

Course Learning Outcomes for Unit II

Upon completion of this unit, students should be able to:

1. Differentiate the relationship statuses between the employer, employee, and independent contractor.
 - 1.1 Prepare a policy that balances employer and employees' rights.

Course/Unit Learning Outcomes	Learning Activity
1	Unit Lesson Chapter 3, 4, and 5
1.1	Unit II Essay

Reading Assignment

Chapter 3: Commonly Committed Workplace Torts

Chapter 4: Employee Privacy Rights in the 21st Century

Chapter 5: The Global Perspective: International Employment Law and American Immigration Policy

Unit Lesson

Tort

Tort is a legal term that means a civil wrongful act on the part of someone. It is different from a contract. Both, however, may lead to civil liability or potentially a civil case. The person committing a tort is called a tortfeasor. Generally, people think that they can sue anyone for anything. There are certain restrictions to bringing a tortious or civil claim. In the employer-employee relationship, if a person is injured on the job, most states allow for recovery under workers' compensation. Workers' compensation was enacted in most states to give injured employees an immediate remedy for medical treatment and care. Many times, there is a settlement at the end of a workers' compensation action for future care, loss of the ability to work, or loss or injury to a part of the body. When there is coverage under workers' compensation, a person cannot bring an action against his or her employer. To bring a civil action under a liability claim takes many years. The advantage of workers' compensation is that the employee gets immediate medical attention rather than waiting for a lawsuit that might end years later (Cihon & Castagnera, 2017). It also allows the employee to get immediate rehabilitation and return to the workplace.

An injured employee may try to claim that he or she is an independent contractor to try to fall under civil law and bring a tort claim. Another option is for the injured party to sue a third person that is not the employer. An example would be if the employee lost a limb on a piece of manufacturing equipment, the employee can sue the manufacturer of the equipment alleging that the equipment did not have the correct safety guards to protect against loss of limb. This would be a product liability case.

The advantage of a tort claim is that the monetary amount may be much greater than a workers' compensation settlement. To bring an action in civil court one must establish first that he or she is an independent contractor. There are four elements that are necessary to win in an action:

- duty,
- breach,

- damages, and
- proximate cause (Cihon & Castagnera, 2017).

An example of the four elements is included in the scenario below. An independent contractor is injured at a corporation and is bringing a civil action:

The employer hires an independent contractor to plow the driveway and parking areas of his plant. The contractor arrives after a heavy snowfall and begins to plow without having seen the parking area before. There is a large area in the lot where there is a hole. The contractor hits the hole, causing his truck to tip. The contractor suffers an injury to his head and subsequent brain damage. The employer owner of the business has a *duty* to provide a safe environment and premises. He *breached* that duty by not making the contractor aware of the hole or filling the hole before someone was hurt. The independent contractor plowing the driveway was injured or *damaged*. If there had not been a breach of the duty, the contractor would not have suffered the brain injury. The breach of the duty was the “but for” or the *proximate cause* of the injury. If you substitute the words “but for,” it will help you decide what is the proximate cause.

Take the same scenario, and assume that the independent contractor did not suffer any damages. Could he still bring a lawsuit? He could make a claim for damage to his vehicle if his vehicle was harmed; however, he is missing one of the key elements: damages. He suffered no loss. If we take the case in another direction, where five weeks later the claimant who is the truck driver is diagnosed with a brain tumor, we see a different set of elements are lacking. The brain tumor is unrelated to the breach of the duty or it is not a proximate cause of the breach of duty so the case again would fail in court.

There are several different types of torts. The most common in the area of employee-employer law is libel, slander, or defamation of character. There are also these types of torts: tortious infliction of emotional distress, tortious interference with a contract, retaliatory demotion or wrongful discharge, theft of trade secrets, bodily injury, and invasion of privacy (Cihon & Castagnera, 2017).

Privacy

One of the relatively recent issues that has arisen in the employment relationship is the issue of privacy. While employees have some expectation that they will have a certain amount of privacy, there are legitimate reasons for the need for an employer to inquire into some areas that employees might consider private. For instance, in hiring employees, employers sometimes require that potential employees allow the employer to conduct a credit check and a background check.

Other invasion of employees’ privacy issues can arise once an employee has been hired. For instance, employers often monitor employee telephone calls and email, and sometimes employers conduct surveillance of employees and even search employee work areas.

Contract

Contractual law is an agreement between two or more persons. Contract law is enforceable as a binding legal agreement and is a form of a civil law. There are certain elements that are necessary for a contract to be legally binding. In order for a contract to be binding, there should be an *offer*, *acceptance*, and *consideration*. Generally, contracts have to be signed in order to overcome what is called the statute of fraud. The offer and acceptance may be called a meeting of the minds in which both people decide to enter into an agreement. Consideration is a monetary value, and there must be mutual intent to be bound by the agreement. Consideration is a legal term meaning that one party or both parties profit or benefit. Something is given and then something is returned. Generally, the return may be in the form of money. A service may be given and money is given in return for that service. In contract law, there may be an implied contract. If you do not have a contract with an employer and you come to work, it is implied that you will work, and the employer will pay you. If you do not do the work, you have breached an implied contract. Another example of an implied contract is when a patient goes to a doctor’s office. The patient does not have a signed contract. If the patient is examined by the doctor and then refuses to pay for the treatment, that is a breach of an implied contract.

Another area of contract law is *capacity*. A person must have the capacity to contract. In the law a person who is under the age of 18, does not have the right to legally contract with another. There may be exceptions to this age in various states. A person who is incapacitated because of a mental disability also does not have the

right to enter into a contract or have a contract enforced against him or her. There are exceptions to these, and one has to examine the case law and statutory state laws to determine if capacity applies.

Reference

Cihon, P. J., & Castagnera, J. O. (2017). *Employment and labor law* (9th ed.). Boston, MA: Cengage Learning.

Suggested Reading

In order to access the following resources, click the links below.

Watch the short video linked below regarding workplace gossip. When does gossip cross the line into defamation?

Lawinfo. (2013, August 12). *Defamation and gossip in the workplace* [Video file]. Retrieved from <https://youtu.be/AOJFXt9NhH0>

Click [here](#) for the video transcript.

This video will help you distinguish protected health information (PHI) from other private information.

Darnall, K. (2014, January 19). *What is protected health information* [Video file]. Retrieved from <https://youtu.be/xqtP6otrLw8>

Click [here](#) for the video transcript.