

# UNDERSTANDING OTHER ASPECTS OF EMPLOYMENT LAW

by

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**HIGHLIGHTED AREAS HAVE BEEN NEWLY UPDATED**

- I. **AFFIRMATIVE ACTION: U.S. SUPREME COURT DECISIONS IN GRUTTER AND GRATZ**
  - A. **Mandated v. Voluntary Programs**
  - B. **The Grutter U.S. Supreme Court Decision**
  - C. **The Gratz U.S. Supreme Court Decision**
- II. **ARBITRATION AGREEMENTS**
  - A. **Arbitration And The Civil Rights Act Of 1991**
  - B. **Arbitration And Statutory Rights**
  - C. **Arbitration And Contract Rights**
- III. **U.S. SUPREME COURT: ARBITRATION CLAUSE UPHELD**
  - A. **Circuit City Wants To Arbitrate Employment Discrimination Suit**
  - B. **Rule Of Law: Federal Arbitration Act Of 1925**
  - C. **The U.S. Supreme Court Holds For Circuit City: Mandates Arbitration**
  - D. **General Guidelines**

- E. **U.S. SUPREME COURT: Arbitration Agreement Does Not Bar EEOC's Suit For Victim-Specific Remedies**
  - F. **No Fee-Splitting Allowed**
  - G. **Arbitration Agreement Should NOT Be Part Of Handbook**
  - H. **Forcing Current Employees To Endorse Arbitration Agreements**
  - I. **General Guidelines**
- IV. CIVIL RIGHTS ACT OF 1866: SECTION 1981**
- A. **Equal Rights Under Contracts**
  - B. **All Races Are Covered By § 1981**
  - C. **What Is A “Race” Under § 1981?**
- V. CIVIL RIGHTS ACT OF 1871: SECTION 1983**
- VI. CONSUMER CREDIT PROTECTION ACT**
- A. **Garnishments**
- VII. CONSTRUCTIVE DISCHARGE**
- A. **Standard**
  - B. **Intent For Employee To Resign Requirement**
- VIII. DEFAMATION**
- A. **Definition And Elements Of The Prima Facie Case**
  - B. **Absolute Privilege**
  - C. **Qualified Privilege**
  - D. **Self-Publication**
- IX. DRUG-FREE WORKPLACE ACT OF 1988**
- X. THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988**
- A. **Coverage Of The EPPA**
  - B. **Rights Of Examinees**

- C. Requirements Placed Upon Examiners
- D. Enforcement And Penalties

## **XI. THE NEW I-9 FORM**

### **XII. THE E-VERIFY RULE**

### **XIII. FAIR CREDIT REPORTING ACT**

- A. General Coverage
- B. Definitions
- C. Requirements For Requesting A Consumer Report
- D. Requirements For Requesting An Investigative Consumer Report
- E. Obsolete Information And The FCRA
- F. Requirements Relating To Adverse Actions Taken Against Individuals
- G. Disputing Information In An Investigative Consumer Report Or A Consumer Report
- H. Requirements Placed Upon Consumer Reporting Agencies
- I. An Additional Consideration Regarding The Use Of Credit Information In Making Employment Decisions
- J. Penalties Under The FCRA

### **XIV. FACTA (THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003)**

### **XV. FAIR CREDIT REPORTING ACT: WORKPLACE INVESTIGATIONS**

- A. FACTA (Fair and Accurate Credit Transactions Act) and Workplace Investigations

### **XVI. JOINT AND SINGLE EMPLOYER LIABILITY**

- A. Title VII, ADEA, And ADA
- B. Leased And Temporary Employees: Is Client Company An "Employer"?
- C. Joint Employer Theory

- D. Interference Theory**
- E. Single Employer Theory**
- F. Americans With Disabilities Act In Particular**
- G. Family And Medical Leave Act**
- H. Other Various Employment Laws**

**XVII. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (OSHA)**

- A. Purpose Of OSHA**
- B. OSHA's Authority**
- C. Retaliation**
- D. OSHA Reporting Requirements**
- E. Privacy Concerns**
- F. Annual Summary**
- G. Record Access**
- H. Recording Criteria**
- I. Days Away from Work**
- J. Defining Restricted Work**
- K. First Aid**

**XVIII. OSHA's NEW ELECTRONIC ACCIDENT REPORTING RULE SEEKS TO DRAMATICALLY IMPAIRS POST-ACCIDENT DRUG AND ALCOHOL TESTING**

- A. Overview of New Rule**
- B. Employers Conducting Post-Accident Testing Will Face Penalties Unless Substance Abuse *Likely Contributed* to the Accident and the Test Identifies Impairment**
- C. Implications for Employers with Post-Accident Drug Testing Policies**
- D. OSHA Delays Post-Accident Testing Ruling Due to NAM Lawsuit**

**XIX. POLICIES vs. CONTRACTS**

- A. What Is The Difference?**
- B. What Is A Handbook?**

**XX. PREVAILING WAGE LAWS**

- A. The Davis-Bacon Act Of 1931**
- B. The Service Contract Act Of 1965 (Or The O’Hara-McNamara Services Contract Act)**
- C. The Walsh-Healey Public Contracts Act Of 1936**

**XXI. PRIVACY ACT OF 1974**

- A. Coverage**
- B. Private Employers And State Laws**
- C. Penalties**

**XXII. SARBANES-OXLEY ACT OF 2002**

- A. Who Is Covered?**
- B. Financial Specifics Of The Law**
- C. Whistleblower Protection: Reporting Or Participation Provision**
- D. Whistleblower Protection: Fraud Against Shareholders**
- E. Whistleblower Protection: Informant Protection**
- F. Preventative Requirements: Code of Ethics**
- G. Preventative Requirements: Disciplinary Policy Additions**
- H. Preventative Requirements: Employee Protection For Reporting Federal Offenses**
- I. Training Requirements**
- J. Documentation Requirements and Penalties**
- K. Concern For Private Employers?**

**XXIII. UNIFORM SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 (USERRA)**

- A. Coverage**
- B. Reemployment Rights**
- C. Employer Defenses**
- D. Remedies**

**XXIV. NEW DOL REGULATIONS UNDER USERRA**

- A. General**
- B. Retirement Plans**
- C. Contributory Plans**
- D. Noncontributory plans**
- E. Duration of Return To Work**
- F. Health Care Benefits**
- G. Healthcare Election Issues**
- H. Employee Healthcare Contribution**
- I. Reinstatement**

**XXV. USERRA CLAIMS MAY BE WAIVED IN SEVERANCE AGREEMENTS**

**XXVI. VIETNAM-ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1974**

- A. Coverage of Individuals**
- B. Employer Requirements**

**XXVII. WHISTLEBLOWER LAWS**

- A. Federal Law**
- B. State Laws**

**XXVIII. WORKER ADJUSTMENT AND RETRAINING NOTIFICATION (WARN)  
ACT OF 1988 (PLANT CLOSING LAW)**

- A. Coverage**
- B. When The Requirements Of WARN Are Initiated**
- C. Requirements Of WARN**
- D. Exceptions To WARN's 60-day Notice Requirement**



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*Business First's 20 People To Know In HR*  
*CEO Magazine's 2008 Human Resources "Superstar"*  
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**Scott Warrick** combines the areas of law and human resources to assist organizations in  
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**Scott's academic background and awards include:**

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