

BOOK REVIEWS

1998 Wiley Employment Law Update, edited by Henry H. Perritt, Jr., New York: Aspen Law & Business, 1998, 372 pp. (softbound)

Each year important legal developments occur that significantly affect human resource managers and the practice of law in the employment and labor fields. The *1998 Wiley Employment Law Update* continues a tradition begun in 1991 by providing useful analysis of recent developments in an array of employment law subjects. Contributed by professionals in employment law, this update provides information on several major developments that anyone interested in employment law should know about.

This update, like earlier editions in this series, provides analysis of important current topics in labor and employment law. All of the chapters are aimed at practitioners, enabling them to get accessible and relatively complete information on topics likely to arise in their practices and on new legal theories they may wish to consider in presenting their clients' cases.

More specifically, the *1998 Update* covers:

- Chapter 1 Employee Privacy Interests and Employer Restrictions Outside the Workplace
- Chapter 2 The Impact of Qualified Retirement Assets on a Decedent's Estate: Saving for the Future
- Chapter 3 Employee Leave Rights: A Survey of Recent Cases
- Chapter 4 New Approaches to Employer-Sponsored Health Care Plans
- Chapter 5 Enforcing the Noncompete and Confidentiality Duties of High-Level Executives
- Chapter 6 ADR in the Workplace
- Chapter 7 Implied Employment Contract Developments
- Chapter 8 Employment References
- Chapter 9 Political Patronage in Public Employment: The *Elrod/Branti* Exception and Other Problems Raised by the Supreme Court's Trilogy

Chapter 1 extends the analysis of employee privacy outside the workplace. It explains how an employer's reaction to nonworkplace conduct of its employees can give rise to privacy claims. This becomes important as the greater proportion of the work force holds multiple jobs and as lifestyle concerns become more controversial.

Chapter 2 considers the connection between work and retirement savings. It evaluates the tax implications of different kinds of retirement assets.

Chapter 3 takes a comprehensive look at employee leave rights, synthesizing the Family and Medical Leave Act with the ADA, Title VII, the Pregnancy Discrimination Act of 1978, and the Uniform Services Employment and Reemployment Rights Act of 1994. It also provides a framework for assessing different types of leave, including that for pregnancy and child care, substance abuse treatment, medical leave, and religious observance.

Chapter 4 reviews the rapidly evolving private frameworks for health care benefits frequently provided by employers. It emphasizes managed care networks, ranging from the now-familiar preferred provider organizations to newer forms like physician service organizations, explaining how liability for incomplete or withheld care can be asserted notwithstanding ERISA's preemption of state law.

Chapter 5 focuses on high-level executives and their obligations not to compete and to maintain confidentiality. It analyzes several recent cases that apply long-standing public policy-based restrictions on enforcement of covenants not to compete in the context of high-level executives.

Chapter 6 analyzes the role that alternative dispute resolution (ADR) plays in resolving employer/employee disputes. Initially slow to catch on, ADR is becoming a regular possibility as employers try to be proactive with respect to disputes that arise in the workplace.

Chapter 7 provides an update on implied contract developments in wrongful dismissal law. It explains how these cases require counsel to apply fundamental contract law concepts, such as offer and acceptance, and contract interpretation rules in the context of employment at will, in which the terms are often not documented and in which there is considerable asymmetry between employer and employee obligations.

Chapter 8 takes a close look at employment references. In it, the contract- and tort-based risks of giving unfavorable references are surveyed. It also explains how legal liability may arise from not giving a reference at all or from giving inappropriately favorable references, followed by some kind of catastrophic act by the former employee.

Chapter 9 explains recent case law involving political discrimination by public employers. Initial prohibitions in this area under the federal civil rights laws have gone far beyond patronage dismissals to include failures to promote and

other adverse employment decisions motivated by subtler differences in political activity.

Professor Perritt has once again succeeded in putting together a fine collection of topics that review issues of current interest in labor and employment law. This series continues to be an excellent yearly update that should not be missed.

Kurt H. Decker

Mandated Benefits: 1998 Compliance Guide, edited by McGladrey & Pullen, LLP, New York: Aspen Publishers, Inc., 1998, 1,000 pp.

Government regulation of employee benefits continues to change and grow at a rapid pace. The past year has brought numerous new rules and requirements in areas including health care benefits, minimum wage, family and medical leaves, and accommodating disabled employees. In addition, the legal environment for employers has become increasingly precarious, with new threats of liability for issues ranging from sexual harassment to racial discrimination to privacy violations.

Mandated Benefits: 1998 Compliance Guide is designed as an up-to-date and practical manual covering every key regulatory issue that human resources managers, benefits professionals, and employers must face. It helps take the risk out of providing employee benefits by spelling out, clearly and concisely, exactly what to do to comply with each regulation, how to protect against the most common litigation threats, and how to handle problems if and when they occur.

The 1998 edition contains revised, updated information and one all-new chapter: The new chapter, on the interviewing and selection process, covers job analysis in the hiring, interviewing, and selection process, negligent referrals, and the Illegal Immigration and Immigrant Responsibility Act of 1996. The revised and updated information focuses on the Health Insurance Portability and Accountability Act of 1996 (HIPAA), The Newborns' and Mothers' Health Protection Act of 1996, medical savings accounts (MSAs), "family-friendly" benefits, pension and savings planning, and much more.

The critical element for employers to remember is that any federal law regulating administration of a benefit represents the *minimum* requirements for compliance. A state may pass legislation to modify a federal law and increase the benefits' entitlement, but no state may reduce the entitlement of a benefit below the federal minimum.

Congress has spent considerable energy in recent years contemplating major changes in employment benefits legislation. The Health Insurance Portability

and Accountability Act of 1996 (HIPAA) is a good example of that. It seems inevitable that there will be some form of federal control over our nation's group health care systems. In the meantime, states continue to pass legislation to address their own varied worker benefit issues.

This book is as up-to-date as possible in an ever-changing regulatory employment environment. It reflects an excellent available interpretation and summary of state laws at the time of publication.

Kurt H. Decker