

CHAPTER THREE

Legal Construction of the Employment Environment

Evolution of the Employment Relationship

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- * Human Resources and the most valuable – and costly – assets of a firm
- * Law permits some leeway in the selecting, managing and terminating of employees

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Recruitment

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- * Federal Statutory Regulation of Recruitment
 - Title VII of the Civil Rights Act of 1964
 - Vocational Rehabilitation Act of 1973
 - The Americans with Disabilities Act of 1990
 - Age Discrimination in Employment Act of 1967
 - Immigration Reform and Control Act of 1986
- * State Employment Laws
 - Essentially duplicates of Federal Laws, but more liberally construed

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Recruitment

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- * Common Law: Misrepresentation and Fraud
 - Fraud
 - Misrepresentation
 - Material Facts
- * Application Regulation to Recruitment Practices
 - Advertisement
 - Word-of-Mouth Recruiting
 - Nepotism
 - Promoting from Within
 - Venue Recruiting
 - Walk-In Applicants
 - Neutral Solicitation
 - Résumé Collection Concerns

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Recruitment

- * Preferential Treatment
 - Affirmative Action

“Nothing in this title shall be interpreted to require any employer . . . to grant preferential treatment to any individual or to any group because of race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed . . . In compared with the total number or percentage of any persons of such race, color, religion, sex or national origin in any community.” [Section 703(j)]

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Information Gathering and Selection

- * The Application Process
 - Legal question on application
- * The Interview
 - Frequently a source of lawsuits
 - Illegal questions
 - Promises made
 - Crucial to train those in organization who will be interviewing!
- * Background or Reference Check, Negligent Hiring

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Information Gathering and Selection

- * Background or Reference, Negligent Hiring
 - 20 Tips for Catching Résumé Fraud (Page 126)
- * Checks Reference Checks: Potential Liability for Providing References?
 - Nothing but the truth!
 - Negative reference in retaliation
 - Compelled self-publication

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Information Gathering and Selection

- * “After-Acquired Evidence” Defense of Wrongful Termination Suits
 - Can be used, even if not related to the original cause of action
 - Documentation of failure to hire

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Testing in the Employment Environment

- * **Preemployment Testing**
 - Testing (usually before hiring) for integrity, honesty, drug and alcohol use, HIV, or other characteristics

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Testing in the Employment Environment

- * **Eligibility Testing**
 - Business necessity
 - Job analysis
 - Test validity
 - Subgroup norming
 - Job related requirement
- * **Types**
 - Skills
 - Integrity and personality
 - Physical Ability
 - Medical

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Testing in the Employment Environment

- * **Ineligibility Testing**
 - Legal issues: defamation
- * **Types**
 - Polygraph
 - Drug and Alcohol
 - Genetic
- * **Unique Considerations of HIV/AIDS Testing**

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Performance Appraisals, Evaluation, and Discipline

- * **Performance Appraisals**
- * **Legal Implications of Performance Appraisal Systems**
 - Disparate Impact
 - Disparate Treatment
 - Defamation
 - Negligence

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Performance Appraisals, Evaluation, and Discipline

* Discipline

- Fair and equitable!!!!
 - * Fact finding
- Punishment to fit the crime
- Document, document, document