CHAPTER ONE

The Regulation of Employment

OUTLINE

I. INTRODUCTION TO THE REGULATORY ENVIRONMENT

a. Freedom to contract versus inherent power of employer
   1. regulations make “power relationship” between employer and employee more fair and equitable

b. Is Regulation Necessary?
   1. one view: rational employers interested in profit maximization will not discriminate based on membership in protected categories in employment decisions
   2. other view: economic forces do not fully protect against employment discrimination

c. Why do Employers Need to Understand Regulation?
   1. prevent liability
   2. protect goodwill
   3. operationalize organizational “core values”

d. The “Freedom” to Contract in the Regulatory Employment Environment
   1. Covenants Not to Compete (“Noncompete Agreements”)
      a. Usual requirements
      b. California law
c. “reasonable restrictions” allowed in some other states

d. arbitration agreements in employment contracts
   i. typical terms
   ii. form of alternate dispute resolution (ADR)
   iii. recent court decisions on enforceability

e. Employers’ Negligence: Workers’ Compensation
   1. “work-related injuries”
   2. California Corporate Criminal Liability Act
   3. Managers’ liability

II. THE EMPLOYMENT-WILL DOCTRINE
   1. definition of at-will employment: either employer or employee could terminate the employment relationship at any time for any reason or no reason at all
   2. [California law]

III. EXCEPTIONS TO THE AT-WILL DOCTRINE
   1. breach of implied contract
      a. [Cal.law: includes breach of implied covenant of good faith and fair dealing]
         i. Coombs
         ii. Toroysan
      b. Employment Policy Manuals as implied contract
         i. Hicks
ii. Lake Park Care Center

2. breach of public policy
   a. examples: employee terminated due to:
      i. refusal to commit a crime on behalf of employer
      ii. exercise of statutory right
      iii. fulfilling a statutory duty
      iv. disclosing “bad acts” of employer to governmental agency (“whistleblowing”)

3. Cases:
   a. Palmeteer
   b. Ralee Engineering Co.
   c. Stiles

4. Other exceptions:
   a. Collective Bargaining Agreement
   b. Individual “fixed term” contract
   c. WARN Act: Notice of mass layoffs

IV. INTRODUCTION TO WRONGFUL DISCHARGE

1. compensatory and punitive damages
2.  [wrongful termination- breach of implied contract/wrongful termination- breach of public policy]

3.  constructive discharge
   a.  Van Steenburgh
   b.  Yoho

V.  MODEL UNIFORM EMPLOYMENT TERMINATION ACT (META)
   A.  Adoption in remaining 49 states, including California, not likely.

VI. MANAGEMENT CONSIDERATIONS/TIPS
   a.  Honesty and fairness as “core values”
   b.  Support employees’ exercise of protected rights/public duties
   c.  Good-faith performance evaluations
   d.  Honest communication regarding organization’s future
   e.  Avoid promises in pre-employment stages
   f.  Uniform application of communicated standards of performance and conduct
   g.  Create and use arbitration and noncompete agreements in good faith/ensure compliance with legal restrictions on such agreements