Employment Law

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This presentation will provide you with generalist training on four key areas of employment law, to wit: wrongful termination, violation of disability rights, discrimination, and sexual harassment. In addition to general definitions for each of these, examples of possible violations as well as potential consequences will be outlined and emphasis will be placed on suggestions for how each employee can stay in compliance with these laws to protect the company in furtherance and support of current social change initiatives.

I. Employment Law: Violation of Disability Rights

America was founded on principles of capitalism. To a capitalist or business owner this may be hard to believe, but many laws exist which prohibit the termination of a company employee. Generally, these classes of wrongful termination can fall in to one of two broad categories, to wit: discriminatory or retaliatory. Within these categories, Federal law and State law delineate further unlawful causes for termination. The collection of unlawful causes are termed protected classes. Most commonly, protected classes found in applicable federal and state law include: pregnancy, disability, sexual orientation, age, race, gender, national origin, and religion (Thomson Reuters, 2019).

An example of wrongful termination can be found in the following example: a local business owner comes into his place of business late one Tuesday morning and walks in to find one of his employees is wearing a yarmulke. The employer is anti-Semitic. He has never seen this employee showing any outward signs of his religion or national identity before, but today happens to be a Jewish holiday. The employer supposes this may be the reason but he cannot contain his prejudicial thoughts and in a loud outburst, tells the employee to leave and not come back for work. The employer has just wrongfully terminated the employee and the employee has recourse

available to him under State and Federal law. No employee may be terminated for reasons of national origin or religion, regardless of the State's at-will work status.

Another example of wrongful termination can be found where an employer fires an employee over an OSHA complaint. Suppose a man owned a construction business and on job sites he considers construction hard hats to be entirely optional. In fact, he is so against the OSHA regulations that he berates employees who practice high safety standards and mocks their, so called, "compliance". On one day in particular, the owner is cited for numerous Occupation Safety and Health Act violations and fined severely. In a rage, he conducts an internal investigation and finds out that one of his employees is the one responsible for turning him in. He fires the employee on the spot, screams profanity at the worker, and tells him to never come back into his place of business again. The employer has just wrongfully terminated this employee and the employee will have recourse available under State and Federal law. Employers are prohibited from terminating an employee under these circumstances.

Although almost any business owner would agree that they feel they have every right to hire and fire employees for any reason as they see fit, the reality is that State and Federal law departs from this view. Many consequences exist for employers who violate applicable law and choose to terminate an employee for a *prohibited class*. Upon an unlawful termination, an employee may seek legal recourse and compensation. In fact, if the employee is sufficiently indigent, he may seek complimentary legal counsel from the county legal aid society. The employer faces fees and fines, some monetary compensation which the court can award a petitioner, including in some cases the responsibility to pay the petitioner's legal fees and court costs. Furthermore, the employer will be paying his own attorney's fees and in most cases the

situation will be detailed in local newspapers and the business stands to suffer a hit to its reputation regionally (UniversalClass, 2020).

It is therefore essential and recommended that employees stay abreast and up to speed with applicable State and Federal laws concerning wrongful termination. Particular attention should be given to memorize the *prohibited classes*, most especially if you find yourself in the position of a human resources employee or hiring manager for a corporation. Do not be fooled or tricked into thinking that a State's *at will* status protects you and gives *carte blanche.*

II. Employment Law: Violation of Disability Rights

The Americans with Disabilities Act, also known under the acronym ADA, was enacted into law in 1990. Collectively, the ADA laws are civil rights laws which prohibit discrimination in many enumerated forms against persons with disabilities. The law retains jurisdiction and remains in force in places of employment, schools, public transit systems, and in all places which are open to the public. The legislature intended that all persons with a *disability* as defined by the ADA, be given the same opportunities and rights as everyone else. Although compliance would facially seem quite basic at first review, quite to the contrary, often ADA law establishes public accommodations and even can force the hands of business owners and managers in matters of employment. The government is not even exempt from the far-reaching nature of ADA law, altering, fundamentally, even state and local governmental services. Americans with Disabilities Act laws have perhaps most shaped the telecommunications industry, altering, and mandating specific enhancements and alterations to key services. Service users pay for this in increased fees and tax payers are levied additional taxes to fund increased legislation and prosecution of offending employees or businesses. In 2008, ADA underwent a major overhaul and effective the first of 2009, the Americans with Disabilities Act Amendments Act (ADAAA) was given full

effect and force (ADA National Network, 2020). One may be surprised to learn of the broad categories and classifications of what constitutes a "disability". Fun fact: home-owners association websites have to support screen readers and be accessible to blind individuals.

Employers can open themselves up to civil liability under a cause of action of failing to accommodate a disability if they do not appropriately pander to persons with disabilities and ensure their products, services, and company are equally usable and accessible. A quick example of a violation of ADA law would be if doors which lead into employee bathrooms were not large enough to accommodate a wheel chair. Upon discovery, the business owner or responsible party would have to take immediate action to remedy the situation or face hefty fines and governmental interference. A second example of an ADA law violation can be found if company elevators (or really elevators in any place accessible to the public) didn't have brail near all operational buttons.

Failure to comply with applicable Americans with Disabilities Act (ADA) regulations open up the business and responsible managing employees to extensive lawsuits funded with mega money by local, regional, or State regulatory agencies such as the U.S. Equal Employment Opportunity Commission, the U.S. Department of Justice, the Federal Communication Commission, or even the offended individual, often at the expense of tax payers funding his or her legal counsel. As previously stated, penalties for failure to accommodate a disability include hefty fines or governmental interference to force compliance with applicable law. Often times, these suits can drag the business into a negative public light and the suit, especially if not settled out of court with a binding non-disclosure agreement, will result in damage to the company's reputation, hurting the public perception of the company's positive social change initiatives.

It would be wise for managers to stay apprised of current ADA regulations and closely monitor legislative changes and new company expansions or operations, to catch and correct issues

before they become violations. In protecting the company and in the quest for employment law compliance, hiring managers need to be especially careful to not disqualify an ADA protected person for employment because of disability when they 'check' all of the other 'boxes' of what the company is looking for in a prospective new employee within the business or organization. It is additionally wise to have legal counsel on retainer for advisory purposes. It is almost a 'must' these days.

III. Employment Law: Discrimination

Treating others less favorably due to their age, race, gender, sexual orientation, religion, or national origin constitutes discrimination, and it is unlawful. 70 years ago, discrimination was largely unregulated and federal government rarely, if ever, interfered in employers' decisions to hire or fire, with exception of meddling in union relationships. However, in the 1960's civil rights movements, Congress began to legislate, taking away employers' discretionary abilities. Primarily, the 1963 Equal Pay Act, the 1964 Civil Rights Act, the 1967 Age Discrimination in Employment Act, and the 1990 Americans with Disabilities Act created severe limitations on employers' abilities to discriminate and make employment decisions based on age, race, gender, sexual orientation, religion, or national origin (Lumen Learning, 2020). These congressional acts made discrimination in the workplace unlawful.

A great example of discrimination in action is as follows: a company's payroll spreadsheet was uncovered and it was found that all Hispanic administrative secretaries were paid half of the hourly wage of their white colleagues in similar administrative secretarial positions. Once the wages were made public, the Hispanic secretarial staff would have a strong civil case against the employer.

A second, and strong, example of unlawful discriminatory practices can be seen in the following example. A hiring manager and employer of a clothing store were aware that two employees were homosexuals. The manager and employer would go out of their way and intentionally ensure that each year around Christmas time the two were not invited to annual holiday parties. Additionally, the hiring manager would disinvite these two employees and prohibit them from attend company functions. These actions are discriminatory and they subject the employer and hiring manager to civil liability.

Let it be known that convictions for discriminatory acts to not require proving that the defendant intended to discriminate. Companies and persons taking a discriminatory stance open themselves up to enhanced civil liability and stiff fines as well as court costs and litigation fees. Often times the petitioner (offended party) will be able to find complimentary legal aid which can often be disheartening and demoralizing for the defendant who will undoubtedly be spending a great deal on his or her own legal fees. An unspoken consequence exists in the potential for retaliatory action and harm to the business in the form of public disapproval. The public often does not look favorably on the ‘big bad corporation’ picking on a minority.

To stay in compliance with local, state, and federal anti-discrimination laws, employees would be wise to avoid discriminatory actions towards minorities. In spite of any one person’s negative views or beliefs about another based on their age, race, gender, sexual orientation, religion, or national origin, it is always best to strive to practice political correctness in word and deed. It can be helpful to mentally place yourself in the other’s position and follow the age old, tested and true, ‘golden rule’: do unto others as you would have done to you. Often times discriminatory thoughts developed at a young age and may have been passed down from parents. Give others the benefit of the doubt and keep an open mind. Always be respectful of others and

remember that your actions don't just reflect on yourself, but on the company who has employed you as well. Remember your company's positive social change initiatives and always let your words and actions mimic their essence.

IV. Employment Law: Sexual Harassment

Of the four areas this presentation will be covering in employment law, we conclude with sexual harassment. One might expect this aspect of employment law to be not worth mentioning, or perhaps easy to avoid. On the contrary, this area deserves serious attention. Offenders come from both genders, albeit female on male sexual harassment is widely underreported in the nation. Offenders also come from individuals of all races, ethnicities, and creeds. Sexual harassment consists of any unwelcomed sexual advance. In this context, the terminology *unwelcomed* carries so much more in its connotation than *undesired*. The term is more closely aligned with *unsolicited*. Sexual harassment does not necessarily have to be an action. It can also include requests for sexual favors or other verbal or physical conduct which is of a sexual nature including innuendoes and sexual jokes as well. Something as simple as a cat call has the additional result, or effect, of interfering unreasonably with another's performance at work and creates an intimidating, hostile, and offensive work environment (United Nations, n.d.). With this comprehension in full view then, it should come as no surprise that this form of conduct has no place in the work place under any circumstance or in any form.

To expound, an example of sexual harassment can be found in the following example. At a certain company, a secretary's boss offers her a raise in exchange for sexual favors. From this man's vantage point, he may feel like the financial offer he has just extended far exceeds the gravity of the sexual favor he has requested. Yet, men and women have equal rights to be protected from such advances. His actions have no place in the work environment and will undoubtedly

create a hostile, offense, or intimidating environment. Once those words are expressed, they can never be taken back. This type of conversation can place both individuals in a bad space and the employer-employee relationship will never be able to go back to what it was. One may use the comments against the other and it should be noted that in the vast majority of cases, workplace romances do not work out anyways.

On the topic of sexual harassment, I present the following additional example: a female entry-level employee, working in a large firm, was tasked with working directly for an upper-management executive. While working directly for this executive, and one time while alone with him at the office, she approached him from behind where he was seated and began to massage his neck in a sensual manner. To some men this may be a fantasy, regardless, sexual harassment can be performed on both men and women. Sexual harassment against men goes severely underreported each year. Harassment of this form, turns a work environment unproductive, awkward, and not conducive for rewarding or mutual business-relations amongst coworkers.

Sexual harassment caries broad consequences, all of which are severe and far outweigh whatever perceived gain which the offender first sought. Consequences for sexual harassment vary widely by the level of offensiveness of the words or actions. They could include being suspended from work without pay, being fired, being subject to a lawsuit, the potential for criminal charges is an additional consideration as well as the loss of one's liberty. In a majority of cases if a criminal conviction for sexual misconduct/harassment occurs, a civil suit will almost undoubtedly follow. Most do not take kindly to learning of others' sexual indiscretions and this sort of conviction or allegation will follow an individual for years and years to come.

Staying in compliance with these laws is a must, lest the individual ruin their entire career. To be clear, one should avoid sexual conduct of all kinds in the workplace. Sexual thoughts, words,

and actions have no place in the work environment. Always consider that one represents more than just himself. Each represents the company they work for. A company may be strongly involved in positive social change initiatives and pursuing a reputation that is strong, positive, and beyond reproach. Any actions against this may be cause for immediate termination. The company may try to shed liability and quickly separate themselves from the "offending" employee and may even cut ties all together.

Conclusion

With just how easy it is these days to blog about experiences and interactions with companies and their employees, companies are strongly involved in positive social change initiatives and are pursuing a reputation that is all positive, strong, and beyond reproach. This presentation has sought to provide generalist training on just key areas of employment law, which included: wrongful termination, violation of disability rights, discrimination, and sexual harassment. In addition to the definitions which were provided, the supplied examples of employment law violations should be carefully considered and it should be noted that a concerted effort to comply with employment law will reflect positively on the company and further support their current social change initiatives.

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