

# Employment Law

## Understanding Business and Personal Law *Online*



**Chapter Overview** Visit the *Understanding Business and Personal Law* Web site at [ubpl.glencoe.com](http://ubpl.glencoe.com) and click on Chapter 20: Employment Relationships—Chapter Overviews to preview the chapter information.

## The Opening Scene

Caterina has just arrived at home. Her parents are preparing dinner. Her brother, Lazzaro, is also home.

### Second Chance

**MR. GANT:** Say, you look upset. What's wrong, Caterina?

**CATERINA:** Nothing.

**LAZZARO:** She got fired.

**CATERINA:** How do you know?

**LAZZARO:** The rumor's all over school. I heard about it in my English class.

**CATERINA:** Great.

**MRS. GANT:** Did Mr. Pellis fire you already? Did you do something to make him angry? What happened, Caterina?

**CATERINA:** Nothing.

**LAZZARO:** She bought Mr. Pellis's own fax machine back from the guy who stole it last week. No wonder he was angry. Now Mr. Pellis is out \$200 because of Caterina's mistake.

**CATERINA:** Shut up.

**MRS. GANT:** Is that true, Caterina?

**CATERINA:** No. Well, yes, sort of.

**MRS. GANT:** Sort of?

**CATERINA:** Okay, so it's true, but it's not fair that he fired me. I was just trying to help. How could I have known the machine was stolen?

**LAZZARO:** Sounds fair to me.

**CATERINA:** Shut up.

**MRS. GANT:** Why isn't it fair?

**CATERINA:** I don't know.

**MRS. GANT:** Then it must be fair.

**CATERINA:** Okay. It's not fair because he promised me that he wouldn't fire me, as long as I did exactly what he asked me to do. Besides, his manual says I should get a second chance.

**MRS. GANT:** Manual? What are you talking about, Caterina?



**CATERINA:** He gave me this employment manual to read when he hired me, and it says right on page five that all employees get what he calls progressive discipline. I didn't get progressive discipline. Mr. Pellis fired me for making one mistake.

**LAZZARO:** All of his employees? You're his only employee.

**CATERINA:** Shut up.

**MR. GANT:** Well, it's too bad that you got fired, especially after all that time you spent getting a work permit. I guess you'll just have to look for a new job.

**LAZZARO:** Oh, she never got a work permit. She said it wasn't important.

**CATERINA:** Shut up.

**MR. GANT:** You didn't get your work permit?

**CATERINA:** Not exactly.

**MR. GANT:** Caterina.

**CATERINA:** Yes?

**MR. GANT:** Not getting a work permit is very irresponsible. Maybe it's better that you got fired after all.

### What Are the Legal Issues?

1. What is the doctrine of employment-at-will?
2. What employment situations do not fall within the doctrine of employment-at-will?
3. What are the exceptions to employment-at-will?
4. What are the federal laws that regulate employment relationships?

# Employment Relationships

## What You'll Learn

- How to define employment-at-will
- How to identify those situations that fall outside of the doctrine of employment-at-will
- How to identify the exceptions to employment-at-will
- How to distinguish between implied contract and implied covenant

## Why It's Important

Understanding the nature of at-will employment will help you determine whether your rights have been violated if you are discharged by an employer.

## Legal Terms

- employment-at-will
- union
- collective bargaining agreement
- grievance procedure
- severance pay
- promissory estoppel
- implied contract
- disclaimer
- public policy tort
- implied covenant

## Employment-at-Will

The doctrine known as **employment-at-will** is the general rule governing employment in most states. According to this doctrine, an employer is permitted to discharge an employee at any time, for any or no reason, with or without notice. This doctrine is based on the notion that both parties in an employment relationship must be free to leave the employment arrangement at any time. If employees were not free to leave an employment relationship at any time, then they would actually be slaves. Enslavement, of course, violates the Thirteenth Amendment's prohibition against involuntary servitude.

## Unionized Employees

The doctrine of employment-at-will does not apply in certain situations. Employees have the right to organize and participate in a union. A **union** is an organization of employees that is formed to promote the welfare of its members. Employees who belong to labor unions have hiring and firing procedures built into their collective bargaining agreements. A **collective bargaining agreement** is a contract negotiated by the employer and representatives of the labor union, and it covers issues related to employment.

### UNION ACTIVITY

A union is an organization of employees that is formed to promote the welfare of its members. Employees who belong to labor unions have hiring and firing procedures built into their collective bargaining agreements. *What procedures are available to union members should an employer violate a collective bargaining agreement?*



Union members select representatives to negotiate a contract with the employer through a series of discussions known as bargaining.

## Collective Bargaining Agreements

A collective bargaining session generally concerns issues such as working conditions, wages, benefits, job security, layoffs, and firing policies. For example, a contract might stipulate that an employer must have a legitimate, employment-related reason, or just cause, for disciplining or discharging an employee. Collective bargaining agreements generally include the steps that must be followed in a grievance procedure. A **grievance procedure** establishes a series of steps that an employee must follow to appeal the decision of an employer who may have violated the collective bargaining agreement. Many nonunion companies also include a grievance procedure as part of the employment contract.

*Example 1.* Edward Ewing worked on the assembly line for Stewart Motors, Inc. He was also a member of the Organization of American Automotive Employees (OAAE). Ewing was discharged because he was late for work on one occasion. The collective bargaining agreement between Stewart Motors and OAAE did not permit the firing of a worker for a single incident of lateness. Also, according to the agreement, all violations for lateness were to be reported in writing, and the employees were to be given a second chance. After going through the grievance procedure, Ewing was restored to his position.

## Layoffs and Plant Closings

Despite the many advantages associated with collective bargaining agreements, they do not guarantee that employees will have a job for life. Sometimes, economic conditions force layoffs or plant closings. When such events occur, some or all employees may lose their jobs. Massive layoffs and plant closings can pose great hardships to communities and individual families. Collective bargaining agreements often provide a negotiated procedure under which such layoffs occur. A collective bargaining agreement may also provide for **severance pay**, which is a set amount of money to compensate employees for being discharged and to help them through the time that they remain unemployed. Severance pay is calculated by using a variety of factors, including the position and salary of the person being laid off.

The federal government also endeavors to aid employees who lose their jobs or are laid off. For example, Congress enacted the Worker Adjustment and Retraining Notification Act (WARN). This legislation compels some companies to give employees at least 60 days advance notice of a factory shut down or massive layoff. Only companies that



### Employment Discrimination

Working at a part-time job helps provide a sense of responsibility, pride, and freedom. Sometimes, however, companies discriminate while hiring because of the race, gender, or national origin of certain applicants. *What would you do if the company for whom you worked refused to hire certain minorities?*

### Get Involved

Contact organizations like the ACLU or look up the ACLU's Web site at [www.aclu.org](http://www.aclu.org) to find out how the organization helps protect citizens from discrimination.

### **Determining When to Discipline**

Cira Valdez is principal at Morningside Elementary. She is the only daughter of elderly parents. For the past three years, she has missed many days of work to care for her parents. The superintendent of her school district, Adya Perkins, has warned her repeatedly about her absences, and the vice-principal, Don Mattison, has complained about the extra work that Cira's absences have caused him. In March, Mrs. Perkins suspended Ms. Valdez. Parents and teachers were furious. They felt Mrs. Perkins should have taken disciplinary measures in the summer when the students would not be affected. *What are Mrs. Perkin's ethical obligations in the case? Do you agree with her actions? Why or why not?*

employ more than 100 workers are bound by this requirement. Notice of lay off or shut down is not always necessary, especially if it is the result of an emergency situation.

## **Illegal Discrimination**

Even when an employee is not covered by a collective bargaining agreement or a professional employment contract, he or she cannot be discharged for a reason that is discriminatory in nature. According to the Civil Rights Act of 1964, a discharge is discriminatory if it occurs because of a person's race, color, creed, national origin, or gender. Similarly, the Age Discrimination in Employment Act protects people from being discharged because of their age. The Civil Rights Act of 1964 and the Age Discrimination in Employment Act are covered in more detail in Chapter 21.

## **Rights and Duties of Employers and Employees**

Employers and employees have certain mutual expectations in their working relationships. Some of these expectations are determined by the nature of the job, but other expectations are implied or imposed by state and federal statutes. Employers expect their employees to have the experience, education, and skills that they claim to possess. Employers also expect a reasonable amount of work from employees within a reasonable amount of time. They have the right to tell employees what tasks to perform and how to perform them.

Employees are expected to be loyal, honest, and dependable, and they must abide by the employer's rules. Employees can expect their employers to provide regular pay, a safe work environment, appropriate job training, opportunities to earn raises and promotions, and safe tools. They can also expect to be able to make reasonable complaints.

## **Exceptions to Employment-at-Will**

Despite all of the protection afforded to employees, most workers are still subject to the principles outlined in the doctrine of employment-at-will. As explained previously, this doctrine states that an employer is permitted to discharge an employee at any time, for any or no reason, and with or without notice. Terminating an employment contract under the doctrine of employment-at-will has occasionally resulted in injustices. As a result, many courts challenge the employment-at-will doctrine by ruling against the wrongful discharge of employees.

## **Wrongful Discharge**

Wrongful discharge, also called unjust dismissal, provides employees with grounds for legal action against employers who have treated them unfairly. The courts have established five standards it will consider

regarding an unjust termination. These five standards include promissory estoppel, implied contract, public policy tort, intentional infliction of emotional distress, and implied covenant.

**Promissory Estoppel** **Promissory estoppel** has been used by some courts as proper grounds for unjust dismissal lawsuits. However, to build a solid case based on promissory estoppel, four elements must be proven. These elements include the following:

- The employer makes a promise to an employee that the employer can reasonably expect the employee to rely upon.
- The employee actually relies upon that promise, and as a result, does or doesn't do something.
- The employee ordinarily would not have acted or refrained from acting had it not been for the employer's promise.
- The employee is in some way harmed by the employer's failure to honor the promise.

If all of these elements exist, then the court may prevent the employer from denying responsibility for the loss suffered by the employee as a result of that reliance.

**Example 2.** Nigel Harrington worked as a bookkeeper for Federated Shipping, Inc. In June, he was arrested and charged with embezzlement. Harrington's supervisor told him that he would be suspended pending the results of the case. The supervisor assured Harrington that he would have his job back with full seniority rights if the case were resolved in his favor. In reliance on this promise, Harrington didn't seek another job, and instead concentrated on clearing his name. When the charges were dropped, Harrington attempted to get his old job back only to find that Federated would not employ him.



#### PROMISSORY ESTOPPEL

If an employer makes a promise to an employee and that employee relies on the promise and suffers a loss as a result, then the employee may be permitted to bring a wrongful discharge lawsuit based on promissory estoppel. *What are the elements of promissory estoppel?*

Harrington's case clearly fits within the guidelines set up by the courts for a case of unjust dismissal based on promissory estoppel. If Harrington were to bring a wrongful discharge suit based on promissory estoppel against Federated Shipping, he would likely succeed.

**Implied Contract** Another exception to employment-at-will involves implied contract. The **implied contract** exception arises when an employer has said, written, or done something to lead the employee to reasonably believe that he or she is not an at-will employee. When determining whether an employer has created an implied contract, the court can look at all of the facts involving that employment relationship, not just the oral promises made by the employer. The court can examine the nature of the employment relationship, the way that the parties have dealt with one another in the past, the length of the employment arrangement, the customary way that the employer has dealt with other employees, and employment policies and procedures. An employer's policies and procedures are generally outlined in an employee handbook or other company documents. If the handbook contains promises of lifelong employment, fair and just treatment, discipline or discharge

## LAWS in Your Life

### Organizing and Participating in a Union

Employees have a right to organize into unions if they share common employment interests, do not have supervisory duties, and do not have a confidential role in creating management-labor policies. To establish a union, organizers must have a sufficient number of the prospective bargaining unit members sign authorization cards. A bargaining unit consists of a group of eligible employees whose contract is negotiated as a group. Authorization cards, signed by employees who are eligible for membership in a union, indicate that the workers want their employment to be represented by a particular union. If a certain percentage of workers sign authorization cards, the union may ask management to be recognized as the exclusive bargaining unit for the employees it represents. If management refuses to voluntarily recognize a union, organizers can ask the National Labor Relations Board (NLRB) to conduct hearings and certify the union.

**Conduct Research** Investigate an employee's right to organize and participate in a union, based on current legislation. What are some of the laws governing management's conduct during the process of establishing a union? What are some of the laws governing the conduct of prospective union members?

### Mathematics

In May 2001, the U.S. Department of Labor reported 1,426 mass lay-off actions by employers during that month. A mass layoff action means that a single company lays off at least 50 people, regardless of the duration of the layoff.

### Research Activity

Look at the chart below.

|              | Mass Layoff Actions | Total No. of Workers |
|--------------|---------------------|----------------------|
| Jan–May 2001 | 7,426               | 878,387              |
| Jan–May 2000 | 5,873               | 627,520              |

*What is the percentage increase in the number of mass layoffs and individual workers laid off between January and May of 2000 and between January and May of 2001?*

only for certain offenses, or progressive discipline, then the employer may have created an implied contract. However, before the plaintiff in a wrongful discharge lawsuit can make such allegations, he or she must convince the court that the employer intended the employment manual to be a part of the employment relationship. This can usually be done if the employer required the employee to read and sign the handbook as a condition of employment.

Most federal and state courts that have recognized that the implied contract exception will still allow employers to maintain an employment-at-will arrangement by using a disclaimer. A **disclaimer** is a statement that holds that, regardless of any provisions, policies, or oral promises to the contrary, an employment-at-will situation still exists between the employer and its employees. To be effective, a disclaimer should include the following statements:

- Neither the employee handbook nor any other communication to employees is intended to create an employment contract between the firm and its employees.
- The employer reserves the right to discharge an employee at any time with or without notice and with or without reason.
- No one other than the president of the firm is empowered to make any oral or written change in this disclaimer.

**Example 3.** Mary Barnes applied for a job with the Kosar Brothers Department Store. The employee manual contained a disclaimer that preserved employment-at-will. The disclaimer specifically said that employees could be discharged with or without notice at any time for any or no reason. Only the president of the store could alter this provision. Barnes told Jack Gower, the assistant manager, that she would not work under such provisions. Gower told her to ignore the disclaimer and promised Porter a job for life. Gower’s oral representation would have no legal effect in light of the ironclad nature of the disclaimer. Barnes realized this and sought employment elsewhere.

Although the disclaimer provides a way for an employer to preserve employment-at-will, many employers are reluctant to include such a statement in their employee handbooks. It may lower morale to remind employees that they can be fired at any time without warning or cause. Some employers qualify the disclaimer by saying that “employees can be dismissed at any time for just cause,” or “employees who violate company rules can be terminated at any time.” Such qualifying provisions can weaken the disclaimer to the extent that it no longer has the effect of preserving employment-at-will, making it possible for a discharged employee to sue for breach of an implied employment contract.



### PUBLIC POLICY TORT

If an employee is fired for refusing to violate the law, such a discharge would violate public policy. *Why does punishing someone for obeying the law violate public policy?*



Courts in some states have held that a disclaimer may also be negated if overwhelming evidence suggests that an employer has provided for a detailed dismissal procedure. Providing such detail has established an implied employment contract.

**Public Policy Tort** Many states now permit a fired employee to recover compensatory and punitive damages in a **public policy tort** if he or she can prove the firing violated public policy. Public policy holds that no one should be allowed to do anything that tends to hurt the public at large.

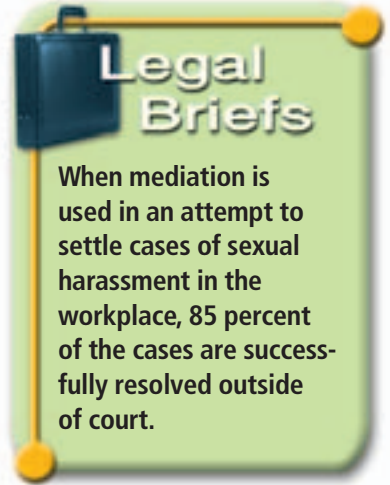
**Example 4.** Allen Kiefer was ordered to appear for jury duty on December 3. The law in his state says that anyone who disobeys such an order can be fined and imprisoned. The same statute also forbids an employer from firing an employee who is ordered to appear for jury duty. Despite this prohibition, Kiefer's employer fired him for being absent from work on December 3. Kiefer can bring a wrongful discharge suit based on public policy tort.

**Intentional Infliction of Emotional Distress** Some courts have permitted discharged employees to bring a tort lawsuit against their former employers for intentional infliction of emotional distress. For example, if the conduct of an employer in discharging an employee caused severe mental and emotional trauma, the employee may bring lawsuit based on this provision. However, an employer's conduct must be extremely outrageous to qualify as intentional infliction of emotional distress.

**Example 5.** Marvin Pardew’s employer, Ron Wilson, was having a very bad day. When Wilson discovered several careless errors made by Pardew, he flew into a rage. In the process of firing Pardew, Wilson publicly insulted Pardew using loud, offensive speech. He then grabbed Pardew by the arm and dragged him to the exit of the building. Wilson’s behavior caused Pardew to experience feelings of extreme humiliation. Pardew might be able to win a tort lawsuit against his employer.

**Implied Covenant** Another exception to employment-at-will is the principle of **implied covenant**. This principle holds that any employment relationship is based on an implied promise that the employer and employee will be fair and honest with one another. Unlike implied contract, the existence of an implied covenant exists simply because the employment relationship exists.

**Example 6.** Ella Ernst was to receive a 25 percent commission on all computer sales she made for her employer, Clarkson Computer Company (CCC). Ernst made a \$10 million sale to the federal government, earning a \$2.5 million commission. CCC fired her and refused to pay the commission. Ernst sued CCC for unjust dismissal based on the existence of an implied covenant. The court held that CCC had violated an implied covenant of fair dealing and honesty. Ernst was entitled to her commission.



**Legal Briefs**

When mediation is used in an attempt to settle cases of sexual harassment in the workplace, 85 percent of the cases are successfully resolved outside of court.

## Section 20.1 Assessment

### Reviewing What You Learned

1. What is employment-at-will?
2. What situations fall outside of the doctrine of employment-at-will?
3. What are the exceptions to employment-at-will?
4. What is the difference between implied contract and implied covenant?

### Critical Thinking Activity

**Employment-at-Will** Why have the courts begun to carve out exceptions to the employment-at-will doctrine?

### Legal Skills In Action

**Employment Rights and Duties** Your Uncle Ian was recently approached at work by a representative of a union that is attempting to organize the workers at his plant. Uncle Ian believes that as a union member, he will be guaranteed a job for life. Send an e-mail message to your Uncle Ian explaining why the union can’t guarantee him lifelong employment.

# Legislation Affecting Employment

## What You'll Learn

- How to recognize those areas of employment that must be included in any collective bargaining process
- How to identify the objectives of the Taft-Hartley Act
- How to identify the goal of the Landrum-Griffin Act
- How to identify child labor laws

## Why It's Important

You need to know the laws that protect union activities because you may be asked to join a union in the future.

## Legal Terms

- closed shop
- union shop
- right-to-work laws
- featherbedding
- child labor laws

## Regulating Collective Bargaining

As mentioned earlier in the chapter, employment contracts are often negotiated by groups of employees organized into unions. Called collective bargaining, this process is now firmly established as a way of defining working conditions and industrial relations. The government has played an active role in regulating collective bargaining. As we shall see, the government at both the federal and state levels is also very interested in regulating the employment of minors.

In the past, the courts held collective bargaining to be an illegal conspiracy. As attitudes changed, the courts began to accept collective bargaining. Eventually, the government began to encourage collective bargaining, and people felt that the government should regulate the process to some extent.

## Wagner Act

The first federal law addressing collective bargaining was the National Labor Relations Act of 1935, also called the Wagner Act. The purpose of this act was to encourage collective bargaining, discourage certain unfair labor practices, and provide federal assistance in obtaining fair bargaining.

The Wagner Act also established guidelines for determining which employment concerns had to be included in the collective bargaining process. The act states that employers must negotiate “wages, hours, and conditions of employment.” Subsequent court decisions have helped interpret what “conditions of employment” might include. For example, business decisions that are at the very heart of an executive’s ability to control the company, such as decision on how to invest corporate funds, would be outside the scope of collective bargaining.

**Example 7.** Wilma Durrell, chief executive officer of Collier-Ansen Laboratories, Inc., decides to discontinue a line of over-the-counter medications that had been the object of tampering. Unfortunately, the discontinuation caused the shutdown of one of Collier-Ansen’s manufacturing plants. The union incorrectly claimed that the decision to close the plant should have been submitted to collective bargaining. The decision to discontinue that line of medication was clearly within the discretion of corporate management.



## Careers in Law

### Labor Union President

Every day, thousands of farmworkers who do not own land work long, backbreaking hours to produce the food served at American tables. Many of these farmworkers and their families “follow the crops,” migrating from one area of the country to another as the need for farm labor changes with the changing seasons.



Ramon Ramirez is the president of Pineros y Campesinos Unidos del Noroeste (Northwest Treeplanters and Farmworkers United), a labor union that represents 5,000 farmworkers in the Willamette Valley of western Oregon. Ramirez and his PCUN staff of 14 are trying to establish better working conditions, higher wages, and better housing for union members.

“The median annual income for a farmworker in the United States is about \$7,500,” he says. “They are the lowest-paid work force in the country. After a grueling day working in the fields, some of our members don’t even go home to a house. They live in cars, even chicken coops.”

The PCUN helps farm workers tackle their employment and housing problems by monitoring enforcement of the state minimum wage and occupational health and safety laws. In addition, Ramirez tries to improve working conditions by negotiating with the growers who hire the farm workers. If all else fails, the PCUN can launch a boycott to encourage consumers not to buy produce from certain farms.

Ramirez believes that the most effective way to improve the lives of farm workers is through education. Ramirez goes into the fields to inform workers about the union and how it can help them. The PCUN helps them understand their legal rights and establish economic development projects.

“Education empowers people,” Ramirez says. “We know when we’ve done our job, because people no longer need our services. They will have learned enough to take control of their own working lives.”

- |                    |  |
|--------------------|--|
| <b>Skills</b>      | Reading, writing, and multi-lingual, especially Spanish and English.                                     |
| <b>Personality</b> | Committed to the struggle for social change and justice; interested in helping people live better lives. |
| <b>Education</b>   | Willing to get on-the-job training. Volunteer or propose to perform an unpaid internship with a union.   |

You can find more information about PCUN at [www.pcun.org](http://www.pcun.org). For more information about labor activists, visit [ubpl.glencoe.com](http://ubpl.glencoe.com) or visit your public library.

## Virtual Law

### Using E-Mail at Work

A large company that makes chemical products fired as many as 40 people at a Texas factory for their e-mail use. The employees were sending messages containing sexual and violent images over the company's e-mail system. A similar review of complaints by the company had led to the firing of 50 people some months earlier. Employees should not assume that their e-mail on company computers is private. In fact, just the opposite is true. Action can be taken against employees for inappropriate e-mail use. (Source: *InformationWeek*, August 23, 2000)

**Connect** Send an e-mail to the human resources department of one or more large companies. Ask if they have a policy on use of e-mail at work.

### Taft-Hartley Act

Many people felt that the Wagner Act gave too great an advantage to the union bargaining unit. Consequently, it was amended in 1947 by the Labor-Movement Relations Act, popularly called the Taft-Hartley Act. The purpose of the Taft-Hartley Act was to equalize the power of labor and management. The act provided, among other things, that unions must provide a 60-day notice before calling a strike. If a strike would endanger the nation's health or safety, the president can obtain an injunction to stop the strike for 80 days.

The Taft-Hartley Act also made the closed shop illegal. A **closed shop** is a business or company that requires a person to be a union member before being hired. In contrast, a **union shop**, or a business in which a worker must join the union within 30 days after being employed, is allowed under the act. The act also allows states to pass **right-to-work laws**. State right-to-work laws prohibit union shops. The Taft-Hartley Act prevents a labor union from requiring an employer to retain employees who are no longer needed. **Featherbedding**, or assigning more employees to a job than are actually needed, and pressure exerted by a union to retain unnecessary employees are two more acts prohibited by the Taft-Hartley Act.

### Landrum-Griffin Act

The Wagner Act was further amended in 1959 by the Labor Management Reporting and Disclosure Act, usually referred to as the Landrum-Griffin Act. The primary goal of the Landrum-Griffin Act was to

stop corruption in the unions. Under provisions of this act, all unions must register their constitutions and bylaws with the Secretary of Labor. Moreover, unions must submit yearly reports on their financial condition. The report must include assets, liabilities, receipts, sources of revenue, loans to union members, and other money paid out of the union treasury. The act also includes the union members' "bill of rights," which ensures that all members of the union have the right to be involved in running the union.

## Regulating the Employment of Minors

In the industrial revolution, children were often exploited by employers. For example, some mine owners would use children to work deep in mines because they could crawl into small cracks and crevices. Even though this work was dangerous, the children were paid very low wages. Children couldn't refuse to do the work because jobs were scarce. To prevent such abuse, laws were enacted to protect children who enter the labor force.

### State Child Labor Laws

**Child labor laws**, or laws that control the work that children are permitted to do, developed slowly. In 1842, Massachusetts and Connecticut passed laws limiting the amount of hours that a child could work. However, these two states were far ahead of their time. Even as late as 1930, only 44 states had child labor laws dealing with nonmanufacturing occupations. In 1934, the annual Conference on Labor Legislation adopted a set of standards for state child labor legislation, and these standards have had a great influence on child labor laws.

As part of these laws, many states (see Figure 20.1) specify certain types of activities that cannot be performed by minors on the job. Such prohibitions include working on or around dangerous machinery. These laws are designed to protect minors who, because of inexperience, might not understand the dangers involved on a specific job.

### Federal Child Labor Laws

A positive step in federal child labor laws was the child labor portion of the Fair Labor Standards Act of 1938, as updated in 1974. This act prohibits the interstate or foreign trade shipment of any goods produced in factories in which "oppressive child labor" had been used within 30 days of the removal of the goods. The act also prohibits the

#### CHILD LABOR LAWS

Both state and federal laws regulate child labor. *Why does the law permit children to work in agriculture as long as the work takes place after school hours?*



**Figure 20.1**

## Child Labor Laws

This chart summarizes the state laws (printed in regular type) and the federal Fair Labor Standards Act (FLSA) laws (printed in italics), governing the employment of minors in California. If an employer is covered by both state and federal laws, the higher standard—the provision which gives the most protection to employees—applies. In general, the provisions of FLSA shown in this chart are the higher standard, and therefore prevail.

|                               | <b>All minors under age 18</b>   | <b>Minors age 16 –17</b>  | <b>Minors age 14 –15</b>  | <b>Minors age 12 –13</b>   |
|-------------------------------|--|---|---|--|
| <b>SPREAD OF HOURS</b>        | <p>Work must be performed between 5 A.M. and 10 P.M. Exception: Public messenger service must be performed between 6 A.M. and 9 P.M.</p> <p>Work experience programs up to 12:30 A.M.—see minors ages 16 and 17. Day preceding nonschool day up to 12:30 A.M.—see minors ages 16 and 17. See also Entertainment Industry employment.</p>   | <p>If enrolled in a work experience program, may work until 12:30 A.M. on any evening. Minor may work until 12:30 A.M. on any day preceding a nonschool day.</p> <p><i>FLSA: No limitations</i></p>   | <p>Work must be performed between 5 A.M. and 10 P.M. Exception: Public messenger service must be performed between 6 A.M. and 9 P.M. (Can be employed as a messenger only in cities having less than 15,000 inhabitants.)</p> <p><i>FLSA: Work must be performed between 7 A.M. and 7 P.M. Exceptions: From June 1 to Labor Day can work to 9 P.M.</i></p>  | <p>Work must be performed between 5 A.M. and 10 P.M. Exception: Public messenger service must be performed between 6 A.M. and 9 P.M. (Can be employed as a messenger only in cities having less than 15,000 inhabitants.)</p> <p><i>FLSA: Minors under 14 years of age may not be employed in firms subject to the FLSA.</i></p> |
| <b>RESTRICTED OCCUPATIONS</b> | <p>Cannot sell or serve alcoholic beverages. Cannot be employed for the purpose of driving a motor vehicle on the highways or streets.</p> <p><i>FLSA—NO MINOR UNDER 18 MAY BE EMPLOYED IN any occupation declared hazardous by the Secretary of Labor, including, but not limited to:</i></p> <p><i>Explosives manufacturing occupations.</i><br/><i>Motor vehicle occupations.</i><br/><i>Mining occupations.</i><br/><i>Logging and sawmilling occupations.</i><br/><i>Power-driven woodworking machine and power-driven metal forming, punching, and shearing machine operations.</i><br/><i>Occupations involving exposure to radioactive substances, and to ionizing radiations.</i></p> <p><i>IN ADDITION TO THE ABOVE, FURTHER LIMITATIONS APPLY TO ALL MINORS UNDER AGE 16: (See Child Labor Bulletin 101) Employment is limited to certain occupations not requiring performance of any duties in work places where goods are manufactured, moved, or processed. Some permitted occupations in retail and food services include:</i></p> <p><i>Office and clerical.</i><br/><i>Cashiering and selling.</i><br/><i>Price marking and packaging.</i><br/><i>Bagging.</i></p> | <p><i>Occupations in slaughtering, meat packing and rendering plants.</i><br/><i>Bakery machine operations.</i><br/><i>Paper products machine operations.</i><br/><i>Brick, tile, and kindred products manufacturing.</i><br/><i>Wrecking, demolition, and ship-building operations.</i><br/><i>Roofing work, including application of weather-proofing materials and substances.</i><br/><i>Excavation operations.</i></p> | <p><b>NO MINOR UNDER 16 MAY BE EMPLOYED:</b></p> <p>In selling or serving alcoholic beverages.<br/>In hazardous occupations.<br/>In operating an auto or truck.<br/>In delivering goods, merchandise, commodities, papers, or packages from a motor vehicle.<br/>In the vicinity of moving machinery.<br/>In or about any manufacturing or transportation of explosives.<br/>In or about the functioning parts of unguarded and dangerous moving equipment, aircraft or vessels, or functioning blades or propellers.<br/>In or about a gasoline service station.</p> <p>In selling to passing motorists newspapers, candy, flowers, or other merchandise or commodities.<br/>In door-to-door selling of newspapers or magazine subscriptions, candy, cookies, flowers or other merchandise, or commodities unless the following conditions are met:<br/>1) Minors work in pairs as a team<br/>2) One adult supervisor for 10 or fewer minors<br/>3) Within sight or sound of the supervisor once every 15 minutes<br/>4) Returned to home or rendezvous point daily</p> <p style="text-align: center;"><i>SEE TEXT OF THIS DIGEST FOR A MORE DETAILED LIST &amp; CONDITIONS</i></p> <p><i>FLSA: CHILD LABOR PROVISIONS DO NOT APPLY TO: Children under 16 years of age employed by their parents in occupations other than manufacturing, mining, or occupations declared hazardous by the Secretary of Labor; Children employed as actors or performers in motion pictures, theatrical, radio, or television productions. Children engaged in the delivery of newspapers to the consumer.</i></p> |  |

### CHILD LABOR LAWS

Federal and state laws restrict the employment of minors. *What kinds of restrictions does this state impose?*



employment of oppressive child labor in any enterprise engaged in commerce or in the production of goods for commerce. Oppressive child labor is defined as employment of minors under the age of 16 in any of the jobs covered by the act and the employment of minors under 18 in jobs declared especially dangerous by the Secretary of Labor.

Minors between 14 and 16 may be employed in jobs other than those covered by the act, but only if the Secretary of Labor determines that such employment does not interfere with their schooling. There are many exceptions to the minimum wage and maximum hours rules in the Fair Labor Standards Act. They include children working in agriculture after school hours, child actors, children working for their parents in jobs other than manufacturing, and children delivering newspapers.

### Industry-Education Cooperation

Effective control of child labor requires the help of industry and schools. Many industries have their own codes that restrict child labor to an even greater extent than do the laws. Other industries, however, conform only if forced by law.

Education and the child labor problem are closely associated. One of the great evils of child labor is its interference with the education of children. Public schools work with the enforcement officers of child labor acts to protect children. Work permits, for example, are often issued by the public school system. A work permit is a document that allows a minor below a certain age to work. Laws regulating work permits vary from state to state.

## Section 20.2 Assessment

### Reviewing What You Learned

1. What employment areas must be included in any collective bargaining process?
2. What are the objectives of the Taft-Hartley Act?
3. What is the goal of the Landrum-Griffin Act?
4. What are child labor laws?
5. Investigate an employee's right to organize and participate in a union. Explain the legal developments that govern this right.

### Critical Thinking Activity

**Collective Bargaining** Why did the courts once believe that collective bargaining was an illegal conspiracy?

### Legal Skills In Action

**Child Labor** Your friend, Felicia, has threatened to complain to the Secretary of Labor because her parents have put her to work on the family farm after school. Write a letter to Felicia explaining whether her complaint is justified.



## Chapter Summary

**Section 20.1 Employment Relationships**

- Employment-at-will is the general rule governing employment in most states. According to the doctrine of employment-at-will, an employer is permitted to discharge an employee at any time, for any or no reason, with or without notice. This doctrine is based on the notion that both parties in an employment relationship must be free to leave the employment relationship at any time.
- The doctrine of employment-at-will does not apply to employees who are protected by a union. A union is an organization of employees that is formed to promote the welfare of its members. In addition, an employer cannot invoke the doctrine of employment-at-will to discharge an employee for a reason that is discriminatory in nature. It is unlawful to discriminate against employees because of their age, race, color, creed, national origin, or gender.
- Exceptions to employment-at-will include wrongful discharge. Wrongful discharge, also called unjust dismissal, provides employees with grounds for legal action against employers who have treated them unfairly. The courts have established five standards it will consider regarding an unjust termination: promissory estoppel, implied contract, public policy tort, intentional infliction of emotional distress, and implied covenant.
- When an employer does something to lead an employee to reasonably believe that he or she is not an at-will employee, an implied contract is created. All employment relationships are based on an implied covenant that the employer and employee will be fair and honest with one another.

**Section 20.2 Legislation Affecting Employment**

- The first federal law addressing collective bargaining, the National Labor Relations Act of 1935, also called the Wagner Act, states that employers must include wages, hours, and conditions of employment in the collective bargaining process. Business decisions that are at the very heart of an executive's ability to control a company, such as decisions on how to invest corporate funds, would be outside the scope of collective bargaining.
- The objective of the Taft-Hartley Act was to equalize the power of labor and management. It provides, among other things, for a 60-day "cooling off" period, which the President of the United States could invoke to postpone a strike for up to 60 days under special circumstances. The act also made it illegal to have a closed shop, which requires a person to be a union member to be considered for hiring. In contrast, a union shop, or a business in which a worker must join the union within 30 days after being employed, is allowed under the act. The act also allows states to pass right-to-work laws, and prevents featherbedding.
- The primary goal of the Landrum-Griffin Act was to stop corruption in the unions by mandating, among other things, that all unions must register their constitutions and bylaws with the Secretary of Labor. Under the Landrum-Griffin Act, unions are also required to submit yearly reports on their financial condition. These reports must include assets, liabilities, receipts, sources of revenue, loans to union members, and other money paid out of the union's treasury.
- Child labor laws control the work that children are permitted to do. They specify certain types of activities that cannot be performed by minors on the job. Federal child labor laws prohibit shipment of goods produced in factories in which "oppressive child labor" had been used.

## Using Legal Language

Consider the key terms in the list below. Then use these terms to complete the following exercises.

**promissory estoppel  
union**

**collective bargaining**

**grievance procedure**

**severance pay**

**public policy tort**

**implied contract**

**employment-at-will  
disclaimer**

**implied covenant**

**union shop**

**right-to-work laws**

**child labor laws**

1. Imagine you are a friend of Caterina (in “The Opening Scene”) and are discussing her recent firing. Write a dialogue between the two of you. Use as many of the terms listed above as possible.
2. With a partner, role-play your dialogues.
3. With your partner, practice your dialogues and present them to the class.
4. As a class, vote to choose the best dialogue.

## The Law Review

Answer the following questions. Refer to the chapter for additional reinforcement.

5. What is the doctrine known as employment-at-will based upon?
6. Do collective bargaining agreements guarantee employees a job for life? Why or why not?
7. Describe an employee’s and employer’s duties and rights to each other.
8. What must a disclaimer include in order to be effective? Why are many employers reluctant to include a disclaimer in their employee handbooks?
9. Name the first federal law dealing with collective bargaining. What was its purpose?
10. What is a grievance procedure?
11. Why do employee handbooks often play important roles in lawsuits regarding termination of employment?
12. How has the attitude of the court changed regarding collective bargaining?
13. Why is the public school system involved in regulating the number of hours worked by minors?

## Understanding Business and Personal Law

**Online** 

**Self-Check Quiz** Visit the *Understanding Business and Personal Law* Web site at [ubpl.glencoe.com](http://ubpl.glencoe.com) and click on Chapter 20: Employment Relationships—Self-Check Quizzes to prepare for the chapter exam.

### Linking School to Work

#### Interpreting and Communicating Information

Research the child labor laws in your state.

Locate the answers to the following questions:

14. When and why were the laws were passed?
15. How many hours is a child allowed to work per day and per week?
16. What types of work are children not allowed to perform?
17. What (if any) exceptions are there to the law (e.g., students enrolled in school work-study programs, apprenticeship programs)?

Write a one- or two-page paper summarizing your findings.

### Let's Debate

You learn that your friend Wendy, who is 15, is leaving school early every Tuesday. Her new employer told her she must work on Tuesdays or she will lose her job. You remind Wendy that the child labor laws are being violated and suggest that she ask for a change of schedule.

#### Debate

18. If Wendy wants to work on Tuesdays and keeps her grades up, is there really a problem? Explain your answer.
19. Whose responsibility is it to comply with the child labor laws? Is it the employer's? Is it Wendy's? Explain your answer.

### Grasping Case Issues

For the following cases, give your decision and state a legal principle that applies.

20. Luther McConnell is discharged by Erin Publishing for incompetence. When he

passed his probationary period 14 years earlier, McConnell received a copy of Erin's standard letter to employees. The letter welcomed McConnell and said, "Now that you're a permanent employee, you'll always have a home at Erin." All efficiency reports on McConnell rated him very highly. Does McConnell have grounds for a lawsuit based on unjust dismissal? Explain your answer.

21. At the height of a flu epidemic in the United States, workers at several pharmaceutical companies that produce flu vaccines threaten to strike. The flu tends to incapacitate people for a week to 10 days. What options might the President of the United States have in this situation?
22. David Canidy was employed as a server at the Kirkus Tea Room. Canidy was unfairly accused of stealing money. As it turned out, Louis Whittaker, the manager of the restaurant, had simply misplaced some money. However, before discovering his own error, Whittaker fired Canidy in a loud and public display. During the firing, Whittaker accused Canidy of the theft and insulted him. What kind of a wrongful discharge lawsuit might Canidy bring against Whittaker and the Kirkus Tea Room? Explain your answer.
23. Sidi Hassam was hired as a salesperson by the Georgian Plate Glass Company. When hired, he was asked to read and sign the company's employment manual. The manual, which did not include a disclaimer, promised that all employees would be permitted to submit any grievance to a special committee headed by the Director of Human Resources. When Hassam was disciplined for something he did not do, he asked the director to assemble the committee to review his complaint. The director refused, and Hassam was fired. What kind of a wrongful discharge lawsuit might Hassam contemplate bringing against the company? Explain your answer.

## Analyzing Real Cases

In each case that follows, you be the judge.

### 24. Age Requirements

Neil Bagge, 17, got a job at a construction site where dump trucks were used. State law prevented anyone under 18 from operating a “motor vehicle of any description.” Bagge’s employer did not hire him to operate a dump truck; however, the employer did assign Bagge to work around and on the trucks. *Would such an assignment violate the state law forbidding the employment of minors to operate motor vehicles? Why or why not?*

*Bagge’s Case*, 363 N.E.2d 1321 (MA).

### 25. Wrongful Discharge

Juergens worked as a staff accountant at Strang, Klubnik, and Associates, Inc. The employment manual published by the company included an overtime pay provision. Klubnik made a mistake in calculating Juergens’s overtime payments. He promised her that it would not happen again when she worked overtime. Later Juergens was asked to assume additional duties. She declined to do so and was discharged. She brought a wrongful discharge suit based on implied contract, arguing that the overtime pay provision and the promise of future overtime pay amounted to an implied promise of continued employment. *Is Juergens correct? Why or why not?*

*Juergens v. Stahl, Klubnik, and Associates, Inc.*, 644 N.E.2d 1006 (OH).

## Legal Link

### Union Pride

Lawson has been working in the office at the Tennessee Valley Authority for six months. Recently, several of his friends at work have asked him to consider joining the union. Lawson doesn’t know enough about unions to make an informed decision, so he looks to you for help.

### Connect

Using a variety of search engines, research a union and answer the following questions:

26. What are the benefits of joining?
27. Who is the president of the union?
28. Why and where was the union first started?
29. Who belongs to the union?



30. **Predict** Why do you think people join unions?
31. **Connect** Have you or has someone you know ever been fired? What were the circumstances?
32. **Question** Why do you think some states have passed right-to-work laws while others have not?
33. **Respond** Do you think the child labor laws are really necessary? Why or why not?