

22-1 Making and Terminating Employment Contracts

GOALS

- Describe how employment contracts are made
- Explain how employment contracts are terminated

KEY TERMS

employment	wrongful discharge
employer	discharged without cause
employee	unemployment compensation
independent contractor	discharged for cause
employment at will	

How Are Employment Contracts Made?

WHAT'S YOUR VERDICT?

Andrewski hired on as a machinist in Zinton's fabricating shop. Her supervisor told Andrewski she would have to provide her own protective gloves, goggles, and protective apron. Andrewski complained to Zinton, saying that providing these items was not covered in the employment contract.

Must Andrewski supply these items to stay employed?

Employment is a legal relationship based on a contract that calls for one individual to be paid for working under another's direction and control. The parties to this contract are the employer and the employee. The party who pays someone in order to direct and control that person's activities is the **employer**. The party who is paid by the employer to serve under the employer's direction and control is the **employee**.

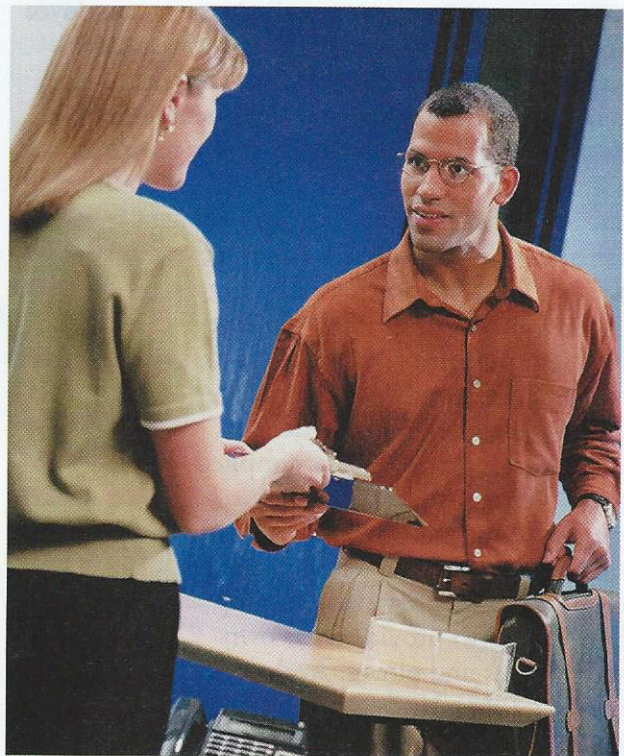
If there is no contract to pay for work, or if there is no direction and control, the relationship between the parties is not one of employment. If you hire someone merely to produce a specified result in the manner they see fit, you have hired what the law terms an **independent contractor**. In general, an independent contractor agrees to produce a finished job without being supervised. An example would be a small publishing house that is hired to write, print, and distribute a company's newsletter. On the other hand, an employee agrees to do a range of tasks under the direction and control of the employer. An example of this would be

a staff member of the company who is assigned the job of writing all of a company's newsletters and press releases under the supervision of the head of the company's public relations department.

Terms of The Employment Contract

Employment contracts are unusual because their terms can come from a variety of sources. The terms can be derived from

- express agreements between the employer and employee



This man has just been hired as a customer service representative at a large consumer products company. The woman in the photo will be his supervisor, and he will work under her direction. Is he an employee or an independent contractor? Explain.

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- implied agreements between the employee and employer
- state and federal laws

EXPRESS AGREEMENTS Express employment contracts are oral or written documents. Detailed written contracts are used with sports professionals, entertainers, top-level managers, and union members. These written contracts expressly describe all of the elements of the employment relationship. See the sample employment contract on page 399. A party who violates an express term is liable for breach of the contract.

Only a small percentage of employment contracts are completely in writing. Most express contracts are partly written and partly oral. Compensation is almost always an express term. So are fringe benefits. Often the employer and employee also expressly agree upon the duration of the job or the time required for advance notice of termination.

IMPLIED AGREEMENTS When hiring hourly workers, custom or trade practice determines whether length of employment is expressly stated. Generally, hourly wage jobs are impliedly considered to come under the doctrine of **employment at will**. This means that an employer can discharge an employee at any time for any cause or even without cause without being liable for breach of contract. This is because there has been no agreement about the length of the employment. It also means an employee may quit a job at any time without being liable for breach of contract. Employment contracts can always be identified as either “at will” or “for a specific period.”

Frequently, other terms also are implied from the way individual employers supervise their employees. For example, in a particular restaurant there may be an implied term that requires waiters and waitresses to pool their tips and to share them with the people who clear tables. Factory workers may be required to provide their own safety shoes and gloves. Andrews in *What's Your Verdict?* can be fired if she does not provide the items required by her employer.

TERMS IMPOSED BY LAW State and federal laws impose many important terms into each employment con-

tract whether or not the employer and employee want them included. Terms requiring the payment of a minimum wage and the hiring of racial and other minorities over other more qualified applicants, if necessary, are examples.

CHECKPOINT Name three sources of the terms in employment contracts.

How Are Employment Contracts Terminated?

WHAT'S YOUR VERDICT?

Jin was asked to stay after work one evening to assist in moving some barrels containing a toxic chemical onto a truck. A forklift tine punctured one of the drums causing a large spill. The company supervisor used a garden hose to wash the material down a city drain. No report was made of the incident to the EPA. When a fish kill resulted in a nearby river and an official investigation followed, the company asked Jin to lie about what he'd seen. When he refused, he was terminated.

In a state that allows employment contracts to be terminated at will, does Jin have any legal recourse against his ex-employer?

NETBookmark

Many federal laws have been passed to protect employees from wrongful termination. Access school.cengage.com/blaw/lawxtra and click on the link for Chapter 22. Read the article “Employment at Will: U.S. Federal Laws Limiting Employment at Will.” Then click on one of the laws listed and read about it. Write a paragraph that explains how this law protects an employee from wrongful termination by his or her employer.

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Generally, contracts of employment are terminated either by performance of a specific job or performance for a specific period, by termination at the will of one or both of the parties, or as the result of a material breach. Terminated employees may be eligible for government assistance during their subsequent unemployment.

By Performance

Most contracts of employment are terminated the way all other contracts are—by performance. Completion of the job or the running of the period of employment defined in the contract terms is the key to such performance. As mentioned previously, the courts will look at the express, implied, and terms defined by laws to determine the obligations owed by the parties to one another. If these obligations have been fulfilled, the employment contract is terminated.

By Termination at Will

As discussed, many employment contracts are terminable at the will of either the employer or the employee. This occurs because the employer and employee generally do not specify a length of time for the employment relationship. The law then assumes that either party may terminate employment at any time without liability.

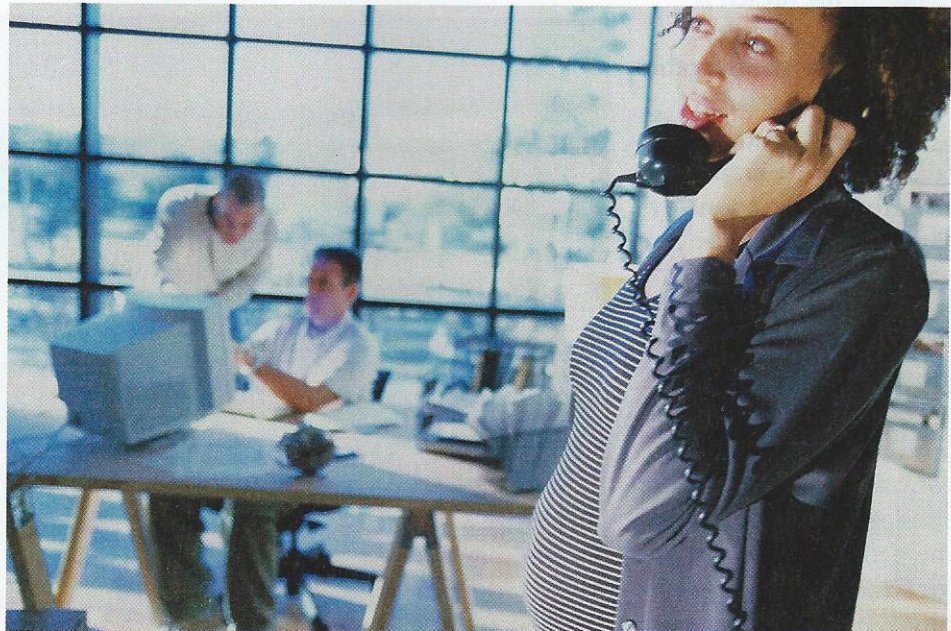
For example, an automobile repair shop mechanic would incur no liability for quitting her job for a higher paying one. By the same token, the repair shop manager could fire the mechanic without giving any reason for doing so. It is important to note, however, that many employers ask for and check references of prospective employees. As a consequence, abruptly quitting a job and consequently leaving an employer without the ability to fulfill his or her contracted tasks, could diminish future opportunities for the departing employee.

WRONGFUL DISCHARGE There are limitations on this power to terminate without cause. Firing because of race, religion, gender, age, disability, pregnancy, veteran status, or national origin is job discrimination and illegal. Federal law also prohibits an employer from dismissing an employee for engaging in unionizing activities. Further, most states now deny the power to terminate at will when it is used to retaliate against those who

- refuse to commit perjury at the request of the company
- insist on filing a workers' compensation claim
- report violations of law by the company
- urge the company to comply with the law

When an employer fires an employee for one of the above reasons, it commits the tort of **wrongful discharge**. Jin in *What's Your Verdict?* would be able to sue his ex-employer for such a wrongful discharge.

VIOLATION OF CONTRACT TERMS Employers who make promises orally or in company documents such as employee handbooks to "treat employees fairly" may cause this promise to become a part of the employment contract. When such terms are part of the employment contract, the employer cannot fire an employee without a fair reason.



The Pregnancy Discrimination Act is a federal law that outlaws discrimination against employees based on pregnancy, childbirth, or related medical conditions. Do you think such protection for pregnant women is necessary? Why or why not?

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GOVERNMENT EMPLOYEES In general, employees who work for the government, often referred to as *public employees*, are entitled to due process before being discharged. This means that they are entitled to notice of the reasons for the discharge along with a hearing. In a hearing, they are given the opportunity to present their own evidence and to challenge the claims of the governmental employer. For this reason, it is more difficult to discharge public employees than private sector employees.

IN THIS CASE

Waller accidentally discovered that the test results had been faked on the new body armor her company was developing for sale to various police departments around the country. She urged her superiors to withdraw the product from the market, but they refused. She then went to the media with documentation of their unlawful conduct. When she was fired as a result, she sued the employer for wrongful discharge and won.

By Material Breach

If the obligations of the employment contract are not fulfilled, breach of contract occurs. As mentioned, if the breach is material, it extinguishes the obligations of the other party to the contract.

Suppose an employer fails to pay the employee an agreed-upon monthly check. This would be a breach of the contract. Because it is material, the employee would be justified in quitting or in abandoning the job without liability for breach of contract. Similarly, if the employee fails to perform the daily required tasks for which she or he was hired, the employer may treat the contract as terminated and discharge the employee without liability.

Unemployment Compensation

Workers who have been terminated despite having complied with all the terms of their employment contract are said to have been **discharged without cause**. This means the cause of the discharge was not the employee's conduct. An employee who is discharged without cause is entitled to unemployment compensation benefits. **Unemployment compensation** is money paid by the government or a private insurance fund to workers who have lost their jobs through no fault of their own.

Workers who have been **discharged for cause**, however, are not eligible for unemployment compensation. Felonious conduct, participation in an unlawful strike, starting a prison sentence of longer than 30 days, disqualification under federal or state mandatory drug testing, engaging in willful misconduct in disregard of the employer's interest are all considered bases for being discharged for cause by the U.S. Department of Labor.

Unemployment compensation payments are made by the states in cooperation with the federal government under the Social Security Act of 1935. There usually is a period of one or two weeks after termination before payments begin. Then a percentage of the regular wage is paid to the unemployed person every week for a limited



Upon graduating from college later in life with a chemistry degree, Alexandra took a job as a lab technician. The job bored her, and she began to arrive late for work or not show up at all. Would the lab be justified in terminating her? Why or why not?

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period of time. Unemployment compensation generally is not available to those who quit voluntarily, strike, or refuse to accept similar substitute work. It often is available to part-time workers.

CHECKPOINT What are the three main ways in which an employment contract is terminated?

EMPLOYMENT CONTRACT

The parties to this contract _____ ("Employer") and _____ ("Employee") do hereby agree that the following terms shall govern their employment relationship:

1. The effective date of commencement of this contract is _____ at _____ A.M./P.M. and it shall continue in force until terminated as set forth below.
2. Employee's job description shall be _____ with the following duties to be performed at a location(s) to be determined after evaluation by employer:

3. After the initial probationary period of four weeks (during which time termination shall be at will and without notice by either party) termination of the contract can be effectuated by either party to it with a verbal or written notice of at least two weeks duration.
4. Employee's wages shall be paid by check/cash/direct deposit (circle appropriate method) on the last working day of every week. Employee's initial wage shall be \$ _____ per hour with a \$.50/hour raise at the end of the successful conclusion of the probationary period. Thereafter evaluations for wage increases and promotions will be held semi-annually.
5. A normal work day will consist of 8 hours of labor with a half-hour lunch break. More than 40 hours of labor per week (Monday through Saturday) will be paid at time and a half. For work performed on Sundays and public holidays double time will be paid.
6. All state and federal public holidays will be honored. Employees taking these holidays will receive normal pay for an 8-hour day as though it had been worked. Any actual work on these days will be voluntary and paid at the rate noted above.
7. A sick-leave period with pay of one week for each 6 months of continuous employment shall accrue after the probationary period for employee. Sick leave taken during employee's probationary period shall be without pay.
8. An annual leave entitlement of one week for each 6-month period of continuous employment shall be granted to employee. Said leave shall be taken at a time mutually agreeable and convenient to both employer and employee.
9. Each employee shall be entitled to 60 days maternity or family-care leave without pay for every 18-month period of continuous employment.
10. Additional term(s): _____

NOTE: ALTERATIONS TO THIS AGREEMENT TO BE LEGALLY VALID MUST BE IN WRITING AND SIGNED BY BOTH PARTIES.

DATE _____

EMPLOYEE

FOR EMPLOYER

TITLE

22-1 Assessment

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THINK ABOUT LEGAL CONCEPTS

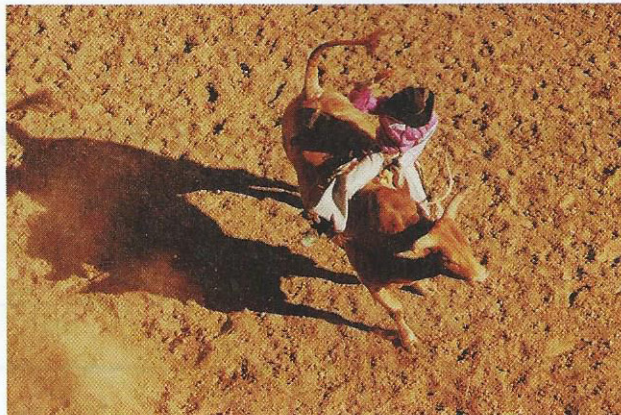
1. Someone who is paid to perform a job but is not supervised or controlled in so doing is a(n) ?.
2. Federal law is likely to supply which of the following terms in employment contracts? (a) job title (b) minimum wage (c) job location
3. When no length of employment is specified, the employer–employee relationship is known as employment ?.
4. Firing an employee because he or she had served in the military would be employment discrimination. **True or False?**
5. Unemployment compensation will be denied if the employee was fired for cause. **True or False?**
6. Most ? employees are entitled to due process (notice and a hearing) before they can be discharged.

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

7. Susan contracted to park customers' cars at a local restaurant. All her pay was in the form of tips, and she worked whenever the restaurant was open. She had no direct supervisor and parked the cars in a lot nearby. When she was unable to work, the restaurant placed a sign at their entrance telling customers to self-park. Is Susan an employee?
8. Darrell, a high school student, was friends with an adult neighbor, Bill. Bill operated an auto tune-up business from his garage. Darrell often helped out. At first he would drop by for an hour in the evening and just watch. Then he started handing tools and parts to Bill. Occasionally Bill would give Darrell a \$5 bill or take him to dinner. Darrell showed up about twice a week, but there was never any advance notice. Is Darrell an employee?
9. Sterling was the night clerk at the Monument Inn. He had several duties besides working at the main desk. Therefore, he was not allowed to sleep while on the job, even if business was slow. On several occasions, the manager of the inn found Sterling sleeping and warned him not to do so. If Sterling continued to fall asleep on the job, would the manager be justified in discharging him? If discharged, could Sterling collect unemployment compensation?
10. Belly T. Buckle, a famous rodeo bull rider, signed on for a rodeo tour of 15 shows. His employer, In the Dirt, Inc., featured him in all their advertisements. Halfway through the tour, Belly fell in love with an emergency room nurse. As a consequence, he quit the tour. In the Dirt had to hire a replacement rider on short notice at a premium of \$75,000 over Belly's pay. At the close of the tour, In the Dirt sued Belly for the extra \$75,000, \$23,000 for the expense of changing its ad campaign, and more than \$200,000 in projected attendance revenue lost due to Belly not being on the tour. Will Dirt recover? How much?

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22-2 Duties of Employers and Employees

GOALS

- List an employer's duties
- Name an employee's duties

KEY TERMS

payroll deductions	duty of loyalty and honesty
workers' compensation	duty of reasonable performance
duty of obedience	
duty of reasonable skill	

What Are an Employer's Duties?

WHAT'S YOUR VERDICT?

Armstrong was a nurse at the local hospital and an Army reservist. When her unit was called to active duty for service in the Middle East, Armstrong left her job and family to serve her country. After she was honorably discharged from the Army, she sought to reclaim her job at the hospital. Upon her return, however, she found the job had been filled by another person.

Is she entitled to regain her job?

Employers owe a variety of duties to employees and others. Some of these duties arise out of the express terms of the contract of employment. Others are implied by law. Following are the principal duties that employers owe employees.

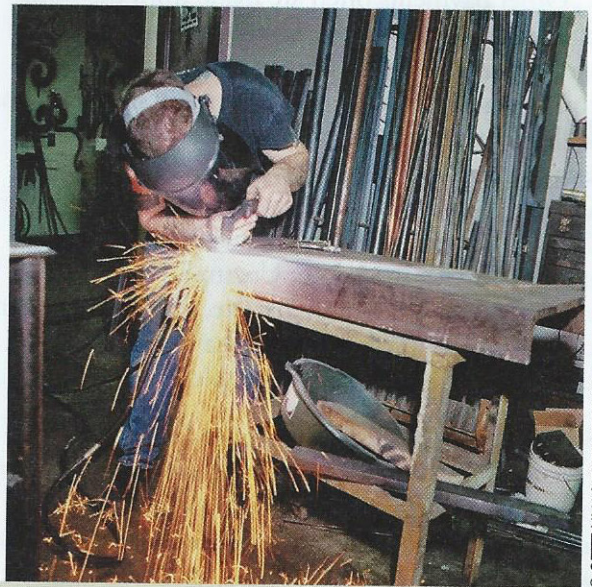
Duties Owed to Employees

REASONABLE TREATMENT An employer is required to treat workers in a reasonable manner. If the employer commits an assault or battery upon an employee, the employee may quit the job without liability. The injured employee also may sue for damages.

SAFE WORKING CONDITIONS An employee is entitled by law to reasonably safe working conditions, including safe tools, equipment, machinery, and the building itself. The working conditions must not be harmful to the employee's health, safety, morals, or reputation. If the employer does not provide safe working conditions, the employee may quit without being liable for breaching the contract.

FAIR LABOR STANDARDS The federal government enacted the Fair Labor Standards Act to establish the minimum wage and maximum hours for all employees under the jurisdiction of the act. Maximum hours that can be worked at regular rates of pay are 40 per week (with no daily maximum except for transportation employees). If more than 40 hours are worked in a week, overtime must be paid at one and a half times the regular rate. Note that American workers currently work almost 100 hours more per year than their Japanese counterparts and 350 hours more per year than their European counterparts.

Not all workers are covered by this act. The minimum wage and overtime requirements of the law do not apply to executives, administrators, and professional workers. In addition, the hourly provisions apply only partially to workers in seasonal industries. Special rules apply to trainees,



This metal-cutting tool was supplied by the employer of the man who is using it. If it malfunctions, the man is burned, and he quits his job over the incident, will he have breached his employment contract? Why or why not?

LEGAL Research

Interview family members or friends who are employed. Ask them what percentage of their paychecks their employers withhold and what the withholding categories are. Ask how they feel about these amounts being deducted. Summarize your findings in a paragraph.

apprentices, student workers, and handicapped workers. In certain circumstances they may be paid at 85 percent of the minimum wage.

PAYROLL DEDUCTIONS Certain governmental programs are financed by payments made by employees. Typically the employer deducts money from the employee's paycheck. These are called **payroll deductions**. Thus, the employer is legally obligated to withhold a percentage of the paycheck to cover the employee's federal and state income tax obligations. Similarly, the employer must withhold certain amounts for the employee's portion of social security payments. The abbreviation FICA, which stands for Federal Insurance Contributions Act, on an employee's paycheck stub refers to these social security payments. Refer to Chapter 19 for a description of the programs supported by these payments.

Other payments often are made from the funds of the employer. **Workers' compensation** is an example. This is a payment into an insurance fund that compensates employees for their injuries on the job. It eliminates the need for employers to compensate employees directly for on-the-job injuries. See Chapter 25 for a detailed discussion of this program.

Similarly, employers must make payments for unemployment insurance. Unemployment insurance provides short-term income, or unemployment compensation, for people who have recently lost their jobs. This topic was discussed in Lesson 22-1.

MILITARY SERVICE The Military Selective Service Extension Act of 1950 requires that certain military persons be re-employed by their former employer after honorable discharge from the service. Persons who have been drafted, enlisted, or called to active duty receive this protection. To qualify for reemployment, veterans must still be able to perform the work. In *What's Your Verdict?* Armstrong is legally entitled to get her old job back.

VOTING More than one-half the states provide that workers must be given sufficient time off with pay, at a time convenient to the employer, to vote in regular primary and general elections.

FAMILY AND MEDICAL LEAVES The Family and Medical Leave Act requires that a covered employer grant to an eligible worker up to 12 weeks of unpaid leave in a year for the following: serious medical conditions, birth and care of a newborn child of the employee, care of an immediate family member with a serious health condition, or circumstances involved with the employee's receiving children for adoptive or foster care.

Duties Owed to Minors

Both state governments and the federal government have prescribed employer duties aimed at protecting minors from overextended working hours and dangerous working conditions. Although the federal and state laws vary, they are all based on the following principles:

- A person's early years are best used to obtain an education.
- Certain work is harmful or dangerous for young people.
- Child labor at low wages takes jobs from adults.

STATE LAWS Every state government regulates the conditions and types of employment permitted for persons under age 18. These are often termed child-labor laws. When state child-labor laws have stricter standards than federal laws, the state laws control.

GLOBAL ISSUES

Worst Forms of Child Labor

Children are exploited as cheap labor throughout the developing world. They are tied to looms in India while their elders work. They perform tasks among machinery and toxic substances in shoe factories in Mexico. In response, members of the United Nations (UN) have adopted either partially or completely the UN's Convention on the Rights of the Child (CRC). This document sets out the economic, social, and political rights of the young members of our societies. Only two UN member countries, the United States and Somalia, have not ratified the CRC.

The states usually specify a minimum age for employment. All states place a limit on the number of hours a young person may work. In calculating the maximum number of hours, the school hours often are combined with the hours on the job while school is in session. For example, a common maximum is 48 hours (school and outside work combined) in one week. Most states maintain controls over those hours, and most require a work permit if the individual is under the age of 18.

In addition, some states have child labor laws that

- set the maximum number of working hours in one day
- prohibit night work
- prescribe the grade in school that must be completed before being able to work
- set the required age for certain hazardous occupations
- restrict the hours of work to between 5 A.M. and 10 P.M.



LAW BRIEF

Occupations Prohibited by the FLSA for Certain Age Groups

Under 14 years of age

All occupations except entertainment and agriculture

14 and 15 years of age

Any manufacturing, any mining, most processing, any involving operating power-driven machinery (including lawn mowers and "weed whackers"), any involving operating motor vehicles or helping with same, any in the transportation, warehousing, communication, public utilities, and construction industries, any as public messengers.

16 and 17 years of age

Any occupation declared "particularly hazardous" by the Secretary of Labor to include (with some exemptions possible for apprentices and student learners) mining, manufacturing explosives, logging and saw milling, driving motor vehicles, slaughtering or meat packing, operating powered saws, demolition, roofing, and excavating.



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Child labor laws in this country are written essentially to discourage child labor. Do you see any benefits of children working? If so, what are they?

FEDERAL LAW The Fair Labor Standards Act (FLSA) sets the minimum protection for most young workers. (FLSA exempts from its coverage youths delivering newspapers, making wreaths in the home, employment as actors or actresses, or employment by their parents in occupations other than mining and manufacturing or those declared hazardous by the Secretary of Labor.) This law makes it illegal for people under fourteen years old to work. Fourteen- and fifteen-year-olds are only permitted to work limited hours after school in non-hazardous jobs. Unless modified by state law, sixteen- and seventeen-year-olds can work unlimited hours in non-hazardous jobs.

Duties Owed to Those Injured by Employees

If an employee, acting within the *scope of employment*, commits a tort (injuries persons or property), the employer is liable for the damages. It is immaterial that the employer did not authorize the act. If an employee commits a tort but is not acting within the scope of the employer's business, the employee alone is liable for any resulting injuries. Even if an employee intentionally causes damage, the employer may be held liable

if the employee has acted with the intention of furthering the employer's interests

Generally, if a person is an independent contractor rather than an employee, the person who hired the contractor is not liable for the contractor's torts. If the job is inherently dangerous, such as blasting with dynamite, the party who hired the independent contractor may be liable to those injured.

CHECKPOINT Name the duties owed by employers to their employees.

What Are an Employee's Duties?

WHAT'S YOUR VERDICT?

Mel was hired by the Critical Care Construction Company as an expert welder to help assemble the containment vessel for a new nuclear power plant. For safety each weld was x-rayed after being completed. When more than 70 percent of Mel's welds were found to be improperly done, he was discharged by Critical Care.

Did Critical Care act legally?

Duty to Fulfill the Employment Contract

An employee has a duty to fulfill the express terms of the employment contract and other implied agreements made with the employer. In addition to the duties acquired by personal consent to the employment agreement, the employee also has duties imposed by state law. These duties include the duties of obedience, reasonable skill, loyalty and honesty, and reasonable performance.

Duty of Obedience

Each employee is bound by the **duty of obedience**. This means the employee has a duty to obey the reasonable orders and rules of the employer. This duty exists whether or not the employee has expressly agreed to it. However, an employee cannot be required to act illegally, immorally, or contrary to public policy.

IN THIS CASE

Ash was the assistant to the president of Pinos Point Properties. She had confidential information that her company was going to make an offer on a certain piece of land for \$250,000 but would be willing to pay as much as \$350,000 for it. Ash told this to the owners of the land, who agreed to give her one-half of any amount over \$250,000 that they received. After the purchase was made for \$350,000, Pinos Point learned of Ash's action. Pinos justifiably dismissed Ash and sued her for damages.

Duty of Reasonable Skill

The **duty of reasonable skill** requires that those who accept work possess the skill, experience, or knowledge necessary to do it. The employer need not keep the employee, nor pay damages for discharging the employee, if the employee does not perform with reasonable skill. Thus, a welder whose welds are consistently substandard, such as Mel's in *What's Your Verdict*, could be fired for the lack of reasonable skill.

Duty of Loyalty and Honesty

An employee owes the **duty of loyalty and honesty** to the employer. The employee is obligated to look out for the employer's best interest. By committing a fraud upon the employer, or by revealing confidential information about the business, an employee may be justifiably discharged. Such a worker also may be liable for damages.

A Question of **ETHICS**

Tuchbach was a coach at the University of Southern Missouri. In his third season of a five-year contract, he led his football team to an 10-1 record and a Division I-AA bowl bid. Two weeks after the game, Tuchbach received an offer from another school at double his current salary plus a weekly interview show and endorsement rights. Is it ethical to break his contract even if he pays damages?

Duty of Reasonable Performance

Employees owe the **duty of reasonable performance** to employers. This is the obligation to perform the job tasks with competence. An employer is justified in discharging an employee who fails to perform assigned duties at the prescribed time and in the prescribed manner. Occasional minor failure

to perform as expected ordinarily is not sufficient grounds for dismissing an employee.

On the other hand, any employee may be discharged if unable to do the work because of illness or injury.

CHECKPOINT What duties are owed the employer by an employee?

22-2 Assessment

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Study Tools

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THINK ABOUT LEGAL CONCEPTS

1. Which of the following is not a duty owed by the employer to the employee? (a) duty of reasonable treatment (b) duty to provide safe working conditions (c) duty to follow Fair Labor Standards (d) all of the above are employer duties
2. If state laws designed to protect minors have stricter requirements than federal laws, the federal laws still prevail. **True or False?**
3. An employer is liable for the torts of an employee if the employee was acting within the ? when the tort occurred.
4. Any party who hires an independent contractor may be liable for the independent contractor's torts if the work (a) involves overtime (b) is inherently dangerous (c) requires professional skill
5. Which of the following is not a duty owed by employees to employers? (a) duty of obedience (b) duty of reasonable performance (c) duty to follow immoral but not illegal instructions (d) duty of loyalty and honesty (e) all of the above are employee duties
6. Generally, an employee may be discharged if unable to do the work because of illness or injury. **True or False?**

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

7. Socow's father was an operator of a backhoe. For three summers, the father trained his son to operate backhoes. When Socow turned 14 years old, he applied for a job with a local construction firm as a backhoe operator but was turned down because of his age. Was the construction company's conduct legal?
8. Your friend is hired as a ride operator with a traveling carnival. At a county fair, he carelessly fails to secure the safety bar over the seat on a small roller coaster. Two riders are thrown out and seriously injured. Who is liable for the injuries?
9. Holtz entered into a contract with Acme Pool Company for the construction of a pool in the back yard of his new country estate. As the pool was to be located on a rock bluff, Acme had to do a considerable amount of dynamiting. During one blast, a large portion of the bluff accidentally fell away and severely injured a neighbor below. The neighbor sued Acme and Holtz for \$1,000,000. Acme's assets and insurance coverage equalled no more than \$150,000. Is Holtz liable for the remainder?
10. Sharp worked for Silicompetent Inc., a computer chip design company. While developing applications for Silicompetent's hypersecret new bubblechip, Sharp copied its schematics and sold them to a competing microchip firm. Is this grounds for firing Sharp?
11. Francis was hired as a cook at a local restaurant. He said he was experienced in cooking breakfast items and could handle lunch, too. In fact, his only experience was as a dishwasher, although he had carefully watched cooks work. On the first day, he was fired because he was too slow. Was the employer acting legally?

CONCEPTS IN BRIEF

22-1 Making and Terminating Employment Contracts

1. In an employment relationship, an employee is paid for working under the direction and control of an employer.
2. If there is no contract to pay for work, or if there is no direction and control, the relationship between parties is not one of employment.
3. Express employment contracts may encompass terms agreed to orally or in writing. These may be augmented by terms implied from the work setting, environment, and applicable state and federal laws.
4. Many employment contracts are terminable at the will of either the employer or the employee. This applies primarily to those without a set duration or job to complete. Employment contracts also may be terminated by performance or material breach.

5. If they are discharged without cause, employees may be eligible for unemployment compensation.

22-2 Duties of Employers and Employees

6. An employer's primary duties are to treat the employee reasonably, provide safe working conditions, and comply with applicable laws and the contract of employment.
7. Both state and federal governments have child-labor laws that regulate conditions and types of employment for persons under age 18.
8. An employee must adhere to the fiduciary duties prescribed by law and comply with the contract of employment. Employees have duties that include fulfilling the employment contract, obedience, reasonable skills, loyalty and honesty, and reasonable performance.

YOUR LEGAL VOCABULARY

Match each statement with the term that it best defines. Some terms may not be used.

1. Governmental payments to those who recently lost their jobs
 2. Payment for injuries that occur on the job
 3. Party who engages another to work for pay under the former's control and direction
 4. One who contracts to do something for another but is free of the latter's direction and control
 5. Contractual relationship in which one party engages another to work for pay under the supervision of the party paying
 6. Party who works under the supervision of another for pay
 7. The obligation to look out for the best interests of the employer
 8. The obligation to perform the job tasks with competence
 9. Firing an employee in retaliation for reporting violations of law by the company
 10. Obligation to obey the reasonable orders of the employer
 11. Employment relationship whereby employee may be discharged at any time because no agreement was made about length of employment
 12. Money withheld from an employee's paycheck
- a. discharged for cause
 - b. discharged without cause
 - c. duty of loyalty and honesty
 - d. duty of obedience
 - e. duty of reasonable performance
 - f. duty of reasonable skill
 - g. employee
 - h. employer
 - i. employment
 - j. employment at will
 - k. independent contractor
 - l. payroll deductions
 - m. unemployment compensation
 - n. workers' compensation
 - o. wrongful discharge

REVIEW LEGAL CONCEPTS

13. Describe the difference between an independent contractor and an employee.
14. Evaluate the employer's exposure to liability due to employee and independent contractor activities.
15. Explain how courts will decide whether an employment contract is terminable at will.
16. What are the basic provisions of the Fair Labor Standards Act?

WRITE ABOUT LEGAL CONCEPTS

17. Write a short description of a job you know about. Next write two or three sentences describing an employment contract for that job that makes it terminable at will. Last, write another two or three sentences describing an employment contract for the job that makes it not terminable at will.
18. Write a short comparative essay on the origins and evolution of your state's unemployment compensation programs and the federal unemployment compensation programs. Include the social, economic, and political pressures that caused the enactment of each.
19. Investigate the actions and results of Canada's reaction to the UN Convention on the Rights of the Child. Compare Canada's overall response to that of the United States. Do you agree with the position of Canada or the United States in the matter? Justify your answer.
20. Contact the embassies of several foreign countries, being sure to include at least one country from each populated continent. Ask for a list of employee and employer rights and protections in the country. Compare them with the rights and protections of workers and employers in the United States. State your conclusions as to which countries provide better conditions and where the United States both excels and falls short.
21. **HOT DEBATE** What sanctions would the Army impose on Justin if he reacted in combat as he planned? Would these be ethical?

MAKE ACADEMIC CONNECTIONS

22. **ENGLISH** Consider how conditions of employment have changed since the turn of the twentieth century by reading *The Jungle* by Upton Sinclair. Sinclair, one of the famous authors dubbed "muckrakers" by President Theodore Roosevelt, investigated the working conditions of immigrants in the Chicago meat packing industry. Prepare a report for the class on the changes.

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

23. Chin interviewed Caroline for a position as a cashier in her grocery store. She described the job responsibilities, the days and hours Caroline would work, the attitude she wanted Caroline to communicate to customers, and the hourly pay. After the interview, Chin said she would hire Caroline and they shook hands. Describe three terms of this employment contract that are express and three that are imposed by law.
24. Myron owned Crossroads Service Station. He directed Pat, an employee, to put re-refined oil into the unlabeled oil jars displayed for sale. Pat knew that the law required re-refined oil to be labeled "re-refined." Therefore, Pat refused to fill or display the jars. Was Pat's disobedience grounds for discharge? If discharged, could Pat collect unemployment compensation?
25. Harrison was hired as an electrical engineer, but there was no agreement about the length of the employment period. At the time he was hired he was told that he would not be fired unless he failed to perform his job. The employee's handbook said the same thing. Later when the company changed product lines, it fired Harrison. Can Harrison recover for breach of the employment contract?
26. Cerney operated a computer programming business. Sharon began working for Cerney after school because she could program in a useful language. When she was hired, she was told she would be paid \$14 per hour. However, her first paycheck had a third of the pay taken out for federal and state taxes, social security (FICA) taxes, and other deductions. Are the deductions legal?

ANALYZE REAL CASES

27. Thomas P. Finley worked for Aetna Life Insurance. Aetna had a company personnel manual that stated that employees would “not be terminated so long as their performance is satisfactory.” Finley was fired. He sued and asserted that the language in the personnel manual meant that he was not terminable at will but rather entitled to employment as long as he performed satisfactorily. Can a personnel manual supply such terms of the employment contract? (*Finley v. Aetna Life and Casualty Company*, 202 Conn. 190)
28. Gale, an umpire, was a member of the Greater Washington Softball Umpires Association. During a game which Gale was officiating, a player objected to his decision on a play. The player then struck Gale with a baseball bat, causing injuries to Gale’s neck, hip, and leg. Gale claimed that he was an employee of the association and, as such, sought workers’ compensation for his injuries. The association asserted that its members were independent contractors. It based this assertion on the fact that the umpires had full charge and control of the games, and that the association did not direct the worker in the performance or manner in which the work was done. The evidence presented showed (a) that the umpires were paid by the association from fees collected from the teams; (b) that the umpires, while assigned to the games by the association, were not obligated to accept the assignments; (c) that the association conducted clinics, administered written examinations, and required members to wear designated uniforms while officiating; and (d) that the umpires had to meet with the approval of committees of the association who observed a member officiating during a probationary period. Under these circumstances, do you believe Gale was an employee of the association or an independent contractor? (*Gale v. Greater Washington Softball Umpires Association*, 311 A.2d 817)
29. Whirlpool operated a manufacturing facility that used overhead conveyors to transport parts around the plant. Because the parts sometimes fell from the overhead conveyor belt, Whirlpool installed a wire screen below the conveyor belts to catch them. Maintenance workers were required to retrieve fallen parts from the screen, which was about twenty feet above the floor of the plant. On two occasions, maintenance workers fell through the screen onto the floor. One of the workers was killed by the fall. Shortly thereafter, Vergil Deemer and Thomas Cornwell asked that the screen be repaired. When repairs were not made, these men complained to OSHA. The next day they were told by their supervisor to climb out onto the screen to retrieve fallen parts. When they refused, they were sent home without pay. Was their refusal a violation of their duty of obedience? (*Whirlpool v. Marshall*, 445 U.S. 1)
30. Lucky Stores, Inc., owned a building with a large sign spelling out “ARDENS” on it. Lucky hired Q.R.I. Corporation as an independent contractor to remove the sign. The removal work was inherently dangerous because each letter was about six-feet high and two and one-half feet wide and weighed between fifty and sixty pounds. Q.R.I. workers safely removed the letter “A” and loaded it on their truck. They also safely removed the letter “R” and leaned it against the truck. Then, for a moment, one worker negligently released his hold on the letter. A gust of wind blew the letter into contact with 79-year-old Smith, injuring her seriously. Is Lucky liable to Smith for damages? (*Smith v. Lucky Stores, Inc.*, 61 Cal. App. 3d 826, 132 Cal. Rptr. 628)
31. Central Indiana Gas Co. hired Frampton. Later Frampton was required to serve on a jury. Because he missed work for jury duty, he was fired. He sued. Will he win? (*Frampton v. Central Indiana Gas Co.*, 297 N.E. 2d 425, Indiana)
32. Walgreen Company planned to open a restaurant in Duluth, Minnesota. A.J. Gatzke, a district manager for Walgreen, was sent to Duluth to supervise the opening. Gatzke obtained a room—paid for by Walgreen—in a motel owned by Edgewater Motels, Inc. One day after work, Gatzke and another Walgreen employee went to a bar near the motel. There Gatzke drank four brandy Manhattans in about one hour. Then Gatzke went back to his motel room where, apparently, he smoked several cigarettes after completing an expense account report. The butt of one cigarette was apparently thrown into a wastebasket in the room. The room caught on fire and the fire spread to the entire motel. Gatzke escaped uninjured, but the damage to the motel was more than \$330,000. Edgewater Motels sued both Gatzke and his employer, Walgreen Company. Who is liable? (*Edgewater Motels, Inc. v. Gatzke*, 277 N.W.2d 11)