

UNDERSTANDING EMPLOYMENT LAW

FIRST EDITION

RODERICK O. FORD, J.D., SPHR

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A Member of *The Florida Bar*
And The Human Resources Certification Institute

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The
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at Urbana-Champaign

About the Author

Roderick O. Ford is the principal and founder of the employment law firm of Ford & Associates, LLC in Tampa, Florida, and serves as labor and employment Of Counsel to the Porter Law Firm in Stuart Florida. Mr. Ford earned his bachelor of arts (B.A.) degree from Morgan State University and his juris doctor (J.D.) degree from the University of Illinois at Urbana-Champaign. He holds the professional designation of Senior Professional in Human Resources (SPHR) from the Human Resources Certification Institute, as well as a graduate certificate in human resources leadership from Cornell University's School of Industrial and Labor Relations. Mr. Ford represents individual consumers and aggrieved workers before state and federal courts and administrative agencies. His law practice also includes human resources risk management for churches, non-profit organizations, and small businesses. In 2016-17, Mr. Ford was nominated to membership in *Lawyers of Distinction* and in *Best Attorneys of America*.

Preface

As a labor and employment attorney, I have often encountered the challenges and difficulties of reducing complex areas of employment and labor law to simple concepts in order to assist non-lawyers. Eventually, I conceived of a plan to meet this challenge by writing a column in a local newspaper called "Legal Ease," where I contributed over one hundred articles on various topics of employment and labor law. From these articles, I have extracted numerous materials which laid the general foundations for this publication, which is also written in plain English, so that non-lawyers such as consumers, employees, union stewards, chaplains, front-line managers, and human resources specialists can readily understand the concepts.

This publication is also designed to supplement the various certification review materials which help to prepare men and women for certification examinations in the field of human resources management, labor relations, and employment law. It is multidisciplinary in scope, covering strategic human resources management principles as well as standard American labor and employment jurisprudence.

The field of human resources management is dynamic and remains in perpetual motion. Human interaction within the modern workforce can be unique and multifaceted, as well as conflict-ridden

and stressful. These phenomena often converge and spill over into the American legal system, where administrative labor commissions, civil service boards, and courts decide important legal issues that impact the workplace. For this reason, students and practitioners of human resources management need to keep up with forever-changing employment and labor laws in order to remain competent and effective. At the same time, they need to be able to recognize potential human-resources risk management issues before they arise, in order to best protect their organizations' financial, human, and physical assets. Conversely, lawyers and judges would be well-served in gaining a working knowledge of human resources risk management in order to fully understand how the practical problems employee relations affect the development and adjudication of employment law. In fact, both the human resources profession and the American legal profession should emphasize cross-disciplinary continuing education that covers both employment law and human resources management. This book was written for both groups of professionals in mind. It is designed for every professional who comes into contact with issues involving human resources management, employee relations management, and labor and employment litigation.

Many human resources practitioners who are studying for one of the several HRCI or SHRM certification examinations should also find this book to be a very practical and useful supplement to their certification review materials—particularly the PHR or SPHR review materials. This book thoroughly covers the legal aspects of the HRCI and the SHRM body of knowledges. Although it is not designed to be a substitute for any of the official certification review materials published by HRCI or SHRM, the author believes that this book should be read as a very critical and important supplement in preparation for any one of the various HRCI or SHRM certification examinations. The reason is that those examinations are pragmatic and experiential-based, and the materials presented in this book are written from the perspective of practical experience in the field of labor and employment law and human resources management.

Human resources and union officers will also find this book to be a useful and practical guide for their daily work in managing employee relations. Workplace issues come up daily; novel workplace questions often arise suddenly on a daily basis; and H.R. and labor

relations professionals often need a quick and ready reference guide to turn to for help. This book is the perfect desk reference for such occasions. It not only provides a thorough overview of the most common and key legal principles that impact the modern American workplace, but it gives examples of workplace scenarios in plain English; provides black-letter law and case citations; and even includes special sections on "human resources strategic and risk management," so that human resources professionals can visualize how a particular aspect of labor and employment law affects their professional obligations and duties. This cross-disciplinary approach to labor and employment law allows the reader of this book to review the legal concepts discussed in each chapter, not only from the perspective of lawyers and judges, but also from the perspective of human resources and labor relations practitioners. The author believes that this cross-pollination of interdisciplinary scholarship helps to provide pragmatic and experiential knowledge to this text material.

Most importantly, this book is also designed for rank-and-file employees and workers who need to know what their workplace rights are. Union stewards, labor and industrial chaplains, and worker advocates will find this book to be an indispensable guide as they seek to assist workers. As an experienced labor and employment attorney, the author has presented the material in this book with the common person in mind. The materials are designed for individuals who are not lawyers or experienced human resources practitioners, but who need to attain a working knowledge of labor and employment law within a very short period of time. For example, this book should be very helpful for individuals who are about to face a disciplinary proceeding and need a quick reference guide to understand their rights; or for individuals whose request for disability or sick leave has been denied and who need to understand what steps to take to appeal the denial.

Finally, the human resources and risk management materials compiled in this book are national in scope, but the employment and labor laws were taken primarily from states within the U.S. Fifth- and U.S. Eleventh Circuit Court of Appeals, which cover the states of Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas. The reason for this jurisdictional limitation is because this book was

originally designed as a human resources handbook for the National Association of Christian Counselors, which provides chaplaincy and counseling services within these states. For this reason, labor and employment attorneys who practice in these jurisdictions—particularly those attorneys who are preparing for the labor and employment law board certification examinations in Florida and Texas—should find the case citations, legal commentaries and the attached employment law digest to be directly relevant to their law practice.

Introduction

A multi-disciplinary book on labor and employment law and human resources management is difficult to plan, because the subject matter covers a very broad range of state and federal laws and administrative regulations which govern every aspect of the employer-employee relationship. I do not pretend to suggest or purport that every important or conceivable aspect of labor and employment jurisprudence and human resources management is presented in this book. What this book does provide is a comprehensive outline of the most critical aspects of labor and employment law that most often directly impact the lives of individual workers and human resources managers. Since this book was written with the non-lawyer as the primary audience, it is written in clear and easy-to-read prose, with careful explanations, where appropriate, of legal terminology and case law, so that legal principles can be easily understood. But there is sufficient legal material, such as case law references, to engage the legal community as well. For example, lawyers and judges who wish to delve deeper into a particular topic will find ample materials within this text for doing so, including an employment law digest which I have affixed to the end of the book. Towards the end of most of the chapters in this book, I have provided additional materials for the human resources professional, called "human resources and strategic

risk management." It is my objective with this section to show how "black-letter" labor and employment laws significantly impact the daily operations of front-line and human resources managers.

This publication is designed to be a desk reference manual for a wide variety of readers: entry-level employees, mid-level supervisors, managers, senior executives, human resources managers, union officials, attorneys, labor and industrial chaplains, judges, etc. It is especially designed so that laypersons and trained professionals can benefit from reading its contents. Non-lawyers, who are unfamiliar with employment law, can read this publication from beginning to end, while each chapter builds upon the next chapter, so that the legal principles are developed and explained in logical sequence. On the other hand, more experienced legal or human resources professionals should have not problems reading the individual chapters in this book in any sequence, since each chapter is a stand-alone topic that deals with a specific subject-matter area of labor and employment law.

This book consists of five major topics: the American common law; labor rights; disparate treatment (i.e., individual discrimination claims); disparate impact (i.e., group discrimination claims); and salary, compensation and employee benefits.

The American common law is the foundation of labor and employment law. For this reason, this book covers the common law of law; labor rights; disparate treatment (i.e., individual discrimination claims); disparate impact (i.e., group discrimination claims); and salary, compensation and employee benefits. The American common law is the foundation of labor and employment law. For this reason, this book covers the common law of contracts, the common law of principal and agent, the employment at-will doctrine, and the common law of torts in great detail, in chapters one through four. The common law principles explained in these first four chapters provide the essential foundations for understanding the other remaining principles of labor and employment law covered in chapters five through nineteen.

Next, we take look at the National Labor Relations Act (NLRA) in part two of this book. The NLRA is one of the oldest federal labor laws in the United States, and this book takes a look at several of the most common labor topics which impact non-unionized workers as well as the union's duty of fair representation.

In the third and fourth parts of this book, we look at Title VII of the Civil Rights Act of 1964 and several other federal anti-discrimination statutes. This is perhaps the most comprehensive parts of the book, because it covers a multitude of examples of causes

of action and prima facie case standards under various statutes. Here, the reader will also find detailed descriptions of disparate impact, class action, and affirmative action, and various other related case citations. In the fifth part of this book, we look at the important topic of salary, compensation, and employee benefits, as we analyze key federal statutes such as the Family and Medical Leave Act, the Fair Labor Standards Act, and the Uniformed Services Employment and Re-employment Rights Act. In sixth part, the reader will find a directory of the leading human resources and employment law certification and training centers. And finally, in the seventh part of this book, I have provided a comprehensive "employment law digest" which corresponds with the first nineteen chapters. This law digest is a compilation of case laws, together with a brief description of the judicial opinions rendered in each case.

Lastly, as this is the first edition of a self-published work whose general outline and themes were extracted largely from the author's law practice (i.e., news articles, demand letters, appellate briefs, memoranda of law, and motion-hearing notes), I beg all of my readers' forgiveness for any foibles and mistakes contained herein. This book is in essence the author's "white papers" which have been compiled over the course of several years and presented here for the first time to the general public. This publication is an evolving, collaborative, and on-going research project.

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Tampa, FL
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