

BOOK REVIEWS

1998 Employment Law Update, edited by Henry H. Perritt, Jr., New York: Aspen Law & Business, 1999, 510 pp. (softbound)

Each year important legal developments occur that significantly affect human resource managers and the practice of law in the employment and labor fields. The *1999 Employment Law Update* continues a tradition begun in 1991 by providing useful analysis of recent developments in an array of employment law subjects. Contributed by professionals in employment law, this update provides information on several major developments that anyone interested in employment law should know about.

Like earlier editions in this series, it provides analysis of important current topics in labor and employment law. All of the chapters are aimed at practitioners, enabling them to get accessible and relatively complete information on topics likely to arise in their practices and on new legal theories they may wish to consider in presenting their clients' cases.

More specifically, the *1999 Update* covers:

- Chapter 1 Independent Contractor or Employee?
Navigating the Maze of Worker Classification
- Chapter 2 Workplace English-Only Rules
- Chapter 3 Current FLSA Issues: Beyond 40 Hours and Time and a Half
- Chapter 4 The After-Acquired Evidence Doctrine after McKennon
- Chapter 5 Evidence of Prior Employer Acts in Discrimination Cases
- Chapter 6 Actions Against Individual Supervisors and Fellow Employees
- Chapter 7 Insurance for Employment Discrimination and Wrongful Termination Claims: Coverage Issues and New Directions in Insurance Policies
- Chapter 8 A Guide to Pre-Employment Practices and Policies
- Chapter 9 Overview of Immigration Law Principles for Employers

Chapter 1 explores the distinction between independent contractor and employee. The distinction is important not only for tax reasons but also for worker's compensation, the Occupational Safety and Health Act (OSHA),

employment discrimination, and union organizing reasons. Independent contractors are excluded from most labor and employment law protections, while employees are included.

Chapter 2 explains when employers may require English proficiency and prohibit the use of other languages in the workplace. This is a question of growing importance as the American workforce becomes more diverse and as markets become more global.

The Fair Labor Standards Act is far more complicated than simply prescribing time and a half for work in excess of forty hours per week and a prescription of the minimum wage. Some of these complexities are discussed in Chapter 3.

In the McKennon case, the United States Supreme Court held that when employers discover evidence of employee wrongdoing after they already have taken disciplinary action or terminated an employee, they may be able to use this evidence to limit the remedies for illegality in the discipline or termination, although they cannot escape liability based on this "after-acquired evidence." Chapter 4 sets forth how the McKennon case raises almost as many issues as it resolves and offers a compass to employers and employees for the use and misuse of after-acquired evidence.

Chapter 5 reviews the circumstances under which potentially illegal employer decisionmaking in other cases may be used as evidence to reinforce a claim of employer illegality in a specific case.

A growing number of state and federal courts are concluding that employee lawsuits against individual supervisors and fellow employees are not appropriate on claims of discrimination and wrongful termination. Chapter 6 outlines the different rationales that have emerged and identify cases from the major jurisdictions.

As a panoply of employee rights grows, employers increasingly seek to insure themselves against the risk of unsuccessful employment law litigation. Chapter 7 details the circumstances under which insurance coverage extends to such cases.

Chapter 8 offers practical guidance to employers and employees on preemployment practices such as advertisements, interviews, and medical screening.

Finally, Chapter 9 is a primer of immigration law principles for employers concerned about liability for hiring illegal aliens, about obtaining skilled workers from abroad, and about providing employment for refugees.

Professor Perritt has once again succeeded in putting together a fine collection of topics that review issues of current interest in labor and employment law. This series continues to be an excellent yearly update that should not be missed.

Kurt H. Decker