Yesterday vs. Today

- **Common Law Rule: employment at will**
  - Employer may fire an employee for any reason
- **Current Status: employment at will unless**
  - the employee is protected by statute
Statutes Supplementing Common Law (Tort and Contract)

- National Labor Relations Act (1935)
- Social Security Act (1935)
- Fair Labor Standards Act (1938)
- Equal Pay Act (1963)
- Civil Rights Act (1964)
- Age Discrimination in Employment Act (1967)
Statutes Supplementing Common Law (Tort and Contract)

- Occupational Safety & Health Act (1970)
- Pregnancy Discrimination Act (1978)
- Americans with Disabilities Act (1990)
- Family & Medical Leave Act (1993)
Four Main Categories

- Employment Security
- Safety & Privacy in the Workplace
- Financial Protection
- Employment Discrimination
EMPLOYMENT SECURITY
Wrongful Discharge

- Common law exception to employment at will rule
- Exception prohibits employer from firing a worker for a bad reason
- Claims based on public policy doctrine, tort, and contract
Public Policy Doctrine

- Prohibits employer for firing worker for reason that violates basic social rights, duties, or responsibilities
  - Ex.: worker who refuses to violate the law
- In *Dunn v. Enterprise Rent-A-Car Company*, a controller was terminated and the employee filed suit for wrongful discharge because he was a whistle-blower
  - Federal Whistleblower Protection Act
Public Policy Protections

- Workers who exercise a legal right
- Workers who perform a legal duty
- Whistleblowers protected
  - If wrongdoing by gov’t contractors
  - If exercising free speech or other civil rights
  - If involved in illegal activity
  - If knowledgeable about illegal activity
Contract Law

- Courts may imply contract terms of employment:
  - Truth in hiring – oral promises made during hiring process can be enforceable
  - Statements in an employee handbook may create a contract
  - Covenant of good faith & fair dealing
- Some firms try to protect themselves by requiring employees to sign waivers
  - Question remains whether these protect the firm
Tort Law

- Employees may sue firms for defamation if the firm provides false or unfavorable references
  - Qualified privilege for firms that provide “truthful” statements about a former employee
  - Warning: some firms have been sued for giving a falsely glowing report about a former worker!

- Employees may sue for intentional infliction of emotional distress if employer condoned cruel treatment of employees
  - Ex: sexual harassment or assault
National Labor Relations Act

- Created the National Labor Relations Board to enforce labor laws and allowed for unions
- Parties must bargain in good faith

- Landmark case: *NLRB v. Jones & Laughlin Steel*
Family & Medical Leave Act

- Guarantees men and women up to 12 wks unpaid leave each year for childbirth, adoption, or medical emergencies for themselves or a family member
- Applies to firms >50 workers & employees who have been with the firm >1 yr
SAFETY & PRIVACY IN THE WORKPLACE

It's a lot cheaper than a security system and just as effective.
OSHA

- Occupational Health and Safety Act passed to ensure safe working conditions
  - Oversight is OSHA Administration

Triangle Shirtwaist Factory before the infamous fire of 1911 when 145 female workers burned or jumped to their death from the 10th floor
OSHA

- Safety in the manufacturing environment used to be emphasis; now other workplace injuries, such as repetitive stress syndrome receiving emphasis

Serious workplace injuries still occur. Graph at right shows non-fatal workplace-related amputations per 10,000 fulltime workers or 9985 in 1999

For more info:  http://www.cdc.gov/niosh/sbw/public_health/pdfs/jeffbrown.pdf
Workers’ Compensation

- Workers’ compensation protects only employees (not independent contractors)
  - State laws may exempt certain employees or employers
- When applicable, worker’s compensation laws allow injured employees to recover under strict liability
  - Removes need to prove employer negligence and eliminates employer defenses
- Workers’ compensation is an employee’s exclusive remedy against an employer for covered injuries
Workers’ Compensation

- Types of recovery: hospital and medical expenses, (2) disability benefits, (3) specified recoveries for loss of certain body parts, and (4) death benefits to survivors and/or dependents
Privacy Issues

- Some employers have tried to regulate employees with regard to:
  - Off-duty conduct
  - Alcohol and drug testing
  - Polygraph tests (prohibited under Employee Polygraph Protection Act of 1988)
  - Electronic monitoring of the workplace
  - Most recently, genetic testing (allegedly for insurance and health & safety reasons)
Privacy Issues

- Note: the Electronic Communications Privacy Act of 1986 permits employers to monitor workers’ telephone calls and e-mail messages if the employee consents, monitoring occurs in ordinary course of business, and employer provides the e-mail system.

Rachel Mosteller – one of many “dooced” (aka fired) for weblog written outside of work!
Michael Smyth v. Pillsbury

- Smyth used company’s server to communicate with another employee & threaten company
- Pillsbury’s software flagged email and they fired Smyth
- Smyth sued alleging Pillsbury violated his right to privacy
FINANCIAL PROTECTION

DON'T FEEL BAD IF YOU ONLY GOT A 3% RAISE; I ONLY GOT 2% MYSELF.

CAN WE FEEL BAD THAT 2% OF YOUR PAY IS BIGGER THAN 3% OF OUR PAY?

DON'T GET ALL MATHY ON ME.
During Employment

- *Fair Labor Standards Act (1938)* regulates wages and limits child labor

See: [U.S. Dept. of Labor Int’l Child Labor Program](https://www.dol.gov/childlabor)

Note: Child labor laws do not apply to agriculture!
Post-Employment

- **Social Security** (1935) system pays benefits (including medical insurance) to retired, disabled, or temporarily unemployed workers, and to spouses and children of disabled or deceased workers.

- **Unemployment Compensation** Covering discharged workers, each state administers a system of unemployment compensation under federal guidelines.
Post-Employment

- Employers often contribute voluntarily to employee retirement income through pension plans
- *Employee Retirement Income Security Act of 1974* (ERISA) imposes:
  - Fiduciary duties on pension fund managers
  - Record-keeping, reporting, and disclosure requirements
  - Guaranteed employee participation
EMPLOYMENT DISCRIMINATION
Equal Pay Act of 1963

- An employee may not be paid a lesser rate than employees of opposite sex for equal work.
- Reality: women paid 77¢ for each $1 males get.
Title VII of the Civil Rights Act of 1964

- Prohibits employers from discriminating on basis of race, color, religion, gender, or national origin
- Prohibits sexual harassment and discrimination because of pregnancy
- Permits employers to have affirmative action plans
- Requires plaintiff to first file a complaint with the EEOC, which after 6 months must file a case or issue right to sue letter
Title VII -- Discrimination

- Discrimination: refusing to hire, failing to promote, firing, or otherwise reducing a person’s employment opportunities for the protected classes

- Two methods to prove discrimination:
  - Disparate treatment
  - Disparate impact
Title VII -- Discrimination

- **Disparate Treatment**: plaintiff must show s/he was treated differently because of race, gender, color, religion, or ethnicity
  - Plaintiff proves *prima facie* case, employer must show legitimate and non-discriminatory reason for the discrimination, plaintiff proves that the reason is *mere pretext*

- **Disparate Impact**: if employer has a rule that *on its face* is non-discriminatory, but *in practice* excludes too many people in a protected class
Title VII and Religion

- Employers must make *reasonable accommodation* for a worker’s religious beliefs unless the request would cause *undue hardship* for the business.
- Discrimination: refusing to hire, failing to promote, firing, or otherwise reducing a person’s employment opportunities for the protected classes.
Title VII Defenses

- **Merit**: employer isn’t liable if the person favored was most qualified
- **Seniority**: a legitimate seniority system is legal
- **Bona Fide Occupational Qualification (BFOQ)**: employer permitted to establish discriminatory job requirements if they are essential to the position in question
  - E.g., Private faith-based schools may refuse to hire teachers not of the particular faith
  - E.g., the Hooters lawsuit (private settlement)
Title VII and Affirmative Action

- Programs designed to emphasize the hiring and promotion of minority candidates
- Adarand Constructors, Inc. v. Pena
  - Govt. had a plan for minority contractors; white contractor sued
  - Case is still controversial
Title VII and Sexual Harassment

- Two major categories:
  - *Quid pro quo* (this for that): when an aspect of a job is made contingent on sexual activity
  - *Hostile work environment*: when sexual talk and innuendo are so pervasive that a hostile work environment is created for the complainant
Title VII and Sexual Harassment

- Harasser(s), individual manager(s), and the company are potential defendants

Virtual Humor by Kevin Duffy

I’ll ask you again, sir!
Did you or did you not look at my client and, in a crowded shopping mall, in front of her children, call her, not once, but three times... a "ho"!

Santa's sexual harassment trial takes a dramatic change for the worse
Harris v. Forklift Systems

- Harris was a manager, President harassed women at the plant; Harris sued
- Sup. Ct. held that a mere epithet is not actionable, but when conduct is pervasive enough to create a hostile work environment to the reasonable person, such conduct is actionable even if the plaintiff has not suffered psychological injury
- *Lesson:* If an employee complains to management about sexual harassment, take action to prevent the harassment or become liable
Age Discrimination in Employment Act (ADEA)

- Prohibits age discrimination against employees or job applicants at least 40 years old
- Procedure similar to Title VII claim

Patrol officer Ron Arnett and 6 others won record setting age discrimination suit against California Public Employees' Retirement System and will receive benefits estimated at $250 million
Americans with Disabilities Act

- Prohibits employers from disqualifying a job applicant or employee if employee can, with *reasonable accommodation*, perform the *essential functions* of the job
  - Accommodation not reasonable if it would create *undue hardship* for the employer

- Procedure similar to Title VII claim
- Employer may not ask about disabilities before making a job offer
Americans with Disabilities Act

- Disabled person is someone with a physical or mental impairment that substantially limits a major life activity, or someone who is regarded as having such an impairment.
- Studies of reported federal cases show that ADA plaintiffs have small success rate of 2-7%.
  - See Toyota Mfg v. Williams
Americans with Disabilities Act

In set of cases (Sutton v. United Airlines, Albertson’s v. Kirkingburg, Murphy v. UPS), the Supreme Court rejected EEOC guidelines & held that a disability which is “treatable” is not a disability for purposes of the ADA, thus

- Persons with diabetes, less than 20/20 vision, and other “treatable” disabilities cannot sue if they suffer discrimination because of such disabilities
Test Your Knowledge

- True = A, False = B

- Employment at will is the law in all states.
- An employer (100 employees) may not fire a man for taking a two month leave of absence to care for his seriously-ill wife.
- Workers’ compensation is an employee’s exclusive remedy against an employer for covered injuries.
Test Your Knowledge

- True = A, False = B
- Fair Labor Standards Act prohibits any form of child work or labor by any employer engaged in interstate commerce.
- OSHA may not inspect a workplace or issue citations for violations of the act without a warrant issued by a judge.
- An employer may terminate a whistle-blower immediately because whistle-blowers make defamatory comments to the public.
Test Your Knowledge

**Multiple Choice**

Under Workers’ Compensation, employees recover only for:

- (a) Injuries that affect an employee’s ability to do his or her job
- (b) Work-related injuries that arise out of or happen in the course of employment
- (c) Injuries that occur during any period of employment, whether on or off the job
- (d) both A and B
Information for Discussion

- Roughly 6,371 job-related injury deaths, 13.3 million nonfatal injuries, 60,300 disease deaths, and 1,184,000 illnesses occurred in the U.S. workplace in 1992.

- The total direct and indirect costs associated with these injuries and illnesses were estimated to be $155.5 billion, or nearly 3 percent of gross domestic product (GDP).
Next

- Securities Regulation