

3-15-1988

## Book Review

David J. Agatstein

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/naalj>



Part of the [Labor and Employment Law Commons](#)

---

### Recommended Citation

David J. Agatstein, *Book Review*, 8 J. Nat'l Ass'n Admin. L. Judges. (1988)  
available at <https://digitalcommons.pepperdine.edu/naalj/vol8/iss1/7>

This Book Review is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Journal of the National Association of Administrative Law Judiciary by an authorized editor of Pepperdine Digital Commons. For more information, please contact [bailey.berry@pepperdine.edu](mailto:bailey.berry@pepperdine.edu).

## **BOOK REVIEW: *EMPLOYMENT LAW, CASES AND MATERIALS***

by Mark A. Rothstein,  
Andria S. Knapp,  
Lance Liebman

University Casebook Series  
The Foundation Press, Inc.  
Mineola, New York (1987)

In recent years a new topic has caught the imagination of legal scholars and practicing lawyers across the United States. With private sector unionism on the wane (only one quarter of nonagrarian workers were organized in 1984, compared to one third in 1954, according to one study cited in this book), the process of collective bargaining may have lost some of its dominance as a factor shaping the standards and conditions of the American workplace. At the same time, the National Labor Relations Board, once the unrivaled oracle of American labor policy, may have lost some of its preeminence in the field of labor relations and some of its prestige within the dwindling ranks of the federal administrative judiciary. However, other forces have been on the ascendency. Legislation at both the state and federal levels, and various common law developments, have given new protections to organized and unorganized workers alike. The study of these new developments has come to be known as Employment Law.

One- and two-day cram courses in Employment Law are now being offered by bar associations and educational entrepreneurs across the country. The price is usually steep. For the scholarly practitioner and Administrative Law Judge who want to learn the law directly from the leading primary sources, reading this book is by far the better alternative.

The similarity between Employment Law and the case books most of us read in law school extends only to the gold-embossed blue cover. The cases and materials found in this volume are almost all good, current law, or leading older cases, having obvious practical application. The paperback statutory supplement is very handy in its own right.

Employment Law is fairly comprehensive in scope. In general, it traces the law pertaining to an individual worker from the initial search for employment through retirement. Collective bargaining, employee-union relations,

and other topics usually covered in courses on Labor Law are treated in summary fashion; the book does not encroach on the Labor Law curriculum. Civil Service Law -- that impenetrable morass of regulations governing all government employees -- is mentioned, but is not covered.

Two introductory chapters discuss the employment relationship in its historical, social and economic contexts; the chapters also reveal the book's bias, which is unabashedly pro-employee. Readers should be aware that some of the cases contained in the book, reporting significant employee victories on novel theories of law (including plant closings, abusive discharge, and other areas), do not represent the majority view, nor even, necessarily, a growing trend. These cases are few in number, however, and, in any event, are useful precisely because they do put forward new ideas.

Chapters three and four are both highly original and very interesting. Chapter three, "Searching for a Job", covers such topics as the law governing want ads, employment agencies and hiring halls, and legal restrictions on employment, including residency requirements, child labor laws, age discrimination, and the problem of undocumented aliens. Even the new Immigration Reform and Control Act of 1986 is mentioned.

Chapter four addresses the employer's information-gathering process. It covers job criteria and specifications, application forms, the interview process, references, polygraph and personality screening, and medical testing. The topics are treated very well, and inspire further inquiry.

Chapter five, "Discrimination in Hiring", compresses a very large and difficult subject into one hundred pages. Its principal virtue consists of the detailed procedural guidance it offers at each step in the prosecution and defense of a Civil Rights action. Perhaps unfortunately, the authors' pronounced views on the moral and social issues underlying such topics as reverse discrimination are in no way concealed.

Chapter six covers "Wages, Hours and Benefits", including the Fair Labor Standards Act, and such difficult and timely issues as fringe benefit protection under ERISA and the problem of pregnancy leave.

There is some sex, and a lot of human interest in chapter seven, "Conditions of Employment". Grooming and dress, harassment, free speech and regulation of off-work

activities are topics which have given rise to a number of truly astonishing cases. Seniority and promotion, disciplinary procedures and grievances round off the discussion.

Occupational Health and Safety receives, as it deserves, detailed treatment in chapter eight. The authors subject the Occupational Health and Safety Act to close and critical scrutiny. Workers Compensation (chapter nine) and Unemployment Insurance (chapter twelve) are also given extended treatment, but the latter chapters suffer, unavoidably, from the great variations in state law which govern these very specific programs. However, the leading nationally recognized cases in these areas are, at least, mentioned. <sup>1/</sup>

Chapter ten ("Leaving a Job") and chapter eleven ("Discharge") explore at some length the various implications of the doctrine of employment at will. Not surprisingly, the authors question the desirability of retaining the doctrine. The evolving tort and contract actions for wrongful dismissal are encouraged.

Finally, the very important and complex subject of private pension law, and the effect of ERISA, is admirably treated in chapter thirteen ("Retirement"). The chapter (and the book) concludes with a discussion of Social Security Retirement Benefits.

In sum, the topic of Employment Law is both trendy and important. For many readers of this Journal, the substantive body of law is invaluable, if not indispensable. No finer exposition of the law is available today. Administrative Law Judges and practicing lawyers are encouraged to buy and read this excellent volume.

---

<sup>1/</sup> Chapter twelve also touches on the problems of employer bankruptcy.