern Reporter, Second Series
N.W.2d	Northwestern Reporter, Second Series
NYS	New York Supplement
NYS2d	New York Supplement, Second Series

P.2d	Pacific Reporter, Second Series
P.L.	Public Law
RIA	Research Institute of America
S.Ct.	Supreme Court Reporter
S.E.2d	Southeastern Reporter, Second Series
So.2d	Southern Reporter, Second Series
S.W.2d	Southwestern Reporter, Second Series
U.S.	United States Reports (U.S. Supreme Court Reporter)
USC	United States Code
WH	<i>Wage and Hour Cases</i> (BNA)

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