

## 9.2: Employment, Worker Protection, and Immigration Law

Compared to other countries in the West, stringent and extensive employee protections came fairly late to the United States. Up until 1959, for example, employers had the right to fire a worker without giving any reason. This concept, which was known as **at-will employment**, was applicable in all states. The concept of at-will employment does, however, continue today, and all employees are considered to be at-will unless they are employed under a collective bargaining agreement, or under a contract for a set duration. Employers can still fire employees for any reason, but they cannot be fired for illegal reasons, as set out in the U.S. or state constitutions, federal law, state statutes, or public policy. In this section, some of the main employee rights and company responsibilities will be introduced.



Figure 9.2.1: Employees have various rights in the workplace and companies have various responsibilities toward them. (Credit: Raw Pixel/ pexels/ License: CC0)

### Health and Safety

Workers have the right to be safe at work, and companies have responsibilities to employees in the event that they are harmed while undertaking work on behalf of the employer. The **Occupational Safety and Health Act**, passed in 1970, is the main legislative action that governs health and safety in the workplace. The Act established the **Occupational Safety and Health Administration (OSHA)**, which is a federal agency whose role is to “assure safe and healthy working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance.” Private employers and federal government agencies are all covered under OSHA protection, although the self-employed and workers at state and local governments in most states are not covered. OSHA has adopted thousands of regulations to enforce the Occupational Safety and Health Act. It imposes a number of record-keeping and reporting requirements on private employers. In addition, employers are required to inform employees of their health and safety rights by posting appropriate notices in the workplace.

Table 9.2.1

| Type of OSHA Standard   | Description  | Example   |
|-------------------------|--|---|
| Specific Duty Standards | Standards that apply to specific types of work, procedures, work conditions, and equipment         | Safe handling of compressed gas cylinders                         |
| General Duty Standards  | Standards that apply to all employers and that impose a duty to protect workers from known hazards | Standards pertaining to indoor air quality and workplace violence |

**Workers’ Compensation Acts** help employees claim compensation for injuries that occur on the job. States require employers to either purchase workers’ compensation insurance, or have the ability to self-insure against compensation claims. Workers’ compensation insurance covers a range of different injuries, including physical injuries, mental illnesses that can be shown to be employment-related, and stress.

Under the terms of the Acts, a **Workers' Compensation Agency** is established at the state level to provide judicial and administrative services to help in the resolution of claims for compensation. In the event of a claim, a three-step process is put into place:

1. The worker files a claim with the agency.
2. The agency establishes the legitimacy of the claim.
3. If the injury is determined to be legitimate, compensation benefits are paid accordingly.

It is important to note that workers' compensation is understood to be an **exclusive remedy**. This term means that workers cannot sue the employer in court for further damages beyond that which is paid out under the compensation claim. An exception is made when the employer intentionally injures the worker, however. Furthermore, workers have the right to sue any third party involved in the cause of the injury to recover additional damages.

## Case Insight

In the case *Chad A. Kelley v. Marsha P. Ryan, Administrator, Ohio Bureau of Workers' Compensation, and Coca-Cola Enterprises*, Chad A. Kelley attended a team-building event held by his employer, Coca-Cola, to celebrate the launch of a new product. All employees attending the event were required to canoe down a river, which Kelley, with colleagues, achieved without incident. Employees waiting on the river bank began to splash one another, and according to witnesses, Kelley said that it would take more than some splashing to get him wet. Consequently, several colleagues tried to throw Kelley into the water, which led him to sustain neck injuries. The Ohio Bureau of Workers' Compensation denied Kelley's claim for benefits, however, arguing that Kelley had instigated "horseplay" that removed the incident from the scope and course of employment. In 2009, an appellate court ruled that this conclusion was incorrect and that the employer was, in fact, responsible. Kelley was entitled to the compensation.

## Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) sets out provisions that delineate fair labor and unfair labor. There are three main categories covered in the Act:

1. Child labor
2. Minimum wage provisions
3. Overtime pay requirements

The FLSA prohibits oppressive **child labor** as well as the shipping of goods produced by firms that make use of oppressive labor. The FLSA sets the minimum age for non-agricultural work as 14. However, there are some exceptions. People under the age of 14 who are classed as minors may deliver newspapers, perform babysitting or chores around the home, and can work in businesses owned by their families, as long as the work is not deemed to be hazardous. In addition, minors may perform in television, radio, movie, or theatrical productions. Once an employee becomes 18, child labor regulations no longer apply.

Under the terms of the FLSA, employees in covered industries, with the exception of apprentices and students, must be paid the federal minimum wage. Congress is responsible for reviewing the level of the minimum wage on a periodic basis and raising it to compensate for increases in the cost of living caused by inflation. In 2009, Congress raised the federal minimum wage to \$7.25 an hour. This increase was the first in almost a decade (although in 2014, President Obama signed an executive order that increased the minimum wage to \$10.10 for those employed on new federal contracts).

FLSA also mandates that employees who work more than 40 hours in a week should receive overtime pay that is equal to at least one and one-half times their regular wage for every additional hour worked. Four categories of employees are excluded from this provision, however: executives, administrative employees, professional employees, and outside salespersons.

## Family and Medical Leave Act

The Family and Medical Leave Act (FMLA), enacted in 1993, guarantees all eligible workers up to 12 weeks of unpaid leave during any 12-month period for family and medical emergencies. The FMLA applies to all public and private employers with 50 or more employees, covers employees who have worked for the employer for at least one year, and applies to employees who have worked at least 25 hours a week for each of 12 months prior to the leave. The events that qualify workers for leave are:

- The birth of a child
- The adoption of a child
- The placement of a foster child in the employee's care

- The care of a seriously ill spouse, parent, or child
- Any serious health condition that prevents the worker from being able to perform any of the essential functions of the job

Once the employee returns to work, he or she must be restored to the same or equivalent position. Social Security benefits also provide benefits to certain employees and their dependents. The types of benefits that fall under Social Security regulations include disability benefits, Medicare benefits, survivors' benefits, and retirement benefits.

## Ending Employment

There are also several regulations that cover workers who are terminated or who lose their employment. These are summarized in the following table.

Table 9.2.2

| Regulation   | Description  |
|--|--|
| Consolidated Omnibus Budget Reconciliation Act (COBRA) | Mandates that employees who are terminated must be provided with the opportunity to continue to participate in group health insurance, so long as they agree to pay the group rate premium. The employer is required to notify employees of their COBRA rights.  |
| Employee Retirement Income Security Act (ERISA)        | This Act covers any pension plan offered by employers to their workers, and is designed to prevent abuses and fraudulent use of those plans. Under the terms of ERISA, employers are required to keep certain records pertaining to the plans, and to report on those records at regular intervals. The Act also provides for <b>vesting</b> , which occurs when an employee has a nonforfeitable right to receive pension benefits. |
| Unemployment compensation                              | Unemployment compensation programs are paid to those who become temporarily unemployed, and are funded by employers through employment taxes. Workers who quit voluntarily or who are terminated for bad conduct are not eligible for compensation. In addition, in order to qualify for the benefits, applicants must demonstrate that they are available for work.   |

## Immigration Law

There are vast areas of immigration law that are applicable to employment. The U.S. Citizenship and Immigration Service (USCIS) administers a range of different immigration programs that enable U.S. employers to employ foreign national workers. For example, under the EB-1 visa, U.S. employers can employ foreign nationals who have **extraordinary ability** for certain types of work. Under the terms of the Immigration Reform and Control Act (IRCA), employers are required to examine evidence of employees' identity and complete mandatory paperwork for each employee. There are serious financial and criminal penalties for employers who knowingly hire undocumented workers.

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