Preface

Few areas of the law are both as complex and as volatile as labor law. Constructed of a bewildering maze of often conflicting statutes, common-law doctrines, contract-established rules, and administrative agency edicts, labor law can be extraordinarily frustrating for attorneys who seek symmetry and clearly discernible patterns in the law. Even within a narrow area, the applicable law can vary tremendously, depending on whether one is litigating before the National Labor Relations Board (NLRB) or seeking enforcement of an NLRB decision in one of the Circuit Courts of Appeal. In short, there is no simple way to learn the law in this area or to avoid the necessity of constantly keeping abreast of developments in the field to update one's knowledge.

This is not surprising, since few areas of the law encompass issues of such central importance to the society as a whole. The conflict between labor and management is at the heart of our economic system, which, in turn, is at the heart of the entire social structure. For that reason, labor law can be fairly said to be among the most political of legal areas. Laws and court decisions in this area historically have reflected the shifting balance of forces in the economic arena.

The original National Labor Relations Act, the Wagner Act, was passed in 1935–a time when the workers' movement was organizing and developing its influence as never before. As the society sought to contain the organizing upsurge within acceptable legal channels, the Act that was passed was relatively prolabor: It legalized union organization and gave union organizers certain rights; it contained provisions outlawing certain employer "unfair labor practices"; and it contained no similar sanctions against union activity.

In 1947, however, with the union movement on the defensive and the Cold War and McCarthy eras on the horizon, the Taft-Hartley Act was passed, drastically revising the National Labor Relations Act. Provisions of the Taft-Hartley Act defined certain conduct by unions as unlawful for the first time, and its Section 14(b), the antiunion "right to work" provision, allowed states to enact legislation outlawing union contracts that require employees to join the union within a designated time period.

Similarly, the powerful civil rights movement in the fifties and sixties was able to win passage of the Civil Rights Act of 1964, with its Title VII prohibitions against hiring and job discrimination based on race, religion, national origin, or sex. However, as the activity of the civil rights movement diminished

in the seventies, a period of government retrenchment and retreat began. This has been accompanied by court decisions chipping away at the law's teeth, raising ever more difficult standards of proof for the antidiscrimination advocate.

In 1988 the Worker Adjustment and Retraining Notification Act (WARN) was enacted, dealing with the ever increasing problem of plant closings and mass layoffs. Scorned by its opponents as an interference in the delicate and volatile affairs of business, WARN nevertheless serves as the sole source of federal regulation of plant closings and mass layoffs.

It is the political essence of labor law, then, that explains its vast, sprawling jumble of rules. And it is this character that helps to explain why it is such an important, exciting, and challenging field to many of the attorneys who practice it.

We would not suggest here that labor law has ever been the solid ally of the worker. Far from it. At best, it has established procedures and channels through which the labor movement can obtain redress as part of its overall political battle. Unfortunately, even these procedures often fail to provide meaningful remedies, and employers often find it economically profitable to violate the law. At its worst, labor law has shackled the workers' struggle, placing financially and organizationally draining obstacles in the way of organizing and legitimizing the intervention of the courts and government on the management side of the conflict.

It has been suggested that the United States is virtually unique among industrialized nations in the extent to which the labor struggle is channeled into legal procedures. It is thus a fact of life that almost any serious effort by workers directed against their employers, be they unionized or not, will require them to deal with the legal system. Often, workers and their unions find themselves facing batteries of corporate lawyers, who have virtually unlimited resources with which to pursue the antiunion struggle.

This problem has been exacerbated in recent years by the explosive growth of professional "union-busting" concerns. Often integrated into large corporate law firms, this multimillion-dollar industry has developed through its ability to help employers stay at the very edge of the law in their conflicts with their workers. These concerns aim to use every possible legal and quasi-legal tactic to frustrate organizing, drain precious resources into interminable legal battles, and make a mockery of the "legal rights" of workers.

Such a situation places unions at a great disadvantage. With resources far more limited than those of employers, unions must constantly assess how much they can allocate to the legal struggle, aware that every penny they divert cannot be used for the important work of organizing and serving their members.

The problem is even worse for individual or unorganized workers. Their concerns might be varied: fighting the employer around an individual discharge or grievance, organizing in opposition to discrimination or unsafe conditions on the job, or fighting for reform within their union. In any case, their resources are the most limited, and the legal battle can be the most draining. They often seek assistance from general practitioners or legal services attorneys, some of whom might be inexperienced in the field or limited in the resources they can devote to the case.

In such a situation, we know that the Employee and Union Member Guide to Labor Law cannot be a panacea. It would be totally impossible to encompass the field of labor law in three volumes. Nevertheless, we do hope to make a contribution to the legal component of the labor struggle.

This treatise was written by dozens of members and friends of the National Lawyers Guild who have special expertise in their field. We have aimed at providing advice that gives the important parameters of the law in a practical context. The topics covered were chosen for both the frequency with which they arise and the context in which they arise. Because we recognize that the law is, at best, a tool for the labor movement to use in its development, we have chosen areas that we think are related to that development.

It is our hope that this work can be useful to the experienced and inexperienced practitioner alike. For the inexperienced practitioner, our aim is to provide a practical manual that will help start serious research, answer basic questions, and help avoid some common pitfalls. For the more experienced attorney, we hope to provide a useful desk reference for quick answers to important questions.

We will be updating, revising, and expanding this manual on a regular basis. We welcome suggestions on how it can be improved in order to better fulfill its goals. We would be delighted to receive suggestions for new topics to include, or better ways to present those we have included. The editor, Christina Hatzidakis, can be reached at christina@hatzidakislaw.com.

The Employee and Union Member Guide to Labor Law is a publication of the National Labor and Employment Committee of the National Lawyers Guild. Nationwide, there are more than 20 local labor committees affiliated with the National Lawyers Guild and hundreds of affiliated attorneys, legal workers, and law students.

Contributors



This treatise has been extensively reworked and revised since it first appeared in 1981. More than a hundred Guild members and supporters have helped create and update the chapters over the years. The following is only a partial, and necessarily incomplete, list of those contributors.

Those initially involved in the organization of the manual included Neil Herring, Martin Eichner, Ken Cloke, and Warren Adler, all from California. Subsequently, Dan Siegel of Oakland, California, and Robert Gibbs of Seattle, Washington, took over the responsibility for bringing the manual to completion, which included finishing a number of chapters and making final editorial decisions about chapters that had been revised. Paul Alan Levy of the Public Citizen Litigation Group of Washington, D.C., prepared most and edited all of the releases from 1986 through 1994. Elise Gautier of Portland, Oregon, and Henry Willis of Los Angeles, California, edited the releases from 1995 through 2004. Ms. Gautier has edited the releases since 2004.

Chapter 1, "Organizing the Unorganized," was originally written by members of the Guild's District of Columbia chapter and its Chicago chapter labor committee, including Carolyn Cairns, now of Seattle, Washington, and Robert Hodge, Roberta Brown, and Jim Fennerty, all of Chicago, Illinois. These drafts were reviewed and revised by Robert Gibbs and Chris Mrak of Seattle and John McTernan of Los Angeles, California. The 1996 release was prepared by Ira Jay Katz of New York, New York, with assistance from Robert Gibbs of Seattle. The 1998 release was prepared by Henry Willis of Los Angeles. Richard Gilberg and Richard Brook of New York, New York, contributed the new division XIII on voluntary recognition, card check, and neutrality

agreements for the October 2004 release. The 2006 updates were prepared by Alexia Kulwiec, chief counsel for SEIU Local 1 in Chicago, with assistance from her research assistant, Leslie Ward. Dean Royer of Siegel & Yee in Oakland, California, updated the chapter from 2010 through 2013. Emma R. Rebhorn of Willig, Williams & Davidson in Philadelphia, Pennsylvania, updated the chapter in 2015.

Attorneys from Leonard Carder, LLP, in Oakland, California, updated the chapter from 2017 through 2026, including Emily Maglio in 2017; Ms. Maglio, Sara Tosdal, and Nicole Teixeira in 2018; Ms. Maglio, Ms. Teixeira, and Eleanor Morton in 2020; Ms. Maglio and Julia Lum in 2021; Ms. Maglio in 2022; Ms. Lum in 2023; Ms. Lum and Paul Sindberg in 2024; Ms. Lum and Namrata Kakade in 2025; and John Henry Vansant in 2026. They were assisted by their law clerks Ken Wang, Angela Breining, Rachel Uemoto, John Henry Vansant (as a clerk in 2023), and Elizabeth Stone.

Chapter 2, "Opposing Discriminatory Discharges," was originally prepared by Jonathan Siegel of the National Labor Law Center, with contributions from Amy Gladstein of New York, New York, and Neil Herring of Los Angeles, California. Spencer Clapp of Hartford, Connecticut, prepared the materials on employment at will, while Paul Alan Levy of Washington, D.C., wrote the section on preemption of wrongful discharge claims. David Kern and Michael Wyatt of El Paso, Texas, rewrote former Sections 2.01 and 2.04 in 1995; Robert Handelman and Jon Wentz of Columbus, Ohio, revised former Section 2.02 in 1996; and Henry Willis of Los Angeles rewrote former Section 2.03 in 1997. Jonathan Gould of Hartford, Connecticut, and Henry Willis updated and revised former Section 2.05 in 1998. The chapter was reorganized and revised by Henry Willis in 2003. From 2003 to 2008, Hope Pordy of Spivak, Lipton, Watanabe, Spivak, Moss & Orfan LLP in New York, New York, updated Sections 2:1 to 2:21, and Harvey S. Mars of Leibowitz and Mars in New York, New York, updated Sections 2:22 to 2:45. In 2009, the chapter was updated by Hunter Pyle, then at Sundeen Salinas & Pyle, in Oakland, California, and Mr. Pyle prepared the subsequent releases to 2016, with assistance from Mana Barari, Tanya Tambling, and Verenice Andrade in 2014. The chapter was updated in 2017 by Mr. Pyle, Ms. Tambling, and Chad Saunders, all at Hunter Pyle Law in Oakland. In 2019, Alexia Kulwiec, an associate professor at the UW-Madison Department of Labor Education, updated the chapter with research assistance from UW-Madison law student Susan Kania.

Chapter 3, "The Duty to Bargain Collectively" was prepared by Nola Hitchcock Cross of Milwaukee, Wisconsin, and Robert Gibbs of Seattle, Washington, with assistance from Chris Linder.

The 1997 release was prepared by Martin Eichner of Palo Alto, California. The chapter was reorganized and revised by Henry Willis in 2003. Attorneys at the Cross Law Firm, S.C., in Milwaukee, Wisconsin, have kept the chapter up to date since then, including Shannon McDonald from 2003 to 2006, with contributions in 2006 from Nola Hitchcock Cross and Laura Platt; from Andrei Ciobanu and Nola Hitchcock Cross in 2007; Christopher Kloth in 2010 and 2011; and from Danielle Bailey in 2014. William Wetzel of the Cross Law Firm has prepared the updates since 2017.

Chapter 4, "Right to Strike and Other Forms of Economic Action" was originally written in large part by Mike Healey of Pittsburgh, Pennsylvania, with the assistance of Grant Crandall of West Virginia, Allen Vomacka of Houston, Texas, and Dan Siegel of Oakland, California. Laura Rasset and Chris Mrak of Seattle, Washington, wrote the section on secondary boycotts, while John McTernan of Los Angeles, California, contributed the section on political strikes. Henry Willis of Los Angeles expanded and reorganized the chapter in 1996 and updated it through 2004. Matthew Bergeron, an associate counsel with New York State United Teachers, in Latham, New York, expanded and updated the chapter in 2008 and kept it up to date through 2015. Portions of the chapter were updated in 2020 by Scott Miller, an administrative law judge for the State of California, Public Employment Relations Board, and he has prepared the subsequent updates.

Chapter 5, "Rights of Construction Workers" was initially prepared by Cheryl Beckett of Anchorage, Alaska (Sections 5:1 to 5:34), Will Schendel of Fairbanks, Alaska (Sections 5:35 to 5:62), and Steve Goldberg of Portland, Oregon (Sections 5:63 to 5:77). Mr. Schendel updated Sections 5:35 to 5:62 until 1998. Matthew Glasson of Cedar Rapids, Iowa, rewrote Section 5:9 for the 1996 release. Jonathan D. Newman, Nora H. Leyland, Martin J. Crane, and Richard M. Resnick, all of Sherman Dunn P.C. in Washington, D.C., substantially revised the chapter for the 1997 release, rewriting many sections and adding new ones. Mr. Newman prepared the updates from 1998 through 2013 for all sections except Sections 5:35 to 5:62 (which constitute Part V of the chapter). Lucas R. Aubrey of the same firm updated the chapter, with the same exceptions, in 2015 and, with the same exceptions, has kept it up to date since then. David Huffman-Gottschling of Jacobs, Burns, Orlove & Hernandez, in Chicago, Illinois, has updated Part V (Sections 5:35 to 5:62) since 2011.

Chapter 6, "Employment Discrimination Law" was written in 1996 by Anne K. Richardson of Pasadena, California. Sandra C. Munoz of Los Angeles, California, provided research assistance. Ms. Richardson prepared all updates through June 2003, with assistance from Christine Trinh on the June 2003 release. Corne-

lia Dai and Lauren Teukolsky of Pasadena, California, prepared the 2004 release. Shannon McDonald of the Cross Law Firm, S.C., in Milwaukee, Wisconsin, prepared the 2006 release. Ylda Marisol Kopka of O'Malley & Madden, P.C., in Chicago, Illinois, and Jennifer E. Ku of O'Donnell, Schwartz & Anderson, P.C., in Washington, D.C., prepared the 2008 and 2009 releases. Ms. Kopka, now an attorney with the EEOC in Birmingham, Alabama, and Emily Bolt of Sundeen Salinas & Pyle, in Oakland, California, updated the chapter in 2010. Ms. Kopka updated the chapter in 2011 and 2012. Ms. Kopka's work on this book does not reflect the views or the endorsement of the EEOC. Christina Hatzidakis of Hatzidakis Law, in Chicago, Illinois, has written some new sections, rewritten others, and kept the chapter up to date since 2012.

Chapter 7, "Workers with Disabilities: The ADA and Other Laws" was written in late 1995. Chapter authors are Brian East of Austin, Texas, and Cordelia Martinez of Santa Ana, California. Section authors are Brian East, Cordelia Martinez, Liz Joffe of Portland, Oregon, Larry Minsky of Long Beach, California, and Marilynn Mika Spencer of San Diego, California. Mr. East, at Disability Rights Texas in Austin, has kept the chapter up to date since then. Chapter 8, "Fair Labor Standards Act" was written in 1997 by Michael Feinberg of Los Angeles, California. James Piotrowski of Herzfeld & Piotrowski, LLP, in Boise, Idaho, prepared the updates from July 2004 to 2009. Hope Pordy of Spivak Lipton LLP, in New York, New York, has updated the chapter from 2010 through 2012. John Philo, executive director and legal director of the Maurice & Jane Sugar Law Center for Economic & Social Justice, in Detroit, Michigan, started updating the chapter in 2015 and has kept it up to date since then.

Chapter 9, "Retirement, Pension, and Health and Welfare Benefits" was written by Jim Klimaski, Bill Anspach and Kathryn Marks of Washington, D.C. It was substantially expanded in 1995 and updated in 1996 by William T. Payne of Pittsburgh, Pennsylvania, and Dennis J. Murphy and Henry Willis of Los Angeles, California. Mr. Payne prepared the 1997 release. Joni S. Jacobs of Davis, Cowell & Bowe, LLP, in Washington, D.C., updated the chapter in 2006 and 2007. Starting in 2009, the chapter has been kept up to date by Chirag Shah of Shah and Associates, in Los Angeles, California. Mr. Shah wrote part XII, "Health Care Reform," in 2010. Amanda Whiddon of Shah and Associates provided research assistance in 2015.

Chapter 10, "The WARN Act" was written by Professor David Santacroce of the University of Michigan Law School in Ann Arbor, and he keeps the chapter up to date.

Chapter 11, "The Duty of Fair Representation" was written in 1997 by Henry Willis of Los Angeles, California. Hanan Kolko of

Meyer, Suozzi, English and Klein, P.C., in New York, New York, updated the chapter in August 2005, with significant contributions from summer law clerks Brishen Rogers and Anthony Foti. From 2009 through 2012, the chapter was updated by Tara Levy, a field attorney for the National Labor Relations Board in its regional office in Newark, New Jersey. Her work on this book does not reflect the views or the endorsement of the National Labor Relations Board. Professor Angela Cornell, director of the Labor Law Clinic at Cornell Law School, in Ithaca, New York, updated the chapter in 2013, 2014, and 2015. David Tykulsker of David Tykulsker & Associates in Montclair, New Jersey, updated the chapter and wrote some new sections in 2017 and has prepared the subsequent updates.

Chapter 12, "Rights of Union Members Within Their Unions" was written by Paul Alan Levy of Washington, D.C., who also prepared some subsequent releases. The rewritten chapter replaced a chapter written by Roy Otis and Suzanne Sherbell of San Francisco, California, and Dan Siegel of Oakland, California. Chapter 12 has been updated since 2005 by Emeritus Professor Michael J. Goldberg of the Widener University Delaware Law School in Wilmington, Delaware.

Chapter 13, "Internal Union Elections" was written by Paul Alan Levy of Washington, D.C., who also prepared some subsequent releases. The rewritten chapter replaced a chapter that was written by Dan Siegel, Larry Norton, Robert Gibbs, Bruce Bentley and Diane Dickstein. Jerry Hochzstein of St. Louis, Missouri, provided assistance on the 1996 release. Chapter 13 has been updated since 2003 by Emeritus Professor Michael J. Goldberg of the Widener University Delaware Law School in Wilmington, Delaware. Sam Datlof of Philadelphia, Pennsylvania began updating the chapter in 2026.

Chapter 14, "Representing Unions and Employees in Bankruptcy Cases" was written by Brad Pyles of West Virginia and Linda Stanch and Herb Eisenberg of New York, New York. Chapter 14 was substantially revised in 1995 by Babette Ceccotti of Cohen, Weiss and Simon LLP in New York, New York, who also prepared the releases through 2007. Robin H. Gise of the same firm prepared the 2008 release, and Joshua J. Ellison of the same firm has prepared the subsequent releases.

Chapter 15, "Organizing and Representing Immigrant Workers," was written by the following attorneys with the law firm Weinberg, Roger and Rosenfeld: Tiffany Crain Altamirano, Alejandro Delgado, Monica Guizar, Xochitl Lopez, Conchita Lozano-Batista, Lisl Soto, and Eric Wiesner. (Ms. Guizar and Mr. Wiesner are no longer with the firm.) Additional contributions were made by Daniela Archila, Andrea Matsuoka, Corey Kniss, and Bisma Shahbaz. The firm keeps the chapter up to date.

The Labor and Employment Committee of the National Lawyers Guild thanks all of those who have worked on this project over the years.