Employment and Employee Rights

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This book is the outcome of a long series of studies on employee rights. In 1985, having written a book on employee rights, one of the authors optimistically speculated that many of the issues that book explored would no longer be relevant in 2000. Affirmative action and equal opportunity initiatives would have by and large solved inequalities in the workplace, and the “glass ceiling” phenomenon would be a thing of the past. Whistleblowing legislation would be in place, the Privacy Act would cover employers in the private as well as the public sectors, and threats to worker safety would occur only in the remotest parts of the economy. The elusive goal of workplace due process would have been achieved, and most places of work would encourage more participatory management.

Today, in 2002, these goals have not been achieved. While there is increased focus on diversity, and while there is much less discrimination in hiring, glass ceilings for women and minorities are still in place for senior positions in many firms. Due process in the private sector remains elusive, whistleblowers are often treated as pariahs, and privacy throughout the political economy in every area is practically nonexistent. We have seen an increased focus on employee teams, and more employee participation on the plant floors and assembly lines. The reduction and flattening of managerial hierarchies means that employees and middle managers have increased responsibilities. At the same time layoffs and other forms of workforce reductions have increased to such an extent that the notion of employee loyalty to a particular firm is no longer a consideration. The need for further work in this area has inspired us to write this book.

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Introduction

This is a book about rights in the workplace. Although much of the literature on employment focuses on employee rights, we shall consider the rights of both employees and employers. We argue that the recognition and protection of employee and employer rights in the workplace, even in the absence of Constitutional or other legal directives, both coincides with our considered moral judgments and benefits multiple stakeholders, including employers, employees, shareholders, and firms themselves.

In particular, this book is about rights in employment in the United States. We defend this focus from two perspectives. First, because employment rights are not top priorities in the private sector of the economy in this country, it would be inappropriate for us, as American thinkers, to critique employment practices elsewhere. Second, it is important to target practices in the United States for analysis since these employment practices are commonly exported and copied around the world, not merely by American-based multinational corporations but also by other governments and other international and global corporations. As in other areas of commerce, the United States is often held up as a role model for free-market economic growth and well-being. A book such as this about the shortcomings as well as positive features of the American model for employment is an important step toward preventing the export of the employment-related ills that already plague the American workplace.

In the first part, Rights, Employee Rights, and Employment-at-Will, we discuss the moral and legal landscape and traditional assumptions about rights in employment. Chapter 1 begins with a theoretical exposition of rights theory interpreted through the lens of a postmodern conception of social construction. This point of view acknowledges that rights theory is a historically late Western frame-
work for evaluating human behavior. We nevertheless argue that
effects talk, while parochially developed, is a widely accepted mode
of internal and cross-cultural evaluation, and human rights are thus
provisional candidates for cross-cultural or global principles. Still, as
we point out in the last section of the chapter, despite American
political and legal preoccupations with rights, rights in the workplace
are not part of that preoccupation. Indeed, employment is often
thought of as a purely economic, even ahuman, phenomenon.

Chapter 2 focuses on the legal background for employee rights.
We begin by sorting out traditional distinctions between the public
and private sectors of our political economy, and the contemporary
erosion of those distinctions. We point out that the Constitution and
Bill of Rights protect political rights of individuals and corporations
against the state, but do not apply, except with regard to egregious
behavior, to private affairs such as within families or in employment
in the private sector. This chapter sets the stage for chapter 3, which
is devoted to a more extensive discussion of employment-at-will.
Employment-at-will is a widely accepted common law American
document that, in the absence of contracts or laws, employment
agreements are “at-will” arrangements that can be severed at any
time, by either party, without any explanatory requirement or good
reasons.

In the last chapter of this section, we show how employee rights,
in particular the rights to due process and whistleblowing, can
coexist with employment-at-will. Procedural due process is the
requirement that some sort of mechanism be established to adjudicate
employment practices, particularly those involving layoffs, firing,
transfers and any practices for which there might not be mutual
employee–employer consent. Substantive due process is the demand
for good reasons for employment practices – reasons, we argue, that
are required of any sound management activity. Chapter 4 ends with
a discussion of Christopher McMahon’s proposal for workplace
democracy, a proposal that would circumvent the need for establish-
ing separate employee and employer rights.

In part II, New Models of Employment and Employment
Relationships, we explore arguments for guaranteeing rights, particu-
larly for employees, which are derived from relational, develop-
mental, and economic bases. Chapter 5 investigates the function of
roles and role morality in employment. Recognizing the limits of role
morality invites new thinking about employment practices that goes
beyond traditional approaches and can serve as a basis for deriving
employee rights. We suggest that employees are individuals with rights, not merely employees. As such, employees and employers not only have rights to be respected, but they also have responsibilities to each other and further obligations to act independently of their assigned roles.

Chapter 6 begins with an analysis of “meaningful work.” The importance of work being meaningful for each individual is often discussed, but what “meaningful” signifies is different for different people and different occupations. This is a term that is often used with sufficient vagueness so as to be vacuous. We shall nevertheless attempt to arrive at a definition that defines meaningful work as work that an individual enjoys, excels in, and has some control over – work that creates a sense of satisfaction and preserves employee autonomy and employment choices. In response to a demand for meaningful work, in these turbulent times with changing labor conditions, employers have developed models of outplacement and employability with the idea that well-trained flexible employees and managers can find meaningful work in a number of employment settings. The chapter ends with an examination of such practices.

We end part II with chapter 7, written with Norman Bowie, depicting a series of arguments defending employee rights as economic value added for employers and companies. Appealing to the writings of Jeffrey Pfeffer and others, we argue that reasonable employment practices – including careful hiring, continuous training, team management, decentralization and participation in management decision-making, high compensation, financial transparency, and employment security – create more economic value for companies that employment practices to the contrary.

Finally, in part III, The Evolving Workplace, we conclude by exploring new dimensions of employment. Chapter 8 outlines challenges to diversity, and we defend the position that equitable employment practices are both fair and also, if carried out properly, contribute to economic value added. Recent changes in the workplace, resulting from variables such as technology and the changing economic climate, make it even more important for employees to exercise control over their careers. Even with employment-at-will as the default rule, it does not mean that employee rights must be ignored. In chapter 9 we propose a model that incorporates growing workplace diversity, builds upon our understanding of the legal landscape, and expands upon our justifications for recognizing and protecting rights. Such a model introduces the notion that every