Contents

Introduction ........................................... xiii

Chapter 1. Job Security: Why You Can’t Be Disciplined or Fired “For Any Reason” ........ 1
The Historical Decline of Employment at Will ........................................ 2
Legislative Exceptions to Employment at Will ........................................ 3
Why Some Lawyers Still Invoke “Employment at Will” ............................. 4
Everyone Is Protected by One or More Laws ........................................... 5
The Limited Meaning of “Right-to-Work” Laws ......................................... 5

Chapter 2. Size and State Matter ......................................................... 7
Your State Matters .................................................................................. 7
The Forum of the Court Matters ............................................................. 8

Chapter 3. The Basics of Lawful and Unlawful “Discrimination” ................. 11
Not All Discrimination on the Job Is Illegal ........................................... 11
What Is Wrongful Discharge? ................................................................. 12
Unlawful Employment Discrimination Basics .......................................... 13
   Unlawful Disparate Treatment .............................................................. 13
   Unlawful Retaliation Based on Speech ................................................ 15
   Unlawful Retaliation Based on Conduct .............................................. 17
   Unlawful Failure to Accommodate a Disability or Religious Belief ........ 17
   Unlawful “Interference” ..................................................................... 18
   Unlawful Disparate Impact Discrimination .......................................... 18

Chapter 4. Understanding Your Rights as a Job Applicant ......................... 21
What Should and Shouldn’t I Put on My Résumé? ....................................... 21
What Should I Say if I Am Asked Why I Left My Last Job? ......................... 23
What Can My Former Employer Say to a Prospective Employer? ............... 23
Can a Prospective Employer Ask Questions That Will Reveal My Age, Race, or Medical Problems? .......................................................... 24
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Should I Sign a Noncompete Agreement When I Am Hired?</td>
<td>25</td>
</tr>
<tr>
<td>Should I Worry About the Noncompete Agreement I Signed with My Last Employer?</td>
<td>25</td>
</tr>
<tr>
<td>What Documents Should I Sign When I Am Hired?</td>
<td>26</td>
</tr>
<tr>
<td>Is an Employment Offer a Contract?</td>
<td>26</td>
</tr>
<tr>
<td>When Should I Get Legal Advice Before Accepting a Job?</td>
<td>26</td>
</tr>
<tr>
<td><strong>Chapter 5. Understanding Your Rights as an Employee</strong></td>
<td></td>
</tr>
<tr>
<td>What Laws Protect Me?</td>
<td>29</td>
</tr>
<tr>
<td>Do Independent Contractors Have the Same Rights as Employees?</td>
<td>29</td>
</tr>
<tr>
<td>Do I Have an Employment Contract?</td>
<td>30</td>
</tr>
<tr>
<td>Do I Have More Rights if I Am Covered by a Union Contract?</td>
<td>30</td>
</tr>
<tr>
<td>When Am I Entitled to Overtime Pay?</td>
<td>31</td>
</tr>
<tr>
<td>What Is the Minimum Wage I Can Be Paid?</td>
<td>32</td>
</tr>
<tr>
<td>Am I Entitled to Pay During a Medical Leave of Absence?</td>
<td>32</td>
</tr>
<tr>
<td>Can My Employer Discipline or Fire Me for Being Absent from Work if I Have a Medical Excuse?</td>
<td>33</td>
</tr>
<tr>
<td>Am I Entitled to Receive Either Short-Term or Long-Term Disability Pay if I Have Been Disabled?</td>
<td>33</td>
</tr>
<tr>
<td>What Are My Rights to Vacation and Other Paid Time Off?</td>
<td>33</td>
</tr>
<tr>
<td>What Should I Do if I Am Injured on the Job?</td>
<td>34</td>
</tr>
<tr>
<td>Does My Company Have to Follow Its Employee Handbook?</td>
<td>35</td>
</tr>
<tr>
<td>Which Laws Apply When the Company Is Making Promotion Decisions?</td>
<td>35</td>
</tr>
<tr>
<td>Am I Entitled to Receive a Performance Review?</td>
<td>36</td>
</tr>
<tr>
<td>Am I Entitled to Receive Warnings?</td>
<td>37</td>
</tr>
<tr>
<td>Should I Sign Warnings or Performance Reviews?</td>
<td>38</td>
</tr>
<tr>
<td>What Should I Do if I Receive Unfair Discipline or an Unfair Performance Review?</td>
<td>38</td>
</tr>
<tr>
<td>What Should I Do if My Boss Is a Jerk but He’s Not Violating Any Laws?</td>
<td>39</td>
</tr>
<tr>
<td>When Does Harassment Become Illegal?</td>
<td>40</td>
</tr>
<tr>
<td>What Should I Do if I Am Being Harassed by a Coworker?</td>
<td>40</td>
</tr>
<tr>
<td>What Should I Do if I Am Being Harassed by a Supervisor?</td>
<td>41</td>
</tr>
<tr>
<td>What Can I Do About the “He Said/She Said” Problem?</td>
<td>41</td>
</tr>
<tr>
<td>Is a “Performance Improvement Plan” a Sign of Trouble?</td>
<td>42</td>
</tr>
<tr>
<td>What Should I Do if I Suspect My Job Is in Jeopardy?</td>
<td>43</td>
</tr>
<tr>
<td>What Should I Do if My Employer Offers a Voluntary Separation Program?</td>
<td>43</td>
</tr>
<tr>
<td>What if I Am Called to a Meeting and I Suspect I Am Being Fired?</td>
<td>44</td>
</tr>
<tr>
<td>Do I Have a Right to Privacy at Work?</td>
<td>45</td>
</tr>
<tr>
<td>Can My Company Search “My” Locker or Other Property on Company Premises?</td>
<td>45</td>
</tr>
<tr>
<td>Am I Entitled to Review “My” Personnel File?</td>
<td>46</td>
</tr>
<tr>
<td>Can My Employer Monitor My Computer Usage at Work?</td>
<td>46</td>
</tr>
<tr>
<td>Can My Employer Monitor My Personal Calls at Work?</td>
<td>47</td>
</tr>
</tbody>
</table>
Can My Employer Require Me to Take a Polygraph (Lie Detector) Test? 47
Can My Employer Require Me to Disclose My Social Media Passwords? 47
May I Audiotape Conversations at Work? 48
Can My Employer Subject Me to a Drug Test? 48
Can My Employer Enforce a Dress Code? 48
Can My Employer Implement a “No Smokers” and/or a “No Smoking” Policy? 48
Can I Blog or Post Facebook Comments About Work Issues on My Own Time? 49
Can I Moonlight? 49
What Should I Do if I’m Just Unhappy on the Job? 50
How Good Are Internal Complaint Procedures? 51
Am I Required to Complain Internally Before Making a Legal Claim? 51
What Are “Alternative Dispute Resolution” Programs, and Do They Affect My Right to Go to Court? 52
Should I Trust HR? 52
Should I Trust My Union? 53
Should I Seek Legal Counsel Before I Am Fired? 53
Can I File a Lawsuit if I Have Problems on the Job but I Am Not Fired? 54

Chapter 6. Understanding Your Rights if You Are Fired 55

Am I Entitled to Unemployment Compensation? 55
If I Believe I Have a Legal Claim Against My Former Employer, Should I Find a Job or Will That Hurt My Chances of Collecting Money? 56
Am I Bound by the Noncompete Agreement I Signed? 56
Do I Have a Right to Receive My Accrued Vacation or Other Paid Time Off if I Quit or Am Fired? 57
Am I Entitled to COBRA Continued Medical Coverage? 57
Can My Employer Stop Me from Working for a Competitor? 58
Am I Entitled to Severance? 59
What Should I Expect in a Severance Agreement? 59
How Can I Get a Better Severance Offer? 60
What Should I Do if I Am in a Union and I Am Fired? 61
Are Headhunters and Outplacement Professionals Any Good? 62
Are There Government Agencies That Will Help Me if I Am Fired? 62
Do I Have Any Obligations to a Former Employer? 63

Chapter 7. Federal Law Exceptions to Employment at Will 65

Rights Related to Protected Classes 66
  Title VII of the Civil Rights Act 66
  Unlawful Harassment 66
  The Pregnancy Discrimination Act 67
  The Equal Pay Act and Lilly Ledbetter Act 67
Contents

Section 1981 of the Civil Rights Act 68
The Age Discrimination and Employment Act 69
The Older Workers Benefit Protection Act 69
The Uniformed Services Employment and Reemployment Rights Act 70

Rights Related to Safety, Health, and Medical Conditions 71
The Occupational Safety and Health Act 71
The Americans with Disabilities Act 71
The Family and Medical Leave Act 72
The Rehabilitation Act 73

Rights Related to Other Economic Issues 74
The Fair Labor Standards Act 74
Section 510 of the Employee Retirement Income Securities Act 76
The Worker Adjustment and Retraining Notification Act 76

Rights Related to Conduct/Privacy 77
The National Labor Relations Act 77
The Employee Polygraph Protection Act 77
The Consumer Credit Protection Act 78
The Juror Protection Act 78
The Genetic Information Nondiscrimination Act 78

Whistleblower Rights 78
The Whistleblower Protection Act 79
The False Claims Act 80
The Sarbanes-Oxley Act and Dodd-Frank Act 81
Environmental Whistleblower Laws 81
The Food Services Modernization Act 82

Chapter 8. State and Local Exceptions to Employment at Will 83

Sexual Orientation Laws 84
Transgender Discrimination 84
Breach of Contract: Oral and Written Contracts 85
Promissory Estoppel 85
Breach of Public Policy 86
Intentional Infliction of Emotional Distress 86
Defamation 87
False Imprisonment 87
Fraud 87
Assault and Battery 88
Interference with a Business Relationship 88
Negligence 88

Chapter 9. Obtaining Legal Advice 91

How Do I Find the Right Lawyer? 91
What Can I Expect a Lawyer to Do for Me? 92
How Much Will I Be Charged by a Lawyer? 93
So, You’ve Decided to Hire a Lawyer: What’s Next? 93
Filing a Lawsuit: What Can I Expect? 94
Why Would I Settle for Less Than What a Jury Might Award? 95
What are “Mediation” and “Arbitration”? 95
What Happens if I Don’t Settle My Case? 96


Author’s Note 98

Index 99

About the Author 103