

Chapter 17
Agency and
Private Employment Law

1 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Introduction

- Agency law
- Independent contractors
- Employment law

2 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Agency Formation

- The principal/agent relationship can be formed by:
 - Agreement (oral or express)
 - Ratification (by the principal)
 - Estoppel (principal leads third person to believe another person is his/her agent)

3 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Two Types of Agency Relationships

- Principal/Agent
- Employer/Employee

4

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Duties of Agents to Principals

- Fiduciary duty
- Duty of performance
- Duty of loyalty
- Duty of obedience
- Duty of accounting
- Duty of notification
- Any duties stated in the contract

5

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Duties of Principals to Agents

- Duty of compensation
- Duty of reimbursement and indemnification
- Duty of cooperation
- Duty to provide safe working conditions

6

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Liability of Principals and Agents to Third Parties

- Principal is disclosed
 - Principal is liable; agent is not liable
- Principal is partially disclosed
 - Principal is liable; agent is liable in most states
- Principal is undisclosed
 - Principal is liable once the third party discovers who he/she is; agent is liable

7

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Agent Lacks Authority

- If an agent lacks authority for an action or exceeds the scope of his authority, the agent is liable based on a breach of implied warranty of authority
- Principal is not liable

8

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Tort Liability

- Employer is liable for the torts of the employee, if the employee commits the torts within the scope of employment
- This is strict liability without regard to the fault of the employer
- But if the employee is deviating from his/her employer's business, the employee is liable for his/her own torts

9

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Agent's Misrepresentation

- The principal is liable based on the agent's actual or apparent authority

10

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Agent's Intentional Torts

- The employer is not responsible for an agent's intentional torts except:
 - Where the intentional tort was committed within the scope of employment
 - Where the employer knew or should have known the employee was unfit
 - Where the employer ratifies the intentional tort of the employee

11

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Termination of Agency Relationship

- | | |
|---|---|
| <ul style="list-style-type: none">• By act of the parties<ul style="list-style-type: none">• Agreement duration• If no definite time, continues for a reasonable time• Particular objective achieved• Mutual agreement | <ul style="list-style-type: none">• By operation of law<ul style="list-style-type: none">• Mental incompetence• Death of principal or agent• Subject matter of agency lost or destroyed• War• Change in the law |
|---|---|

12

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Termination of Agency Relationship— Notice Required

- Termination by the parties
 - Actual notice to all third parties who dealt with the agent
 - Constructive notice to all third parties who have not dealt with the agent
 - Until notice is given, agent retains apparent authority
- Termination by operation of law
 - No duty exists to notify third parties

13

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Independent Contractors

- An independent contractor is not an employee, but can be an agent under certain limited circumstances
- Key issues in determining whether someone is an independent contractor
 - Liability
 - Responsibility for payments to IRS

14

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Criteria for Determining Whether Someone Is an Independent Contractor

- Extent of employer control over details of the work
- Type of job
- Amount of skill required to perform job
- Who supplies equipment or tools?
- Length of employment
- Method of payment
- Method of filing tax returns

15

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Employment Law

- Employment contracts
 - Oral or written
 - Statute of frauds
 - Covenant not to compete
- Employee leasing
 - PEO
 - Advantages
 - Disadvantages

16

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Employment-at-Will

- Either party may terminate the employment arrangement with or without cause
 - Limits
 - Discrimination laws
 - Civil service laws
 - Whistleblower laws
 - State laws
 - Implied covenant of good faith
 - Implied covenant of fair dealing

17

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

International Considerations

- U.S. Companies fairly free environment
- Other countries different attitude
- Often two-tiered board
- Must adhere to countries' regulations affecting employee rights

18

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Summary

- Agency Formation
- Two Types of Agency Relationships
- Duties of Agents to Principals
- Duties of Principals to Agents
- Liability of Principals and Agents to Third Parties
- Agent Lacks Authority
- Tort Liability
- Agent's Misrepresentation
- Agent's Intentional Torts
- Termination of Agency Relationship
- Independent Contractors
- Criteria for Determining Whether Someone Is an Independent Contractor
- Employment-At-Will

19

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