

# WRONGFUL DISCHARGE

- Absent a contrary provision in a written agreement between the employer and employee, employment is presumed to be “**at-will**” – meaning that the employer may terminate the employee at any time, for any reason, or for no reason at all. There are exceptions:
  - **Implied Employment Contract:** Even where there is no written contract, courts may imply a contractual limit on termination from, *e.g.*, an employment manual, a personnel bulletin, or employer policies and procedures.
    - Some states imply a **duty of good faith** into every employment contract that may further limit the employer’s right to terminate the employee.
  - **Abusive Discharge:** The manner of discharge may give rise to a claim of defamation or emotional distress.
  - **Public Policy:** Many states prohibit an employer from terminating an employee for refusing to perform an illegal or unethical act or for refusing to take any other action contrary to fundamental public policy.
  - **Whistleblower statutes** prohibit employers from terminating employees who report illegal or unethical conduct to the authorities, the press, or their superiors.

# WAGE AND HOUR LAWS

- **Fair Labor Standards Act (FLSA):** Federal law, applicable to the employees of all employers engaged in interstate commerce. Among its provisions are:
  - **Child Labor:** FLSA prohibits children **under the age of 14** from most types of work, making exceptions for, *e.g.*, lawn care, newspaper delivery, and entertainment. Children aged **14 or 15** are allowed to work in any non-hazardous occupation; however, FLSA establishes strict limits on the number of hours per day, the number of days per week, as well as the hours and days on which they may work. Children aged **16 to 18** do not face such hour and day restrictions, but still may not work in hazardous occupations or do other work detrimental to their health and well-being.
  - **Maximum Hours/Overtime:** Except for so-called *exempt employees* (*e.g.*, professionals, executives), FLSA requires that any employee who works more than 40 hours per week must be paid overtime wages – at least 1-1/2 times their regular wage – for all hours worked in excess of 40.
  - **Minimum Wage:** The lowest wage that an employer may pay an hourly-wage employee.

# FEDERAL LABOR LAWS

- **Norris-LaGuardia Act:** Protects employees' rights to peacefully strike, picket, and boycott.
- **National Labor Relations Act (NLRA):** Establishes employees' rights to **collective bargaining** and to strike to protect that right, and prohibits certain *unfair labor practices*, such as interfering with employees' efforts to organize, discriminating against employees based on union membership or grievances, and refusing to bargain collectively with the employees' chosen representative.
- **Labor-Management Relations Act (LMRA):** Prohibits certain *unfair union practices*, such as requiring union membership as a condition of employment (a *closed shop*) or continued employment (a *union shop*), refusing to negotiate with management, and causing employers to hire unneeded employees (*featherbedding*).
- **Labor-Management Reporting and Disclosure Act:** Sets forth an "employee bill of rights," regulating internal union procedures, and prohibits all (1) *secondary boycotts* – refusals by a union to work for, purchase from, or handle the products of a company in order to force that company to stop dealing with an employer with whom the union has a labor dispute – and (2) *hot-cargo agreements*, in which employers agree not to handle, use, or deal in non-union goods.

# UNIONS AND COLLECTIVE BARGAINING

- **Authorization:** If a majority of employees sign authorization cards stating their desire to unionize, union supporters may seek formal recognition from their employer.
- **Petition:** If the employer refuses to formally recognize the employees' desire to unionize, they may petition the NLRB for an election. Union supporters must demonstrate to the NLRB that at least 30 percent of those to be represented support a union or an election on unionization.
- **Campaign:** Employers may limit campaign activities at the workplace and campaign against unionization.
- **Election/Certification:** At the appropriate time, an election will be held. If the NLRB deems the election to be fair and a majority of eligible employees vote for unionization, the NLRB will *certify* the union as the employees' *collective bargaining* representative.
- **Collective Bargaining:** The union will bargain with the employer on behalf of all employees.
- **Strikes:** If collective bargaining fails, unionized workers may decide to refuse to work and to picket the employer's place of business in an effort to force a favorable settlement.

# EMPLOYEE HEALTH AND SAFETY

- **Occupational Safety and Health Administration (OSHA):** The federal agency empowered to promulgate workplace health and safety standards, to conduct workplace inspections, and to investigate employee complaints.
  - Employers must promptly report any **workplace accident** as a result of which an employee was killed or at least five employees were hospitalized.
  - Failure to comply with OSHA standards or failure to promptly report incidents may result in **severe fines** for the employer and **possible imprisonment** for culpable supervisory personnel.
  - *Deliberate Indifference* to OSHA standards constitutes a willful violation of federal law.
- **Workers' Compensation Laws:** State laws establishing an administrative procedure for compensating workers for their workplace or work-related injuries that arise out of, or in the course of, their employment, regardless of fault.
  - Generally speaking, compensable injuries must be **accidental**; intentionally inflicted injuries are excluded.

# INCOME SECURITY

- **Social Security:** Government-assured supplemental income for persons (1) over the age of 65 years, (2) their survivors, and (3) disabled persons. Social Security is funded by (non-voluntary) employer and employee “contributions.”
  
- **Medicare:** Government-administered health insurance program for those eligible for social security.
  
- **Pension Plans:** Private plans into which employees and employers may contribute toward the employees’ retirement savings.
  
- **Unemployment Insurance:** Government-assured, short-term income insurance for qualified persons who are unemployed. Funded by employers’ payments to unemployment tax fund.
  
- **COBRA:** Federal law extending an employee’s right to participate (at the employee’s expense) in employer-provided medical, dental, or optical insurance beyond the date of the employee’s voluntary or involuntary termination.
  
- COBRA generally does not apply to employers (1) with fewer than 20 workers, (2) who provide no non-wage benefits to their employees, or (3) who completely eliminate non-wage benefits for present employees.

# FAMILY AND MEDICAL LEAVE

- **Family and Medical Leave Act (FMLA):** Federal law requiring employers with 50 or more employees to provide their employees with up to 12 weeks of family or medical leave during any twelve-month period.
  
- During the leave period, the employer must continue to provide benefits to the employee; however, the employer is not required to pay the employee while on leave.
  
- The employer must also guarantee that the worker may return to his or her prior job or to a comparable job unless the employee is a “key employee” (defined as someone whose income is in the top 10% of the firm’s workforce).
  
- The FMLA does not apply to employees who have worked for the employer
  - (1) less than one year, or
  
  - (2) less than 25 hours per week for the previous year.

# ELECTRONIC MONITORING

- The **Electronic Communications Privacy Act** prohibits intentionally intercepting any wire or electronic communication and intentionally disclosing or using any information so intercepted.
  
- **Business-Extension Exception:** Employers may monitor their employees' electronic communications
  - (1) if the employee **consents** to interception by the employer, or
  
  - (2) lacking consent, if the communication was sent or received via a device
    - (a) **furnished by the employer**
  
    - (b) that the employee is using in the **ordinary course of the employer's business.**
  
- As a general principle, courts weigh the **employer's interest** in discovering its employees' communications against the **employees' reasonable expectation of privacy**. Thus, an employer who informs its employees that it intends to monitor their communications will fare better than one who monitors without **prior disclosure**.



## OTHER EMPLOYEE PRIVACY ISSUES

- The **Employee Polygraph Protection Act** prohibits employers from
  - (1) **requiring or causing** employees or applicants to take a lie-detector test;
  - (2) **using, accepting, or referring to the results** of any lie-detector test taken by an employee or applicant; and
  - (3) taking or threatening any **negative employment action** based on an employee's or applicant's lie-detector test results or her refusal to take a lie-detector test.
  
- **Drug testing** of employees or applicants for evidence of drug use is subject to both state statutory and state and federal constitutional limitations, and may also be prohibited or regulated by the terms of a collective bargaining agreement or even an individual employee's contract.
  
- **AIDS testing** of employees or applicants is subject to many of the same constraints. In addition, the *Americans with Disabilities Act* prohibits a covered employer from discriminating against an employee or applicant because that person has, or has tested positive for, AIDS.

# IMMIGRATION ISSUES

## ■ The **Immigration Reform and Control Act (IRCA)**

- (1) prohibits employers from hiring *illegal immigrants*, and
- (2) requires employers to complete a **Form I-9** for each employee, verifying that each employee is either a U.S. citizen or is otherwise entitled to work in the U.S.

## ■ The **Immigration Act of 1990**

- (1) limits the number of *legal immigrants* entering the U.S. each year by capping the number of visas issued each year, and
- (2) requires employers recruiting workers from other countries to
  - (a) satisfy the U.S. Department of Labor that there is a **shortage of qualified U.S. workers** capable of performing the work, and
  - (b) establish that bringing immigrant workers into the U.S. **will not adversely affect** the existing labor market.