A CAPSULE OF LABOR & EMPLOYMENT LAW

Lea B. Vaughn, Prof.
School of Law
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Your coverage depends on:

- Who you are
- What kind of employee you are
- What kind of firm you work for

Who are YOU?
- Age
- Sex and Ethnicity
- Union and Religious Affiliation
- Disability
- Marital and Family Status

What kind of employee are you?
- Part-time or Full-time
- Contract or Permanent
- Unionized or not
- Public or Private Sector
- Employee or Supervisor or Manager or Independent Contractor
What kind of Pharmacy do you work for?

- Small (less than 15)
- Large
- Private or Public
- Hospital or Retail Concern

Sources of Workplace Law

- Federal Law
  - Statutes
  - Case Law
  - Agency

- State Law
  - Statutes
  - Case Law
  - Agency

Unless You’re in the Public Sector

- Federal Constitution
  - Due Process
  - First Amendment
  - Equal Protection

- State Constitution
  - Privacy
  - Non-discrimination

- Public Sector Labor Law

Four Types of Workplace Laws

- Labor Management Relations (Unions)
- Discrimination Law
  - Title VII/ State
  - Disabilities
- Employee Protections
  - Workers’ Comp
  - Health & Safety
- Wrongful Discharge, or Common Law Protections
Beginning a Job

Applications and Interviews
- Must conform to all existing state and federal laws
- Privacy Concerns
- Generally, use Pre-employment Inquiry Guidelines
- Look carefully at job description
- Is it FLSA exempt as professional?

ADA and Medical Exams
- Can inquire into ability to do the job only not medical condition
- No pre-employment physical
- After conditional offer of employment, may condition on exam if all entering employees take exam and results confidential
  - Medical records must be kept separately

To Join or Not to Join... That is the question – All about unions
### National Labor Relations Act
- Right to join or refrain from joining a union
- Neither Employer nor Union can discriminate based on your affiliation or beliefs
- Two major issues:
  - Organizing Campaign
  - Negotiating a Collective Bargaining Agreement

### NLRA - Things to Remember
- Enforcement Agency: National Labor Relations Board
  - Seattle Office
  - “It’s Free!”
- 180 days to file complaint

### Public Sector Unions
- Washington has numerous statutes
- Public Employment Relation Commission (PERC)
- Much like NLRA
- CANNOT STRIKE

### Employment Law
The Erosion of At Will Employment

- About ½ of the workforce is “at will”
- About 150,000 employees fired every year without “just cause”
- At Will Rule: An employer can discharge employees for no cause, good cause or even morally wrong cause without fear of liability.

Employment Law

- Regulated & Enforced by State Courts
- Contracts over one year must be written
- At will employment - Exceptions:
  - Employment manuals
  - Whistleblowing
  - Public Policy Exception
  - Discrimination prohibited by other laws

Discipline - Ask the following Questions

- Is there a written attendance, behavioral, performance standard that the employee violated?
- What is the agency’s actual practice in respect to such violations?
- How would I treat my best employee if he or she violated this standard? (answered honestly, this is the key to assessing your motives!)
- Is the proposed action supported by policy, practice and appropriate documentation?

Work Environment

- Employer must supply uniform
- No smoking indoors
- Drug testing, monitoring generally allowed
- Polygraphs generally can’t be used but can use paper & pencil testing
- Courts recognize covenants not to compete and you have Duty of Loyalty to employer
- Intellectual Property: Patents, Trade Secrets
Credit Reports

- Use of such reports growing
- If ER uses third party to obtain report or investigate, must comply with Fair Credit Reporting Act
  - Broad definition of Credit Agency
  - Implications for legal practice
  - Must disclose to employee

No Discrimination Allowed

- Federal Laws
  - Title VII
  - Age Discrimination
  - Americans with Disabilities Act
  - Civil Rights Law

- State Laws
  - Law Against Discrimination
  - Seattle Human Rights Ordinance

Title VII of the 1964 Civil Rights Act

- Protects on the basis of race, color, sex, national origin, or religion
- Covers hiring, firing, wages, terms and conditions of employment
- Enforced by the Equal Employment Opportunity Commission (Seattle)
- 180/300 days to report
Harassment

- Unwelcome conduct
- Based on an individual’s protected class status
- That is severe and pervasive enough to alter the terms and conditions of employment

What does harassment include?

- Non-sexual, gender-based harassment: e.g. frequent derogatory comments about women, even though not sexual in nature, could be unlawful sexual harassment
  - Also called gender hostility
- Harassment by a person of the same sex
- Complainant can be anyone affected by the harassing conduct and does not have to be the person to whom the harassing conduct is directed
- Race, Religion, Ethnicity

Conduct

- Verbal: epithets, jokes, slurs, stories, comments
- Written: graffiti, email, cartoons, posters, photographs, documents
- Physical contact
- Interference with freedom: blocking movement, even without contact
- Gestures: suggestive motions, simulating inappropriate acts, unwelcome gifts

Employer Duties & Harassment

- Employer must establish, disseminate and enforce anti-harassment policy
- Employer should establish more than one avenue of reporting complaint
- Employer must take prompt, remedial action when it learns of a complaint
- “Prompt” means launching investigations within 24 to 48 hours
- Remedial measures cannot adversely affect the complainant
Pregnancy & Title VII

- Cannot discriminate based on pregnancy
- Must be treated the same as any other disability at the workplace

Americans With Disabilities Act

- Prohibits discrimination against Americans with disabilities
- Disability means an actual impairment, a record of an impairment, or a perception of having an impairment
  - must be otherwise qualified
- Duty to accommodate unless undue hardship or direct threat

ADA - Special Issues

- Drug & Alcohol: covers people in rehab, alcoholics but not current drug users
- Contagious Diseases: HIV covered
- Medical Exams very restricted
  - generally not before
  - doesn’t cover drug testing

9/11 and Immigration

- All U.S. employers must verify citizenship status of new employees using Form I-9
- Note New Agency Alignment after creation of Dept. of Homeland Security
  - Bureau of Immigration and Customs Enforcement enforces IRCA
Regulations Protecting Employees

Family and Medical Leave Act

Coverage

- Covered Employers: 50 or more employees
- Employee must have worked for one year
  - exempts highly compensated employees

FMLA - Basic Provisions

- Entitled to 12 weeks unpaid leave during any 12 month period for:
  - child care: birth of child or adoption
  - medical leave: to care for spouse, child or self if “serious health condition”
- Intermittent Leave
- Must be restored to “same or equivalent position”; maintain medical insurance

FMLA - Enforcement

- Wage & Hour Division of the Dept. of Labor
- Two Years (or three if willful)
Wage and Hour Law
- Regulates Overtime and Wages
- Most if not all Pharmacists will be exempt as professional employees
  - Watch for regulatory changes which are desired by large retail chains

Health & Safety
- Source of Coverage
  - State Law
  - Federal Law
  - Workers' Compensation
  - WISHA - Sec. 18 Plan
  - OSHA

OSHA - Preventing Injuries
- General Duty Clause: Where there is no specific standard, Employer has a duty to maintain a workplace free of hazards
- Specific Standards: Employer has a duty to comply with specific standards

OSHA Enforcement
- Federal: Occupational & Safety Health Administration within the Dept. of Labor
- State: Washington Dept. of Labor and Industries
Worker’s Compensation

- Provides medical expenses and earnings replacement
- Covers accidents or diseases that “arise out of or in the course of” employment
- Ties in to ADA: employee may also be disabled as result of injury

Proposed Laws for Pharmacists

- Sexual Misconduct
  - WAC 246-860-100
- Prescribing Drugs
  - WAC 246-869-010
  - Comments Due 11 December 2006
  - Religious Discrimination Aspects

What to do if you have a problem?

- Keep a log or a journal
  - what happened
  - who observed it
- Use internal grievance procedure
- Confronting the person? Work with your supervisor?
- Consult a lawyer or government agency
- Try to resolve problems at the lowest level of conflict

Using the Legal System

A quick overview
Controls on the Rationality of the Litigation Process

- Rules of Civil Procedure - Litigation
  - Motion to Dismiss
  - Summary Judgment/JAML
- Rules of Evidence - Litigation
  - Relevance vs. prejudice
  - Admissibility
- Burdens of Proof
- Allocation of duties between Judge and Jury
- Appeals

Backdrop: Types of Client Interactions

Rule 1.1 Competence

- Washington: A Lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- Not Waivable

Ethics

The Lawyer Client Relationship – What You Have a Right to Expect
Rule 1.2 Scope of Representation

(a) A lawyer shall abide by a client’s decisions concerning the objectives of representation, subject to sections (c), (d), and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client’s decision whether to accept an offer of settlement of a matter.

Rule 1.3 - Diligence

☐ Not Waivable
☐ Washington: A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4 Communication

☐ (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
☐ (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rules that Protect Clients

☐ Attorney-Client Privilege
☐ Rules relating to Fees – “Reasonable”
☐ Rules relating to Conflicts of Interest
☐ Rules relating to non-represented parties and witnesses
☐ Prohibition on counseling illegality
☐ Duty to report certain illegal behavior
QUESTIONS?