Chapter 23

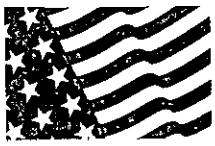
Employment Contracts and Minors and Employment

Andrew has just arrived at home. He enters the kitchen where his mother, father, and sister are preparing dinner.

Mr. Corsi: *Say, you really look down in the dumps. Is anything wrong?*
Andrew: *I just got fired.*
Cathy: *Again!*
Mrs. Corsi: *Hush, Cathy. Again, Andrew?*
Andrew: *Yes, again. Only this time it wasn't my fault.*
Mr. Corsi: *Well, whose fault was it?*
Andrew: *Nobody's. Mr. Pellas just said he couldn't use me any more.*
Mrs. Corsi: *That's too bad.*
Andrew: *It sure is, especially since his employee handbook says that no one who gets good evaluations will ever be fired.*
Mr. Corsi: *Did you get good evaluations?*
Andrew: *I sure did, Dad. I only made one mistake all year.*
Mrs. Corsi: *What was that, son?*
Cathy: *You remember, Mom. He bought Mr. Pellas's own fax machine for $175.*
Mrs. Corsi: *That's right, though. I do remember that.*
Andrew: *Well, I made up for it. I got Mr. Pellas his money back and he rehired me. In fact, he even gave me a raise for being so clever. After that, I followed all the rules in the employee handbook, but he still fired me.*
(Just then, John enters the kitchen.)
John: *Hey, I hear you got fired!*
Andrew: *How did you know?*
John: *It's all over school.*
Andrew: *Great!*
John: *Too bad you don't have a union at the newspaper.*
Andrew: *What good would that do?*
John: *A union would make sure that you had a contract that said you had the job for life.*
Andrew: *Really?*
Mr. Corsi: *No. A union can't guarantee you a job for life. Speaking of jobs, did you do your after-school chores?*
John: *Yes, but I think I'm going to file a complaint with the Secretary of Labor.*
Mr. Corsi: *Really? On what grounds?*
John: *Violation of child labor laws. Since I'm under 16, you can't make me work.*
Cathy: *You have to know what "work" means before you can file a complaint like that.*
John: *Very funny.*
Andrew: *Maybe it's just as well that I lost my job. Mr. Pellas did an unusual thing today. He made his new bookkeeper, Esther Eddington, sign a contract that said she couldn't work anywhere in Kansas if she ever left the* Telegraph.
Mrs. Corsi: *Still, it's too bad you lost your job after all the trouble you went through to get that work permit.*
Andrew: *Oh, I never did take care of that.*
Mr. Corsi: *You mean that you've been working all this time without a work permit!*
Andrew: *Sure.*
Mr. Corsi: *Andrew.*
Andrew: *Yes, Dad?*
Mr. Corsi: *Maybe it's a good thing you got fired after all.*

New Terms

collective bargaining agreement, p. 328
grievance procedure, p. 329
employment-at-will, p. 330
unjust dismissal, p. 330
implied contract, p. 331
disclaimer, p. 332
implied covenant, p. 332
trade secret, p. 333
right-to-work law, p. 335
child labor law, p. 336



The Spirit of the Law

As we have noted before, not all agents are employees, and not all employees are agents. Agents who do not receive compensation for their work are gratuitous agents and not employees. Those agents who do get paid, whether by salary, commission, or hourly wage, and who work under someone else's control are employees. If a person who works for another is compensated but does not have the power to transact business, then that person is an employee but not an agent. Regardless of agency or nonagency status, however, employment relationships have been changing over the last few years. This chapter examines the changes that are occurring in employment law. It also explores the evolution of labor law as it applies to adults and minors. The chapter ends with a look at agreements that restrict subsequent employment.

Legal Issues:

1. Does a statement in an employee handbook about hiring and firing bind an employer?
2. Do agreements between employers and unions guarantee employment for life?
3. Does after-school work on the family farm violate federal child labor laws?
4. Can an employer restrict the employment of a former employee after that employee has left the job?

The Employment Relationship

An employment relationship may be formed as the result of a simple oral agreement between an employee and an employer. Or it may be created by a detailed written agreement reached after lengthy negotiations. It can also result from contract talks between a labor union and management. Regardless of how an employment relationship is formed, however, certain rules apply to its enforcement.

Today employer-employee relations are governed by federal and state statutes. Current statutes recognize the rights of both employees and employers. These statutes regulate wages and hours, prevent employment discrimination, promote safe working conditions, provide compensation for disability and unemployment, and ensure minimum retirement benefits.

Labor-Management Relations

For some employees, the employer-employee relationship is affected by a union, an organization of employees formed to promote the welfare of its members. Employees who belong to labor unions have hiring and firing procedures built into their collective bargaining agreements. A **collective bargaining agreement** is a contract negotiated by the employer and representatives of the labor union, covering all issues related to employment. Union members select representatives to negotiate a contract with the employer through a series of discussions known as collective bargaining.

During the collective bargaining process, union and company negotiators discuss such issues as working conditions, wages, benefits, job security, and layoff and firing policies. For example, the contract might stipulate that the employer must have a legitimate, employment-related reason, or *just cause*, to fire a union worker. Generally, collective bargaining contracts also provide for a grievance procedure. A **grievance procedure** sets up a series of steps employees must take to appeal an employer's decision they feel violates just cause. Many nonunion companies also include a grievance procedure as part of the employment contract.

> ***Example 1.*** Edward Ewing worked on the assembly line for Stewart Motors. He was also a member of the Organization of American Automotive Employees (OAAE). Ewing was fired because he reported late for work on one occasion. The collective bargaining agreement between Stewart Motors and the OAAE forbids the firing of a worker for a single incident of lateness. All such violations were to be reported in writing, and employees were to be given a second chance. After going through the grievance procedure, Ewing was restored to his position.

Collective bargaining agreements do not guarantee union employees lifelong employment. Often economic conditions will force layoffs or plant closings. When such events occur, some or all employees may lose their jobs. Most collective bargaining agreements provide a negotiated procedure under which such layoffs occur.

> ***Example 2.*** Because of a downturn in the economy, Stewart Motors was forced to lay off several workers. Ewing was one of the employees who was laid off because he had been employed a shorter time than other union workers at the plant. He received a percentage of his wages while he was out of work. Moreover, he was guaranteed to be the first to be considered for a job when the economy picked up and Stewart Motors needed more workers. All this was part of the collective bargaining agreement.

Professional Employment Contracts

Professional and executive employees are another group of employees who have the power to negotiate their own employment contracts. Generally, such professionals are in demand and can be selective in choosing employers. Famous entertainers, professional athletes, top business executives, well-known artists and writers, and other individuals with unique abilities fall into this category.

> ***Example 3.*** Elinore Elsinore is a famous science fiction writer who has won several major literary awards. American Studios purchased the screen rights to Elsinore's best-selling novel, *The Thirtieth of February*. The studio also wanted Elsinore to write the screenplay. Elsinore did not want to bother with it. American Studios wanted her work so badly that they offered her $5 million to participate in the project. They also offered to pay for a long-distance computer hookup so that she could write without leaving her mountain cabin. Elsinore agreed. She could negotiate such a lucrative contract because of her unique talents.

Rights and Duties of Employers and Employees

Employers and employees have certain mutual expectations in their working relationship. Some of these are determined by the employment relationship; some are implied by law; most are imposed by federal and state statutes.

Employers expect employees to actually have the experience and skills they claim to have. They also expect a reasonable amount of work from their employees. Employers have the right to tell employees what tasks to perform and how to perform them. Employees are expected to be loyal, honest, dependable and abide by company rules.

Employees expect their employers to pay them regularly for their work and provide a safe workplace and safe tools. Employees expect to be taught how to do their jobs correctly. They have a right to be treated fairly. Employees expect to be able to make reasonable complaints and have the opportunity to get raises and promotions.

Reducing Legal Risks

Keep copies of your offer of employment, employment manual, and work evaluations. These may prove an implied contract of employment in the event of unjust dismissal. Obtain any work permits required by state law. Never violate the law, even under direct orders from your employer.

Terminating the Employer-Employee Relationship

If the employment contract does not state how long the agreement is to last, the employer-employee relationship may be terminated at any time by either the employer or the employee. This right of termination is known as the doctrine of **employment-at-will.** The employer, without being liable for breach of contract, could fire the employee and pay him or her for services rendered up to the time of the firing. Likewise, an employee may quit a job at any time without liability for breach of contract.

> ***Example 4.*** Ernest Etna worked as a janitor for the Richland Fruit and Vegetable Company. Although he was a faithful and capable employee, he was dismissed. Under the doctrine of employment-at-will, Etna would have no legal recourse. Richland can discharge him at any time, with or without notice, with or without a reason.

Terminating an employment contract under the doctrine of employment-at-will has occasionally resulted in injustices. As a result, courts are challenging the employment-at-will doctrine with decisions against firing employees without justification.

Exceptions to Employment-at-Will

Most employees are employees-at-will. They would have no job protection were it not for the exceptions to employment-at-will that the courts have created under the heading of unjust dismissal or wrongful discharge. **Unjust dismissal** provides employees with grounds for legal action against employers who have treated them unfairly. The courts have established three standards by which to judge the injustice of a dismissal: public policy, implied contract, and implied covenant.

Public Policy

In many states, an employee who can prove that his or her firing violated public policy may recover compensatory and punitive damages in tort. Upholding public policy is the broad legal principle that says that no one should be allowed to do anything that tends to injure the public at large. For example, if an employee is fired for refusing to violate the law, such a

discharge would violate public policy. Public policy encourages people to obey the law. Punishing someone for obeying the law would, therefore, violate public policy. Similarly, if the firing itself violates the law, public policy will provide a remedy for the employee.

> ***Example 5.*** Edward Edelman was ordered to appear for jury duty on March 17. The law in his state said that anyone who disobeys such an order can be fined and imprisoned for contempt of court. The same state law also expressly forbids an employer to discharge an employee who was ordered to appear for jury duty. The employer could be fined up to $500 for discharging an employee under such circumstances. Nevertheless, Edelman's employer discharged him when he did not show up for work on March 17. Edelman sued his former employer for unjust dismissal and recovered damages because his employment termination violated public policy.

Implied Contract

An **implied contract** usually involves an oral agreement that would ordinarily be covered by employment-at-will, had the employer not said or done something that implies otherwise. Many courts base the implied contract exception to employment-at-will on the traditional legal doctrine of promissory estoppel. Promissory estoppel requires four elements.

- The employer makes a promise to an employee that the employer can reasonably expect the employee to rely upon.
- The employee actually relies on that promise and, as a result, does or doesn't do something.
- The employee ordinarily would not have acted or refrained from acting had it not been for the employer's promise.
- The employee is in some way harmed by the employer's failure to honor the promise.

If these elements are present, then the employer cannot deny the promise made to the employee. Therefore, the doctrine of employment-at-will does not apply.

> ***Example 6.*** Eliot Eastman, who worked for Lafayette Security, was arrested for a felony. His supervisor, Frank Michelson, told Eastman, "We'll have to lay you off, but when the case is resolved you can have your job back with full seniority." Eastman believed Michelson and did not look for another job. When he was acquitted, Eastman found that Lafayette would not honor Michelson's promise. It took Eastman three months to find a job. He successfully sued Lafayette for unjust dismissal based on the implied contract created by Michelson's promise. Lafayette could not deny that Eastman had reasonably relied on the promise to his detriment.

When examining a case to determine whether the employer has created an implied contract, the court can look at all of the facts involving that employment arrangement, not just the oral promises made by the employer. The court can look at the nature of the employment relationship, the way the parties have dealt with each other in the past, the length of the employment relationship, the customary way the employer handles such situations, and the employer's policies and procedures. To determine the

LAW & Ethics

Rose had worked at a law office for six years without an employment contract. Although she was well-qualified and professional, she was terminated and replaced by the senior partner's niece. Does Rose have any legal rights to her job? Does the law firm have an ethical obligation to Rose?

employer's policies and procedures the court can examine various company documents, including the employee handbook, letters and memos sent to the employee, the employee's evaluation record, and so on.

Most federal and state courts that have recognized the implied contract exception will still allow employers to maintain an employment-at-will arrangement by using a disclaimer. A **disclaimer** is a statement that, regardless of provisions or policies in the employee handbook and regardless of any oral promises to the contrary, an employment-at-will situation still exists between the employer and its employees. To be effective, a disclaimer should include the following statements:

- Neither the employee handbook nor any other communication to employees is intended to create an employment contract between the firm and its employees.
- The employer reserves the right to discharge an employee at any time with or without notice and with or without reason.
- No one other than the president of the firm is empowered to make any oral or written change in this disclaimer.

Example 7. Edwin Engels applied for a job as sales clerk with the Kosar Brothers Department Store. The employee manual contained a disclaimer that preserved employment-at-will. The disclaimer specifically said that employees could be discharged with or without notice at any time for any reason and even without a reason. Only the president of the store could alter this provision. Engels, who had other job prospects lined up, told Jack Gower, the assistant manager, that he would not work under such a provision. Gower told him to ignore the disclaimer and promised Engels a job for life. Gower's oral representation will have no legal effect whatsoever, given the ironclad nature of the disclaimer. Engels realized this and sought employment elsewhere.

Although the disclaimer provides a way for an employer to preserve employment-at-will, many employers are reluctant to include such a statement in their employee handbook. It does not help morale to remind employees that they can be fired at any time without warning or cause. Some employers qualify the disclaimer by saying that "employees can be dismissed at any time for *just cause*," or "employees *who violate company rules* can be terminated at any time." Such qualifying provisions can weaken the disclaimer to the extent that it no longer has the effect of preserving employment-at-will, making it possible for a discharged employee to sue for breach of an implied employment contract.

Courts in some states have held that a loosely written disclaimer may also be negated by overwhelming evidence that the employer has provided for a detailed dismissal procedure. An employer whose employee manual provides extensive detail regarding such things as a hierarchy of rule violations leading to dismissal, a series of warnings before dismissal, and so on, may find that the disclaimer has been nullified. Providing such detail has established an implied employment contract.

YOU And The LAW

Why do employers ask for proof of identity and citizenship before hiring new employees? What happens if they do not? Where can you go in your area to find out?

Implied Covenant

Another exception to employment-at-will is the principle of **implied covenant.** It holds that in any employment relationship, there is an implied

covenant, or promise, that the employer and the employee will be fair and honest in their dealings with one another. The parties will not unfairly nor dishonestly cheat each other out of anything that is due to the other because of the relationship. Unlike implied contract, the existence of an implied covenant does not depend on anything that the employer has said, written, or done. Rather, the implied covenant exists simply because the employment relationship exists.

Example 8. Ella Ernst was to receive a 25 percent commission on all computer sales she made for her employer, Clarkson Computer Company (CCC). Ernst made a $10 million sale to the federal government, earning a $2.5 million commission. CCC fired her despite her excellent sales record and refused to pay the commission. Ernst sued CCC for unjust dismissal based on the existence of an implied covenant. The court held that CCC had violated an implied covenant of fair dealing and honesty in its relationship with Ernst. Ernst was entitled to her commission.

Resolving Disputes

Non-binding Arbitration

Non-binding arbitration is usually ordered by a judge. The judge may appoint one or more arbitrators to intervene in a case, but the arbitration decision is not always final. The intent of binding arbitration is resolution; the intent of non-binding arbitration is negotiation.

In some states, trial court judges are authorized, by statute, to require disputing parties in certain cases to participate in non-binding arbitration before taking their cases to trial.

Many cases begin with non-binding arbitration. For example, suppose you go to a doctor because you are having sharp abdominal pains. The doctor examines you, diagnoses gastritis, and sends you home. That night your appendix bursts and you are rushed to the hospital. You would be permitted to take this case to court only after it has been submitted to non-binding arbitration.

In non-binding arbitration: (1) Hearings are informal. (2) Each of the disputing parties makes a presentation. (3) If both parties accept the arbitrator's award, it is entered as the judgment of the court. (4) If either party rejects the arbitrator's decision, the case can go to trial.

Arbitrators must make both parties aware of the strengths and weaknesses of their cases and show them how a judge and jury would view the dispute. In some instances, when an arbitrated case goes to court, the results may change only slightly, if at all. In some jurisdictions, a person who rejects an arbitrator's decision must pay the other party's court costs if the court's decision is the same or less favorable. This rule helps limit the number of cases that go to court.

1. What is non-binding arbitration?
2. What happens if either party rejects an arbitrator's decision?

Restrictive Employment Covenants

Some employers would suffer unfairly if competing firms managed to obtain inside information on their products, processes, or inventions. Such inside information is usually referred to as a **trade secret**. Imagine a company spending millions of dollars on a new industrial process only to have an engineer quit and take the process to a competitor. The law allows businesses to protect themselves from such acts of piracy. Two important protections are the patent and the copyright. (See Chapter 19.) Patents and

copyrights do not always offer enough protection, however. Therefore, the courts have held that businesses can also protect themselves by restricting the activities of their employees after they leave the company. The customary way to do this is to have employees enter into agreements not to compete. Such agreements are usually called restrictive employment covenants. These agreements were discussed briefly in Chapter 11.

In a restrictive employment covenant, an employee promises not to work for anyone else in the same field or to open a competing business after leaving his or her current job for a specified period of time within a particular geographic area. People employed by firms doing research and development and people who know trade secrets through their jobs are often asked to enter into restrictive employment covenants when they leave a company. Employees who deal in a field which has a limited client pool may also be asked to enter such agreements.

The courts do not favor agreements not to compete because these agreements may violate public policy by depriving people of their livelihoods and by limiting competition. As a result, a restrictive employment covenant must be very carefully drafted or the court may restructure its terms. Generally, restrictive employment covenants cannot stand alone. They are usually a part of a larger and more inclusive employment agreement. The use of the term "covenant" emphasizes that the agreement is a small part of a broader contract. In most cases, restrictive employment covenants must be reasonably limited in three areas: (1) the type of work or conduct prohibited, (2) the length of time involved in the prohibition, and (3) the extent of the geographic area covered.

> ***Example 9.*** As the opening vignette recounts, Esther Eddington began working as a bookkeeper for the *Tiro Telegraph* after signing a restrictive employment covenant. It stated that if she left the newspaper, she could not work anywhere in the state of Kansas for 10 years. Eddington worked at the newspaper for six months and then left to become a teller at Sebastian County Bank in Kansas City. Pellas sued Eddington to prevent her from working for Sebastian. Eddington won when the court held that the restrictive employment covenant was unreasonable as to time, geographic area, and type of work.

Legislation Affecting the Employment Relationship

As mentioned earlier in the chapter, in many industries, employment contracts are negotiated not by individuals but by groups of employees organized into unions. This process, called collective bargaining, is now firmly established as a way of defining working conditions and industrial relations among unionized workers. It is also extensively regulated by the government. As we shall see, the government at both federal and state levels is also very interested in regulating the employment of minors.

Federal Labor Laws

In the past, the courts held collective bargaining to be an illegal conspiracy. Attitudes changed, however, and the courts began to accept collective bargaining as a process to be used by employers and their union

employees. As time went on, the government began to encourage collective bargaining. Still later, people came to think that the government should regulate and control the process somewhat.

Wagner Act

The first federal law dealing with collective bargaining was the National Labor Relations Act of 1935, sometimes called the Wagner Act. The purpose of this act was to encourage collective bargaining, discourage certain unfair labor practices, and provide federal assistance in obtaining fair bargaining. The National Labor Relations Board was established to enforce provisions of the act.

The Wagner Act also established guidelines for determining which employment concerns had to be included in the collective bargaining process. The act states that employers must negotiate on "wages, hours, and conditions of employment." Subsequent court decisions have helped interpret what "conditions of employment" might include. For example, business decisions that are at the very heart of an executive's ability to control the company, such as decision on how to invest corporate funds, would be outside the scope of collective bargaining.

> ***Example 10.*** Wilma Durrell, chief executive officer of Collier-Ansen Laboratories, Inc., decides to discontinue a line of over-the-counter capsule medications that had been the object of tampering. Unfortunately, the discontinuation caused the shutdown of one of Collier-Ansen's manufacturing plants. The union claimed that the decision to close the plant should have been submitted to collective bargaining. The union was incorrect. The decision to discontinue that line of medication was clearly within the business discretion of corporate management.

Taft-Hartley Act

Many people felt that the Wagner Act gave too great an advantage to the union bargaining unit. Consequently, it was amended in 1947 by the Labor-Movement Relations Act, popularly called the Taft-Hartley Act. This act tried to equalize the power of labor and management. It provided, among other things, for a 60-day "cooling-off" period. Under this provision, the President of the United States could postpone a strike for up to 60 days if the strike would endanger the nation's health or safety. During the 60-day period, federal mediators (referees) could meet with management and labor to try to end the dispute.

The Taft-Hartley Act also made the closed shop illegal. A closed shop is a business or company in which a person must be a union member before being hired. In contrast, a union shop is allowed under the act. A union shop is a business in which a worker must join the union within 30 days after being employed. Under the act, however, each state may pass right-to-work laws if it wishes. State **right-to-work laws** prohibit union shops. The Taft-Hartley Act also prevents a labor union from requiring an employer to retain employees who are no longer needed. It also outlaws featherbedding. *Featherbedding* refers to the practice of assigning more employees to a job than are actually needed. Unions are also forbidden to refuse to enter collective bargaining with an employer. The act also requires advance notice of an intent to strike.

YOU And The LAW

Does your state have special laws concerning employment of minors? What are they? Do these laws differ from state laws pertaining to hiring adults? Where can you find out?

Landrum-Griffin Act

The Wagner Act was further amended in 1959 by the Labor Management Reporting and Disclosure Act, usually referred to as the Landrum-Griffin Act. The primary goal of the Landrum-Griffin Act was to stop corruption in the unions. Under provisions of this act, all unions must register their constitutions and bylaws with the Secretary of Labor. Moreover, unions must submit yearly reports on their financial condition. The report must include assets, liabilities, receipts, sources of revenue, loans to union members, and other money paid out of the union treasury. The act also includes the union members' "bill of rights," which insures that all members of the union have the right to be involved in running the union. It guarantees voting rights in union elections, the right to free speech at union meetings, and the right to receive copies of the union's financial reports.

Regulating the Employment of Minors

In the early days of the industrial revolution, children were often abused by employers for cheap labor. For example, some mine owners would use children deep in the mines because children could crawl into the cracks and crevices where adults could not go. Even though this work was difficult and dangerous, the children were paid very low wages. The children could not refuse to do the work because jobs were scarce and hard to keep. To prevent such abuses, laws were enacted to protect children who enter the labor force.

State Child Labor Laws

Child labor laws—laws that control the work that children are permitted to do—developed very slowly. In 1842, Massachusetts passed a law limiting the work of children under the age of 12 to 10 hours per day. In the same year, Connecticut passed a similar law, but these two states were far ahead of their time. By 1880 only a few states had laws limiting the work of children in factories, and only one state had laws limiting the hours for children in any gainful occupation. By 1930, 44 states had child labor laws dealing with nonmanufacturing occupations. In 1934, the annual Conference on Labor Legislation adopted a set of standards for state child labor legislation, and these standards have had a great influence on child labor laws.

In addition, many states specify certain types of activities that cannot be performed by minors on the job. Such prohibitions include working on or around dangerous machinery. These laws are designed to protect minors who, because of inexperience, might not completely appreciate the dangers involved. Figure 23-1 on page 337 shows a portion of one state's minor labor laws.

Federal Child Labor Laws

The most forward-looking step in federal child labor laws was the child labor portion of the Fair Labor Standards Act of 1938, as updated in 1974. This act prohibits the interstate or foreign trade shipment of any goods produced in factories in which "oppressive child labor" had been used within 30 days of the removal of the goods. The act also prohibits the employment of oppressive child labor in any enterprise engaged in commerce or in the production of goods for commerce. Oppressive child labor is defined as any employment of minors under the age of 16 in any of the

Child Labor Laws

This chart summarizes the State laws (printed in regular type) and the Federal FLSA laws (printed in italics), governing the employment of minors in California. If an employer is covered by both State and Federal laws, the higher standard—the provision which gives the most protection to employees—applies. In general, the provisions of the Federal Fair Labor Standards Act (FLSA) shown on this chart are the higher standard, and therefore prevail.

<table>
<tr><th></th><th>All minors under age 18</th><th>Minors age 16–17</th><th>Minors age 14–15</th><th>Minors age 12–13</th></tr>
<tr><td>SPREAD OF HOURS</td><td colspan="2">Work must be performed between 5 a.m. and 10 p.m. Exception: Public messenger service must be performed between 6 a.m. and 9 p.m.

Work experience programs up to 12:30 a.m.—see minors ages 16 and 17. Day preceding non-school day up to 12:30 a.m. —see minors ages 16 and 17. See also Entertainment Industry employment.

If enrolled in a work experience program may work until 12:30 a.m. on any evening. Minor may work until 12:30 a.m. on any day preceding a non-school day.

FLSA: No limitations.</td><td colspan="2">Work must be performed between 5 a.m. and 10 p.m. Exception: Public messenger service must be performed between 6 a.m. and 9 p.m. (Can be employed as a messenger only in cities having less than 15,000 inhabitants.)

FLSA: Work must be performed between 7 a.m. and 7 p.m. Exceptions: From June 1 to Labor Day can work to 9 p.m.

FLSA: Minors under 14 years of age may not be employed in firms subject to the FLSA.</td></tr>
<tr><td>RESTRICTED OCCUPATIONS</td><td colspan="2">Cannot sell or serve alcoholic beverages. Cannot be employed for the purpose of driving a motor vehicle on the highways or streets.

FLSA—NO MINOR UNDER 18 MAY BE EMPLOYED IN any occupation declared hazardous by the Secretary of Law, including, but not limited to:

Explosives manufacturing occupations.
Motor vehicle occupations.
Mining occupations.
Logging and sawmilling occupations.
Power-driven woodworking machine and power-driven metal forming, punching, and shearing machine operations.
Occupations involving exposure to radioactive substances, and to ionizing radiations.
Power-driven hoisting apparatus occupations.

Occupations in slaughtering, meat packing and rendering plants.
Bakery machine operations.
Paper products machine operations.
Brick, tile and kindred products manufacturing.
Wrecking, demolition and ship-building operations.
Roofing work, including application of weather-proofing materials and substances.
Excavation operations.

IN ADDITION TO THE ABOVE, FURTHER LIMITATIONS APPLY TO ALL MINORS UNDER AGE 16: (See Child Labor Bulletin 101)
Employment is limited to certain occupations not requiring performance of any duties in work places where goods are manufactured, moved or processed. Some permitted occupations in retail and food services include:

Office and clerical.
Cashiering and selling.
Price marking and packaging.
Bagging.

Clean-up maintenance of grounds (cannot use power-driven mowers or cutters).
Kitchen work.</td><td colspan="2">NO MINOR UNDER 16 MAY BE EMPLOYED:

In selling or serving alcoholic beverages.
In public messenger service in cities having more than 15,000 inhabitants.
In hazardous occupations.
In operating an auto or truck.
In a pool or billiard room.
In delivering goods, merchandise, commodities, papers or packages from a motor vehicle.
In the vicinity of moving machinery.
In or about any manufacturing or transportation of explosives.
In or about the functioning parts of unguarded and dangerous moving equipment, aircraft or vessels or functioning blades or propellers.

In or about a gasoline service station.
In selling to passing motorists newspapers, candy, flowers or other merchandise or commodities.
In door-to-door selling of newspapers or magazine subscriptions, candy, cookies, flowers or other merchandise or commodities unless the following conditions are met:
1) Minors work in pairs as a team;
2) One adult supervisor for 10 or fewer minors;
3) Within sight or sound of the supervisor once every 15 minutes.
4) Returned to home or rendezvous point daily.

SEE TEXT OF THIS DIGEST FOR A MORE DETAILED LIST & CONDITIONS

FLSA: Child labor provisions do not apply to:

Children under 16 years of age employed by their parents in occupations other than manufacturing, mining, or occupations declared hazardous by the Secretary of Labor;
Children employed as actors or performers in motion pictures, theatrical, radio, or television productions.
Children engaged in the delivery of newspapers to the consumer.</td></tr>
</table>

Figure 23-1 Minors have the right to work. However, federal and state laws restrict the employment of minors. What kinds of restrictions does this state impose?

jobs covered by the act and the employment of minors under 18 in jobs declared by the Secretary of Labor to be especially dangerous.

Minors between 14 and 16 may be employed in jobs other than those covered by the act, but only if the Secretary of Labor determines that such

employment does not interfere with their schooling. There are many exceptions to the minimum wage and maximum hours rules in the Fair Labor Standards Act. They include (1) children working in agriculture after school hours, (2) child actors, (3) children working for their parents in jobs other than manufacturing, and (4) children delivering newspapers. The greatest effect of the act probably has been the placing of some control of child labor under a federal agency that can study its operation.

Example 11. In the opening vignette, John threatens to complain to the Secretary of Labor because his parents have put him to work after school on the family farm. He argues that such work violates child labor laws. In answer to Legal Issue 3, however, work after school in agriculture is one of the exceptions to the minimum wage and maximum hours rules set up under the Fair Labor Standards Act.

FYI

The Department of Labor enforces fair labor standards to protect children, through a nationwide force of about 1,000 wage and compliance officers. These officers identified almost 15,000 cases of illegal child labor during a three-day campaign known as Operation Child Watch in March, 1990.

Industry-Education Cooperation

Effective control of child labor requires the help of industry and schools. Laws alone cannot do the whole job. Many industries have their own codes that restrict child labor to an even greater extent than the laws do. Other industries, however, conform only if the law forces them to.

Education and the child labor problem are closely associated. One of the great evils of child labor is its interference with the education of children. Public schools work hand in hand with the enforcement officers of child labor acts. Work permits, for example, are often issued by the public school system. A work permit is a document that allows a minor below a certain age to work. The law varies from state to state regarding the issuance of work permits.

Chapter

23 *Review*

Summary

Carefully read the summary below before completing the chapter review.

1. An employment relationship is most often created by contract. Employment relationships are governed by federal and state statutes.
2. A collective bargaining agreement is a contract negotiated by an employer and representatives of a labor union, covering all issues related to employment.
3. Most jurisdictions in the United States still adhere to the doctrine of employment-at-will. This means that, unless the employment contract is for a definite time, an employer can dismiss an employee at any time for any reason or for no reason.
4. Unjust dismissal provides employees with grounds for legal action against employers who have treated them unfairly. The courts have established three standards by which to judge the injustice of a dismissal: public policy, implied contract, and implied covenant.

5. An employee who can prove that his or her firing violated public policy may recover compensatory and punitive damages in tort.
6. Implied contract usually involves an oral agreement that would ordinarily be covered by employment-at-will, had the employer not said or done something that implies otherwise.
7. When examining a case to determine whether the employer has created an implied contract, the court can look at the nature of the employment relationship, the way the parties have dealt with each other in the past, the length of the employment relationship, the customary way the employer handles such situations, and the employer's policies and procedures.
8. The implied covenant exception to employment-at-will holds that in any employment relationship, there is an implied covenant, or promise, that the employer and the employee will be fair and honest in their dealings with one another.
9. In a restrictive employment covenant an employee promises not to work for anyone else in the same field, or to open a competing business after leaving his or her current job, for a specified period of time and within a particular geographical area.
10. Federal laws have been passed dealing with collective bargaining. Major legislation includes the National Labor Relations Act of 1935, sometimes called the Wagner Act; the Labor-Movement Relations Act of 1947, popularly called the Taft-Hartley Act; and the Labor Management Reporting and Disclosure Act of 1959, usually referred to as the Landrum-Griffin Act.
11. Child labor laws developed very slowly. In 1934, the annual Conference on Labor Legislation adopted a set of standards for state child labor legislation, and these standards have had a great influence on child labor laws. The most forward-looking step in federal child labor laws was the child labor portion of the Fair Labor Standards Act of 1938, as updated in 1974.

Language of the Law

Choose the term from the list that best completes each sentence below. Then write the complete sentence on a separate sheet of paper.

collective bargaining agreement	disclaimer	implied contract
employment-at-will	right-to-work law	trade secret
grievance procedure	unjust dismissal	child labor law
implied covenant		

1. A(n) _____ is a statement that an employment-at-will situation exists regardless of provisions in a handbook.
2. A(n) _____ controls the work that children are permitted to do.
3. A(n) _____ sets up a series of steps employees must take to appeal an employer's decision.
4. A(n) _____ is a contract between an employer and a union covering all issues related to employment.
5. A(n) _____ prohibits union shops.

6. A(n) _____ is an employer's oral promise of an employment arrangement other than employment-at-will.
7. A(n) _____ is inside information on a firm's products, processes, or inventions.
8. Under the doctrine of _____, the employment relationship may be terminated by the employer or the employee at any time.
9. The principle of _____ holds that the employer and the employee will be fair and honest with each other.
10. _____ provides employees with grounds for legal action against employers who have treated them unfairly.

Questions for Review

Answer the following questions. Refer to the chapter for additional reinforcement.

1. How is an employment relationship created?
2. What are some rights of employers?
3. What are some rights of employees?
4. In what ways can the employment relationship be terminated?
5. In what three situations may an employee charge an employer with unjust dismissal?
6. What are some federal laws that affect labor-management relations?
7. What federal law had the greatest effect on child labor regulation? What are four ways in which this law protects minors?
8. What event had a significant effect on state child labor laws? Why?

Applying Critical Thinking Skills

Apply your understanding of the chapter concepts by answering the questions below.

1. Interview representatives from several local labor unions. Discuss with the representatives the collective bargaining agreements they have negotiated. Analyze the contracts by asking these questions: "Do the collective bargaining agreements in your area differ? If so, in what ways?" Are the differences in type of business or business operations? What other factors might affect the structure of the collective bargaining agreement? What conclusions can you draw?
2. What might be included in negotiations pertaining to "condition of employment"?
3. Compile a list of the 10 most important things you think an employee manual should provide.
4. Why do you think closed shops were made illegal?
5. Contact several employers in your area and request copies of their employee handbooks or manuals. Read the handbooks or manuals carefully and decide if they preserve an employment-at-will situation and why.