

Index

ACTIONS

See also Arbitration
Americans With Disabilities Act of 1990
 drug testing, § 3:30
 genetic testing, § 12:12
 HIV testing, § 11:15
Civil Rights Act of 1964
 fetal vulnerability policies, § 10:7-10:22
 genetic testing, § 12:10
Drug testing
 intrusive actions, employer justification for, § 1:2
 Labor-Management Relations Act, preemption, § 5:7
 National Labor Relations Act, preemption, § 5:8
 preemption
 Labor-Management Relations Act, § 5:7
 National Labor Relations Act, § 5:8
 Railway Labor Act, § 5:9
 Railway Labor Act, preemption, § 5:9
 Rehabilitation Act of 1973, § 3:29
Emotional distress, intentional
 HIV testing, § 11:92
Fetal vulnerability policies
 anti-discrimination laws, state, § 10:16
 Civil Rights Act of 1964, § 10:7-10:22
 reproductive hazards, § 10:17
 state statutes, § 10:16, 10:17
Genetic testing
 Americans With Disabilities Act of 1990, § 12:12
 Civil Rights Act of 1964, § 12:10
 National Labor Relations Act, § 12:14

ACTIONS—Cont'd

 Genetic testing—Cont'd
 Rehabilitation Act of 1973, § 12:11
 HIV testing
 Americans With Disabilities Act of 1990, § 11:15
 common law, § 11:89
 denial
 unemployment compensation benefits, § 11:93
 discrimination
 wrongful discharge, § 11:90
 emotional distress, § 11:92
 fear of AIDS, § 11:95
 invasion of privacy, § 11:91
 Rehabilitation Act of 1973, § 11:14
 Intrusive actions, employer justification for, § 1:2
 Invasion of privacy
 HIV testing, § 11:91
 National Labor Relations Act, preemption
 drug testing, § 5:8
 Rehabilitation Act of 1973
 drug testing, § 3:29
 genetic testing, § 12:11
 HIV testing, § 11:14
 Unemployment compensation
 HIV testing, § 11:93

ADMISSIBILITY

Polygraph testing
 weight, § 6:84

AIDS, HIV

Medical screening
 workplace risks, § 11:5

AIDS TESTING

See HIV Testing

ALABAMA

Drug testing, § 4A:2
HIV testing, § 11:19

ALABAMA—Cont'd

Polygraph testing, § 6:22

ALASKA

Drug testing, § 4A:3

Genetic testing, § 12:17

HIV testing, § 11:59

Polygraph testing, § 6:23

Psychological and honesty testing,
§ 7:18

Sexual orientation and gender
identity discrimination, § 9:19

**AMERICANS WITH
DISABILITIES ACT OF 1990**

Definition

currently engaging in illegal use of
drugs, § 3:30

Drug testing, § 3:30

Genetic testing, § 12:12

HIV testing

infection, asymptomatic, § 11:15

Polygraph testing, § 6:20

Psychological and honesty testing,
§ 7:16

Qualified individuals

HIV-positive persons, § 11:15

Sexual orientation and gender
identity discrimination, § 9:17

ARBITRATION

See also Actions; Unionized Employers

Drug testing

accuracy, § 5:18

arbitral treatment, § 5:11

award challenges, § 5:24

discipline, § 5:21

failure to pursue grievances, § 5:25

impairment, § 5:20

injunctions pending, § 5:10

off-duty use, § 5:20

periodic, § 5:15

post-accident, § 5:14

preemployment, § 5:12

privacy issues, § 5:19

random, § 5:13

reasonable suspicion, § 5:17

refusal of tests, § 5:22

rehabilitation plans, § 5:16

ARBITRATION—Cont'd

Electronic monitoring and surveillance, § 8A:62-8A:64

HIV testing, § 11:98

Polygraph testing
employer use, § 6:80

Searches

arbitral treatment, § 8:22

collective bargaining agreements,
§ 8:27

employee property
outside workplace, § 8:25

employee property in workplace,
§ 8:24

employer policies, § 8:27

employer property, § 8:23

personal, § 8:26

ARBITRATION CASES

Psychological and honesty testing,
§ 7:47

ARIZONA

Drug testing, § 4A:4

Genetic testing, § 12:18

HIV testing, § 11:20, 11:60

Polygraph testing, § 6:24

Sexual orientation and gender
identity discrimination, § 9:20

ARKANSAS

Drug testing, § 4A:5, 12:19

Electronic monitoring and surveillance, § 8A:23

Genetic testing, § 12:19

HIV testing, § 11:61

Polygraph testing, § 6:25

Sexual orientation discrimination,
§ 9:21

ATTORNEY-CLIENT PRIVILEGE

Claims of waiver by employees and
former employees, § 8A:56

BENEFITS

Electronic monitoring and surveillance, § 8A:3

BREACH OF COVENANT

Good faith, fair dealing
common law challenges
drug testing, § 4:12

INDEX

BREACH OF EMPLOYMENT

Based on policies
common law challenges
drug testing, § 4:13

CALIFORNIA

Drug testing, § 4A:6
Electronic monitoring and surveillance, § 8A:24
Fetal vulnerability policies, § 10:18
Genetic testing, § 12:20
HIV testing, § 11:21, 11:62
Off-duty conduct, § 13:13
Polygraph testing, § 6:26
Psychological and honesty testing, § 7:19
Sexual orientation and gender identity discrimination, § 9:22

CIVIL RIGHTS ACT OF 1964

AIDS
awareness training, § 11:17
sexual harassment, § 11:17
Drug testing, § 4:3
Fetal vulnerability policies
EEOC position, § 10:10
historical treatment, § 10:7
International Union, United
Automobile Workers of
America v. Johnson Controls,
Inc., § 10:11
lower court analysis
before Johnson Controls, § 10:9
lower court decisions, § 10:13
need for Constitutional challenges,
§ 10:4
privacy, § 10:5
Supreme Court analysis, § 10:8
Supreme Court decisions, § 10:12
Genetic testing, § 12:10
Polygraph testing, § 6:19
Psychological and honesty testing,
§ 7:14
Sexual harassment
AIDS, § 11:17

COLLECTIVE BARGAINING

See Unionized Employers

COLORADO

Drug testing, § 4A:7
Electronic monitoring and surveillance, § 8A:25
HIV testing, § 11:22, 11:63
Off-duty conduct, § 13:14
Sexual orientation and gender identity discrimination, § 9:23

COMMON LAW

Challenges to employer
Emotional distress
searches, § 8:14
Searches
emotional distress, § 8:14
False imprisonment
employer searches, § 8:15
Invasion of privacy
searches, § 8:13
Searches
challenges to employee
generally, § 8:12
invasion of privacy, § 8:13

COMMON LAW CHALLENGES

Drug testing
Defamation, § 4:8
invasion of privacy, § 4:7
Negligence, § 4:10
private sector employers, § 4:6
National Labor Relations Act,
preemption
searches, § 8:20
Preemption, federal labor laws
searches, § 8:20
Searches
common law
federal preemption, § 8:20
preemption, federal labor laws,
§ 8:20

COMMON-LAW RESTRICTIONS

Polygraph testing
assault, battery, false imprisonment, § 6:71
defamation, § 6:69
infliction, emotional distress,
§ 6:68
invasion of privacy, § 6:67

COMMON-LAW RESTRICTIONS

—Cont’d

Polygraph testing—Cont’d
negligence, § 6:70
other state law claims, § 6:74
refusal to submit
 grounds for discharge, § 6:73
wrongful discharge
 violation of public policy, § 6:72

**COMMUNICATIONS OF
EMPLOYEE**

Electronic monitoring and surveillance, § 8A:6

COMPUTER MONITORING

Electronic monitoring and surveillance, § 8A:8

**CONFIDENTIALITY-SENSITIVE
JOBS**

See Drug Testing

CONNECTICUT

Drug testing, § 4A:8

Electronic monitoring and surveillance, § 8A:26

Fetal vulnerability policies, § 10:19

Genetic testing, § 12:21

HIV testing, § 11:23

Off-duty conduct, § 13:15

Polygraph testing, § 6:27

Psychological and honesty testing, § 7:20

Sexual orientation and gender identity discrimination, § 9:24

State Anti-Discrimination Statutes

 HIV testing, § 11:64

CONSENT EXEMPTION

Omnibus Crime Control and Safe Streets Act 1968

 Electronic monitoring and surveillance, § 8A:15

**CONSTITUTIONAL
CHALLENGES**

Drug testing

 privacy

 rights, § 3:28

 right to privacy, § 3:28

**CONSTITUTIONAL
CHALLENGES—Cont’d**

Privacy, right to
 drug testing, § 3:28

CONSTITUTIONAL ISSUES

See also Privacy Rights

 See Sexual Orientation
 Discrimination

Challenges to employer

 Privacy, right to
 HIV testing, § 11:11

Discrimination based on HIV status
 or aids, § 11:12

Drug testing, § 3:3-3:28

 accuracy, § 3:22

 challenge elements, § 3:3

 due process, § 3:27

 early fourth Amendment challenges, § 3:4

 Early Fourth Amendment challenges

 Implications, Skinner and Von Raab, § 3:7

 National Treasury Employees Union v. Von Raab, § 3:6

 Skinner v. Railway Labor Executives Ass’n, § 3:5

 equal protection, § 3:24

 First Amendment, § 3:26

 Fourth Amendment application, § 3:23

 lower court rulings

 Skinner and Von Raab, § 3:8
 need, § 3:20

 particular program, § 3:20

 post-accident, § 3:18

 privacy

 protections, § 3:21

 Protections to privacy, § 3:21

 random, § 3:17

 reasonable suspicion, § 3:19

 routine periodic, § 3:16

 self-incrimination, § 3:25

Drug testing programs

 particular, § 3:20

Due process

 drug testing, § 3:27

 polygraph testing, § 6:11

INDEX

CONSTITUTIONAL ISSUES

—Cont'd

- Due process—Cont'd
 - psychological and honesty testing, § 7:9
- Electronic monitoring and surveillance, § 8A:4-8A:11
- Employer searches
 - effect of regulations, § 8:9
- Equal protection
 - polygraph testing, § 6:10
- Equal protection, discrimination based on HIV status or AIDS, § 11:12
- Fetal vulnerability policies
 - privacy, § 10:5
- First Amendment
 - drug testing, § 3:26
 - psychological or honesty testing as violation of, § 7:6
- Fourth Amendment
 - challenges to fetal vulnerability, § 10:6
 - drug testing, § 3:3-3:28
 - genetic testing, § 12:6
 - HIV testing, § 11:10
 - psychological and honesty testing as violation of, § 7:5
 - searches, § 8:3-8:10
- Freedom of belief
 - psychological testing as violation of, § 7:7
- Genetic testing
 - Fourth Amendment, § 12:6
 - privacy, right to, § 12:7
- HIV testing
 - Fourth Amendment, § 11:10
 - privacy
 - right to, § 11:11
- Importance
 - Polygraph testing
 - generally, § 6:7
- Polygraph testing
 - due process, § 6:11
 - equal protection, § 6:10
 - privacy, right to, § 6:9
 - self-incrimination, § 6:8

CONSTITUTIONAL ISSUES

—Cont'd

- Privacy, right to
 - genetic testing, § 12:7
 - HIV testing, § 11:11
 - polygraph testing, § 6:9
 - searches, § 8:11
- Psychological and honesty testing
 - equal protection, as violation of, § 7:10
- First Amendment, violation of, § 7:6
- Fourth Amendment, violation of, § 7:5
- right to privacy, as violation of, § 7:8
- Searches
 - generally, § 8:3-8:11
 - employee property, § 8:7
 - employee property within and outside workplace, § 8:7
 - employer property, § 8:6
 - exclusionary rule, § 8:10
- Fourth Amendment challenges, § 8:3
 - lower court decisions, § 8:5
 - O'Connor v. Ortega, § 8:4
 - persons, § 8:8
 - privacy, right to, § 8:11
- Searches of employer property
 - employees interest, § 8:6
- Self-incrimination
 - drug testing, § 3:25
 - polygraph testing, § 6:8
- Types of drug testing
 - preemployment, § 3:15

COSTS

- Electronic monitoring and surveillance, § 8A:3

COSTS, ECONOMIC AND HUMAN

- Drug testing, § 2:6
- Psychological and honesty testing, § 7:4

DEFAMATION

- Drug testing
 - common law challenges, § 4:8

DEFINITIONS

See Words and Phrases

DELAWARE

Drug testing, § 4A:9
Electronic monitoring and surveillance, § 8A:27
Genetic testing, § 12:22
HIV testing, § 11:24
Off-duty conduct, § 13:16
Polygraph testing, § 6:28
Psychological and honesty testing, § 7:21
Sexual orientation and gender identity discrimination, § 9:25

DISABILITIES

See Americans With Disabilities Act of 1990; Rehabilitation Act of 1973

DISABILITY CLAIMS

Electronic monitoring and surveillance, § 8A:54

DISCHARGE

Psychological and honesty testing, § 7:40

DISCIPLINARY ACTIONS

Psychological and honesty testing, § 7:40

DISCIPLINE

Electronic monitoring and surveillance, challenges, arbitration decisions, § 8A:64

DISCLOSURE TO STORED COMMUNICATIONS BY SERVICE PROVIDER

Electronic monitoring and surveillance, § 8A:19

DISCRIMINATION

See Americans With Disabilities Act of 1990; Civil Rights Act of 1964; Rehabilitation Act of 1973; Sexual Orientation Discrimination

DISTRICT OF COLUMBIA

Drug testing, § 4A:10

DISTRICT OF COLUMBIA

—Cont'd

Genetic testing, § 12:23
Polygraph testing, § 6:29
Sexual orientation and gender identity discrimination, § 9:26
State Anti-Discrimination Statutes
HIV testing, § 11:65

DRUG-FREE WORKPLACE ACT OF 1988

See Drug Testing

DRUG TESTING

See also Drug Use; Preemployment Screenings; Public Health and Safety

Accuracy
arbitration, § 5:18
constitutional issues, § 3:22
Actions
Civil Rights Act of 1964, § 4:3
Labor-Management Relations Act, preemption, § 5:7
Railway Labor Act, preemption, § 5:9
Rehabilitation Act of 1973, § 3:29
Adulteration of sample
discipline, § 5:23
Arbitration
accuracy, § 5:18
arbitral treatment, § 5:11
award challenges, § 5:24
discipline, § 5:21
failure to pursue grievances, § 5:25
use, positive tests, § 5:25
impairment, § 5:20
injunctions pending, § 5:10
off-duty use, § 5:20
periodic, § 5:15
post-accident, § 5:14
preemployment, § 5:12
privacy issues, § 5:19
random, § 5:13
reasonable suspicion, § 5:17
refusal of tests, § 5:22
rehabilitation plans, § 5:16

INDEX

DRUG TESTING—Cont'd

Arkansas
genetic monitoring implications, § 12:19
Challenges to enforcement
enforcement of arbitration awards, § 5:24
Civil Rights Act of 1964, § 4:3
Common law
federal preemption, § 5:7-5:9
other challenges, § 4:15
Common law challenges
Breach of covenant
good faith, fair dealing, § 4:12
Denial of unemployment benefits
positive test, § 4:16
grounds for discharge, § 4:14
Intentional, negligent, emotional distress, § 4:9
Common law challenges
invasion of privacy, § 4:7
Constitutional issues
generally, § 3:3-3:28
challenge elements, § 3:3
due process, § 3:27
early cases, § 3:4
early Fourth Amendment challenges, § 3:4
Early Fourth Amendment challenges
Implications of Skinner and Von Raab, § 3:7
National Treasury Employees Union v. Von Raab, § 3:6
Skinner v. Railway Labor Executives Ass'n, § 3:5
equal protection, § 3:24
First Amendment, § 3:26
Fourth Amendment application, § 3:23
lower court rulings
Skinner and Von Raab, § 3:8
need, § 3:20
post-accident, § 3:18
preemployment, § 3:15
privacy
right to, § 3:28
random, § 3:17

DRUG TESTING—Cont'd

Constitutional issues—Cont'd
reasonable suspicion, § 3:19
right to privacy, § 3:28
routine periodic, § 3:16
self-incrimination, § 3:25
Costs, Economic and human, § 2:6
Discipline
for attempts to interfere, § 5:23
Drug-Free Workplace Act of 1998, § 4:2
Drug usage
off-duty, arbitration, § 5:20
Duty to bargain
National Labor Relations Act, § 5:3
Effectiveness, § 2:5
Extent, § 2:3
employment, § 2:3
Fifth Amendment issues
self-incrimination, § 3:25
Follow-up treatment, § 5:16
Fourth amendment challenges
Chandler v. Miller, § 3:12
Implications, Chandler, § 3:13
Lower court application, Chandler, § 3:14
Fourth Amendment issues
generally, § 3:3-3:28
challenge elements, § 3:3
Implications of Acton, § 3:10
lower court application of Acton, § 3:11
lower court rulings, § 3:8
periodic, § 3:16
post-accident, § 3:18
privacy
protections, § 3:21
Protections to privacy, § 3:21
random testing, § 3:17
reasonable suspicion, § 3:19
routine, § 3:16
Vernonia School District 47J v. Acton, § 3:9
Guidelines
federal agencies, § 3:33

DRUG TESTING—Cont'd

- Guidelines, Health and Human Services, § 3:33
- Federal Workplace Drug Testing Programs, § 3:33
- Interference
 - discipline for, § 5:23
- Intrusive actions, employer justifications for, § 1:2
- Labor-Management Relations Act, state law preemption, § 5:7
- Methods, § 2:4
- National Labor Relations Act
 - preemption, state law claims, § 5:8
 - term and condition of employment, § 5:4
- Off-duty use
 - arbitration, § 5:20
- Omnibus Transportation Employee Testing Act of 1991, § 3:32
- On-duty impairment, § 5:20
- Periodic
 - Fourth Amendment challenge, § 3:16
- Positive result discipline, § 5:21
- Post-accident
 - arbitration, § 5:14
- Preemployment
 - arbitration, § 5:12
 - constitutional issues, § 3:15
- Preemption, state law claims
 - Labor-Management Relations Act, § 5:7
 - National Labor Relations Act, § 5:8
 - Railway Labor Act, § 5:9
- Privacy
 - arbitration, § 5:19
- Private sector
 - Civil Rights Act of 1964, § 4:3
 - federal legislation, § 4:1
 - state statutes, § 4A:1-4:50
 - Title VII, § 4:3
 - unionized employers, § 5:1-5:25
- Private sector employers
 - other statutory regulation, § 4:5
 - state statutes, § 4:4

DRUG TESTING—Cont'd

- Public sector
 - generally, § 3:1
 - Americans With Disabilities Act of 1990, § 3:30
 - constitutional issues, § 3:3-3:28
 - Drug-Free Workplace Act of 1988, § 3:31
 - executive order No. 12,564, § 3:2
 - Fourth Amendment issues, § 3:3-3:28
 - guidelines, federal, § 3:33
 - history, § 3:1
 - regulatory issues, § 3:29-3:34
 - Rehabilitation Act of 1973, § 3:29
 - statutory issues, § 3:29-3:34
- Railway Labor Act
 - preemption, state law claims, § 5:9
- Random
 - arbitration, § 5:13
 - collective bargaining, § 5:13
 - constitutional issues, § 3:17
- Reasonable suspicion
 - arbitration, § 5:17
 - constitutional issues, § 3:19
- Refusal to be tested
 - arbitration, § 5:22
- Rehabilitation, § 5:16
- Rehabilitation Act of 1973, § 3:29
- Routine
 - arbitration, § 5:15
 - constitutional issues, § 3:16
 - Fourth Amendment challenge, § 3:16
- State statutes
 - generally, § 4A:1
 - Alabama, § 4A:2
 - Alaska, § 4A:3
 - Arizona, § 4A:4
 - Arkansas, § 4A:5
 - California, § 4A:6
 - Colorado, § 4A:7
 - Connecticut, § 4A:8
 - Delaware, § 4A:9
 - District of Columbia, § 4A:10
 - Florida, § 4A:11
 - Georgia, § 4A:12
 - Hawaii, § 4A:13

INDEX

DRUG TESTING—Cont'd

State statutes—Cont'd
Idaho, § 4A:14
Illinois, § 4A:15
Indiana, § 4A:16
Iowa, § 4A:17
Kansas, § 4A:18
Kentucky, § 4A:19
Louisiana, § 4A:20
Maine, § 4A:21
Maryland, § 4A:22
Massachusetts, § 4A:23
Michigan, § 4A:24
Minnesota, § 4A:25
Mississippi, § 4A:26
Missouri, § 4A:27
Montana, § 4A:28
Nebraska, § 4A:29
Nevada, § 4A:30
New Hampshire, § 4A:31
New Jersey, § 4A:32
New Mexico, § 4A:33
North Carolina, § 4A:34
North Dakota, § 4A:35
Ohio, § 4A:36
Oklahoma, § 4A:37
Oregon, § 4A:38
Pennsylvania, § 4A:39
public employment, § 3:34
Rhode Island, § 4A:40
South Carolina, § 4A:41
South Dakota, § 4A:42
Tennessee, § 4A:43
Texas, § 4A:44
Utah, § 4A:45
Vermont, § 4A:46
Virginia, § 4A:47
Washington, § 4A:48
West Virginia, § 4A:49
Wisconsin, § 4A:50
Terms and condition of employment
National Labor Relations Act,
application, § 5:4
Union attitude, § 5:2
Unionized employers
arbitration, § 5:10-5:25
award challenges, § 5:24
considerations, § 5:1

DRUG TESTING—Cont'd

Unionized employers—Cont'd
discipline for attempts to interfere,
§ 5:23
duty to bargain, § 5:3
enforcement of arbitration awards,
§ 5:24
follow-up treatment, § 5:16
injunctions pending arbitration,
§ 5:10
Labor-Management Relations Act,
§ 5:7
National Labor Relations Act,
§ 5:3, 5:4, 5:8
off-duty use, arbitration, § 5:20
on-duty impairment, § 5:20
periodic, arbitration, § 5:15
positive result discipline, § 5:21
post-accident, arbitration, § 5:14
preemployment
arbitration, § 5:12
preemption, state law claims,
§ 5:7-5:9
privacy issues, arbitration, § 5:19
Railway Labor Act, § 5:5, 5:6, 5:9
random, arbitration, § 5:13
reasonable suspicion, arbitration,
§ 5:17
refusal of tests, arbitration, § 5:22
refusal to be tested, § 5:22
rehabilitation, § 5:16
routine, arbitration, § 5:15
term and condition of employment,
§ 5:4
terms and conditions of employment,
§ 5:4
Urinalysis
observation of urine production,
§ 5:16
Wrongful discharge
common law challenges, § 4:11

DRUG USE

See also Drug Testing
Effect
employees, § 2:2
Effect of drug use by employees,
§ 2:2

DRUG USE—Cont'd

Intrusive actions, employer justifications for, **§ 1:2**
Off-duty use, unionized employees, **§ 5:20**
Society, among employees, **§ 2:1**
Testing
 as response to, **§ 2:1-2:6**
Unionized employees
 off-duty use, **§ 5:20**

DUE PROCESS

See Sexual Orientation Discrimination
Off duty conduct, employer regulation of, **§ 13:8**
Psychological and honesty testing, **§ 7:9**

DUTY TO BARGAIN

Psychological and honesty testing, **§ 7:44**

EFFECTIVENESS

Drug testing, **§ 2:5**

EFFECT OF REGULATIONS

Employer searches
 constitutional issues, **§ 8:9**

ELECTRONIC

COMMUNICATIONS

Monitoring and surveillance
 California, **§ 8A:24**
First Amendment implications, **§ 8A:11**
 Maryland, **§ 8A:31**
 Rhode Island, **§ 8A:43**

ELECTRONIC

COMMUNICATIONS ACT OF 1986

See Omnibus Crime Control and Safe Streets Act of 1968

ELECTRONIC MONITORING AND SURVEILLANCE

Generally, **§ 8A:1 et seq.**
Arbitral treatment
 employer monitoring and surveillance, **§ 8A:62**
Arbitration decisions, **§ 8A:62-8A:64**

ELECTRONIC MONITORING AND SURVEILLANCE

—Cont'd
Arkansas, **§ 8A:23**
Benefits, **§ 8A:3**
California, **§ 8A:24**
Colorado, **§ 8A:25**
Common law restrictions
 Generally, **§ 8A:52-8A:56**
 disability claims, **§ 8A:54**
 emotional distress, **§ 8A:52**
 intentional infliction of emotional distress, **§ 8A:52**
 invasion of privacy, **§ 8A:53**
 other challenges to employer, **§ 8A:55**
 worker's compensation claims, **§ 8A:54**

Communications of employee, **§ 8A:6**

Computer monitoring, **§ 8A:8**

Connecticut, **§ 8A:26**

Consent exemption, **§ 8A:15**

Constitutional restrictions, **§ 8A:4-8A:11**

Costs, **§ 8A:3**

Delaware, **§ 8A:27**

Disability claims, **§ 8A:54**

Discipline, challenges to, arbitration decisions, **§ 8A:64**

Effect of practice or policy of monitoring, **§ 8A:9**

Emotional distress, **§ 8A:52**

Exemption, **§ 8A:15, 8A:16**

Federal regulation

 Generally, **§ 8A:12-8A:20**

 consent exemption, **§ 8A:15**

 exemption, **§ 8A:15, 8A:16**

 Omnibus Crime Control and Safe Streets Act of 1968, **§ 8A:12-8A:20**

First Amendment implications, **§ 8A:11**

Fourth Amendment violations

 Generally, **§ 8A:4-8A:9**
 communications of employee, **§ 8A:6**
 computer monitoring, **§ 8A:8**

INDEX

ELECTRONIC MONITORING AND SURVEILLANCE

—Cont'd

- Fourth Amendment violations
 - Cont'd
 - effect of practice or policy of monitoring, § 8A:9
 - monitoring and surveillance, § 8A:4
 - video surveillance, § 8A:5
- Illinois, § 8A:28
- Intentional infliction of emotional distress, § 8A:52
- Justifications, § 8A:2
- Labor Management Relations Act, § 8A:60
- Louisiana, § 8A:29
- Maine, § 8A:30
- Maryland, § 8A:31
- Methods and extent, § 8A:1
- Michigan, § 8A:32
- Missouri, § 8A:33
- Montana, § 8A:34
- National Labor Relations Act, § 8A:58
- Nebraska, § 8A:35
- Nevada, § 8A:36
- New Hampshire, § 8A:37
- New Jersey, § 8A:38
- New Mexico, § 8A:39
- New York, § 8A:40
- Oklahoma, § 8A:41
- Omnibus Crime Control and Safe Streets Act 1968
 - Access to stored communications, § 8A:18
 - Definitions, § 8A:13
 - Disclosure to stored communications by service provider, § 8A:19
 - Electronic communications, definition, § 8A:13
 - Exemption, § 8A:17
 - Federal regulation
 - access to stored communications, § 8A:18
 - definitions, § 8A:13
- video surveillance, § 8A:5

ELECTRONIC MONITORING AND SURVEILLANCE

—Cont'd

- Omnibus Crime Control and Safe Streets Act 1968—Cont'd
- Federal regulation—Cont'd
 - disclosure to stored communications by service provider, § 8A:19
 - electronic communications, definition, § 8A:13
 - exemption, § 8A:17
 - oral communications, definition, § 8A:13
 - ordinary course of business exemption, § 8A:16
 - provider of wire or electronic communication service, exemption, § 8A:17
 - restrictions, § 8A:14
 - USA Patriot Act, § 8A:20
 - wire communications, definition, § 8A:13
- Indirect regulation, § 8A:21
- State statutes
 - indirect regulation, § 8A:21
- Oregon, § 8A:42
- Policies, challenges to, arbitration decisions, § 8A:63
- Position of unions, § 8A:57
- Preemption of common law challenges, § 8A:60
- National Labor Relations Act, § 8A:58
- Privacy, constitutional right to, § 8A:10
- Railway Labor Act, § 8A:59, 8A:61
- Rhode Island, § 8A:43
- South Dakota, § 8A:44
- State statutes
 - Generally, § 8A:21-8A:51
 - California, § 8A:24
 - Connecticut, § 8A:26
 - Delaware, § 8A:27
 - Illinois, § 8A:28
 - Missouri, § 8A:33
 - Montana, § 8A:34
 - Nebraska, § 8A:35
 - New York, § 8A:40

**ELECTRONIC MONITORING
AND SURVEILLANCE**

—Cont'd

- State statutes—Cont'd
 - Rhode Island, § 8A:43
 - South Dakota, § 8A:44
 - Tennessee, § 8A:45
 - West Virginia, § 8A:50
 - Wisconsin, § 8A:51
- State statutes dealing, § 8A:22
 - Tennessee, § 8A:45
- Unionized employers, § 8A:57
 - Generally, § 8A:57-8A:64
 - discipline, challenges to, arbitration decisions, § 8A:64
- Labor Management Relations Act, § 8A:60
- National Labor Relations Act, § 8A:58
 - position of unions, § 8A:57
 - Railway Labor Act, § 8A:59
- Union positions, § 8A:57
- Utah, § 8A:46
- Vermont, § 8A:47
- Video surveillance, § 8A:5
- Virginia, § 8A:48
- Washington, § 8A:49
- West Virginia, § 8A:50
- Wisconsin, § 8A:51
- Worker's compensation claims, § 8A:54

EMOTIONAL DISTRESS

- Electronic monitoring and surveillance, § 8A:52

**EMPLOYEE POLYGRAPH
PROTECTION ACT OF 1988**

- See also Polygraph Testing
- Psychological and honesty testing, § 7:13
- Statutory regulations
 - Polygraph testing, § 6:12

EMPLOYEE PRIVACY RIGHTS

- Importance, § 1:4
- Need for recognition of, § 1:3
- Private information
 - Scope, § 1:5
- Scope, § 1:5

EMPLOYERS

- See Private Sector Employers; Public Sector Employers; Unionized Employers
- Searches
 - common-law actions, § 8:12
 - invasion of privacy, § 8:13
 - unemployment compensation benefits, § 8:17

EMPLOYER SEARCHES

- See Searches
- Common law
 - federal preemption, § 8:20, 8:21
- Common law
 - defamation, § 8:16
- Constitutional issues
 - effect of regulations, § 8:9
- Defamation
 - searches, § 8:16
- Labor-Management Relations Act
 - preemption, state law claims, § 8:20
- National Labor Relations Act
 - preemption, state law claims, § 8:20
 - searches, § 8:20
 - searches, § 8:20
- Preemption, federal labor laws, § 8:20, 8:21

- Preemption, federal labor laws
 - Railway Labor Act, § 8:21
- Preemption, state law claims
 - National Labor Relations Act, § 8:20
- Preemption, state law claims
 - National Labor Relations Act, § 8:20
- Searches
 - defamation, § 8:16
 - federal preemption, § 8:20
 - preemption, state law claims, § 8:20

EMPLOYMENT

- Drug testing
 - extent, § 2:3

INDEX

EQUAL PROTECTION

Discrimination based on HIV status or aids, **§ 11:12**

EQUAL PROTECTION VIOLATION

Psychological and honesty testing, **§ 7:10**

Sexual orientation and gender identity discrimination, **§ 9:6**

EXEMPTION

Electronic monitoring and surveillance, **§ 8A:15-8A:17**

EXTENT

Drug testing, **§ 2:3**
employment, **§ 2:3**

FAILURE TO CONDUCT OR ACT ON RESULTS

Psychological and honesty testing, **§ 7:11**

FALSE IMPRISONMENT

Common law
employer searches, **§ 8:15**

FEDERAL REGULATION

See Electronic Monitoring and Surveillance

FETAL VULNERABILITY POLICIES

Actions

anti-discrimination laws, state, **§ 10:16**
breach of contract claims, **§ 10:22**
Civil Rights Act of 1964, **§ 10:7-10:22**

intentional infliction of emotional distress, **§ 10:20**
reproductive hazards, **§ 10:17**
state statutes, **§ 10:16**

Anti-discrimination laws, state, **§ 10:16**

Breach of contract, **§ 10:22**

Civil Rights Act of 1964

application, **§ 10:8**

EEOC position, **§ 10:10**

International Union, United Automobile Workers of

FETAL VULNERABILITY

POLICIES—Cont'd

Civil Rights Act of 1964—Cont'd

America v. Johnson Controls, Inc., **§ 10:11**

lower court analysis

before Johnson Controls, **§ 10:9**

lower court decisions, **§ 10:13**

need for Constitutional challenges, **§ 10:4**

privacy, **§ 10:5**

Supreme Court analysis, **§ 10:8**

Supreme Court decisions, **§ 10:12**

Common-law claims

intentional infliction of emotional distress, **§ 10:20**

prenatal death claims, **§ 10:21**

prenatal injury claims

injuries after Johnson Controls, **§ 10:21**

Constitutional issues

Fourth Amendment, **§ 10:6**

privacy, right to, **§ 10:5**

Costs and benefits, **§ 10:3**

Fetal vulnerability, **§ 10:2**

Historical treatment, **§ 10:7**

Occupational Safety and Health Act applicability, **§ 10:15**

policies, impact, **§ 10:15**

reproductive hazards, **§ 10:14**

Privacy, right to, **§ 10:5**

Reproductive capacity, **§ 10:2**

Reproductive hazards, **§ 10:1**

Occupational Safety and Health Act, **§ 10:14**

State statutes

anti-discrimination laws, **§ 10:16**

California, **§ 10:18**

Connecticut, **§ 10:19**

FIRST AMENDMENT

Monitoring and surveillance, **§ 8A:11**

Psychological and honesty testing

freedom of speech, **§ 7:6**

Sexual orientation and gender

identity discrimination, **§ 9:9**

right to freedom of association, **§ 9:11**

FLORIDA

Drug testing, § 4A:11
Genetic testing, § 12:24
HIV testing, § 11:25
Psychological and honesty testing, § 7:22

42 U.S.C.A. § 1983

Psychological and honesty testing, § 7:15
Sexual orientation and gender identity discrimination, § 9:14

42 U.S.C.A. § 1985

Sexual orientation and gender identity discrimination, § 9:15

FOURTH AMENDMENT

Electronic monitoring of employee conduct, § 8A:7

FOURTH AMENDMENT APPLICATION

Constitutional issues
Drug testing, § 3:23

FOURTH AMENDMENT CHALLENGES

Drug testing
Chandler v. Miller, § 3:12
Implications, Chandler, § 3:13
Lower court application, Chandler, § 3:14

FOURTH AMENDMENT VIOLATIONS

See also Electronic Monitoring and Surveillance
Psychological and honesty testing, § 7:5

FREEDOM OF BELIEF

Violation
Psychological and honesty testing, § 7:7

FREEDOM OF SPEECH

Psychological and honesty testing, § 7:6

GAY MEN

See Sexual Orientation Discrimination

GENDER IDENTITY

See Sexual Orientation and Gender Identity Discrimination

GENETIC TESTING

See also Preemployment Screening Actions
Americans With Disabilities Act of 1990, § 12:12
Civil Rights Act of 1964, § 12:10
Rehabilitation Act of 1973, § 12:11
Benefits, § 12:5
Civil Rights Act of 1964, § 12:10
Common law
Employer discipline based on results, § 12:56
intentional infliction of emotional distress, § 12:55
Invasion of privacy, § 12:54

Constitutional issues

Fourth Amendment, § 12:6
privacy, right to, § 12:7
Costs, § 12:5
Diseases discoverable, § 12:2
Executive Order
prohibit discrimination, federal employment, § 12:9

Federal legislative
Genetic Information Nondiscrimination Act of 2008, § 12:8

Fourth Amendment issues, § 12:6

Justifications, § 12:4

National Labor Relations Act, § 12:14

Occupational Safety and Health Act, § 12:13

Prevalence, § 12:3

Privacy, right to, § 12:7

Public sector

Fourth Amendment issues, § 12:6
privacy, right to, § 12:7

State statutes

generally, § 12:16
Alaska, § 12:17
Arizona, § 12:18
Arkansas, § 12:19
California, § 12:20
Connecticut, § 12:21
Delaware, § 12:22

INDEX

GENETIC TESTING—Cont'd

State statutes—Cont'd
District of Columbia, § 12:23
Florida, § 12:24
Hawaii, § 12:25
Idaho, § 12:26
Illinois, § 12:27
Iowa, § 12:28
Kansas, § 12:29
Louisiana, § 12:30
Maine, § 12:31
Maryland, § 12:32
Massachusetts, § 12:33
Michigan, § 12:34
Minnesota, § 12:35
Missouri, § 12:36
Nebraska, § 12:37
Nevada, § 12:38
New Hampshire, § 12:39
New Jersey, § 12:40
New Mexico, § 12:41
New York, § 12:42
North Carolina, § 12:43
Oklahoma, § 12:44
Oregon, § 12:45
Rhode Island, § 12:46
South Dakota, § 12:47
Texas, § 12:48
Utah, § 12:49
Vermont, § 12:50
Virginia, § 12:51
Washington, § 12:52
Wisconsin, § 12:53
Types, § 12:1
Unionized employers
National Labor Relations Act,
§ 12:14
Railway Labor Act, § 12:15

GEORGIA

Drug testing, § 4A:12
HIV testing, § 11:26, 11:66
Polygraph testing, § 6:30

GROUNDS FOR DISCHARGE

Common law challenges
drug testing, § 4:14

GROUNDS FOR DISCHARGE

—Cont'd

Common-law restrictions
polygraph testing
refusal to submit, § 6:73

HAWAII

Drug testing, § 4A:13
Genetic testing, § 12:25
HIV testing, § 11:27, 11:67
Off-duty conduct, § 13:18
Polygraph testing, § 6:31
Psychological and honesty testing,
§ 7:23
Sexual orientation and gender
identity discrimination, § 9:27

HEALTH CARE WORKERS

HIV testing, West Virginia, § 11:56

HIV, AIDS

Workplace
Medical screening, § 11:1

HIV/AIDS DISCRIMINATION

Equal protection, denial, § 11:12
New Mexico, § 11:78
Oklahoma, § 11:81
Virginia, § 11:86

HIV TESTING

See also Preemployment Screening
Generally, § 11:18
Actions
Americans with Disabilities Act of
1990, § 11:15
common law, § 11:89
emotional distress, § 11:92
fear of AIDS, § 11:95
invasion of privacy, § 11:91
Rehabilitation Act of 1973, § 11:14
unemployment compensation,
§ 11:93

AIDS

Dementia Complex, § 11:2
employer response, § 11:6
fear of acquiring, § 11:95
infliction of distress by employee,
§ 11:95
infliction of distress by employer,
§ 11:92

HIV TESTING—Cont'd

AIDS—Cont'd
 invasion of privacy, **§ 11:91**
 Arbitration, **§ 11:98**
 Bargaining requirements
 Railway Labor Act, **§ 11:97**
 Benefits, **§ 11:8**
 Civil Rights Act of 1964, **§ 11:17**
 Common-law claims
 generally, **§ 11:89**
 emotional distress, **§ 11:92**
 fear of AIDS, **§ 11:95**
 invasion of privacy, **§ 11:91**
 Confidentiality
 insurance administrators, Florida,
§ 11:25
 workers' compensation proceedings, **§ 11:94**
 Consent requirements
 Delaware, **§ 11:24**
 Maine, **§ 11:33**
 North Dakota, **§ 11:46**
 Constitutional issues, **§ 11:10**
 Costs, **§ 11:8**
 Emotional distress claims, **§ 11:92**
 Fourth Amendment issues, **§ 11:10**
 Georgia, **§ 11:26**
 Guidelines for prevention
 immunodeficiency, hepatitis B,
§ 11:13
 Hawaii, **§ 11:67**
 Health care workers
 public sector, **§ 11:11**
 Health care workers, West Virginia,
§ 11:56
 Hepatitis B, **§ 11:13**
 Insurance administrators,
 confidentiality of results
 Florida, **§ 11:25**
 Invasion of privacy claims, **§ 11:91**
 Massachusetts, **§ 11:34**
 Medical personnel
 fear of AIDS, **§ 11:95**
 Michigan, **§ 11:35**
 Minnesota, **§ 11:76**
 National Labor Relations Act
 application, **§ 11:96**
 Nevada, **§ 11:40**

HIV TESTING—Cont'd

New York, **§ 11:44**
 Occupational Safety and Health Act,
§ 11:16
 Preemployment screening
 National Labor Relations Act,
 application, **§ 11:96**
 Prevalence, **§ 11:9**
 Privacy, right to, **§ 11:11**
 Railway Labor Act, **§ 11:97**
 Reporting requirements, Kansas,
§ 11:30
 State Anti-Discrimination Statutes
 Generally, **§ 11:58**
 Alaska, **§ 11:59**
 Arizona, **§ 11:60**
 Arkansas, **§ 11:61**
 California, **§ 11:62**
 Colorado, **§ 11:63**
 Connecticut, **§ 11:64**
 District of Columbia, **§ 11:65**
 Georgia, **§ 11:66**
 Illinois, **§ 11:68**
 Indiana, **§ 11:69**
 Kansas, **§ 11:70**
 Louisiana, **§ 11:71**
 Maine, **§ 11:72**
 Maryland, **§ 11:73**
 Massachusetts, **§ 11:74**
 Michigan, **§ 11:75**
 Missouri, **§ 11:77**
 New York, **§ 11:79**
 North Carolina, **§ 11:80**
 Oregon, **§ 11:82**
 Pennsylvania, **§ 11:83**
 Tennessee, **§ 11:84**
 Utah, **§ 11:85**
 West Virginia, **§ 11:87**
 Wisconsin, **§ 11:88**
 State statutes
 generally, **§ 11:18**
 Alabama, **§ 11:19**
 California, **§ 11:21**
 Colorado, **§ 11:22**
 Connecticut, **§ 11:23**
 Delaware, **§ 11:24**
 Florida, **§ 11:25**
 Hawaii, **§ 11:27**

INDEX

HIV TESTING—Cont'd
State statutes—Cont'd
Illinois, § 11:28
Iowa, § 11:29
Kansas, § 11:30
Kentucky, § 11:31
Louisiana, § 11:32
Maine, § 11:33
Massachusetts, § 11:33
Minnesota, § 11:36
Missouri, § 11:37
Montana, § 11:38
Nebraska, § 11:39
New Hampshire, § 11:41
New Jersey, § 11:42
New Mexico, § 11:43
North Carolina, § 11:45
North Dakota, § 11:46
Ohio, § 11:47
Oklahoma, § 11:48
Oregon, § 11:49
Pennsylvania, § 11:50
Rhode Island, § 11:51
Texas, § 11:52
Vermont, § 11:53
Washington, § 11:55
West Virginia, § 11:56
Wisconsin, § 11:57
Transmission risks
Occupational Safety and Health
Act, § 11:16
Unemployment compensation,
§ 11:93
Unionized employers
arbitration, § 11:98
bargaining requirements, § 11:97
National Labor Relations Act,
§ 11:96
Railway Labor Act, § 11:97
Virginia, § 11:54
Virus
AIDS Dementia Complex, § 11:2
employer response, § 11:6
prevalence, § 11:3
transmission, § 11:4
Workers' compensation claims,
§ 11:94
Wrongful discharge claims, § 11:90

HOMOSEXUALS
See Sexual Orientation Discrimina-
tion
HONESTY TESTING
See Psychology and Honesty Testing
IDAHO
Drug testing, § 4A:14
Genetic testing, § 12:26
Polygraph testing, § 6:32
ILLINOIS
Drug testing, § 4A:15
Electronic monitoring and surveil-
lance, § 8A:28
Genetic testing, § 12:27
HIV testing, § 11:28, 11:68
Off-duty conduct, § 13:19
Polygraph testing, § 6:33
Psychological and honesty testing,
§ 7:24
Sexual orientation and gender
identity discrimination, § 9:28
IMPORTANCE
Employee privacy rights, § 1:4
INDIANA
Drug testing, § 4A:16
HIV testing, § 11:69
Off-duty conduct, § 13:20
Polygraph testing, § 6:34
Psychological and honesty testing,
§ 7:25
INDIRECT REGULATION
Electronic monitoring and surveil-
lance, § 8A:21
INTEGRITY TESTING
See Polygraph Testing; Psychological
and Honesty Testing
**INTENTIONAL, NEGLIGENT,
EMOTIONAL DISTRESS**
Common law challenges
drug testing, § 4:9
**INTENTIONAL INFILCTION OF
EMOTIONAL DISTRESS**
Electronic monitoring and surveil-
lance, § 8A:52

**INTENTIONAL INFILCTION OF
EMOTIONAL DISTRESS**

—Cont'd

Sexual orientation and gender
identity discrimination, § 9:60

INVASION OF PRIVACY

Drug testing
common law challenges, § 4:7
Psychological and honesty testing,
§ 7:41

IOWA

Drug testing, § 4A:17
Genetic testing, § 12:28
HIV testing, § 11:29
Polygraph testing, § 6:35
Sexual orientation and gender
identity discrimination, § 9:29

KANSAS

Drug testing, § 4A:18
Genetic testing, § 12:29
HIV testing, § 11:30, 11:70
Psychological and honesty testing,
§ 7:26

KENTUCKY

Drug testing, § 4A:19
HIV testing, § 11:31
Off-duty conduct, § 13:21
Polygraph testing, § 6:36
Sexual orientation and gender
identity discrimination, § 9:30

**LABOR MANAGEMENT
RELATIONS ACT**

See also National Labor Relations
Act; Railway Labor Act; Union-
ized Employers
Drug testing, § 5:7
Electronic monitoring and surveil-
lance, § 8A:60
Preemption, state law claims
drug testing, § 5:7
searches, § 8:20
Searches, § 8:20

LESBIANS

See Sexual Orientation Discrimina-
tion

LIE DETECTION DEVICES

See Polygraph Testing

LIFESTYLE

See Off-Duty Conduct

LOUISIANA

Drug testing, § 4A:20
Electronic monitoring and surveil-
lance, § 8A:29
Genetic testing, § 12:30
HIV testing, § 11:32, 11:71
Off-duty conduct, § 13:22
Polygraph testing, § 6:37

MAINE

Drug testing, § 4A:21
Electronic monitoring and surveil-
lance, § 8A:30
Genetic testing, § 12:31
HIV testing, § 11:33, 11:72
Off-duty conduct, § 13:23
Polygraph testing, § 6:38
Sexual orientation and gender
identity discrimination, § 9:31

MARYLAND

Drug testing, § 4A:22
Electronic monitoring and surveil-
lance, § 8A:31
Genetic testing, § 12:32
HIV testing, § 11:73
Polygraph testing, § 6:39
Sexual orientation and gender
identity discrimination, § 9:32

MASSACHUSETTS

Drug testing, § 4A:23
Genetic testing, § 12:33
HIV testing, § 11:34, 11:74
Off-duty conduct, § 13:24
Polygraph testing, § 6:40
Psychological and honesty testing,
§ 7:27
Sexual orientation and gender
identity discrimination, § 9:33

MEDICAL SCREENING

AIDS, HIV
workplace risks, § 11:5

INDEX

MEDICAL SCREENING—Cont'd

Workplace
 AIDS and HIV
 prevalence, § 11:3
 HIV
 method, transmission, § 11:4
 HIV, AIDS, § 11:1

METHODS

Drug testing, § 2:4

MICHIGAN

Drug testing, § 4A:24
Electronic monitoring and surveillance, § 8A:32
Genetic testing, § 12:34
HIV testing, § 11:35, 11:75
Polygraph testing, § 6:41
Psychological and honesty testing, § 7:28
Sexual orientation and gender identity discrimination, § 9:34

MINNESOTA

Drug testing, § 4A:25
Genetic testing, § 12:35
HIV testing, § 11:36, 11:76
Off-duty conduct, § 13:25
Polygraph testing, § 6:42
Psychological and honesty testing, § 7:29
Sexual orientation and gender identity discrimination, § 9:35

MISSISSIPPI

Drug testing, § 4A:26
Off-duty conduct, § 13:26
Polygraph testing, § 6:43
Sexual orientation and gender identity discrimination, § 9:36

MISSOURI

Drug testing, § 4A:27
Electronic monitoring and surveillance, § 8A:33
Genetic testing, § 12:36
HIV testing, § 11:37, 11:77
Off-duty conduct, § 13:27
Sexual orientation and gender identity discrimination, § 9:37

MONTANA

Drug testing, § 4A:28
Electronic monitoring and surveillance, § 8A:34
HIV testing, § 11:38
Off-duty conduct, § 13:28
Polygraph testing, § 6:44
Sexual orientation and gender identity discrimination, § 9:38

NATIONAL LABOR RELATIONS ACT

See also Unionized Employers
Bargaining requirements
 HIV testing, § 11:96
 polygraph testing, § 6:77
Drug testing
 preemption, state law claims, § 5:8
Electronic monitoring and surveillance, § 8A:58
Polygraph testing
 bargaining requirements, § 6:77
Preemption, state law claims
 drug testing, § 5:8
 searches, § 8:20
Searches
 preemption, state law claims, § 8:20
Unilateral employers action, § 8:18

NEBRASKA

Drug testing, § 4A:29
Electronic monitoring and surveillance, § 8A:35
Genetic testing, § 12:37
HIV testing, § 11:39
Polygraph testing, § 6:45

NEGLIGENCE

Drug testing
 Common law challenges, § 4:10

NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS

Sexual orientation and gender identity discrimination, § 9:60

NEVADA

Drug testing, § 4A:30
Electronic monitoring and surveillance, § 8A:36

NEVADA—Cont'd

Genetic testing, § 12:38
HIV testing, § 11:40
Off-duty conduct, § 13:29
Polygraph testing, § 6:46
Psychological and honesty testing, § 7:30
Sexual orientation and gender identity discrimination, § 9:39

NEW HAMPSHIRE

Drug testing, § 4A:31
Electronic monitoring and surveillance, § 8A:37
Genetic testing, § 12:39
HIV testing, § 11:41
Off-duty conduct, § 13:30
Sexual orientation and gender identity discrimination, § 9:40

**NEW HAMPSHIRE
REGULATIONS**

Psychological and honesty testing, § 7:31

NEW JERSEY

Drug testing, § 4A:32
Electronic monitoring and surveillance, § 8A:38
Genetic testing, § 12:40
HIV testing, § 11:42
Off-duty conduct, § 13:31
Polygraph testing, § 6:47
Sexual orientation and gender identity discrimination, § 9:41

NEW MEXICO

Drug testing, § 4A:33
Electronic monitoring and surveillance, § 8A:39
Genetic testing, § 12:41
HIV/AIDS discrimination, § 11:78
HIV testing, § 11:43
Off-duty conduct, § 13:32
Polygraph testing, § 6:48
Sexual orientation and gender identity discrimination, § 9:42

NEW YORK

Electronic monitoring and surveillance, § 8A:40

NEW YORK—Cont'd

Genetic testing, § 12:42
HIV testing, § 11:44, 11:79
Off-duty conduct, § 13:33
Polygraph testing, § 6:49
Sexual orientation and gender identity discrimination, § 9:43

NORTH CAROLINA

Drug testing, § 4A:34
Genetic testing, § 12:43
HIV testing, § 11:45, 11:80
Off-duty conduct, § 13:34
Sexual orientation and gender identity discrimination, § 9:44

NORTH DAKOTA

Drug testing, § 4A:35
HIV testing, § 11:46
Off-duty conduct, § 13:35
Polygraph testing, § 6:50
Sexual orientation and gender identity discrimination, § 9:45

**OCCUPATIONAL SAFETY AND
HEALTH ACT**

Fetal vulnerability policies
applicability, § 10:15
policies, impact, § 10:15
reproductive hazards, § 10:14
Genetic testing, § 12:13
HIV testing, § 11:16

OFF-DUTY CONDUCT

Common-law actions
denial, unemployment compensation benefit, § 13:51
grounds for discharge, § 13:47
intentional infliction of emotional distress, § 13:50
invasion of privacy, § 13:49
lifestyle discrimination, § 13:46
wrongful discharge, § 13:48
Constitutional protections
due process and liberty rights, § 13:8
employee lifestyle
right to privacy, § 13:4
equal protection, § 13:5
First Amendment, § 13:6

INDEX

OFF-DUTY CONDUCT—Cont'd

Constitutional protections—Cont'd
 freedom of association, § 13:7

Employee lifestyle
 Civil Service Reform Act, § 13:9
 State laws, § 13:12-13:46

Employer lifestyle
 extent, § 13:1

Employer regulation
 effects, § 13:3
 reputation justifications, § 13:2

Employer restrictions
 justifications, § 13:2

Equal protection, classification of
 activity, § 13:5

State laws

- Colorado, § 13:14
- Connecticut, § 13:15
- Delaware, § 13:16
- District of Columbia, § 13:17
- Hawaii, § 13:18
- Illinois, § 13:19
- Indiana, § 13:20
- Kentucky, § 13:21
- lifestyle discrimination, § 13:46
- Louisiana, § 13:22
- Maine, § 13:23
- Massachusetts, § 13:24
- Minnesota, § 13:25
- Mississippi, § 13:26
- Missouri, § 13:27
- Montana, § 13:28
- Nevada, § 13:29
- New Hampshire, § 13:30
- New Jersey, § 13:31
- New Mexico, § 13:32
- New York, § 13:33
- North Carolina, § 13:34
- North Dakota, § 13:35
- Oklahoma, § 13:36
- Oregon, § 13:37
- Rhode Island, § 13:38
- South Carolina, § 13:39
- South Dakota, § 13:40
- Tennessee, § 13:41
- Virginia, § 13:42
- West Virginia, § 13:43
- Wisconsin, § 13:44

OFF-DUTY CONDUCT—Cont'd

Statutory protections

- Americans With Disabilities Act of
 1990, § 13:10
- Civil Service Reform Act, § 13:9
- Title VII of the Civil Rights Act of
 1964, § 13:11

Unemployment benefits, denial,
 § 13:51

Unionized employers

- arbitral treatment, § 13:53
- discipline challenges, § 13:55
- federal preemption, § 13:52
- regulation challenges, § 13:54

OHIO

- Drug testing, § 4A:36
- HIV testing, § 11:47
- Polygraph testing, § 6:51
- Psychological and honesty testing,
 § 7:32
- Sexual orientation and gender
 identity discrimination, § 9:46

OKLAHOMA

- Drug testing, § 4A:37
- Electronic monitoring and surveil-
 lance, § 8A:41
- Genetic testing, § 12:44
- HIV/AIDS discrimination, § 11:81
- HIV testing, § 11:48
- Off-duty conduct, § 13:36
- Polygraph testing, § 6:52
- Psychological and honesty testing,
 § 7:33

**OMNIBUS CRIME CONTROL AND
SAFE STREETS ACT 1968**

Consent exemption

- Electronic monitoring and surveil-
 lance, § 8A:15

Electronic monitoring and surveil-
 lance

- Access to stored communications,
 § 8A:18
- Definitions, § 8A:13
- Disclosure to stored communica-
 tions by service provider,
 § 8A:19

Exemption, § 8A:17

**OMNIBUS CRIME CONTROL AND
SAFE STREETS ACT 1968**

—Cont'd

Electronic monitoring and surveillance—Cont'd
Federal regulation
 ordinary course of business
 exemption, § 8A:16
 restrictions, § 8A:14

**OMNIBUS TRANSPORTATION
EMPLOYEE TESTING ACT
OF 1991**

See Drug Testing
Drug testing, § 3:32

OREGON

Drug testing, § 4A:38
Electronic monitoring and surveillance, § 8A:42
Genetic testing, § 12:45
HIV testing, § 11:49, 11:82
Off-duty conduct, § 13:37
Polygraph testing, § 6:53
Sexual orientation and gender identity discrimination, § 9:47

OTHER COMMON LAW

Psychological and honesty testing, § 7:42

**OTHER STATUTORY
REGULATION**

Private sector employers
 drug testing, § 4:5

PAPER AND PENCIL TESTS

See Psychological and Honesty Testing

PENNSYLVANIA

Drug testing, § 4A:39
HIV testing, § 11:50, 11:83
Polygraph testing, § 6:54
Sexual orientation and gender identity discrimination, § 9:48

PERSONALITY TESTING

See Psychological and Honesty Testing

PERSONAL SEARCHES

See Searches

POLYGRAPH TESTING

See also Preemployment Screening
Alabama, § 6:22
Alaska, § 6:23
Americans With Disabilities Act of 1990, § 6:20
Arbitration
 issues, § 6:80
 weight, § 6:84
Arizona, § 6:24
Arkansas, § 6:25
California
 generally, § 6:26
Civil Rights Act of 1964, § 6:19
Collective bargaining
 Railway Labor Act, § 6:78
Common-law restrictions
 assault, battery, false imprisonment, § 6:71
 defamation, § 6:69
 infliction, emotional distress, § 6:68
 invasion of privacy, § 6:67
 negligence, § 6:70
 Other state law claims, § 6:74
 refusal to submit
 grounds for discharge, § 6:73
 state claim challenges, § 6:66
 wrongful discharge
 violation of public policy, § 6:72
Connecticut, § 6:27
Constitutional issues
 due process, § 6:11
 equal protection, § 6:10
 privacy, right to, § 6:9
 self-incrimination, § 6:8
Delaware, § 6:28
Disabilities, Americans With Disabilities Act, § 6:20
Disclosure limitations, § 6:17
Disclosure limitations, § 6:17
District of Columbia, § 6:29
Duty to bargain, § 6:78
Employee Polygraph Protection Act of 1988
 preemption, § 6:18
 state law, effect, § 6:18
Employer justifications, § 6:5

INDEX

POLYGRAPH TESTING—Cont'd

Employer's
duty to bargain, § 6:77
National Labor Relations Act,
§ 6:77
National Labor Relations Act,
§ 6:77
Unionized employers
bargaining requirements, § 6:77
National Labor Relations Act,
§ 6:77
Employment uses, § 6:3
Equal protection, § 6:10
Evidence, admissibility of test
results, § 6:84
Exemptions
drug distributors, § 6:15
drug manufacturers, § 6:15
test requirements
Employee Polygraph Protection
Act of 1988, § 6:16
Federal preemption, § 6:79
Georgia
generally, § 6:30
Hawaii, § 6:31
History
lie detection devices, § 6:1
Idaho, § 6:32
Illinois
generally, § 6:33
Indiana
generally, § 6:34
Iowa
generally, § 6:35
Kentucky
generally, § 6:36
Limited exemption
investigations of economic loss or
injury, § 6:13
Limited exemptions
security services, § 6:14
Louisiana
generally, § 6:37
Maine, § 6:38
Maryland
generally, § 6:39
Massachusetts, § 6:40
Methods of examination, § 6:4

POLYGRAPH TESTING—Cont'd

Michigan, § 6:41
Minnesota, § 6:42
Mississippi, § 6:43
Montana, § 6:44
Nebraska, § 6:45
Nevada, § 6:46
New Jersey, § 6:47
New Mexico
generally, § 6:48
New York
generally, § 6:49
North Dakota, § 6:50
Ohio
generally, § 6:51
Oklahoma, § 6:52
Oregon, § 6:53
Pennsylvania
generally, § 6:54
Preemption, state law claims, § 6:79
Privacy, right to, § 6:9
Public sector
constitutional issues, § 6:7
due process, § 6:11
Employee Polygraph Protection
Act of 1988, § 6:12
equal protection, § 6:10
privacy, right to, § 6:9
self-incrimination, § 6:8
Railway Labor Act
bargaining requirements, § 6:78
Refusal of tests
discharge grounds, § 6:82
evidence of guilt, § 6:83
Refusal of tests
discharge grounds, § 6:82
evidence of guilt, § 6:83
grounds for discharge, § 6:82
Refusal to submit polygraph tests
discharge grounds, § 6:82
Regulations
Civil Rights Act of 1964, § 6:19
state statutes, § 6:21-6:65
Requirements for limited exemptions
Employee Polygraph Protection
Act of 1988, § 6:16
Restrictions
common law, § 6:66

POLYGRAPH TESTING—Cont'd

Restrictions—Cont'd
 federal preemption, **§ 6:79**
 preemption, federal labor laws,
§ 6:79
 reasonableness, **§ 6:81**
 Results, disclosure limitations, **§ 6:17**
 Rhode Island, **§ 6:55**
 Self-incrimination, **§ 6:8**
 South Carolina
 generally, **§ 6:56**
 South Dakota, **§ 6:57**
 Special considerations
 unionized employers, **§ 6:76**
 State statutes
 generally, **§ 6:21**
 Alabama, **§ 6:22**
 Alaska, **§ 6:23**
 Arizona, **§ 6:24**
 Arkansas, **§ 6:25**
 California, **§ 6:26**
 Connecticut, **§ 6:27**
 Delaware, **§ 6:28**
 District of Columbia, **§ 6:29**
 federal preemption, **§ 6:79**
 Georgia, **§ 6:30**
 Hawaii, **§ 6:31**
 Idaho, **§ 6:32**
 Illinois, **§ 6:33**
 Indiana, **§ 6:34**
 Iowa, **§ 6:35**
 Kentucky, **§ 6:36**
 Louisiana, **§ 6:37**
 Maine, **§ 6:38**
 Maryland, **§ 6:39**
 Massachusetts, **§ 6:40**
 Michigan, **§ 6:41**
 Minnesota, **§ 6:42**
 Mississippi, **§ 6:43**
 Montana, **§ 6:44**
 Nebraska, **§ 6:45**
 Nevada, **§ 6:46**
 New Jersey, **§ 6:47**
 New Mexico, **§ 6:48**
 New York, **§ 6:49**
 North Dakota, **§ 6:50**
 Ohio, **§ 6:51**
 Oklahoma, **§ 6:52**

POLYGRAPH TESTING—Cont'd

State statutes—Cont'd
 Oregon, **§ 6:53**
 Pennsylvania, **§ 6:54**
 preemption, **§ 6:18**
 Rhode Island, **§ 6:55**
 South Carolina, **§ 6:56**
 South Dakota, **§ 6:57**
 Tennessee, **§ 6:58**
 Texas, **§ 6:59**
 Utah, **§ 6:60**
 Vermont, **§ 6:61**
 Virginia, **§ 6:62**
 Washington, **§ 6:63**
 West Virginia, **§ 6:64**
 Wisconsin, **§ 6:65**
 Statutory regulation
 exemptions
 ongoing investigations, **§ 6:13**
 Statutory regulations
 Employee Polygraph Protection
 Act of 1988, **§ 6:12**
 Tennessee
 correctional department employ-
 ees, **§ 6:58**
 Texas
 generally, **§ 6:59**
 Types
 modern lie detectors, **§ 6:2**
 Unemployment compensation
 benefits, **§ 6:75**
 Unionized employers
 bargaining requirements, **§ 6:78**
 Railway Labor Act, **§ 6:78**
 Special considerations, **§ 6:76**
 Utah
 generally, **§ 6:60**
 Utility, **§ 6:6**
 Validity, **§ 6:6**
 Validity and utility, **§ 6:6**
 Vermont, **§ 6:61**
 Virginia
 generally, **§ 6:62**
 Washington, **§ 6:63**
 West Virginia
 generally, **§ 6:64**
 Wisconsin, **§ 6:65**

INDEX

PREEMPLOYMENT

Drug testing
constitutional issues, **§ 3:15**

PREEMPLOYMENT SCREENING

See also Drug Testing; Genetic Testing; HIV Testing; Polygraph Testing; Psychological and Honesty Testing

Drug testing
arbitration, **§ 5:12**

PREEMPLOYMENT TESTING

See also Preemployment Screening

PREEMPTION

Sexual orientation and gender identity discrimination, effect of federal labor law, **§ 9:65**
State law claims regarding psychological and honesty testing by federal labor law, **§ 7:46**

PREEMPTION, FEDERAL LABOR LAWS

Drug testing, **§ 5:7-5:9**

PREGNANCY DISCRIMINATION ACT OF 1978

See Fetal Vulnerability Policies

PRIVACY RIGHTS

See also Constitutional Issues
Generally, **§ 1:1-1:5**
AIDS status of individual, publicizing, **§ 11:91**
Employer actions, **§ 1:1**
Fetal vulnerability policies, **§ 10:5**
Genetic testing, **§ 12:7**
HIV testing, **§ 11:11**
Importance, **§ 1:4**
Preemption
 Railway Labor Act, **§ 5:9**
Psychological and honesty testing as violation of, **§ 7:8**
Searches
 generally, **§ 8:11**

PRIVATE INFORMATION

Employee privacy rights
Scope, **§ 1:5**

PRIVATE SECTOR EMPLOYERS

See also Unionized Employers

Drug testing
 Civil Rights Act of 1964, **§ 4:3**
 common law challenges, **§ 4:6**
 other statutory regulation, **§ 4:5**
 state statutes, **§ 4:4**
 unionized employers, **§ 5:1-5:25**

Genetic testing
 Civil Rights Act of 1964, **§ 12:10**

PROPERTY INTERESTS

Sexual orientation and gender identity discrimination, deprivation of property interest without due process, **§ 9:8**

PROPERTY SEARCHES

See Searches

PSYCHOLOGICAL AND HONESTY TESTING

See also Preemployment Screening
Alaska regulations, **§ 7:18**

Americans with Disabilities Act of 1990, **§ 7:16**

Arbitration cases, **§ 7:47**

California regulations, **§ 7:19**

Challenges to testing as revealing evidence of union bias or sympathy, **§ 7:45**

Civil Rights Act of 1964, Title VII, **§ 7:14**

Common law challenges

 generally, **§ 7:39-7:42**

 invasion of privacy, **§ 7:41**

 results of or refusal to submit to testing, **§ 7:40**

Connecticut regulations, **§ 7:20**

Constitutional issues

 First Amendment, violation of, **§ 7:6**

 Fourth Amendment, violation of, **§ 7:5**

Costs, economic and human, **§ 7:4**

Delaware regulations, **§ 7:21**

Discharges or discipline based upon results of or refusal to submit to testing, **§ 7:40**

Due process challenges, **§ 7:9**

PSYCHOLOGICAL AND HONESTY TESTING—Cont'd

Duty to bargain, employer's, § 7:44

Employee Polygraph Protection Act of 1988, § 7:13

Employer justification, § 7:2

Employer's duty to bargain, § 7:44

Employer's failure to conduct or act on results, § 7:11

Equal protection, as violation of, § 7:10

Extent, § 7:2

Federal statutes relevant to, § 7:12-7:38

First Amendment, as violation of freedom of speech, § 7:6

Florida regulations, § 7:22

42 U.S.C.A. § 1983, § 7:15

Fourth Amendment, as violation of, § 7:5

Freedom of speech, violation of, § 7:6

Hawaii regulations, § 7:23

Illinois regulations, § 7:24

Indiana regulations, § 7:25

Invasion of privacy, § 7:41

Invasion of privacy, § 7:41

Kansas regulations, § 7:26

Massachusetts regulations, § 7:27

Michigan regulations, § 7:28

Minnesota regulations, § 7:29

Nevada regulations, § 7:30

New Hampshire regulations, § 7:31

Ohio regulations, § 7:32

Oklahoma regulations, § 7:33

Other common law, § 7:42

Preemption of state law claims regarding testing by federal labor law, § 7:46

Purpose of, § 7:1

Results of or refusal to submit to testing, discharges or discipline based upon, § 7:40

Rhode Island regulations, § 7:34

Right to privacy, as violation of, § 7:8

Special duties of unionized employers, § 7:43

State regulation, § 7:17-7:38

PSYCHOLOGICAL AND HONESTY TESTING—Cont'd

Texas regulations, § 7:35

Types of common law challenges, § 7:39

Union bias or sympathy, challenges to testing as revealing evidence of, § 7:45

Unionized employees

- arbitration cases, § 7:47
- challenges to testing as revealing evidence of union bias or sympathy, § 7:45
- employer's duty to bargain, § 7:44
- preemption of state law claims regarding testing by federal labor law, § 7:46
- special duties of unionized employers, § 7:43
- union bias or sympathy, challenges to testing as revealing evidence of, § 7:45

Validity, § 7:3

Washington regulations, § 7:36

West Virginia regulations, § 7:37

Wisconsin regulations, § 7:38

PSYCHOLOGICAL STRESS EVALUATOR

See Polygraph Testing

PSYCHOLOGICAL TESTING AS VIOLATION OF

Constitutional issues

- freedom of belief, § 7:7
- Freedom of belief
- constitutional issues, § 7:7

PUBLIC EMPLOYMENT

State statutes

- drug testing, § 3:34

PUBLIC HEALTH AND SAFETY

See also Drug Testing

PUBLIC POLICY VIOLATION

Sexual orientation and gender identity discrimination, § 9:58

PUBLIC SECTOR EMPLOYERS

Drug testing

- generally, § 3:1

INDEX

PUBLIC SECTOR EMPLOYERS

—Cont’d

- Drug testing—Cont’d
 - constitutionality, § 3:3-3:28
 - executive order No. 12,564, § 3:2
 - Fourth Amendment issues, § 3:3-3:28
 - Health and Human Services, § 3:33
 - history, § 3:1
 - periodic, § 3:16
 - random, § 3:17
 - regulatory issues, § 3:29-3:34
 - Rehabilitation Act of 1973, § 3:29
 - routine, § 3:16
 - statutory issues, § 3:29-3:34
- Genetic testing
 - Fourth Amendment issues, § 12:6
 - privacy, right to, § 12:7
- HIV testing
 - constitutional issues, § 11:11
- Polygraph testing
 - constitutional issues, § 6:7
 - due process, § 6:11
 - equal protection, § 6:10
 - self-incrimination, § 6:8
- Rehabilitation Act of 1973
 - drug testing, § 3:29
- Searches
 - employee property, § 8:7
 - Fourth Amendment challenges, § 8:3
 - lower court decisions
 - O’Connor v. Ortega, § 8:5
 - personal searches, § 8:8
 - persons, § 8:8
 - privacy, right to, § 8:11
 - Supreme Court analysis, § 8:4
- Sexual orientation and gender
 - identity discrimination
 - generally, § 9:1-9:65
 - condemnation of homosexuality as protected speech under First Amendment, § 9:10
 - disclosure of homosexuality as protected speech under First Amendment, § 9:9

PUBLIC SECTOR EMPLOYERS

—Cont’d

- Sexual orientation and gender
 - identity discrimination—Cont’d
 - due process
 - deprivation of property without, § 9:8
 - equal protection violation, § 9:6
 - First Amendment, § 9:10
 - property interests, deprivation of
 - without due process, § 9:8
 - religion, freedom of, § 9:12
 - right to privacy violation, § 9:5

RAILWAY LABOR ACT

- See also Unionized Employers
- Bargaining requirements
 - HIV testing, § 11:97
 - polygraph testing, § 6:78
- Dispute types, § 5:6, 11:97
- Drug testing
 - major disputes, § 5:6
 - minor disputes, § 5:6
 - preemption, state law claims, § 5:9
- Duty to negotiate
 - searches, § 8:19
- Electronic monitoring and surveillance, § 8A:59, 8A:61
- Employers
 - Duty to bargain, § 5:5
 - Employers covered, § 8:19
 - HIV testing, bargaining requirements, § 11:97
 - Preemption, state law claims
 - drug testing, § 5:9
 - searches, § 8:21
- Searches
 - duty to negotiate, § 8:19
 - preemption, state law claims, § 8:21

REGULATIONS

- Americans With Disabilities Act of 1990
 - polygraph testing, § 6:20
- Civil Rights Act of 1964
 - drug testing, § 4:3
 - polygraph testing, § 6:19

REGULATIONS—Cont'd

- Drug testing
 - Civil Rights Act of 1964, § 4:3
- Polygraph testing
 - Civil Rights Act of 1964, § 6:19
 - state statutes, § 6:21-6:65

REHABILITATION ACT OF 1973

- Drug testing, § 3:29
- Genetic testing, § 12:11
- Sexual orientation and gender identity discrimination, § 9:16

RELIGION

- See Drug Use
- Sexual orientation and gender identity discrimination, freedom of religion, § 9:12

REPRODUCTIVE HAZARDS

- See Fetal Vulnerability Policies

RESTRICTIONS

- Polygraph testing
 - common law, § 6:66
 - federal preemption, § 6:79
 - preemption, § 6:79
 - reasonableness, § 6:81
 - refusal of tests
 - evidence of guilt, § 6:83

RHODE ISLAND

- Drug testing, § 4A:40
- Electronic monitoring and surveillance, § 8A:43
- Genetic testing, § 12:46
- HIV testing, § 11:51
- Off-duty conduct, § 13:38
- Polygraph testing, § 6:55
- Psychological and honesty testing, § 7:34
- Sexual orientation and gender identity discrimination, § 9:49

ROUTINE PERIODIC

- Constitutional issues
 - drug testing, § 3:16

SCOPE

- Employee privacy rights, § 1:5
- Private information
 - Employee privacy rights, § 1:5

SEARCHES

- Actions
 - emotional distress, § 8:14
 - false imprisonment, § 8:15
- Agreements, § 8:9
- Arbitration
 - arbitral treatment, § 8:22
 - collective bargaining agreements, § 8:27
- employee property
 - outside workplace, § 8:25
 - employee property in workplace, § 8:24
- employees, § 8:26
- employer policies, § 8:27
- employer property, § 8:22
- personal, § 8:26
- Common law
 - federal preemption, § 8:21
- Constitutional issues
 - generally, § 8:3-8:11
 - employee property within and outside workplace, § 8:7
 - employees, § 8:8
 - exclusionary rule, § 8:10
 - Fourth Amendment, § 8:3
 - lower court decisions
 - O'Connor v. Ortega, § 8:5
 - personal, § 8:8
 - privacy, right to, § 8:11
- Defamation claims, § 8:16
- Drug testing
 - reasonable suspicion, § 3:19
- Duty to negotiate
 - Railway Labor Act, § 8:19
- Emotional distress claims, § 8:14
- Employee property
 - outside workplace, § 8:25
- Employees
 - arbitration, § 8:26
 - emotional distress claims, § 8:14
- Employer property
 - arbitration, § 8:23
 - constitutional issues, § 8:6
 - Fourth Amendment issues, § 8:6
- Exclusionary rule, § 8:10
- False imprisonment claims, § 8:15

INDEX

SEARCHES—Cont'd

- Fourth Amendment issues
 - challenge elements, § 8:3
 - consent, § 8:3-8:10
 - exclusionary rule, § 8:10
 - lower court decisions, § 8:5
- Invasion of privacy, § 8:13
- Personal
 - arbitration, § 8:26
- Preemption, federal labor laws, § 8:21
- Preemption, state law claims
 - Railway Labor Act, § 8:21
- Preemption, state law claims
 - Railway Labor Act, § 8:21
- Privacy
 - right to, § 8:11
- Public sector
 - personal searches, § 8:8
 - persons, § 8:8
- Railway Labor Act
 - duty to negotiate, § 8:19
 - preemption, state law claims, § 8:21
- Regulations, § 8:9
- Types, § 8:1
- Unionized employees, arbitration
 - employer property, § 8:23
- Unionized employers
 - arbitration
 - arbitral treatment, § 8:22
 - collective bargaining agreements, § 8:27
 - employee property in workplace, § 8:24
 - employees, § 8:26
 - employer policies, § 8:27
 - personal, § 8:26
 - duty to negotiate, § 8:19
 - federal preemption, § 8:21
 - National Labor Relations Act, § 8:18
 - Railway Labor Act, § 8:21

SEARCHES OF EMPLOYEES AND PROPERTY

- Justifications, § 8:2

SEARCHES OF EMPLOYEES AND PROPERTY—Cont'd

- Types of searches
 - by employers, § 8:1
- SECURITY-SENSITIVE JOBS**
 - See Drug Testing
- SECURITY SERVICES**
 - Limited exemptions
 - polygraph testing, § 6:14
- SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION**
 - Generally, § 9:1 et seq.
 - Alaska, § 9:19
 - Americans with Disabilities Act (ADA), § 9:17
 - Arizona, § 9:20
 - Arkansas, § 9:21
 - California, § 9:22
 - Collective bargaining
 - “just cause” provisions, § 9:64
 - provisions prohibiting discrimination, § 9:63
 - Colorado, § 9:23
 - Common law, § 9:57-9:61
 - Condemnation of homosexuality as protected speech under First Amendment, § 9:10
 - Connecticut, § 9:24
 - Constitutional issues. Public sector employers, constitutional limitations, below
 - Contractual limitations, § 9:62-9:65
 - Delaware, § 9:25
 - Disclosure of homosexuality as protected speech under First Amendment, § 9:9
 - District of Columbia, § 9:26
 - Due process
 - deprivation of liberty without, § 9:7
 - deprivation of property without, § 9:8
 - Effects of, § 9:3
 - Equal protection violation, § 9:6
 - Federal statutes, § 9:13-9:17
 - First Amendment, § 9:9, 9:10

SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION—Cont'd

42 U.S.C.A. § 1985, § 9:15
 Gender identity, § 9:2
 Hawaii, § 9:27
 Illinois, § 9:28
 Intentional infliction of emotional distress, § 9:60
 Invasion of privacy, § 9:59
 Iowa, § 9:29
 "Just cause" provisions, § 9:64
 Justifications, employer justifications for discrimination, § 9:1
 Kentucky, § 9:30
 Labor law, preemptive effect, § 9:65
 Maine, § 9:31
 Maryland, § 9:32
 Massachusetts, § 9:33
 Michigan, § 9:34
 Minnesota, § 9:35
 Mississippi, § 9:36
 Missouri, § 9:37
 Montana, § 9:38
 Negligent infliction of emotional distress, § 9:60
 Nevada, § 9:39
 New Hampshire, § 9:40
 New Jersey, § 9:41
 New Mexico, § 9:42
 New York, § 9:43
 Non-unionized private sector employees, § 9:62
 North Carolina, § 9:44
 North Dakota, § 9:45
 Ohio, § 9:46
 Oregon, § 9:47
 Pennsylvania, § 9:48
 Preemptive effect of federal labor law, § 9:65
 Prevalence, § 9:4
 Property interests, deprivation of without due process, § 9:8
 Public policy violation, § 9:58
 Public sector employers
 due process
 deprivation of liberty without, § 9:7

SEXUAL ORIENTATION AND GENDER IDENTITY DISCRIMINATION—Cont'd

Public sector employers, constitutional limitations generally, § 9:1-9:65
 condemnation of homosexuality as protected speech under First Amendment, § 9:10
 disclosure of homosexuality as protected speech under First Amendment, § 9:9
 due process
 deprivation of liberty without, § 9:7
 deprivation of property without, § 9:8
 equal protection violation, § 9:6
 First Amendment, § 9:9, 9:10
 property interests, deprivation of without due process, § 9:8
 religion, freedom of, § 9:12
 right to privacy violation, § 9:5
 Rehabilitation Act, § 9:16
 Religion, freedom of, § 9:12
 Rhode Island, § 9:49
 Right to privacy violation, § 9:5
 State statutes, § 9:18-9:56
 Statutes, generally, § 9:13-9:56
 Tennessee, § 9:50
 Title VII, § 9:13
 Unemployment compensation benefits, § 9:61
 Unionized employers. Collective bargaining, above
 Utah, § 9:51
 Vermont, § 9:52
 Virginia, § 9:53
 Washington, § 9:54
 West Virginia, § 9:55
 Wisconsin, § 9:56

SOUTH CAROLINA

Drug testing, § 4A:41
 Off-duty conduct, § 13:39
 Polygraph testing, § 6:56

SOUTH DAKOTA

Drug testing, § 4A:42

INDEX

SOUTH DAKOTA—Cont'd
Electronic monitoring and surveillance, § 8A:43
Genetic testing, § 12:47
Off-duty conduct, § 13:40
Polygraph testing, § 6:57

SPECIAL ISSUES
Drug testing
Union attitude
Unionized employers, § 5:2

STATE REGULATIONS
Psychological and honesty testing, § 7:17-7:38

STATE STATUTES
See Electronic Monitoring and Surveillance
Drug testing
public employment, § 3:34

STATUTORY REGULATIONS
Polygraph testing
Employee Polygraph Protection Act of 1988, § 6:12

STRIP SEARCHES
See Searches

TENNESSEE
Drug testing, § 4A:43
Electronic monitoring and surveillance, § 8A:45
HIV testing, § 11:84
Off-duty conduct, § 13:41
Polygraph testing, § 6:58
Sexual orientation and gender identity discrimination, § 9:50

TESTING FOR HIV AND AIDS
Methods, § 11:7

TEXAS
Drug testing, § 4A:44
Genetic testing, § 12:48
HIV testing, § 11:52
Polygraph testing, § 6:59
Psychological and honesty testing, § 7:35

TITLE VII
See Civil Rights Act of 1964

TITLE VII—Cont'd
Sexual orientation and gender identity discrimination, § 9:13

TRANSPORTATION INDUSTRY
See Drug Testing; Public Health and Safety

TYPES OF DRUG TESTING
Preemployment testing, § 3:15

UNEMPLOYMENT COMPENSATION
HIV testing, § 11:93
Polygraph test failure, § 6:75
Searches as grounds for denial of benefits, § 8:17
Sexual orientation and gender identity discrimination, § 9:61

UNION ATTITUDE
Drug testing, § 5:2

UNION BIAS OR SYMPATHY
Psychological and honesty testing, § 7:45

UNIONIZED EMPLOYERS
See also Arbitration; Labor-Management Relations Act; National Labor Relations Act; Railway Labor Act; Electronic Monitoring and Surveillance
Arbitration
drug testing, § 5:10-5:25
HIV testing, § 11:98
searches, § 8:22-8:27
Bargaining requirements
National Labor Relations Act
polygraph testing, § 6:77
polygraph testing, § 6:77, 6:78
Railway Labor Act
HIV testing, § 11:97
polygraph testing, § 6:78
Disciplinary actions, reasonable suspicion requirement, § 5:17
Drug testing
actions, federal labor law preemption, § 5:7-5:9
arbitration, § 5:10-5:25
considerations, § 5:1
follow-up treatment, § 5:16

UNIONIZED EMPLOYERS**—Cont'd**

- Drug testing—Cont'd
 - impairment, arbitration, § 5:20
 - injunctions pending arbitration, § 5:10
- National Labor Relations Act
 - preemption, state law claims, § 5:8
 - off-duty use, arbitration, § 5:20
 - periodic, arbitration, § 5:15
 - post-accident, arbitration, § 5:14
 - preemployment
 - arbitration, § 5:12
 - preemption, state law claims, § 5:7-5:9
- Railway Labor Act
 - preemption, state law claims, § 5:9
 - random, arbitration, § 5:13
 - reasonable suspicion, arbitration, § 5:17
 - refusal of tests, arbitration, § 5:22
 - rehabilitation, § 5:16
 - routine, arbitration, § 5:15
 - terms and conditions of employment, § 5:4
- Duty to negotiate
 - National Labor Relations Act
 - searches, § 8:18
 - Railway Labor Act
 - searches, § 8:19
- Genetic testing
 - National Labor Relations Act, § 12:14
- HIV testing
 - arbitration, § 11:98
 - bargaining requirements, § 11:97
 - Railway Labor Act, § 11:97
- Just cause provisions
 - sexual orientation and gender identity discrimination, § 9:64
- Labor-Management Relations Act
 - drug testing, § 5:7
 - preemption of state claims, § 5:7
 - searches, § 8:20

UNIONIZED EMPLOYERS**—Cont'd**

- National Labor Relations Act
 - bargaining requirements
 - polygraph testing, § 6:77
 - drug testing, § 5:8
 - employers covered, § 6:77
 - National Labor Relations Board, powers, § 6:77
 - polygraph testing, § 6:77
 - preemption, state law claims
 - drug testing, § 5:8
 - searches, § 8:18
- Off-duty conduct
 - arbitral treatment, § 13:53
 - discipline challenges, § 13:55
 - federal preemption, § 13:52
 - regulation challenges, employer, § 13:54
- Polygraph testing
 - bargaining requirements, § 6:77, 6:78
 - Railway Labor Act, § 6:78
- Preemption, state law claims
 - drug testing, § 5:7-5:9
 - National Labor Relations Act, § 5:8
 - Railway Labor Act, § 5:9, 8:21
 - searches, § 8:21
- Railway Labor Act
 - bargaining requirements
 - HIV testing, § 11:97
 - polygraph testing, § 6:78
 - dispute types, § 5:6
 - drug testing, § 5:6, 5:9
 - major disputes, § 5:6
 - minor disputes, § 5:6
 - preemption, state law claims
 - drug testing, § 5:9
 - searches, § 8:21
 - searches, § 8:21
- Searches
 - arbitration, § 8:22-8:27
 - federal preemption, § 8:21
 - preemption, state law claims, § 8:21
 - Railway Labor Act, § 8:21

INDEX

UTAH

Electronic monitoring and surveillance, § 8A:46
Genetic testing, § 12:49
HIV testing, § 11:85
Polygraph testing, § 6:60
Sexual orientation and gender identity discrimination, § 9:51

VERMONT

Drug testing, § 4A:46
Electronic monitoring and surveillance, § 8A:47
Genetic testing, § 12:50
HIV testing, § 11:53
Polygraph testing, § 6:61
Sexual orientation and gender identity discrimination, § 9:52

VIDEO SURVEILLANCE

Electronic monitoring and surveillance, § 8A:5

VIRGINIA

Drug testing, § 4A:47
Electronic monitoring and surveillance, § 8A:48
Genetic testing, § 12:51
HIV/AIDS discrimination, § 11:86
HIV testing, § 11:54
Off-duty conduct, § 13:42
Polygraph testing, § 6:62
Sexual orientation and gender identity discrimination, § 9:53

VOICE STRESS ANALYZER

See Polygraph Testing

WAIVER

Attorney-client privilege, § 8A:56

WASHINGTON

Drug testing, § 4A:48
Electronic monitoring and surveillance, § 8A:49
Genetic testing, § 12:52
HIV testing, § 11:55
Polygraph testing, § 6:63
Psychological and honesty testing, § 7:36

WASHINGTON—Cont'd

Sexual orientation and gender identity discrimination, § 9:54

WEST VIRGINIA

Drug testing, § 4A:49
Electronic monitoring and surveillance, § 8A:50
Health care workers, § 11:56
HIV testing, § 11:56, 11:87
Off-duty conduct, § 13:43
Polygraph testing, § 6:64
Psychological and honesty testing, § 7:37
Sexual orientation and gender identity discrimination, § 9:55

WISCONSIN

Drug testing, § 4A:50
Electronic monitoring and surveillance, § 8A:51
Genetic testing, § 12:53
HIV testing, § 11:57, 11:88
Off-duty conduct, § 13:44
Polygraph testing, § 6:65
Psychological and honesty testing, § 7:38
Sexual orientation and gender identity discrimination, § 9:56

WORDS AND PHRASES

Railway Labor Act
minor disputes, § 11:92

WORKERS' COMPENSATION

Electronic monitoring and surveillance, § 8A:54
HIV status, § 11:94

WORKPLACE

Medical screening
HIV, AIDS, § 11:1

WORKPLACE SEARCHES

See Psychological and Honesty Testing; Searches

WRONGFUL DISCHARGE

Drug testing
common law challenges, § 4:11

EMPLOYEE PRIVACY LAW

WYOMING

Off-duty conduct, § 13:45