

***Business Law:***

*A Modern Textbook for Undergraduate Students  
and Primer for Law Students*

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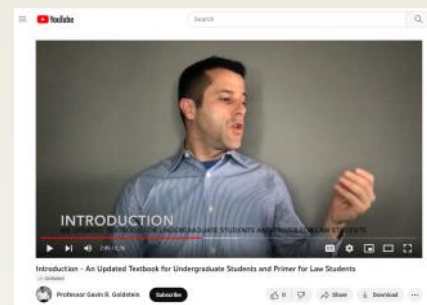
***Differentiators:***

- Written in a relaxed manner that students will relate to and enjoy. (How many of your students enjoy reading their book?) The book is not intimidating or overwhelming. Rather, Gavin provides an outline and discussion of complicated legal subjects written in plain, clear English. The “colloquial approach.” Real-world examples like the Enron case, the “Cannibal Cop,” the global distribution chain of Apple iPhones, the Paris Climate Change Agreement, and NATO illustrate and clarify key concepts
- Reaches students where they are. The text portrays updates in the law after 2020 including recent Supreme Court decisions that dramatically affect businesses -- *Citizens United*, *Bostock v. Clayton County*, *Burwell v. Hobby Lobby*, *Dobbs v. Women’s Health Organization*, and *Students for Fair Admissions v. Harvard*. Uses modern themes and examples including the Black Lives Matter movement, BREXIT, the Student Loan Crisis, and *Hamilton* the Broadway musical.
- Explains modern administrative agencies, like the Department of Labor, the Food and Drug Administration, and the Securities and Exchange Commission, and their roles in our government and in regulating commerce.
- Discusses key concepts that most introduction to law texts neglect like non-disclosure agreements, the differences between condominiums and cooperative apartments, at-will employment, trade unions and collective bargaining, credit, and basic insurance.



- **QR codes** throughout the text offer one-click access to videos of the author’s explanations of important themes and concepts.

- Incorporates the concepts of Diversity, Equity, and Inclusion by highlighting ethical business practices with an emphasis on corporate social responsibility and public benefit corporations.
- For those reading digitally, bottom-of-page references to give immediate access to sources and demonstrate the validity of the information.
- Specific attention to international law and business in the last chapter. Demonstrates the importance of cross-cultural communication and understanding, and the effects of globalism.



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After graduating with a degree in history from Syracuse University’s Maxwell School of Citizenship and Public Affairs, **Gavin Goldstein** pursued a career in law. He earned his Juris Doctorate from Brooklyn Law School and began teaching part-time while practicing law. Gavin quickly discovered his passion and began teaching full-time.

Gavin’s law practice helps him prepare his students by keeping him current on both legal scholarship and real-world procedures. After being hired as an Assistant Professor at LIM College in New York City, where he taught business management and law, Gavin earned his PhD in Business Management and wrote his dissertation on Corporate Social Responsibility (“CSR”) and Taxation. This dissertation evolved into two double-blind peer-reviewed articles published in the *International Journal of Business & Applied Sciences*, which Gavin coauthored with his twin brother in 2020.

Gavin now teaches at the Graduate School of Business at Touro University. He continues to research the intersections of CSR, ethical management, and the law.

When not practicing law, teaching, or researching and writing, Gavin enjoys spending time with his parents, brothers, sisters, nieces, and nephews, and is a passionate marathon runner.

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## *Business Law*

*A Modern Textbook for Undergraduate Students  
and Primer for Law Students<sup>1</sup>*



<https://www.youtube.com/watch?v=eNOMEOLyaEQ>

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<sup>1</sup> This book is intended to introduce the subject of law and its application in business. The law is an extremely complicated subject and is seldom specific enough to answer all questions. This book is an excellent resource to begin your studies on the law, but each chapter in this text is merely a primer. One could teach an entire course on each single chapter's topic, or even parts of the chapters. This book is just the tip of law's iceberg.

I have included references to my resources to give credit and demonstrate the validity of my information. Readers should have immediate access to my resources as I reference them. I have tried to take care to make sure that each resource is factual and unbiased. The majority of resources I have relied on have been educational institutions, non-for-profit learning centers, or reputable news outlets. I encourage readers of this book to review my resources.

One of my students, Maria Bologna, assisted with reviewing the content of this book. She reviewed every chapter and all of the content, suggesting edits, helping with the videos, and suggesting ways to improve the content and readability. I am extremely grateful for her help, which made this a better book.

Similarly, another student, Hannah Szwast, reviewed the learning objects, cases, and examples, and provided feedback for improvement, which I am very grateful for.

Thank you to Danielle Baxter for her support, and her incredible help with the videos. Thank you also to Professor Richard Olivieri, Esq. for his feedback and support. And thanks also to Textbook Media Press (Edgar Laube, Tom Doran, and Karen Evans) for their help in bringing this book to market.

This book is dedicated to my mother Cheryle Goldstein and my father Dr. Gene Goldstein. All that I accomplish is because of you. I would also like to dedicate this to my grandparents, especially Gussie Lustig and Sylvia Goldstein for passing on their infinite love to their "interests." And, to my twin brother, siblings, and nieces and nephews. I love you.

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## Chapter 8

### Employment Law<sup>346</sup>



<https://www.youtube.com/watch?v=nIzfehPrUbo&feature=youtu.be>



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<sup>346</sup> I would like to thank Kevin Hickman, Esq., another fellow Brooklyn Law School alum, for reviewing this chapter and improving the content.

## Learning Objectives

After reading this chapter, you should be able to:

- ✓ Recognize the different laws that regulate employment law in the United States.
- ✓ Recognize the history of the labor movement in the United States and its influence on employment law.
- ✓ Identify the rules that regulate wages, hours, worker safety, compensation, discrimination, and record keeping for employers.
- ✓ Identify and understand the different classes that warrant protection against discrimination in the workplace.
- ✓ Understand the legal responsibilities of employers.

## Cases and Examples

- *Allgeyer v. Louisiana* (1897)
- Montana
- Federal Department of Labor
- Upton Sinclair's *The Jungle*
- Communications Workers of America ("CWA")
- National Labor Relations Act (the "NLRA")
- Fair Labor Standards Act (the "FLSA")
- Occupation Safety and Health Act
- Workers' Compensation
- Texas and Oklahoma
- Federal Employees' Compensation Act ("FECA")
- Fourteenth Amendment
- *Brown v. Board of Education* (1954)
- *Reed v. Reed* (1971)
- *Roe v. Wade* (1973)
- *Dobbs v. Jackson's Women's Health Organization* (2022)
- *University of California v. Bakke* (1978)
- *Students for Fair Admissions (SFFA) v. Harvard* (2020)
- *Bush v. Gore* (2000)
- The Civil Rights Act of 1964
- *Griggs v. Duke Power Co.* (1971)
- *Meritor Savings Bank v. Vinson* (1986)
- *Price Waterhouse v. Hopkins* (1989)
- *Burlington Industries, Inc. v. Ellerth* (1998)
- *Oncale v. Sundowner Offshore Serv., Inc.* (1998)
- *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.* (2015)
- Age Discrimination in Employment Act of 1967 ("ADEA")
- Age Discrimination Act of 1975
- *Babb v. Wilkie* (2020)
- *U.S. Equal Employment Opportunity Commission v. Marymount Manhattan College* (2012)
- The Rehabilitation Act
- The Americans with Disabilities Act (the "ADA")
- The Equal Employment Opportunity Commission (the "EEOC")

As discussed in the previous chapter, **Chapter Seven**, it is important to distinguish between an employee and a non-employee because the employer-employee relationship is a key example of agency. Employers are usually liable for the torts, crimes, contracts, and other acts performed by an employee during the performance of its job. This is also dependent on whether the acts were performed while in the course and scope of the employer-employee relationship. In addition to determining liability, employment is also a field regulated under state and federal laws. This chapter will elaborate on the employee/employer relationship, discuss the history of the labor movement, and review the different laws which regulate employment in the United States.

## Employment Relationship

In an article discussing legal implications surrounding employment, the United States' Bureau of Labor Statistics drew on Black's Law Dictionary's definition of an employee as:

*a person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.*<sup>347</sup>

As noted in **Chapter Seven**, an employer of an independent contractor exercises little control and gives little direction on how to complete its job. The relationship of an employer and an employee or independent contractor is often outlined within an employment contract. Like other contracts, an employment contract outlines the rights and responsibilities of the employer and employee. Each party agrees to certain responsibilities, and risks breach of contract or termination of the relationship.

The right to enter into contracts, and that no state should interfere with legal contracts, became a pivotal legal doctrine after the United States Civil War. In 1897, in the case of *Allgeyer v. Louisiana*, the Supreme Court indocrinated the concept of the right to contract as a legal right of substantive due process and property.<sup>348</sup> "Men were not only free to choose what business or vocation they would follow but free in that vocation to succeed, to amass property, and to enjoy that property without governmental regulation."<sup>349</sup> It was a constitutional right under substantive due process that individuals could choose where they wanted to work, and under what conditions. The state had minimal power to interfere with contracts, private property, and the economy, except minimally to protect the health and safety of the citizenry. Since the *Allgeyer* case, the courts have used the right to contract to strike down state and federal labor regulations controlling employment.<sup>350</sup> Under this theory, the government could only minimally interfere with the right to enter into contracts and the conditions of labor. As a result, most states have adopted an "at-will" policy of employment.

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<sup>347</sup> <https://www.bls.gov/opub/mlr/2002/01/art1full.pdf>

<sup>348</sup> <https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/regulation-of-labor-conditions>

<sup>349</sup> Urofsky, Melvin I. *Louis D. Brandeis A Life*. New York, Pantheon Books, 2009, p. 208.

<sup>350</sup> <https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/regulation-of-labor-conditions>



Under the doctrine of at-will employment, an employee and employer may terminate the employment relationship at any time. An employee may quit at any time, and the employer may fire the employee for any legal reason. Legal reasons include poor performance, to cut costs, or because the employer simply doesn't like the employee. All states in the United States, except for Montana, recognize at-will employment.<sup>351</sup> Unlike in the other states, employers in Montana may not fire an employee for any legal reason. An employer may not fire an employee without cause if that employee has completed an initial probationary period.<sup>352</sup>



Most of the world has employment laws that align more closely with Montana. Employers are only allowed to dismiss employees for cause. There must be a reason like misconduct or negligence. However, Montana is the exception in the United States, and most states recognize at-will employment. An employer may dismiss an employee for any legal reason. It is illegal to fire an employee for discriminatory reasons, to retaliate against the employee for reporting harassment, or because the employee exercised a legal right.<sup>353</sup> For instance, most states have enacted laws against illegal termination or adverse actions against “whistle blowers.” Under whistle blower laws, an employer cannot take an adverse action against employees for engaging in a protected activity.<sup>354</sup> Adverse actions include termination of employment, demotions, denying overtime or promotion, or reducing pay or hours. Under whistle blower statutes, employers may

<sup>351</sup> <https://www.ncsl.org/research/labor-and-employment/at-will-employment-overview.aspx>

<sup>352</sup> <https://www.nolo.com/legal-encyclopedia/employment-at-will-definition-30022.html>

<sup>353</sup> [https://www.law.cornell.edu/wex/at-will\\_employment](https://www.law.cornell.edu/wex/at-will_employment)

<sup>354</sup> <https://www.whistleblowers.gov/>

not take adverse actions against employees for reporting violations of the law, like workplace safety and health, securities, tax, antitrust, and anti-money laundering laws.

The concept of at-will employment derived originally from the right to contract. Additionally, it is rooted in a respect for employer and employee deference, and the belief that both employers and employees favor it over job security. However, historically, employers and employees have not always met eye-to-eye on labor and whether it should be regulated within the United States.

## History of the Labor Movement

As introduced in **Chapter Two**, the Department of Labor regulates working conditions in the United States and promotes safety and worker's rights. On March 4, 1913, hours before leaving office, President William Howard Taft signed a law creating the Federal Department of Labor.<sup>355</sup> It was the product of the growing progressive movement, and organized labor's demand for a voice in the federal government. Its main purpose was to promote the welfare of working people, and eventually protected minorities in the workplace. The progressive movement of the early 20<sup>th</sup> century worked to make American society better and safer. It promoted regulations to hold big businesses more responsible, like improving working conditions in factories. It also promoted regulations against corruption and improving living conditions for the poor. Many progressives were also concerned with conservation and the environment.<sup>356</sup> The child labor laws, anti-discrimination laws, fair labor standards, and safety measures we will discuss below find their roots in the progressive movement and the regulations of the Department of Labor.

## Unions and Collective Bargaining Agreements

Remember our discussion of Upton Sinclair's novel *The Jungle* in **Chapter Two**? Sinclair described the terrible living and working conditions of immigrant workers, including long hours of intense labor. *The Jungle* also advocated for unionization and collective bargaining as a reaction to and a means of protection against these terrible conditions. Collective bargaining is the process between an employer and a labor union to negotiate and create an employment contract.<sup>357</sup> The union may negotiate for the contracts of the labor force. Federal and state statutes, administrative agencies, and case law govern collective bargaining. The main body of law governing collective bargaining is the National Labor Relations Act (the "NLRA") also known as the Wagner Act. This federal law protects employees' rights to collectively bargain and join trade unions.

A trade union is a collective association of workers in a particular trade, industry, or organization created to secure improvements in pay and other benefits and working conditions through collective bargaining.<sup>358</sup> For instance, the Communications Workers of America ("CWA") represents 700,000 workers in industries like telecommunication and information technology,

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<sup>355</sup> <https://www.dol.gov/general/aboutdol/history/dolhistoxford>

<sup>356</sup> <https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/progressive-era-to-new-era-1900-1929/overview/>

<sup>357</sup> [https://www.law.cornell.edu/wex/collective\\_bargaining](https://www.law.cornell.edu/wex/collective_bargaining)

<sup>358</sup> <https://www.britannica.com/topic/trade-union>

airline, news media, television, health care, and education.<sup>359</sup> The CWA represents approximately 30,000 workers at Verizon Communications.<sup>360</sup> In 2016, the CWA assisted striking workers negotiate better contracts with Verizon Communications in the northeast region of the United States.<sup>361</sup> While trade unions and collective bargaining have most directly resulted in negotiations with employers, trade unions also use their political influence to advocate for protective legislation.

## Wages and Hours

### Fair Labor Standards Act

In 1938, President Franklin D. Roosevelt signed the Fair Labor Standards Act (the “FLSA”). The landmark law set new standards for the nation’s social and economic development.<sup>362</sup> The law guarantees workers the right to fair pay and sets the federal minimum wage, requirements for overtime, and places restrictions on child labor.<sup>363</sup> It covers workers engaged in the production of goods, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for interstate commerce.<sup>364</sup> The FLSA covers industries including: (1) businesses whose gross sales are \$500,000 or higher; (2) institutions primarily engaged in health care or education; and (3) public agencies. The FLSA’s authority is limited to interstate commerce and in other ways. It does not regulate vacation or sick days, weekend, or holiday periods, pay raises or fringe benefits, or termination notices, which are generally regulated by state law.

#### Overtime and Classification of Jobs

One of the functions of the FLSA is the classification of employees and whether employers are responsible to compensate for overtime work. After forty hours of work in a week, employers must pay overtime to employees that qualify. Qualified employees are entitled to not less than one and a half times the regular pay rates for each additional hour of work over forty hours.<sup>365</sup> However, certain professionals with advanced knowledge (many of whom are salaried employees), farmworkers, and other employees are exempt and do not qualify for overtime pay.

#### State Laws

The states have enacted their own laws regulating wages, hours, and other labor issues. For instance, states may determine their own minimum wages. In cases where state and federal minimum wage laws differ, employees are entitled to the higher minimum wage.<sup>366</sup> The states also determine whether their labor department or schools issue certificates for employment (often

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<sup>359</sup> <https://cwa-union.org/about>

<sup>360</sup> <https://cwa-union.org/verizon>

<sup>361</sup> <https://district1.cwa-union.org/CWAD1Bargaining/verizon-neny>

<sup>362</sup> <https://www.dol.gov/general/aboutdol/history/flsa1938#:~:text=%20Fair%20Labor%20Standards%20Act%20of%201938%3A%20Maximum,born.%20President%20Roosevelt%20had%20postponed%20action...%20More%20>

<sup>363</sup> [https://www.law.cornell.edu/wex/fair\\_labor\\_standards\\_act\\_\(flsa\)](https://www.law.cornell.edu/wex/fair_labor_standards_act_(flsa))

<sup>364</sup> <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa#2>

<sup>365</sup> <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa#14>

<sup>366</sup> <https://www.dol.gov/agencies/whd/flsa>



known as a worker's cards) and the age that individuals may obtain one.<sup>367</sup> Other state labor law issues include (1) minimum wages for tipped employees, (2) child labor regulations regarding farming, agriculture, entertainment, and door-to-door sales, (3) minimum paid rest periods, (4) minimum meal periods, (5) average or prevailing wages, and (6) payday requirements.<sup>368</sup> Each state maintains their own departments of labor to enforce these laws, protect workers, and assist the unemployed.

Similarly, laws regulating unemployment benefits vary state by state. The states set their own unemployment benefits and eligibility guidelines. State qualifications often include minimum work and wage requirements, and whether one is unemployed because of fault.<sup>369</sup> For instance, to qualify for unemployment insurance in New York State, an employee must have worked at least two calendar quarters and earned at least \$2,600 in wages in one of the calendar quarters.<sup>370</sup> Determining fault often means the employee was not fired because of misconduct or a criminal act.<sup>371</sup> To qualify for unemployment, the employee should not have left voluntarily and was dismissed as a result of lay-offs rather than misconduct. Unemployment insurance is normally funded through special taxes paid by employers to the state and federal government.<sup>372</sup> For the latest iterations of minimum wage and unemployment insurance regulations, employers should monitor for updates from the federal and local state departments of labor.

## Occupational Safety and Health Act

In 1970, Congress passed the Occupational Safety and Health Act. The purpose of the law was to ensure safety and healthy working conditions for employees. The provisions of this law require employers to provide a workplace free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to employees.<sup>373</sup> The law created the federal administrative agency, the Occupational Safety and Health Administration ("OSHA"), as part of the United States Department of Labor, to administer these safety regulations. OSHA promotes safety by providing training, outreach, education, and assistance to employees and employers.<sup>374</sup> OSHA also inspects worksites for unsafe conditions. In 2019, following inspections of worksites, OSHA published its list of the most frequently cited standards that it found workplaces violated. This included: failures to protect workers from falling, properly post hazard warnings, and protect dangerous materials. OSHA publishes this list to alert employers about these commonly cited standards so that they can take steps to avoid preventable injuries and illnesses in the

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<sup>367</sup> <https://www.dol.gov/agencies/whd/state/age-certificates#NewYork>

<sup>368</sup> <https://www.dol.gov/agencies/whd/state>

<sup>369</sup> <https://www.dol.gov/general/topic/unemployment-insurance>

<sup>370</sup> This figure is for 2020.

<sup>371</sup> <https://www.labor.ny.gov/ui/claimantinfo/beforeyouapplyfaq.shtm#0>

<sup>372</sup> <https://eligibility.com/unemployment/where-do-unemployment-benefit-funds-come-from>

<sup>373</sup> <https://www.osha.gov/faq#v-nav-employerassist>

<sup>374</sup> <https://www.osha.gov/aboutosha>

workplace.<sup>375</sup> Failure to comply with OSHA standards can result in hefty penalties. These penalties may increase depending on the seriousness of and intent behind the violations.<sup>376</sup>

## Workers' Compensation

If a worker is injured during the performance of the job, they may be entitled to workers' compensation. Workers' compensation is a form of insurance that provides monetary benefits and medical care for workers who are injured or become ill as a result of their job.<sup>377</sup> An employee may collect workers' compensation if their injury is work related. They may not collect benefits if the injury was the result of their intoxication or if they intended to injure themselves or another. Employers pay for workers' compensation insurance, and the law prevents them from requiring that an employee contribute to the costs of compensation. Workers' compensation law may also provide benefits for dependents of workers who are killed because of work-related accidents or illnesses.<sup>378</sup>

Both the states and the federal government administer workers' compensation laws. The Federal Employees' Compensation Act ("FECA") applies to federal employees. It is similar to state systems but is paid for by the U.S. government through tax dollars. It pays for lost wages, medical expenses, disabilities, and death benefits to federal civil service employees.<sup>379</sup> All states except Texas and Oklahoma require employers to maintain workers' compensation insurance. Most of these programs cover wage replacement, necessary medical treatments, and vocational rehabilitation, as well as other benefits. Generally, workers' compensation applies to both part-time and full-time employees. In most instances, workers' compensation prevents common law liability against an employer if its employee is injured on the job (however, they may still be exposed to contractual liability). The state or federal government may fine businesses that fail to comply with workers' compensation laws.

## Discrimination

Most Americans have a basic understanding of employment issues like workers' compensation, safety, wage, and hourly protections. Similarly, most Americans have general knowledge about the illegality of discrimination in the workplace. As discussed above, all states except Montana recognize some form of at-will employment. Generally, an employer may fire an employee for any legal reason like poor performance, to cut costs, or because the employer simply does not like the employee. However, it is illegal to fire an employee for discriminatory purposes.

Generally, the term "discriminate" means to treat another person differently or less favorably for some reason.<sup>380</sup> While this is not typically illegal, it is illegal for certain individuals to

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<sup>375</sup> <https://www.osha.gov/top10citedstandards>

<sup>376</sup> <https://www.osha.gov/penalties>

<sup>377</sup> <http://www.wcb.ny.gov/content/main/onthejob/WCLawIntro.jsp>

<sup>378</sup> [https://www.law.cornell.edu/wex/workers\\_compensation](https://www.law.cornell.edu/wex/workers_compensation)

<sup>379</sup> <https://www.dol.gov/general/topic/workcomp>

<sup>380</sup> <https://www.eeoc.gov/youth/what-employment-discrimination>

treat others differently or unfavorably at school, in the workplace, or in public places because of a protected class. In the workplace, it is illegal to discriminate against individuals because of their race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age (age 40 or older), or genetic information. The law protects these different classes from discrimination in the form of unfair treatment, harassment, denial of a reasonable workplace change, improper questions about, or disclosure of, medical or genetic information, and retaliation for complaints of discrimination.

As discussed in **Chapter One** the origin of these laws derives from the United States Constitution. Like the protections that businesses receive from the U.S. Constitution, the U.S. Constitution also protects individuals from businesses. The Fourteenth Amendment provides:

*No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*<sup>381</sup>

While this amendment addresses different aspects of the rights of citizens, the Fourteenth Amendment is commonly referred to as the Equal Rights Amendment because of the application of the “equal protection of the laws.” The Constitution requires that the laws be equally applied to each citizen. As such, the states and federal governments may enact laws to protect individuals from unequal treatment. Equal protection played a prominent role and was the basis for many landmark United States Supreme Court decisions including:

- ***Brown v. Board of Education (1954)*** – the Court unanimously ruled that the segregation of public schools based solely on race violated the Equal Protection Clause of the Fourteenth Amendment.<sup>382</sup>
- ***Reed v. Reed (1971)*** – the Court held that an Idaho probate law setting a preference of males to females violated the Fourteenth Amendment. The Court concluded that “[t]o give a mandatory preference to members of either sex over members of the other...is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment. . .[T]he choice in this context may not lawfully be mandated solely on the basis of sex.”<sup>383</sup>
- ***Roe v. Wade (1973)*** – the Court ruled that the Fourteenth Amendment’s due process clause protected the fundamental “right to privacy” which protects a pregnant woman’s choice whether to have an abortion.<sup>384</sup> Years later, Justice Ruth Bader Ginsburg espoused the view that this was an equal protection issue because restrictions to abortion qualified as an impediment to gender equality.<sup>385</sup>

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<sup>381</sup> <https://www.law.cornell.edu/constitution/amendmentxiv>

<sup>382</sup> <https://www.oyez.org/cases/1940-1955/347us483>

<sup>383</sup> [https://www.oyez.org/cases/1971/70-4?\\_escaped\\_fragment\\_=&\\_escaped\\_fragment\\_="](https://www.oyez.org/cases/1971/70-4?_escaped_fragment_=&_escaped_fragment_=)

<sup>384</sup> <https://www.oyez.org/cases/1971/70-18>

<sup>385</sup> <https://www.nytimes.com/2020/09/21/us/ruth-bader-ginsburg-roe-v-wade.html>

In 2022, in the case of ***Dobbs v. Jackson’s Women’s Health Organization***, the Court held that the regulation of abortion was not an issue of gender or due process. The Court ruled that the Constitution does not confer a right to an abortion.<sup>386</sup>

- ***University of California v. Bakke (1978)*** – the Court declared affirmative action constitutional, but that the use of numerical requirements for admitting certain races, or racial quotas, was unconstitutional.<sup>387</sup> In 2020, affirmative action was brought back to the forefront of discussion in the case of ***Students for Fair Admissions (SFFA) v. Harvard (2020)***. The First U.S. Circuit Court of Appeals in Boston upheld Harvard University’s use of affirmative action. However, the United States Supreme Court is in the process of reviewing the case.<sup>388</sup>
- ***Bush v. Gore (2000)*** – the Court ruled that the use of different standards to count ballots violated the equal protection clause. The Court concluded that the disparate treatment of votes violated the notion of equal protection.<sup>389</sup>

These cases demonstrate the application of the 14<sup>th</sup> Amendment to protect citizens from unequal treatment based on classes like gender and race.



### Discrimination based on Race, Gender, and Religion

As discussed in **Chapter One**, the United States adopted the Civil Rights Act of 1964, prohibiting discrimination in the workplace. Business entities may not discriminate based upon

<sup>386</sup> <https://constitutioncenter.org/the-constitution/supreme-court-case-library/dobbs-v-jackson-womens-health-organization>

<sup>387</sup> <https://www.oyez.org/cases/1979/76-811>

<sup>388</sup> <https://www.cnn.com/2020/11/12/politics/harvard-affirmative-action/index.html>

See also: <https://www.oyez.org/cases/2022/20-1199>

<sup>389</sup> <https://www.oyez.org/cases/2000/00-949>

different statuses including race, religion, national origin, or sex. The following United States Supreme Court decisions exemplify the Court's stances on employment discrimination as a civil rights violation:

- **Griggs v. Duke Power Co. (1971)** – The Court held that education requirements and aptitude tests used as conditions of employment and advancement were a subtle, and illegal, means of giving job preferences to its white employees.<sup>390</sup>
- **Meritor Savings Bank v. Vinson (1986)** - The Court held that a hostile environment created by sexual harassment qualified as sex discrimination. As a result, victims may bring suit under Title VII of the Civil Rights Act of 1964.<sup>391</sup>
- **Price Waterhouse v. Hopkins (1989)** - The Court ruled that employment discrimination based on sex stereotypes is an unlawful form of sexual discrimination under Title VII of the Civil Rights Act of 1964.<sup>392</sup>
- **Burlington Industries, Inc. v. Ellerth (1998)** – The Court found that an employer is liable for unwelcome and threatening sexual advances by a supervisor. A plaintiff may recover for damages against the employer without showing job consequences or that the employer is at fault for the supervisor's actions.<sup>393</sup>
- **Oncale v. Sundowner Offshore Serv., Inc. (1998)** – The Court ruled that same-sex sexual harassment qualified as sex discrimination. Same-sex sexual harassment was prohibited under Title VII of the Civil Rights Act of 1964.<sup>394</sup>
- **Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc. (2015)** - The Court ruled that Abercrombie and Fitch was liable for refusing to hire an applicant based on a religious observance or practice. Title VII creates a responsibility to accommodate religious practices.

These cases exemplify the Court's protective stance against discrimination based on race and gender stemming from the Civil Rights Act of 1964.

### Discrimination Based on Age

While people often associate discrimination with race and gender, the federal government extended protections against discrimination to include age and disability. Finding its roots in the Civil Rights Act of 1964, Congress passed laws to prevent discrimination based on age. The Age Discrimination in Employment Act of 1967 (the "ADEA") protects job applicants and employees 40 years of age and older from discrimination. Employers cannot base decisions to hire, promote, discharge, or compensate employees based on age. Similarly, the terms, conditions, or privileges of employment cannot be influenced by age.<sup>395</sup> The federal government extended protections against age discrimination in the Age Discrimination Act of 1975, which prohibited age

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<sup>390</sup> <https://www.oyez.org/cases/1970/124>

<sup>391</sup> <https://www.oyez.org/cases/1985/84-1979>

<sup>392</sup> <https://www.oyez.org/cases/1988/87-1167>

<sup>393</sup> <https://www.oyez.org/cases/1997/97-569>

<sup>394</sup> <https://www.oyez.org/cases/1997/96-568>

<sup>395</sup> <https://www.dol.gov/general/topic/discrimination/agedisc>



discrimination in programs and activities receiving federal financial assistance. The following cases exhibit cases of age discrimination:

- ***Babb v. Wilkie (2020)*** – In this case, the management of a pharmacy for a Veterans Affairs center rejected applications of older applicants. The Court found that the ADEA requires that age should not be a factor in making personnel decisions.<sup>396</sup>
- ***U.S. Equal Employment Opportunity Commission v. Marymount Manhattan College (2012)*** – In this case, the Equal Employment Opportunity Commission (the “EEOC”) filed suit against Marymount Manhattan College (“Marymount”) in the Southern District of New York court. The EEOC alleged that Marymount did not hire a 64-year-old choreography instructor for an assistant professorship in dance composition because of her age.<sup>397</sup> Marymount eventually settled the case before further litigation.<sup>398</sup>

Since 1967, the law prohibits discriminatory practices in the workplace based on age. Similarly, the federal government extended protections to include discrimination based on disability.



## Discrimination Based on Disability

In 1973, Congress passed the Rehabilitation Act. Section 504 of that act made it illegal for discrimination based on disability in any program or activity receiving federal financial assistance or conducted by any executive agency or by the United States Postal Service.<sup>399</sup> Congress and

<sup>396</sup> <https://www.oyez.org/cases/2019/18-882>

<sup>397</sup> <https://www.eeoc.gov/selected-list-pending-and-resolved-cases-under-age-discrimination-employment-act-adea>

<sup>398</sup> <https://www.eeoc.gov/newsroom/marymount-manhattan-college-settles-eeoc-age-discrimination-lawsuit>

<sup>399</sup> <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973>

President George H.W. Bush extended this law in 1990 by signing of the Americans with Disabilities Act (the “ADA”).<sup>400</sup>

Modeled after the Civil Rights Act of 1964, the ADA’s civil rights legislation ensures equal opportunity for people with disabilities to employment, to purchase goods and services, and to participate in state and local government programs and services. The ADA covers individuals with physical or mental impairments that substantially limit one or more major life activities. This includes individuals with a history or record of such an impairment or individuals that are perceived by others as having such an impairment. While the ADA does not specifically name all of the impairments it covers, the law makes it illegal to discriminate based on disability, history of disability, or perception of disability.

### The Equal Employment Opportunity Commission (the “EEOC”)

The United States Equal Employment Opportunity Commission is the administrative agency responsible for enforcing the federal laws that make it illegal to discriminate based on an individual’s race, color, religion, sex, national origin, age, disability, or genetic information. The EEOC has jurisdiction over employers with 15 or more employees.<sup>401</sup> The EEOC also covers most labor unions and employment agencies. It oversees regulations concerning hiring, firing, promotions, harassment, training, wages, and benefits in the workplace. It has the authority to investigate charges of discrimination and administers legal disputes, like the *Marymount* case above.<sup>402</sup> Often, the EEOC will attempt to resolve disputes before filing a lawsuit, but has the ability to sue on behalf of victims of discrimination. It also provides outreach, education, and technical assistance programs to prevent discrimination in the workplace. Employers must also follow state and local laws which may encompass greater regulation than the EEOC. The EEOC attempts to work with these local agencies on local matters and defers thousands of cases to them each year.<sup>403</sup> Employers must post notices describing the federal laws prohibiting job discrimination. The EEOC collects workforce data and requires employers to maintain records regarding discrimination issues.<sup>404</sup>

### Required Records and Record Keeping

As part of EEOC requirements, employers must keep all personnel or employment records for one year. Additionally, if an employee is involuntarily terminated, the employer must maintain those personnel records for one year from the date of termination. The EEOC has other regulations pertaining to record keeping, including maintaining records related to payroll. Similarly, if it has brought an action against a business, the business has further responsibilities to

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<sup>400</sup> [https://www.ada.gov/ada\\_intro.htm](https://www.ada.gov/ada_intro.htm)

<sup>401</sup> For cases of age discrimination, the EEOC has jurisdiction over employers with 20 or more employees.

<sup>402</sup> <https://www.eeoc.gov/overview>

<sup>403</sup> <https://www.eeoc.gov/newsroom/commission-acts-strengthen-ties-state-and-local-fair-employment-practice-agencies-0>

<sup>404</sup> <https://www.eeoc.gov/employers>

maintain accurate records.<sup>405</sup> There are numerous regulations that govern some aspect of employer record-keeping and retention including requirements from various federal, state, and local laws.

Maintaining a good system of record-keeping may be required in many instances, but it is also good business practice. The United States Small Business Administration recommends keeping a current record system for contracts, leases, licenses, permits, payroll, and personnel documents. This will assist with improved business acumen and legal compliance. Similarly, the IRS recommends keeping records of purchases, expenses, assets, and income receipts.<sup>406</sup> Additionally, the IRS requires employers to keep records of employment taxes and related tax documents for four years after filing.<sup>407</sup>

As discussed in **Chapter Six**, federal securities laws require public corporations, corporations whose shares are bought and sold by the public, to disclose certain information on an ongoing basis. The Securities Exchange Commission requires publicly traded corporations to file forms 8-K, 10-Q, and 10-K reports on an ongoing basis with the SEC. These reports are made available to the public, so the investing public is aware of the financial conditions of the corporations where they are putting their money. It is meant to prevent fraud by requiring disclosure.<sup>408</sup> A Form 8-K, known as a “current report,” announces major events that investors should know about, like bankruptcy or an acquisition.<sup>409</sup> Corporations generally have four business days to file a Form 8-K for an event that triggers the filing requirement.<sup>410</sup>

Corporations file Form 10-Q reports for each of the first three fiscal quarters of the company's fiscal year.<sup>411</sup> It contains the organization's financial statements and provides an ongoing view of the business's financial position throughout the year. Similarly, the SEC requires public corporations to file a Form 10-K annually. This provides a comprehensive overview of the business's financial condition. This is different from the annual shareholders report, which a corporation must send to its shareholders when it holds an annual meeting to elect directors.<sup>412</sup> The annual shareholders report is usually a state-of-the-company report that includes an opening letter from the chief executive officer, financial data, results of operations, market segment information, new product plans, subsidiary activities, and research and development activities on future programs.<sup>413</sup>

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<sup>405</sup> <https://www.eeoc.gov/employers/recordkeeping-requirements#:~:text=EEOC%20Regulations%20require%20that%20employers%20keep%20all%20personnel,also%20keep%20all%20payroll%20records%20for%20three%20years.>

<sup>406</sup> <https://www.irs.gov/businesses/small-businesses-self-employed/what-kind-of-records-should-i-keep>

<sup>407</sup> <https://www.irs.gov/businesses/small-businesses-self-employed/employment-tax-recordkeeping>

<sup>408</sup> [https://www.law.cornell.edu/wex/securities\\_exchange\\_act\\_of\\_1934](https://www.law.cornell.edu/wex/securities_exchange_act_of_1934)

<sup>409</sup> <https://www.sec.gov/fast-answers/answersform8khtm.html>

<sup>410</sup> <https://www.investor.gov/introduction-investing/investing-basics/glossary/form-8-k>

<sup>411</sup> <https://www.investor.gov/introduction-investing/investing-basics/glossary/form-10-q>

<sup>412</sup> <https://www.investor.gov/introduction-investing/investing-basics/glossary/form-10-k>

<sup>413</sup> <https://www.investor.gov/introduction-investing/investing-basics/glossary/annual-report>



## Conclusion

Employment status is extremely important, and there are many laws that regulate employment in the United States. For instance, the concept of At-Will employment, which is recognized in nearly every state in the United States, allows both employers and employees to voluntarily terminate an employment relationship at-will. While the law protects both employers and employees, many of the regulations from the 20<sup>th</sup> century and today protect employees' health, well-being, and quality of life. Since the labor movement's early beginnings, progressive laws regulated child labor, discrimination, fair labor standards, and safety measures. The union and collective bargaining movements fought for fairer wages and hours for workers. It led to greater safety regulations and workers' compensation for employees injured or killed on the job. Additionally, federal and state laws prohibit workplace discrimination based on race, religion, sex, age, disability, and other protected classes. Employers must maintain records and file reports to demonstrate compliance with these laws. In addition to records for the EEOC, IRS, and SEC, other administrative agencies require employees to maintain and report accurate records. The next chapter will focus on the laws regulating property ownership and the concepts of real and personal property.



<https://www.youtube.com/watch?v=fhf2xmrVbwg>

## Terms

- ✚ Employee
- ✚ Whistle Blower Laws
- ✚ Right to Contract
- ✚ Trade Union
- ✚ Collective Bargaining
- ✚ At-Will Employment
- ✚ Just Cause
- ✚ OSHA
- ✚ Workers' Compensation
- ✚ Civil Rights Act of 1964
- ✚ Age Discrimination Act of 1975
- ✚ Americans with Disabilities Act
- ✚ Form 8-K Report
- ✚ Annual Shareholders Report

## Learning Objectives Discussed

**After reading this chapter, you should be able to:**

- ✓ Recognize the different laws that regulate employment law in the United States.
  - Employment is regulated by state and federal laws. These laws regulate wages, hours, worker safety, compensation, discrimination, and record keeping for employers.
- ✓ Recognize the history of the labor movement in the United States and its influence on employment law.
  - The child labor laws, anti-discrimination laws, fair labor standards, and safety measures discussed herein find their roots in the labor and progressive movement and the regulations of the Department of Labor.
- ✓ Recognize and understand the concept of at-will employment.
  - Under the doctrine of at-will employment, an employee and employer may terminate the relationship at any time. An employee may quit at any time, and the employer may fire the employee for any legal reason. However, it is illegal to fire an employee for discriminatory reasons, to retaliate against the employee for reporting harassment, or because the employee exercised a legal right.
- ✓ Identify and understand the different classes that warrant protection against discrimination in the workplace.
  - In the workplace, it is illegal to discriminate against individuals because of their race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, disability, age (age 40 or older), or genetic information.
- ✓ Understand the legal responsibilities of employers.
  - Employers must follow state and federal regulations that guide employment, remuneration, safety, discrimination, and record keeping.

## Cases and Examples Discussed

- *Allgeyer v. Louisiana* (1897)
  - The Supreme Court indoctrinated the concept of the right to contract as a legal right of substantive due process and property.
- Montana
  - The only state in the United States that does not recognize At-Will Employment. Unlike in the other states, employers in Montana may not fire an employee for any legal reason.
- Federal Department of Labor
  - A federal agency created in 1913 to promote the welfare of working people, and eventually protected minorities in the workplace.
- Upton Sinclair's *The Jungle*
  - In 1906, Upton Sinclair published his novel *The Jungle*. Sinclair described the terrible living and working conditions of immigrant workers in Chicago's meat processing factories. As a result of this exposé, the public demanded that the government regulate the working conditions of labor and the foods distributed more closely.
- Communications Workers of America ("CWA")
  - An example of a labor union. The CWA represents 700,000 workers in industries like telecommunication and information technology, airline, news media, television, health care, and education.
- National Labor Relations Act (the "NLRA")

- Also known as the Wagner Act, this federal law protects employees' rights to collectively bargain and join trade unions.
- Fair Labor Standards Act (the "FLSA")
  - The 1938 federal law that guaranteed workers the right to fair pay, and set the federal minimum wage, requirements for overtime, and placed restrictions on child labor.
- Occupation Safety and Health Act
  - The 1970 federal law to ensure safety and healthy working conditions for employees. It led to the creation of the Occupation Safety and Health Administration.
- Workers' Compensation
  - A form of insurance that provides monetary benefits and medical care for workers who are injured or become ill as a result of their job.
- Federal Employees' Compensation Act ("FECA")
  - The federal law that provides workers' compensation to federal employees.
- Texas and Oklahoma
  - All states except Texas and Oklahoma require employers to maintain worker's compensation.
- Fourteenth Amendment
  - While this amendment addresses different aspects of the rights of citizens, the Fourteenth Amendment is commonly referred to as the Equal Rights Amendment because of the application of the "equal protection of the laws." This amendment provides the basis for the state and federal laws, and court cases that protect individuals from unequal treatment.
- *Brown v. Board of Education* (1954)
  - The Supreme Court case that ended segregation in schools.
- *Reed v. Reed* (1971)
  - The Supreme Court case that disallowed laws mandated on the basis of sex.
- *Roe v. Wade* (1973)
  - The Supreme Court case that protected abortion as a right to privacy.
- *Dobbs v. Jackson's Women's Health Organization* (2022)
  - The Supreme Court case that overturned *Roe v. Wade* and declared that abortion was not a protected right under the Constitution.
- *University of California v. Bakke* (1978)
  - The Supreme Court case that declared affirmative action constitutional.
- *Students for Fair Admissions (SFFA) v. Harvard* (2020)
  - A recent circuit court case upholding the constitutionality of affirmative action.
- *Bush v. Gore* (2000)
  - The Supreme Court case that declared the use of different standards to count ballots violated the Equal Protection clause.
- The Civil Rights Act of 1964
  - The federal law that prohibits discrimination in the workplace. It extended the constitutional protections of the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments, including protections from employment discrimination.
- *Griggs v. Duke Power Co.* (1971)
  - The Supreme Court held that education requirements and aptitude tests used as conditions of employment and advancement were a subtle, and illegal, means of giving job preferences to its white employees.
- *Meritor Savings Bank v. Vinson* (1986)
  - The Supreme Court held that a hostile environment created by sexual harassment qualified as sex discrimination.
- *Price Waterhouse v. Hopkins* (1989)
  - The Supreme Court ruled that employment discrimination based on sex stereotypes is an unlawful form of sexual discrimination.
- *Burlington Industries, Inc. v. Ellerth* (1998)

- The Supreme Court found that an employer is liable for unwelcome and threatening sexual advances by a supervisor.
- *Oncale v. Sundowner Offshore Serv., Inc.* (1998)
  - The Supreme Court ruled that same-sex sexual harassment qualified as sex discrimination.
- *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.* (2015)
  - The Supreme Court ruled that Abercrombie and Fitch was liable for refusing to hire an applicant based on a religious observance or practice.
- Age Discrimination in Employment Act of 1967 (“ADEA”)
  - The federal law that protected job applicants and employees 40 years of age and older from discrimination.
- Age Discrimination Act of 1975
  - The Federal law that extended protections against age discrimination in programs and activities receiving federal financial assistance.
- *Babb v. Wilkie* (2020)
  - The Supreme Court found that ADEA requires that age should not be a factor in making personnel decisions.
- *U.S. Equal Employment Opportunity Commission v. Marymount Manhattan College* (2012)
  - In this case, the Equal Employment Opportunity Commission filed suit against Marymount Manhattan College in the Southern District of New York court. The EEOC alleged that Marymount did not hire a 64-year-old choreography instructor for an assistant professorship in dance composition because of her age. Marymount eventually settled the case before further litigation.
- The Rehabilitation Act
  - The 1973 federal law that made it illegal for discrimination based on disability in any program or activity receiving federal financial assistance or conducted by any executive agency or by the United States Postal Service
- The Americans with Disabilities Act (the “ADA”)
  - The 1990 federal law that ensures equal opportunity for people with disabilities to employment, to purchase goods and services, and to participate in state and local government programs and services.
- The Equal Employment Opportunity Commission (the “EEOC”)
  - The administrative agency responsible for enforcing the federal laws that make it illegal to discriminate based on an individual’s race, color, religion, sex, national origin, age, disability, or genetic information.