

Assignments for Weeks 1 & 2

Tuesday, September 8 - Course Mechanics & Introduction to Employment Law

1. Read 2-11; 18-21 in the Rothstein casebook. This class will consist of an overview of course coverage and mechanics.

Wednesday, September 9 – Historical Origins of Employment Law

1. Read 1-22 in the Supplement. This class will consist primarily of a lecture on the historical origins of U.S. Employment Law.

Monday, September 14 - “Employment” and the Contingent Workforce

1. Read pages 71-77 & 401-10; in the casebook.
2. The casebook describes various changes in technology and workforce demographics. In what ways are these changes likely to impact the dynamics of the employment relationship?
3. Mr. and Mrs. Boomer have two children and two jobs. They have arranged with Mrs. Doubtfire to come into their home each school day from 3:00 p.m. to 7:00 p.m. to take care of their children and to prepare dinner for the Boomer family. The Boomers take care of the grocery shopping but leave daily menu planning to Doubtfire. Doubtfire also provides day care for two other families in her own home during morning hours.
 - a. Is Doubtfire an “employee” of the Boomers or an independent contractor? How can you tell?
 - b. What is the practical importance of the answer to a? What are the policy pro's and con's of finding the existence of an employment relationship?
 - c. What advice would you give to the Boomers if they tell you that they would prefer to structure this as an independent contractor arrangement?
4. In *DialAmerica*, why does the court find that the telephone researchers are employees, but that the telephone distributors are not?
5. Who are we talking about when we use the term “contingent workforce?” Make a list of the reasons behind the tremendous growth in this sector of the workforce?
6. Should the law dictate that contingent workers receive pay and benefits equivalent to that of regular employees? Should the law bar gender and race discrimination with respect to non-employee workers?

Tuesday, September 15 - The At Will Rule and the Union/Just Cause Alternative

1. Read 29-33, 51-54, & 878-83 in the casebook.
2. The Company has employed Murray as a truck driver for the past ten years. He was discharged because of an accident that severely damaged the truck he was driving. Murray claims that the accident, the first in his employment history, was wholly caused by the driver of the other vehicle and requests an opportunity to prove that he was not at fault. The Company has refused this request. What recourse, if any, does Murray have under the traditional employment at will rule?
3. The holding in Adair (32) is based upon the premise that “the employer and the employee have equality of right” which may not be abridged by Congress. What exactly are the respective rights of the employer and the employee under the employment at will doctrine?
4. Mary has received an offer for a new job. She would prefer not to work on an at-will basis. As her attorney, what steps would you recommend to enhance her legal position?
5. What are the policy pro's and con's of the employment at will doctrine? What factors are likely causes of the doctrine's recent, relative decline?
6. How would Murray's case (#2 above) be handled under a collective bargaining agreement that predicates discharge upon a "just cause" standard?
7. In Marcy, the Montana court holds that a termination made upon a good faith, but mistaken interpretation of facts is not consistent with a good cause standard.
 - a. What exactly does “just cause” mean?
 - b. Is the dissent correct in asserting that this approach empowers courts to second-guess routine personnel decisions?
8. The percentage of unionized workers has steadily declined over the past 30 years. Make a list of the factors contributing to this decline. Is the decline likely to continue? How does the decline affect the legal contours of nonunion employment?

Wednesday, September 16 - The Public Policy Exception

1. Read 23-28 in the Supplement; 935-42, 12-15 in the casebook.
2. In Phipps, the MN Sup Ct recognized an exception to the at-will rule based upon notions of "public policy." What is the policy at stake in Phipps? Where does it come from?
3. Reconsider problem 2 from the last class. If Murray is correct as to his claims, has the Company violated the public policy exception? Why or why not?
4. Make a list of the types of terminations prohibited on public policy grounds. See note 1 on 941. Are some of these grounds more worthy of protection than others?

5. What exactly is the public policy that the Gantt court is seeking to enforce? What does the Gantt court say about the source of this policy? Also, since Gantt quit his job, how can he maintain a wrongful “discharge” action?

6. Is a discharge for a reason violative of public policy a tort, a breach of implied contract, or both? What is the appropriate remedy for a public policy violation?

7. Why did the Wisconsin court in *Bammert* decline to apply the public policy exception to the facts of that case?

- a. Is it because Bammert’s termination was a fair outcome?
- b. Is it because the underlying policy at stake was not fundamental?
- c. Or, is there something else at work here?