

## [ Opening Assignment ]

Don Hoffman, who was employed by the Gatestone Company, beat up the company's industrial manager in a bowling alley. They had argued in the men's room prior to the fight. The company only supported the bowling team to the extent of buying shirts for them. Participation on the bowling team was completely optional. Should Hoffman be fired from his job? Explain.

## [ EMPLOYMENT LAW ]

## [ Right to Work v. Employment at Will ]

- 'Right to Work' states – Employer must have legitimate reason – good cause – to fire an employee
- 'Employment at Will' states – Employee can be fired at any time for no reason at all – but not for a wrongful reason

## [ Employment Without Contract ]

- Terminable at Will of Employer
- Exceptions
  - Discrimination
  - Whistleblower
  - Worker's Compensation Claim
  - Union Activity

## [ Government Employees ]

- Many additional protections at work
- Requires **due process** before discharge
  - Notice of Reasons
  - Hearing

## [ Express v. Implied Contract ]

- Express – specifically discussed terms governing the employment relationship
  - Can be oral or in writing
- Implied – contract terms implied by law into the employment relationship
  - You get paid for the work you do

**[ Legal Duties of Employee ]**

- Obedience
  - Follow reasonable rules and requests

[Video](#)

**[ Legal Duties of Employee ]**

- Reasonable Skill
- Reasonable Performance

[Video](#)

**[ Legal Duties of Employee ]**

- Loyalty and Honesty
- Confidentiality

**[ Legal Duties of Employer ]**

- Reasonable Treatment
- Safe Working Conditions
- Fair Labor Standards
  - 40 hour week or overtime pay
  - Minimum Wage
- Payroll Deduction

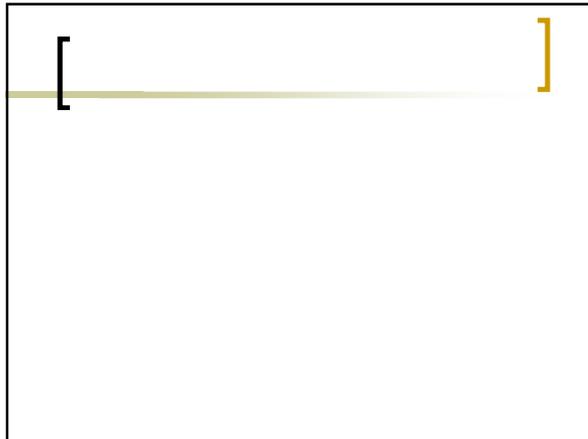
**[ Employment of Minors ]**

- Most states have laws that:
  - Set maximum work hours
  - Prohibit night work
  - Set minimum age for hazardous work
  - Require employed minors to attend school

**[ Employment of Minors ]**

Reason for Laws

- Person's early years best used for education
- Certain work is harmful or dangerous for young people
- Child labor at low wages takes jobs from adults



[ Opening Assignment ]

In the movie *Philadelphia* why was Andrew Beckett really fired? How did they go about proving that he was fired for a discriminatory reason? What evidence did they use?

[ Employment Discrimination ]

[ Discrimination ]

- Race
- Religion
- National Origin
- Gender
- Pregnancy
- Age
- Disability

[ Civil Rights Act of 1964 ]

- Prohibits discrimination (race, religion, national origin, gender)
- Prohibits sexual harassment
- Created the Equal Employment Opportunity Commission (EEOC)

[ Other Laws ]

- Age Discrimination in Employment Act (1967)
- Vocational Rehabilitation Act of (1973)
- Pregnancy Discrimination Act (1978)
- Americans with Disabilities Act (1990)

## Scope of Protection

- Protection extends to
  - Hiring/Firing Decisions
  - Conditions of Employment
- Applies to Employers:
  - With 15 or more employees
  - Engaged in Interstate Commerce

## Proving Unequal Treatment

- Direct Evidence
  - Open and intentional
    - Example: "no Irish"
- Indirect Evidence
  - Protected person received unequal treatment
  - Employer held job open for other persons with similar qualifications

## Equal treatment can be illegal?

- Examples
  - Employees must be 6'2" or taller
  - Employees must be able to lift 150 lbs
- Proof: Compare job qualifications to characteristics of the general workforce
- Disparate (unequal) impact
- Legitimate requirements for the job?

## Defenses of Employer

- Business Necessity
  - Decision based on skills or work history
- Bona Fide Occupational Qualification
  - Legitimate requirements for the job
- Seniority

## Quick Response

Blue Schroeder umpired adult slow-pitch softball games. One night a batter assaulted Blue with his bat after being called out on strikes. Blue suffered contusions to his pelvis and cranium and incurred \$500 in medical bills. Blue is paid by the Metropolitan Softball Association. He goes to Association sponsored training one day each year and has one game a year observed by an Association representative, but he is generally not supervised otherwise. Argue whether or not the Association should pay Blue's medical bills.

## Pseudo-Employment Law

## Employee

- One who works for another (the Employer) for pay
- Under the direction and control of the employer
- Employer responsible for acts of the employee while acting in the scope of employment

## Independent Contractor

- One who agrees to produce a finished job
- Without supervision - controls details of own work

## IRS 20 Factor Test

- Required to comply with others' instructions about when, where, and how they are to work
- Training workers
- The success or continuation of a business depends on the performance of certain services
- Services rendered personally
- Continuing relationships
- Doing work on employers' premises
- Oral or written reports
- Payment by hour, week, or month
- Furnishing tools and materials
- Right to discharge

## Agent

- Person authorized to act on behalf of another (the Principal)
- Can alter the principal's legal relationships with third parties – enter into contracts, etc.

### LIMITED POWER OF ATTORNEY

I, [NAME] of [ADDRESS, COUNTY, STATE], appoint [NAME], of \_\_\_\_\_ [ADDRESS, COUNTY, STATE], my true and lawful attorney-in-fact for me, in my name and on my behalf:

1. To exercise or perform any act, power, duty, right or obligation whatsoever that I now have, or may subsequently acquire the legal right, power or capacity to exercise or perform, in connection with, arising from or relating to the lease of the property located at [ADDRESS], including the execution of all closing documents necessary to the completion of the lease of the premises.
2. I grant to my attorney-in-fact full power and authority to do, take, and perform each and every act or thing whatsoever necessary or proper to be done, in the exercise of any of the rights and powers granted in this instrument, as fully to all intents and purposes as I might or could do if personally present, with full power of substitution or revocation, and by this instrument I ratify and confirm whatever act or thing that my attorney-in-fact shall lawfully do or cause to be done by virtue of this power of attorney and the rights and powers granted by this instrument.
3. The rights, powers and authority of my attorney-in-fact as granted in this power of attorney shall commence and be in full force on the date of this instrument and such rights, powers and authority shall remain in full force and effect thereafter until completion of the lease of the property described above.

In witness, by signing this instrument I affirm all that is written above.

Dated: [DATE]

## Scope of Agency

- Express authority
  - Duties specifically communicated to agent
  - Can be oral or in writing
    - Written authority is called "Power of Attorney"
- Implied authority
  - Anything reasonably necessary to carry out expressed duties

## Agent Duties

- Agent must act within the scope of authority
- Fiduciary Duties:
  - Loyalty
  - Reasonable Care and Skill
  - Confidentiality
  - Accounting

## Potential Problems of Agency

- Communication – The agent must let the principal know anything that would affect the principal's decisions
- Comingling funds – The agent should keep the principal's funds separate from the agent's funds
- Conflict of interest – The agent should always act in the principal's best interest, never for the agent's own benefit

## Apparent Authority

- Principal leads a third party to reasonably believe that another person has agency authority
- No agreement between agent and principal

## Ratification

- When an agent acts outside the scope of authority
- Principal knowingly accepts the benefits of the transaction
- Binds the principal and the third party