Legal Protection for the Individual Employee, 5th edition

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Description

This book is intended for courses on the individual rights of workers in the employment relationship, independent of courses on the law governing collective bargaining or employment discrimination. It can be used for one three credit survey course on employment law, or for two related courses on employment law and employee benefits, each of two credits. The book covers the full range of employment law subjects from the nature of the employment relationship, the definition of “employee”, pre-employment screening, individual employment contracts, the employment at-will doctrine, exceptions to the employment at-will doctrine, obligations of employees, monitoring and control of employees, the regulation of pay and hours of work (FLSA), state and federal regulation of workers compensation, unemployment compensation, the regulation of occupational safety and health (OSHA), state and federal regulation of unemployment compensation, and the regulation of employee benefits (ERISA).

The book has been substantially updated from the last issue to facilitate teaching and to include such topics as: a separate chapter on the definition of “employee”, the Genetic Information Non-discrimination Act (GINA), employee privacy issues in the new information technology, the new restatement of employment law, and the Affordable Care Act (ACA). Where appropriate, the book presents interdisciplinary discussions of employment law problems from historical, sociological and economic perspectives. Efforts were also made to include relevant empirical evidence on important employment law questions. A recurring theme in the book, especially in the introductory chapter and the chapters on individual employment contracts and privacy, is the historical tension in the United States between legal ideologies of “free labor,” i.e., of the law as supporting a notion of labor that is “free” to contract for any employer imposed restraints or of the law as supporting a notion of labor that is “free” even from some unreasonable employer demands, with an eye towards equality and fairness. Another recurring theme in the book is when and how it is desirable to intervene in the labor market to address market failures to promote greater income equality, workplace health and safety, unemployment insurance, healthcare insurance and retirement income security.

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Employment protection legislation (EPL) includes all types of employment protection measures, whether grounded primarily in legislation, court rulings, collectively bargained conditions of employment, or customary practice. The term is common among circles of economists. Employment protection refers both to regulations concerning hiring (e.g., rules favoring disadvantaged groups, conditions for using temporary or fixed-term contracts, training requirements) and firing (e.g., redundancy procedures). Are employees legally entitled to family and medical leave? The federal Family and Medical Leave Act (FMLA) states that all eligible employees must be given up to 12 weeks of unpaid leave per year for any of the following reasons: for the birth and care of the newborn child of the employee. The determination as to whether an individual is an employee or an independent contractor depends largely upon the degree of control that the employer exercises over them. For example, whether the employer dictates the location in which work is performed; the degree to which the individual's business expenses are reimbursed; and the permanency of the relationship, are all factors that go into determining whether an individual is an independent contractor or an employee. One reason for the wide variance in legal protections for employee retirement benefits is that state, not federal, law primarily governs retirement benefits for state workers. And in each state, these protections vary by source, be it the state constitution, statutes, or court decisions. What is protected? Even among states with the same source of legal protection for pension benefits, the aspects or features protected can vary significantly. The research examined three major categories of pension features to determine the extent of state-level protection: accrued benefits, the rate of future accrual, and cost-of-living adjustments. Accrued benefits. Additionally, the value of retiree health benefits is uncertain and varies by individual.