

“Why and How to Practice Employment Law”

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Why? F #1

- ◎ It's FUN



Why? F #2

◎ FASCINATING FACTS



Why? F #3

- ◎ FEES!



Is That Legal?

- ◎ Refusal to Provide Breaks/Lunch
- ◎ Refusal to Provide a Copy of Your Personnel File
- ◎ Playing Favorites
- ◎ Failing to Follow Their Own Policies
- ◎ Firing you for a Stupid Reason
- ◎ No Reason for Termination

At-Will Employment Doctrine

(Default Parameter)

- Basically, in Idaho, an employee's tenure of employment can be terminated at the will of either the employer or the employee.
 - *MacNeil v. Minidoka Memorial Hosp.*, 108 Idaho 588, 701 P.2d 208 (1985); *Jackson v. Minidoka Irrigation Dist.*, 98 Idaho 330, 563 P.2d 54 (1977).
- Any employment law inquiry in Idaho begins here. This is black-letter law and not likely to change any time soon.

Exceptions to At-Will Doctrine

- Statutory Causes of Action

- e.g., ADEA, ADA, FMLA, Title VII, laws (state law companion statute), whistleblower

- Wrongful Termination in Breach of Public Policy

- Refusing to engage in illegal activity, reporting illegal activity, or accessing a right
 - e.g., being fired for cooperating in governmental agency investigation, filing a workers' compensation claim, or refusing to engage in fraud

- Contracts Setting Forth the Period of Employment and/or Causes for Termination

- These contracts can be oral or written.

Questions to Ask at Intake

- **Did you have a contract (written or oral) for employment for a specific period of time or termination for specific reasons?**
 - This would provide an exception to at-will employment
- **Public or Private Employer?**
 - Public employees, generally speaking, have more potential claims to consider (e.g., constitutional protections, due process protections)
- **Are they a union employee (covered by a collective bargaining agreement)?**
 - Like public employees, generally speaking, employees that are part of a unionized workforce have more protections which are laid out in the CBA.
- **How many employees?**
 - Many of the employment laws have minimum number of employees in order to kick in; e.g. Title VII = 15 employees; FMLA = 50 employees; IHRA = 5 employees.

Cont.

- **Date of the adverse employment action?**
 - Many of the employment laws have exhaustion requirements which require employees to file complaints with administrative agencies within relatively short timeframes (e.g. 300 days to file with the EEOC)
- **Sign any releases?**
 - Some employees sign releases in return for a “severance” at the time of termination.
- **How were you paid (hourly or salary)? Did you work overtime; were you paid overtime?**
 - (Looking for FLSA Violations)
- **Did they have prior discipline?**
 - Important to know when evaluating the potential claims

Handy Websites to Google

- U.S. Department of Labor
 - Wage and Hour/FMLA
 - Retirement & Health Plan Info
 - Affirmative Action
- Equal Employment Opportunity Commission/ Idaho Human Rights Commission
 - Discrimination/Harassment
 - Retaliation
- Federal Trade Commission
 - Employment Background Checks
- Electronic Code of Federal Regulations (Title 29 = Labor)
- Internal Revenue Service
 - (taxes/employees v. contractors)
- U.S. Department of Health & Human Svrs.
 - Medicare Info)
- National Labor Relations Board
 - Union/Employer Relations
- Occupational Safety & Health Administration
- U.S. Citizenship & Immigration Svrs.
- Social Security Administration

Federal Law versus Idaho State Law

- Congress as well as the Idaho Legislature have enacted statutory causes of action for wrongs in the workplace.
- Federal law includes ADEA, ADA, FMLA, and Title VII.
- The Idaho state law relative to employment discrimination is the Idaho Human Rights Act (“IHRA”), I.C. §67-5901, *et seq.*
- Idaho Courts look to federal case law to assist in interpreting the employment statutes.
 - *O'Dell v. Basabe*, 119 Idaho 796, 811, 810 P.2d 1082, 1097 (1991).

Title VII

- ◎ 15 or more employees (state law - 5)
- ◎ Protected Categories: race, color, national origin, sex, religion & retaliation
- ◎ Hiring, Firing, Pay, Promotion, Harassment, Other Terms & Conditions
- ◎ Sex:
 - Sexual Harassment: Quid Pro Quo/HWE
 - Gender
 - Sexual orientation – Getting Closer (if you are a government employer – more likely yes)
 - Gender identity – Probably yes

Prerequisites to Bring a Statutory Employment Claim

- Filing with Administrative Agency (IHRC and EEOC) and Exhaustion of Administrative Remedies

- Obtaining a NRTS (notice of right to sue) prior to filing a lawsuit.

ADEA

- At least 20 employees (only 5 under IHRA)
- Employee must be at least 40 years of age
- Contained in 29 U.S.C. §621, *et seq.*
- “Reductions in Force (“RIFs”)
- “Older Decisionmaker”
 - *Elrod v. Sears, Roebuck & Co.*, 939 F.2d 1466 (11th Cir. 1991).

ADA

- 15 employees (only 5 under state law)
- Prohibits discrimination based on an employee having a disability, being perceived as having a disability, having a record of a disability, or associating with someone with a disability
- 42 U.S.C. §12101, *et seq.*
- Disability is defined as, “A mental or physical impairment which substantially limits a major life activity.”
- “QUID” – qualified individual with a disability; an employee who is able to perform the essential functions of the job with or without a reasonable accommodation
- Duty of “reasonable accommodation”
- But not if it poses “Undue burden” on the employer
- Amendments effective January 2009 that revived this law

FMLA

- 50 employees in a 75-mile radius
- Employee must have worked at least 12 months of a calendar year and at least 1,250 hours in the last 12 months to be eligible.
- 29 U.S.C. §2601, *et seq.*
- Requires an employer to afford 12 weeks of unpaid leave time to an employee with a serious health condition, including pregnancy, or who has a family member with a serious health condition
- Hold position or reinstate to a comparable position
- Medical certification by qualified healthcare providers

Wage and Hour Cases

- ◎ The federal law - Fair Labor Standards Act in Title 29 of the U.S. Code.
- ◎ Sets overtime requirements and minimum wage laws.
- ◎ Currently, federal minimum wage in the U.S. is \$7.25/hour.
 - States can set higher minimum wages and more than 25 states have done so

FLSA Cont.

- The key portions of the FLSA involve the exemptions, which set forth the employment positions which are not subject to overtime laws:
 - Executive Exemption (requires management as “primary duty”)
 - Administrative Exemption (requires “exercise of discretion”)
 - Professional Exemption (requires “advanced knowledge”)
 - All exemptions require that the employee earn at least \$913/week (Dec. 2016).
 - Manual laborers, seasonal workers, and “blue collar” workers are typically not exempt from FLSA, BUT there is a long list of exemptions.

Idaho Wage Act

- Idaho Wage Claim Act, I.C. §45-601, *et seq.*
- “...[T]he employer shall make available at the usual place of payment all wages then due the employee by the earlier of the next regularly scheduled pay day or within ten days of such layoff or termination, weekend and holidays excluded.” I.C. §45-606.
- An employee’s right to wages accrues when employment is terminated. *Hales v. King*, 114 Idaho 916, 762 P.2d 829 (Ct.App. 1988).
- Treble damages & attorneys fees. I.C. §45-615(2).
- Vacation Pay = Wages. *Whitlock v. Haney Seed Co.*, 114 Idaho 628, 759 P.2d 919 (Ct.App. 1988).

Wrongful Termination in Breach of Public Policy

- In Idaho, the only general exception to the employment at-will doctrine is that an employer may be liable for wrongful discharge when the motivation for discharge contravenes public policy. *Edmonson v. Shearer Lumber Products*, 75 P.3d 733, 738 (2003).
The purpose of the exception is to balance the competing interests of society, the employer, and the employee in light of modern business experience. *Crea v. FMC Corp.*, 135 Idaho 175, 178, 16 P.3d 272, 275 (2000).
- Exception has been held to protect employees who refuse to commit unlawful acts, who perform important public obligations, or who exercise certain legal rights or privileges. *Sorensen v. Comm Tek, Inc.*, 118 Idaho 664, 668, 799 P.2d 70, 74 (1990).

Employment Agreement Terms

- Term of employment, indefinite or at will
- Good Cause Termination
- Notice – breach/termination/cur
- Severance
- Mediation/Arbitration
- Attorney's Fees
- Forum/Choice of Law Provisions

Non Compete Agreements

- Consideration – continued employment or more
- I.C. §§ 44-2701-2704
- Key Employee/I.C.
- Protect Legitimate Business Interest/ Direct Competition
- Reasonable in time, scope
 - 18 month presumption
 - Geographic area where employee worked
 - Line of work
- Blue Pencil

Non-Disclosure/Non-Solicitation

Agreements

- Proprietary/Confidential Information
- Idaho Trade Secrets Act
- Solicitation
 - Employees – current/former
 - Customers – current/former
- Interference Claims

QUESTIONS????

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