

Table of Contents

Volume 1

PART I. OVERVIEW

CHAPTER 1. INTRODUCTION

- § 1:1 Scope of the book
- § 1:2 Overview of the problem
- § 1:3 Investigative tools
- § 1:4 Employee causes of action
- § 1:5 Checklists

PART II. EMPLOYER ACTIONS

CHAPTER 2. SEARCHES

- § 2:1 Scope of the chapter
- § 2:2 Scope of the Fourth Amendment
- § 2:3 Requirement of state action—Private employer
- § 2:4 —Public employer
- § 2:5 —Criminal activity
- § 2:6 Public employee—Expectation of privacy
- § 2:7 —Reasonableness of search
- § 2:8 —Public danger
- § 2:9 Use of evidence
- § 2:10 Immunity from liability
- § 2:11 Private employers—In general
- § 2:12 —Security guards
- § 2:13 Consent
- § 2:14 Expectation of privacy
- § 2:15 Federal statutes
- § 2:16 State constitutions and statutes
- § 2:17 —State action
- § 2:18 —Reasonableness of search
- § 2:19 —Consent
- § 2:20 —Expectation of privacy
- § 2:21 —Use of evidence
- § 2:22 Unemployment
- § 2:23 Common-law rights—Invasion of privacy
- § 2:24 —Outrageous conduct

- § 2:25 Intentional infliction of emotional distress
- § 2:26 Prima facie tort
- § 2:27 Economic duress
- § 2:28 Defamation
- § 2:29 Public disclosure of private facts
- § 2:30 False light
- § 2:31 Good faith and fair dealing
- § 2:32 Other tortious conduct
- § 2:33 Arbitration
- § 2:34 Examples of searches
- § 2:35 Practical solutions

CHAPTER 3. MEDICAL EXAMINATIONS

I. OVERVIEW

- § 3:1 Scope of chapter

II. UNDER FEDERAL CONSTITUTION

A. GENERALLY

- § 3:2 Overview—Federal constitutional considerations
- § 3:3 Public employers
- § 3:4 Fourth Amendment
- § 3:5 Fifth Amendment
- § 3:6 Consent
- § 3:7 Expectation of privacy

B. MEDICAL TESTING

- § 3:8 Applicant testing
- § 3:9 Random testing
- § 3:10 Postaccident testing
- § 3:11 Reasonable suspicion testing
- § 3:12 Off-duty conduct

C. PRIVACY AND FEDERAL BILL OF RIGHTS

- § 3:13 Overview—Privacy and federal Bill of Rights
- § 3:14 First Amendment: freedom of speech
- § 3:15 First Amendment: freedom of religion
- § 3:16 Sixth Amendment: right to counsel
- § 3:17 Fifth and Fourteenth Amendments: due process
- § 3:18 Fourteenth Amendment: equal protection and privacy

III. UNDER FEDERAL STATUTES, RULES, AND REGULATIONS

A. GENERALLY

- § 3:19 Overview—Federal statutes, rules, and regulations

TABLE OF CONTENTS

- § 3:20 Federal Rehabilitation Act
- § 3:21 —Burden of proof
- § 3:22 Title VII of 1964 Civil Rights Act
- § 3:23 42 U.S.C.A. §§ 1981 and 1983
- § 3:24 Fair Credit Reporting Act
- § 3:25 Drug-Free Workplace Act of 1988
- § 3:26 Omnibus Transportation Employee Testing Act of 1991
- § 3:27 Family and Medical Leave Act
- § 3:28 Clinical Laboratory Improvement Amendments of 1988
- § 3:29 Department of Defense regulations
- § 3:30 Federal rules of evidence and procedure
- § 3:31 Other federal statutes

B. AMERICANS WITH DISABILITIES ACT

- § 3:32 Overview—Americans with Disabilities Act
- § 3:33 Applicants
- § 3:34 Employees
- § 3:35 Disabilities and exceptions
- § 3:36 Reasonable accommodation
- § 3:37 Medical examinations
- § 3:38 Confidentiality
- § 3:39 Health plans
- § 3:40 Checklist

C. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

- § 3:41 Overview—Health Insurance Portability and Accountability Act
- § 3:42 Regulations
- § 3:43 Protected and unprotected records
- § 3:44 Disclosure and consent
- § 3:45 Security
- § 3:46 Checklist

D. GENETIC INFORMATION NON-DISCRIMINATION ACT

- § 3:47 Overview—Genetic Information Non-Discrimination Act
- § 3:48 Definitions
- § 3:49 Prohibitions
- § 3:50 Permitted use, confidentiality and disclosures
- § 3:51 Genetic information and health plans
- § 3:52 Enforcement

IV. UNDER STATE CONSTITUTIONS, STATE STATUTES, AND MUNICIPAL CODES

- § 3:53 State Constitutions

- § 3:54 State statutes and municipal codes regulating medical examinations
- § 3:55 Unemployment laws
- § 3:56 Access, confidentiality, and privacy laws
- § 3:57 Disability and related laws
- § 3:58 Medicinal use of marijuana or other controlled substances
- § 3:59 Recreational use of marijuana and other controlled substances
- § 3:60 Religious use of marijuana and other controlled substances
- § 3:61 Workers' compensation
- § 3:62 Other state statutes and municipal codes

V. UNDER COMMON LAW

- § 3:63 Overview—Common law
- § 3:64 Assault and battery
- § 3:65 Invasion of privacy
- § 3:66 Outrageous conduct and infliction of emotional distress
- § 3:67 Defamation
- § 3:68 Negligence
- § 3:69 Wrongful discharge
- § 3:70 False imprisonment
- § 3:71 Tortious conduct and liability to third parties
- § 3:72 Contract breach or tortious interference
- § 3:73 Privilege to investigate

VI. OTHER MATTERS

- § 3:74 Arbitration
- § 3:75 Blood and urine tests
- § 3:76 Other tests
- § 3:77 Practical solutions

CHAPTER 4. INTERVIEWS

I. OVERVIEW

- § 4:1 Scope of chapter

II. UNDER FEDERAL CONSTITUTION

- § 4:2 First Amendment
- § 4:3 Fifth Amendment
- § 4:4 —Public employers
- § 4:5 —Private employers
- § 4:6 —Miranda warnings

TABLE OF CONTENTS

- § 4:7 Right to privacy
- § 4:8 Sixth Amendment; right to attorney
- § 4:9 Due process

III. UNDER FEDERAL STATUTES

A. IN GENERAL

- § 4:10 Federal statutes generally
- § 4:11 National Labor Relations Act
- § 4:12 —Weingarten rights
- § 4:13 Title VII
- § 4:14 Civil Rights Acts of 1867–1871
- § 4:15 Other federal statutes

B. AMERICANS WITH DISABILITIES ACT

- § 4:16 Americans with Disabilities Act generally
- § 4:17 Medical interviews
- § 4:18 Medical history
- § 4:19 Business necessity
- § 4:20 Disabilities and exceptions
- § 4:21 Confidentiality
- § 4:22 Checklist for medical interviews

IV. UNDER STATE LAW

- § 4:23 State law generally
- § 4:24 Unemployment proceedings
- § 4:25 Workers' compensation claims

V. UNDER COMMON LAW

- § 4:26 Common law generally
- § 4:27 False imprisonment
- § 4:28 Infliction of emotional distress and outrageous conduct
- § 4:29 Invasion of privacy
- § 4:30 Good faith and fair dealing
- § 4:31 Confidentiality
- § 4:32 Defamation
- § 4:33 Privilege to investigate
- § 4:34 Negligent investigation
- § 4:35 Interviewing former employees
- § 4:36 Attorney client privilege and work product privilege
- § 4:37 Joint defense privilege
- § 4:38 Ombuds privilege
- § 4:39 Self-critical analysis privilege
- § 4:40 Prima facie tort
- § 4:41 Economic duress

- § 4:42 Tortious interference
- § 4:43 Other tortious conduct
- § 4:44 Preemption

VI. OTHER MATTERS

- § 4:45 Arbitration
- § 4:46 Practical solutions

CHAPTER 5. POLYGRAPHS

- § 5:1 Scope of chapter
- § 5:2 Federal constitution
- § 5:3 —Right to privacy
- § 5:4 —Due process
- § 5:5 Federal statutes
- § 5:6 —Employee Polygraph Protection Act of 1988
- § 5:7 — —Exemptions
- § 5:8 — — —Private employers in security services—
Checklist
- § 5:9 — — —Pharmaceutical companies—Controlled
substances
- § 5:10 — — —Private employers in ongoing investigations—
Checklist
- § 5:11 — —Checklist
- § 5:12 — —Rights of examinees—Employers' checklist
- § 5:13 — —Qualifications of polygraphers
- § 5:14 — —Records and disclosures
- § 5:15 — —Enforcement
- § 5:16 —Civil rights
- § 5:17 Fair Credit Reporting Act
- § 5:18 National Labor Relations Act
- § 5:19 Other federal statutes
- § 5:20 State constitutions
- § 5:21 State statutes
- § 5:22 —Unemployment claims
- § 5:23 Common law
- § 5:24 —Intentional infliction of emotional distress and
outrageous conduct
- § 5:25 —Negligent infliction of emotional distress
- § 5:26 —Invasion of privacy
- § 5:27 —Wrongful discharge
- § 5:28 —Other tortious conduct
- § 5:29 Reliability
- § 5:30 Arbitration
- § 5:31 Practical suggestions

CHAPTER 6. SURVEILLANCE

I. OVERVIEW

§ 6:1 Scope of chapter

II. FEDERAL LAW

- § 6:2 Federal Constitution
- § 6:3 Federal statutes generally
- § 6:4 Federal wiretap and electronic communications statutes generally
- § 6:5 Electronic Communications Privacy Act
- § 6:6 Stored Communications Act
- § 6:7 U.S.A. Patriot Act
- § 6:8 Cybersecurity Act
- § 6:9 National Labor Relations Act
- § 6:10 Fair Credit Reporting Act
- § 6:11 Federal Privacy Act
- § 6:12 Computer Fraud and Abuse Act
- § 6:13 Cable Subscriber Privacy Act
- § 6:14 Communications Decency Act
- § 6:15 Digital Millennium Copyright Act
- § 6:16 Videotape Privacy Protection Act
- § 6:17 Video Voyeurism Prevention Act

III. STATE CONSTITUTIONS AND STATUTES

- § 6:18 State constitutions
- § 6:19 State statutes generally
- § 6:20 Wiretapping and electronic communications statutes
- § 6:21 State labor laws
- § 6:22 “Shoppers” laws
- § 6:23 Other state laws

IV. COMMON LAW

- § 6:24 In general
- § 6:25 Invasion of privacy
- § 6:26 Intentional or negligent infliction of emotional distress
- § 6:27 Trespass
- § 6:28 Interference with economic advantage
- § 6:29 Prima facie tort
- § 6:30 Good faith and fair dealing

V. ELECTRONIC AND OTHER SURVEILLANCE METHODS

- § 6:31 Eavesdropping on oral communications

- § 6:32 Pen registers
- § 6:33 Mail covers
- § 6:34 Cameras and video
- § 6:35 Drones
- § 6:36 Tracking devices
- § 6:37 Geofencing
- § 6:38 Caller ID
- § 6:39 Computer monitoring
- § 6:40 —Computer monitoring policy
- § 6:41 Internet
- § 6:42 —Internet policy
- § 6:43 E-mail
- § 6:44 —E-mail policy
- § 6:45 Instant, text and tweet messages
- § 6:46 —Instant, text, and tweet messages policy
- § 6:47 Blogs and social media
- § 6:48 —Blogs and social network policies
- § 6:49 Facsimile
- § 6:50 Voice mail
- § 6:51 —Voice mail policy
- § 6:52 Emerging law

VI. OTHER MATTERS

- § 6:53 Discharge
- § 6:54 Arbitration
- § 6:55 Practical solutions

Volume 2

CHAPTER 7. OTHER INVESTIGATIVE TECHNIQUES AND ISSUES

I. OVERVIEW

- § 7:1 Scope of the chapter

II. RECORDS

- § 7:2 Financial disclosure
- § 7:3 Arrest and criminal records
- § 7:4 Driving records
- § 7:5 Military records
- § 7:6 Employment records
- § 7:7 Social security numbers
- § 7:8 Electronic discovery

TABLE OF CONTENTS

III. BIOMETRICS

- § 7:9 Biometrics generally
- § 7:10 Fingerprints
- § 7:11 Handwriting analysis
- § 7:12 Voice prints and stress analysis

IV. TESTING AND ANALYSIS

- § 7:13 Psychological tests
- § 7:14 Fluorescent material

V. EMPLOYEE CONDUCT

- § 7:15 Off-duty conduct
- § 7:16 Violence in the workplace
- § 7:17 Filing suit or hiring an attorney

VI. LIABILITY

- § 7:18 Supervisor liability generally
- § 7:19 Under federal law
- § 7:20 Under state law
- § 7:21 Managing personal liability
- § 7:22 Integrated enterprise, joint employers, successor employers, agent, aider/abettor, direct participant and alter ego
- § 7:23 Nonemployers
- § 7:24 Malicious prosecution

VII. INTERNATIONAL LAW

- § 7:25 European Union Data Privacy Directive
- § 7:26 European Union Electronic Communications Privacy Directive
- § 7:27 Organisation for Economic Co-operation and Development Privacy Framework
- § 7:28 Canada's Personal Information Protection and Electronic Documents Act
- § 7:29 Other international laws
- § 7:30 International investigations

VIII. OTHER MATTERS

- § 7:31 After-acquired information
- § 7:32 Use of dogs
- § 7:33 Shortened limitation periods
- § 7:34 Waiver of jury trials

CHAPTER 8. REHABILITATION OR DISCHARGE

- § 8:1 Scope of chapter

- § 8:2 Obligation to rehabilitate
- § 8:3 —Federal Rehabilitation Act
- § 8:4 —Americans with Disabilities Act
- § 8:5 Employee Retirement Income Security Act
- § 8:6 Occupational Safety and Health Act
- § 8:7 State constitutions and laws
- § 8:8 Common law
- § 8:9 Arbitration
- § 8:10 Cost and effectiveness of rehabilitation
- § 8:11 Practical considerations

CHAPTER 9. MANDATORY ARBITRATION

- § 9:1 Scope of the chapter
- § 9:2 Types of disputes
- § 9:3 Enforceability of arbitration agreements
- § 9:4 Federal Arbitration Act
- § 9:5 Arbitration and federal rights
- § 9:6 Contents of arbitration agreement
- § 9:7 Admissibility
- § 9:8 Obligations created by arbitration agreements
- § 9:9 Challenges to arbitration awards
- § 9:10 Procedural and substantive issues

CHAPTER 10. FORMS FOR EMPLOYERS

I. OVERVIEW

- § 10:1 Comment on use of sample forms

II. MEDICAL EXAMINATIONS; DRUG TESTING

- § 10:2 Consent; medical examination
- § 10:3 Consent and release; medical examination for on-the-job accident
- § 10:4 Instruction not to provide genetic information
- § 10:5 Instructions concerning ADA post-offer medical examination
- § 10:6 Instructions concerning ADA post-employment medical examination
- § 10:7 Consent; preemployment drug screening
- § 10:8 Consent and release; drug screen for applicant/employee
- § 10:9 Policy; substance abuse
- § 10:10 Policy; drug, alcohol and other prohibited items

III. SEARCHES, SURVEILLANCE, AND PRIVACY

A. IN GENERAL

- § 10:11 Checklist; searches

TABLE OF CONTENTS

§ 10:12	Policy; notice of computer monitoring
§ 10:13	Checklist; computers
§ 10:14	Checklist; tracing an internet e-mail
§ 10:15	Policy; data protection
§ 10:15.20	Phishing / Pretexting / Social Engineering Training
§ 10:16	Policy; employee personal device
§ 10:17	Policy; conflict of interest and confidentiality
§ 10:18	Policy; collection of biometric information
§ 10:19	Consent; collect biometric identifiers or biometric information
§ 10:20	Consent; implant microchip
§ 10:21	Checklist; financial disclosure
§ 10:22	Checklist; investigating social security numbers

B. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

§ 10:23	Checklist; protected health information
§ 10:24	Checklist; compliance
§ 10:25	Notice of privacy practices
§ 10:26	Written authorization for disclosure of protected health information
§ 10:27	Request access to protected health information
§ 10:28	Consent; preemployment search and drug screening with HIPAA statement
§ 10:29	Consent and release; drug screen for applicant/employee with HIPAA statement

IV. INTERVIEWS AND BACKGROUND CHECKS

§ 10:30	Consent and release; security examination
§ 10:31	Consent and release; background information
§ 10:32	Notices for employers who use consumer reports
§ 10:33	Consent and release; preemployment

V. POLYGRAPH TESTING

§ 10:34	Postsecurity examination confirmation
§ 10:35	Policy; polygraph statement
§ 10:36	Checklist; polygraph questions

VI. AGREEMENTS

§ 10:37	Employment-at-will
§ 10:38	Investigators, polygraphers, physicians
§ 10:39	Last chance agreement
§ 10:40	Employee personal device
§ 10:41	Leave declaration

VII. LITIGATION

- § 10:42 Checklist; unemployment claim for employer
- § 10:43 Employer unemployment claim responses
- § 10:44 Litigation hold letter
- § 10:45 —Follow up interview
- § 10:46 Response to charge of discrimination
- § 10:47 Checklist; answer to employee lawsuit
- § 10:48 Answer
- § 10:49 Motion to compel arbitration
- § 10:50 Notice of removal
- § 10:51 Joint defense agreement
- § 10:52 Rule 502(d) Order
- § 10:53 Order governing discovery production protocol
- § 10:54 Interrogatories
- § 10:55 Document request
- § 10:56 Request for admissions
- § 10:57 Motion for mental examination
- § 10:58 Reply to plaintiff's response to motion for mental examination
- § 10:59 Order compelling mental examination
- § 10:60 Response to motion to compel
- § 10:61 Request for protected health information records
- § 10:62 Authorization to disclose protected health information
- § 10:63 Authorization to disclose protected employment information
- § 10:64 Motion in limine
- § 10:65 Voir dire questions

VIII. OTHER MATTERS

- § 10:66 Checklist; discharge of group of employees
- § 10:67 Checklist; discharge of individual employee
- § 10:68 Checklist; settlement
- § 10:69 Checklist; arbitration or other internal grievance procedure
- § 10:70 Checklist; determining whether to use arbitration or other dispute resolution techniques
- § 10:71 Checklist; service, assistance, or therapy animal
- § 10:72 Mandatory Covid-19 vaccination policy for employees
- § 10:73 COVID-19 vaccine religious exemption request form
- § 10:74 Request for medical exemption from COVID-19 vaccine requirement

PART III. EMPLOYEES' RIGHTS

CHAPTER 11. EMPLOYEES' FEDERAL CONSTITUTIONAL RIGHTS

I. OVERVIEW

§ 11:1 Scope of chapter

II. FIRST AMENDMENT

- § 11:2 Overview
- § 11:3 Freedom of religion
- § 11:4 Freedom of speech
- § 11:5 Freedom of the press
- § 11:6 Freedom to petition
- § 11:7 Freedom of association
- § 11:8 Right to remain anonymous

III. FOURTH AMENDMENT

- § 11:9 Overview
- § 11:10 State action
- § 11:11 Search warrant
- § 11:12 Reasonableness of investigation
- § 11:13 Consent
- § 11:14 Use of evidence
- § 11:15 Employer liability

IV. FIFTH AMENDMENT

- § 11:16 Overview
- § 11:17 Self-incrimination
- § 11:18 —Coercion
- § 11:19 —Private employees
- § 11:20 Miranda warnings
- § 11:21 —Custodial interviews
- § 11:22 —Private employees
- § 11:23 —Public employees
- § 11:24 Due process
- § 11:25 —Medical examinations
- § 11:26 —Polygraphs
- § 11:27 Remedies
- § 11:28 Equal protection

V. SIXTH AMENDMENT

- § 11:29 Employee protections

VI. FOURTEENTH AMENDMENT

§ 11:30 Employee protections

VII. RIGHT TO PRIVACY

- § 11:31 Overview
- § 11:32 Off-duty actions
- § 11:33 Medical tests
- § 11:34 Polygraphs
- § 11:35 Financial information
- § 11:36 Psychological tests
- § 11:37 Photographs

CHAPTER 12. FEDERAL STATUTORY RIGHTS

- § 12:1 Scope of the chapter
- § 12:2 Civil Rights Acts of 1867 to 1871
- § 12:3 Title VII
- § 12:4 Pregnant Workers Fairness Act
- § 12:5 Providing Urgent Maternal Protections for Nursing Mothers Act
- § 12:6 Age Discrimination in Employment Act
- § 12:7 Americans with Disabilities Act
- § 12:8 —Disabilities
- § 12:9 —Associations
- § 12:10 —Reasonable accommodation
- § 12:11 —Medical inquiries and examinations
- § 12:12 —Drugs and alcohol
- § 12:13 —Promotions and transfers
- § 12:14 —Checklists
- § 12:15 Federal Rehabilitation Act
- § 12:16 Genetic Information Non-Discrimination Act
- § 12:17 Family and Medical Leave Act
- § 12:18 Uniformed Services Employment and Reemployment Rights Act
- § 12:19 Religious Freedom Restoration Act of 1993 and 1997 guidelines on religious exercise and religious expression in the federal workplace
- § 12:20 Civil Rights Remedies for Gender-Motivated Violence Act
- § 12:21 Wire communications
- § 12:22 Oral communications
- § 12:23 Electronic Communications Privacy Act of 1986
- § 12:24 Cable Communications Policy Act
- § 12:25 Computer Fraud and Abuse Act
- § 12:26 Federal Privacy Act

TABLE OF CONTENTS

§ 12:27	Right to Financial Privacy Act
§ 12:28	Gramm-Leach-Bliley Act
§ 12:29	The Identity Theft and Assumption Deterrence Act of 1998
§ 12:30	Telephone Records and Privacy Protection Act of 2006
§ 12:31	Videotape Privacy Protection Act
§ 12:32	Fair Credit Reporting Act
§ 12:33	Employee Polygraph Protection Act of 1988
§ 12:34	Health Insurance Portability and Accountability Act of 1996
§ 12:35	Driver's Privacy Protection Act
§ 12:36	Sarbanes-Oxley Act of 2002
§ 12:37	Dodd-Frank Wall Street Reform and Consumer Protection Act
§ 12:38	False Claims Act
§ 12:39	Emergency Medical Treatment and Active Labor Act
§ 12:40	Occupational Safety and Health Act
§ 12:41	National Labor Relations Act
§ 12:42	—Weingarten rights
§ 12:43	Fair Labor Standards Act
§ 12:44	Employee Retirement Income Security Act of 1974
§ 12:45	Patient Protection and Affordable Care Act
§ 12:46	Alien Tort Statute, Torture Victims Protection Act, and Trafficking Victims Protection Reauthorization Act
§ 12:47	Immigration Reform and Control Act of 1986 and Immigration and Nationality Act
§ 12:48	Clinical Laboratory Improvement Amendments of 1988
§ 12:49	Miscellaneous federal statutes
§ 12:50	Federal Rules of Evidence
§ 12:51	Uniform Guidelines on Employee Selection Procedures
§ 12:52	Retaliation generally
§ 12:53	Retaliation and settlement

Volume 3

CHAPTER 13. EMPLOYEES' STATE RIGHTS

I. OVERVIEW

§ 13:1	Scope of the chapter
--------	----------------------

II. STATE CONSTITUTIONS

§ 13:2	State constitutional provisions generally
--------	---

- § 13:3 Private employees
- § 13:4 Public employees
- § 13:5 Self incrimination
- § 13:6 Privacy
- § 13:7 Searches
- § 13:8 Due process
- § 13:9 Restrictions on use of evidence
- § 13:10 Other state constitutional rights

III. STATE STATUTES

A. GENERAL CONSIDERATIONS

- § 13:11 Overview of state statutes
- § 13:12 Public policy

B. ELECTRONIC SURVEILLANCE AND COMMUNICATIONS

- § 13:13 Wiretapping and eavesdropping laws
- § 13:14 Electronic communications
- § 13:15 Electronic mail and internet statutes

C. PRIVACY MATTERS

- § 13:16 State statutes governing privacy generally
- § 13:17 Investigations
- § 13:18 Medical privacy
- § 13:19 Data protection laws

D. MEDICAL EXAMINATIONS

- § 13:20 Medical examination statutes generally
- § 13:21 Drug testing
- § 13:22 AIDS testing
- § 13:23 Genetic testing or information
- § 13:24 Medical leave laws

E. ACCESS TO RECORDS

- § 13:25 State statutes-governing access to records generally
- § 13:26 Access to medical records

F. DISCRIMINATION

- § 13:27 Statutes prohibiting discrimination generally
- § 13:28 Disability statutes
- § 13:29 Employment selection statutes

G. HONESTY TESTING

- § 13:30 Polygraph laws

TABLE OF CONTENTS

§ 13:31 Voice stress analysis laws

H. OTHER STATE STATUTES

§ 13:32 Whistleblowing
§ 13:33 Credit laws
§ 13:34 Labor laws
§ 13:35 Immigration statutes
§ 13:36 Uniformed leave
§ 13:37 Restrictions on use of evidence
§ 13:38 Unemployment laws
§ 13:39 Workers' compensation statutes
§ 13:40 Insurance laws
§ 13:41 Rehabilitation laws
§ 13:42 Mediation and other dispute resolution methods
§ 13:43 SLAPP statutes
§ 13:44 False imprisonment

CHAPTER 14. EMPLOYEES' COMMON-LAW RIGHTS

I. OVERVIEW

§ 14:1 Scope of the chapter

II. INVASION OF PRIVACY

§ 14:2 Invasion of right of privacy generally
§ 14:3 Public disclosure of private fact
§ 14:4 False light
§ 14:5 Intrusion into seclusion

III. EMOTIONAL DISTRESS

§ 14:6 Claims for emotional distress generally
§ 14:7 Interviews
§ 14:8 Polygraphs
§ 14:9 Surveillance

IV. OTHER COMMON-LAW CLAIMS

§ 14:10 Economic duress
§ 14:11 Defamation
§ 14:12 Good faith and fair dealing
§ 14:13 Wrongful discharge
§ 14:14 Negligence
§ 14:15 False imprisonment
§ 14:16 Tortious interference with economic relationship

- § 14:17 Trespass
- § 14:18 Assault and battery
- § 14:19 Conspiracy
- § 14:20 Conversion
- § 14:21 Prima facie tort
- § 14:22 Fraud
- § 14:23 Aiding and abetting
- § 14:24 Nuisance

CHAPTER 15. ARBITRATION

- § 15:1 Scope of the chapter
- § 15:2 Federal constitutional rights
- § 15:3 —Fifth Amendment
- § 15:4 —Fourth Amendment
- § 15:5 —Sixth Amendment
- § 15:6 —Entrapment
- § 15:7 —Due process
- § 15:8 Federal statutory rights
- § 15:9 Federal Arbitration Act
- § 15:10 Medical examinations
- § 15:11 Surveillance
- § 15:12 Rehabilitation

CHAPTER 16. FORMS FOR EMPLOYEES

I. OVERVIEW

- § 16:1 Comment on use of sample forms

II. EMPLOYEE REQUESTS

- § 16:2 Reason for discharge
- § 16:3 Access to files
- § 16:4 Correction to files
- § 16:5 Amendment/correction of protected health information
- § 16:6 Accounting of disclosures of protected health information
- § 16:7 Reference
- § 16:8 Grievance procedure
- § 16:9 Polygraph questions
- § 16:10 Results of polygraph examination
- § 16:11 Drug retest
- § 16:12 Hearing
- § 16:13 Investigative consumer report
- § 16:14 Preservation of evidence
- § 16:15 Freedom of Information Act

TABLE OF CONTENTS

- § 16:16 —Appeal
- § 16:17 State Open Records Act
- § 16:18 Reasonable accommodation

III. LITIGATION

- § 16:19 Checklist; unemployment claim for employee
- § 16:20 Checklist; challenging drug tests
- § 16:21 Complaint
- § 16:22 Motion and brief to remand
- § 16:23 Interrogatories
- § 16:24 Document request
- § 16:25 Requests for admission
- § 16:26 Motion to expedite discovery
- § 16:27 Motions in limine
- § 16:28 Motion to quash deposition upon written questions
- § 16:29 Motions for protective order
- § 16:30 Agreed protective order
- § 16:31 HIPAA qualified protective order
- § 16:32 Witness affidavit
- § 16:33 Notice of deposition duces tecum on written questions
of custodian of business records
- § 16:34 Questionnaire for prospective jurors

PART IV APPENDICES

- Appendix A. Selected Amendments to the United States
Constitution
- Appendix B. Discrimination Laws Generally
- Appendix B1. Genetic Discrimination
- Appendix B2. Sexual Orientation Discrimination
- Appendix B3. Off-duty Conduct Discrimination
- Appendix B4. Marital Status Discrimination
- Appendix B5. Whistleblowing
- Appendix B6. Gender Identity or Expression
Discrimination
- Appendix B7. Victims of Violence
- Appendix B8. Compensation History
- Appendix B9. Settlement, Noncompete,
Nondisparagement, Nondisclosure, and
Confidentiality Agreements
- Appendix B10. Arbitration of Discrimination Claims
- Appendix B11. Hair Discrimination Laws
- Appendix B12. Pay Disclosure

Appendix C.	Arrest and Conviction Records
Appendix C1.	Duty to Inquire about Criminal History Records
Appendix C2.	Private Employer Access to Records
Appendix C3.	Individual Statement of No Criminal Record
Appendix C4.	Criminal History Records and Defenses to Lawsuits
Appendix C5.	Certificates of Relief or Qualification for Employment
Appendix D.	Search, Seizure, and Privacy Laws Generally
Appendix D1.	Searches and Seizures
Appendix D2.	Defamation Statutes
Appendix D3.	Pretexting
Appendix D4.	Social Security Number
Appendix D5.	Tracking Devices
Appendix D6.	Motor Vehicle Event Data Recorder
Appendix D7.	Biometric Data
Appendix D8.	Driving Records
Appendix D9.	Social Media Employer Restrictions
Appendix D10.	Social Media Employer Permitted Actions
Appendix D11.	Drones
Appendix D12.	Stalking
Appendix E.	Rehabilitation Statutes
Appendix E1.	Drug Testing
Appendix E1.20.	Drug Testing—Types of Specimens
Appendix E2.	Confidentiality of Medical Records
Appendix E3.	Genetic Testing
Appendix E4.	Mental or Psychological Testing
Appendix E5.	AIDS Testing
Appendix E6.	Use and Payment of Costs of and Time Spent in Medical Examination and Treatment
Appendix E7.	Medicinal Use of Marijuana and Other Controlled Drugs
Appendix E7.10.	Recreational Use of Marijuana and Other Controlled Drugs
Appendix E8.	Medical and Family Leave
Appendix E9.	Unemployment Laws; Drug Use and Drug Tests
Appendix E10.	Paid and Unpaid Sick and Other Leave

TABLE OF CONTENTS

Appendix E11.	Pandemic / COVID-19
Appendix F.	Selected Disability Statutes
Appendix G.	Access to Medical Records
Appendix G1.	Right to Access Personnel File
Appendix G2.	Confidentiality of Personnel Records
Appendix H.	Electronic Surveillance Statutes
Appendix H1.	Electronic Mail Statutes
Appendix H2.	Internet Statutes
Appendix H3.	Computer Privacy
Appendix H4.	E-mail Privacy
Appendix H5.	Anti-phishing Statutes
Appendix H6.	Reporting Pornography
Appendix H7.	Computer Trespass
Appendix H8.	Artificial Intelligence
Appendix I.	Handwriting Samples
Appendix I1.	Workplace Safety Statutes
Appendix I2.	Right to Remain Silent
Appendix I3.	Polygraph Examinations
Appendix I4.	Honesty Testing
Appendix I5.	Credit Reports
Appendix I6.	Fingerprinting
Appendix I7.	State Employee Selection Procedure Laws
Appendix I8.	State Bank Records Laws
Appendix I9.	State Labor Union Laws
Appendix I10.	Due Process Laws
Appendix I11.	Voice Stress Analysis Laws
Appendix I12.	Unenumerated State Constitutional Rights
Appendix I12.10.	Equal Treatment State Constitutional Rights
Appendix I13.	Free Speech Rights
Appendix I13.10.	Religious Freedom Laws
Appendix I13.20.	Selected Mandatory Meetings, Training, and Speech Statutes
Appendix I14.	Strategic Litigation Against Public Participation (SLAPP) Statutes
Appendix I15.	Garnishment Laws
Appendix I16.	Photographs
Appendix I17.	Workplace Violence
Appendix I18.	State Immigration Laws

INVESTIGATING EMPLOYEES

Appendix I19.	Uniformed Leave
Appendix I20.	Family Military Leave
Appendix I21.	Data Protection
Appendix I22.	Weapons in the Workplace
Appendix I23.	Blacklisting
Appendix I24.	References and Service Letters
Appendix I25.	Workers' Compensation and Stress Claims
Appendix I26.	Unemployment Laws; Employer Responses
Appendix I27.	Unemployment Laws; Effect of Rulings
Appendix I28.	Employee or Independent Contractor Status and Protection
Appendix I29.	Arbitrators' Immunity and Testimony
Appendix I30.	Waiver Jury Trial
Appendix I31.	Selected Civil Service Statutes
Appendix J.	Selected Excerpts from Restatement of Torts (2d)

Table of Laws and Rules

Table of Cases

Index