

by Clifford A. Rieders, Esquire

# WORKERS' RIGHTS IN PENNSYLVANIA

A Guide for Lawyers Who Represent  
Workers and Businesses Who Employ Them



Rieders, Travis, Humphrey, Waters & Dohrmann

ATTORNEYS AT LAW

[www.riederstravis.com](http://www.riederstravis.com)

# **WORKERS' RIGHTS IN PENNSYLVANIA**

---

A GUIDE FOR LAWYERS WHO  
REPRESENT WORKERS AND  
BUSINESSES WHO EMPLOY THEM

EIGHTH EDITION

By

Clifford A. Rieders, Esquire

COPYRIGHT 2019  
BY  
CLIFFORD A. RIEDERS

All Rights Reserved

The text of this publication, or any part thereof, may not be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, storage in an information retrieval system, or otherwise, without the prior written permission of the publisher. The information contained herein is not intended to constitute legal advice generally or with respect to any particular set of circumstances and should not be relied upon as such by the reader. Neither the author nor the publisher assumes responsibility for errors or omissions as may be contained herein, the use of the information contained herein, or any damages arising or resulting from the use of the information contained herein. Although the publisher intends to update this material from time to time, neither the authors nor the publisher assumes any obligation to do so and this material speaks only as of the date that research therefor was completed which necessarily preceded the publication date.

Printed in the United States of America

ISBN: 978-0-9839159-7-3

Library of Congress Control Number: 2012946907

#### HOW TO USE

**First refer to main text, then check subsequent supplement, using the same reference numbers. Sections added after publication of the main text, if**

any, will be included in a supplemental table of contents.

**ALWAYS VERIFY CITATIONS BY CONSULTING THE OFFICIAL  
COURT DECISIONS, RULES, REGULATIONS AND STATUTES.**

# CONDENSED TABLE OF CONTENTS

---

Acknowledgments

Preface

About the Author

Detailed Table of Contents

Table of Cases

Table of Statutes and Rules

## **Chapter**

1. Collective Bargaining Agreements
2. Constitutional Protection
3. Laws Concerning Discrimination
4. State Law Protections
5. Public Employees
6. Constructive Discharge
7. Defamation
8. Miscellaneous
9. Workers' Compensation—When It Bars Lawsuit Against Employer
10. Limitations On Actions—Statutes of Limitations

Appendixes

Index

# **DETAILED TABLE OF CONTENTS**

---

Condensed Table of Contents

Acknowledgments

Preface

About the Author

Table of Cases

Table of Statutes and Rules

## **Chapter 1**

### **COLLECTIVE BARGAINING AGREEMENTS**

§ 1.1. Definition

§ 1.2. National Labor Relations Act

§ 1.2.1. History

§ 1.2.2. National Labor Relations Board (NLRB)

§ 1.2.3. Employee Rights

§ 1.2.4. Right of Access

§ 1.2.5. Discretion of NLRB

§ 1.2.6. Right to Union Representation

§ 1.2.6.1. Remedies

§ 1.2.6.2. Representative immunity

§ 1.2.7. Smoking Restrictions

§ 1.2.8. Employer Rights

§ 1.2.9. Union by Ordinance

§ 1.2.10. Acts of Other Unions

§ 1.2.11. Arbitration and Review of NLRB Decisions

§ 1.2.11.1. Judicial review of arbitration

§ 1.2.12. Finality of Arbitration

§ 1.2.13. Substantive Versus Procedural Arbitrability

§ 1.2.14. *Functus Officio*

§ 1.2.15. NLRB Rules

§ 1.2.16. Adequate Rationale for NLRB Decision

§ 1.2.17. Injunction Under the NLRA

- § 1.2.18. Underlying Merit of Dispute
- § 1.2.19. Labor Management Relations Act (LMRA)
  - § 1.2.19.1. Neutrality agreement
- § 1.2.20. Paid Leaves of Absence
- § 1.3. Pennsylvania Labor Relations Act (PLRA)
  - § 1.3.1. Purpose
  - § 1.3.2. Fair Share Fees
    - § 1.3.2.1. Contemporaneous objection
    - § 1.3.2.2. Independent auditor verification
    - § 1.3.2.3. Indirect expenses included in calculating fair-share fees
  - § 1.3.3. Size of Bargaining Unit
    - § 1.3.3.1. Not entitled to bargain as police or fire
    - § 1.3.3.2. Probation and domestic relations supervisors not excluded from bargaining unit
    - § 1.3.3.3. Collective Bargaining Under the Public Employee Relations Act (PERA)
  - § 1.3.4. Arbitration and Review of Arbitrator's Decisions
  - § 1.3.5. Arbitrator's Determination of Arbitrability
  - § 1.3.6. Arbitrator as Fact Finder
  - § 1.3.7. Review of Decision of Arbitrability
  - § 1.3.8. Modification of Award
  - § 1.3.9. Section 4 of Act 111
    - § 1.3.9.1. Eligibility for Act 111
    - § 1.3.9.2. Review of Act 111, grievance arbitrations
    - § 1.3.9.3. Review of Act 111, interest arbitration
  - § 1.3.10. Mandatory Arbitration
  - § 1.3.11. Exception to Mandatory Arbitration
  - § 1.3.12. Presumption of Arbitrability
  - § 1.3.13. Arbitration of Shop Fees
  - § 1.3.14. Essence Test
    - § 1.3.14.1. Public policy exception
  - § 1.3.15. Overreaching
  - § 1.3.16. Scope of Arbitrator's Authority
  - § 1.3.17. Binding Past Practice
  - § 1.3.18. Ambiguity of Collective Bargaining Agreement
  - § 1.3.19. Compliance of School District's Collective Bargaining Agreement with School Code
  - § 1.3.20. Impasse Procedures and Timeframes for Mid-year Contracts
- § 1.4. Mandatory Exhaustion of Administrative Remedies for Federal

## Claims

- § 1.5. Individual Cause of Action for Federal Claims
  - § 1.5.1. Section 301 or Similar Hybrid Claims
- § 1.6. Drug Testing for Federal Claims
  - § 1.6.1. Public Sector
  - § 1.6.2. Private Sector
  - § 1.6.3. Employees' Suit for Negligence in Drug Testing
- § 1.7. Pennsylvania Civil Service
- § 1.8. Federal Preemption
  - § 1.8.1. Breach of Fiduciary Duty
  - § 1.8.2. Subject Matter Jurisdiction
  - § 1.8.3. Jurisdiction of Judicial Review of Local Authority Arbitration
- § 1.9. Federal Railway Labor Act, 45 U.S.C. § 151 *et seq.*
- § 1.10. Pennsylvania Unfair Labor Practices
  - § 1.10.1. Unfair Labor Practice for Failing to Maintain Status Quo
  - § 1.10.2. Discrimination for Improper Motivation or Union Animus
    - § 1.10.2.1. Probationary employees
  - § 1.10.3. Transfer of Union Job to Civilian
  - § 1.10.4. Temporary Work Outside the United States
  - § 1.10.5. No Punitive Damages Against Governmental Entity
  - § 1.10.6. Interest Permitted Against Governmental Entity
  - § 1.10.7. Confidential Employees
- § 1.11. "Meet And Discuss" Committees
- § 1.12. Act 47 Recovery Plan
- § 1.13. Tripartite Dispute

## Chapter 2

### CONSTITUTIONAL PROTECTION

- § 2.1. Homosexuality as Termination for Cause
- § 2.2. Psychiatric Examination
- § 2.3. False Statements
- § 2.4. Miscellaneous Other Protections
- § 2.5. First Amendment Rights
  - § 2.5.1. Political Discrimination
  - § 2.5.2. Malicious Prosecution in Retaliation of Protected Speech



- § 2.5.3. Right to Hire and Consult an Attorney
- § 2.5.4. Untruthful Speech Not Protected by First Amendment
- § 2.6. General Section 1981 Principles
  - § 2.6.1. Independent Contractors
- § 2.7. General Section 1983 Principles
  - § 2.7.1. Waiver of Governmental Immunity
  - § 2.7.2. “Shocks the Conscience” Exception to Governmental Immunity
- § 2.8. Fifth Amendment
- § 2.9. Equal Protection
  - § 2.9.1. Class-of-One Claim
- § 2.10. Procedural Due Process
- § 2.11. Constitutional Right to Work
- § 2.12. Right to Engage in Particular Occupation
- § 2.13. Fourth Amendment Unreasonable Search and Seizure

### **Chapter 3**

#### **LAWS CONCERNING DISCRIMINATION**

- § 3.1. Type of Discrimination
  - § 3.1.1. Volunteers
  - § 3.1.2. Religion
    - § 3.1.2.1. Age Discrimination in Employment Act and Religion
  - § 3.1.3. National Origin
  - § 3.1.4. Pregnancy
    - § 3.1.4.1. Burden-shifting framework
    - § 3.1.4.2. Knowledge of pregnancy
    - § 3.1.4.3. Abortion
  - § 3.1.5. Eleventh Amendment
    - § 3.1.5.1. Eleventh Amendment abrogation
  - § 3.1.6. Equal Pay Act
  - § 3.1.7. Age
    - § 3.1.7.1. Nondiscriminatory grounds for termination
    - § 3.1.7.2. Statute of limitations
    - § 3.1.7.3. Collective bargaining agreement requiring arbitration of ADEA claims
  - § 3.1.8. Miscellaneous

- § 3.2. Hostile Environment
  - § 3.2.1. Same-Sex Harassment
    - § 3.2.1.1. Equal opportunity harasser
  - § 3.2.2. Employer Responsibilities
    - § 3.2.2.1. Grievance procedure
    - § 3.2.2.2. Remedial action
    - § 3.2.2.3. Condoning harassment
    - § 3.2.2.4. Knowledge of harassment
  - § 3.2.3. Schools
  - § 3.2.4. Miscellaneous Provisions
    - § 3.2.4.1. Hostile work environment—multiple harassers
    - § 3.2.4.2. Sophisticated discriminators
    - § 3.2.4.3. Code words
    - § 3.2.4.4. One-time acts
    - § 3.2.4.5. Altering condition of employment
- § 3.3. Filing Before State Agency
  - § 3.3.1. Age Discrimination
    - § 3.3.1.1. Filing deadline—PHRC and EEOC
    - § 3.3.1.2. Thirty-day notice
    - § 3.3.1.3. Statutes of limitation
  - § 3.3.2. Rehabilitation Act
  - § 3.3.3. Miscellaneous Provisions
    - § 3.3.3.1. Continuing violations
    - § 3.3.3.2. Class actions
- § 3.4. Administrative Filing—Statute of Limitations
  - § 3.4.1. Equitable Tolling
  - § 3.4.2. Active Deception
  - § 3.4.3. Discovery Rule
  - § 3.4.4. Continuous Violation
  - § 3.4.5. Additional Party Under Successor Liability
  - § 3.4.6. Failure to Post Equal Employment Opportunity Commission Notice
- § 3.5. Time To Initiate Suit After Administrative Filing
  - § 3.5.1. Reconsideration and Filing Period
  - § 3.5.2. Procedural Requirements for Title VII
    - § 3.5.2.1. EEOC verification of claim
  - § 3.5.3. Procedural Requirements for ADEA
  - § 3.5.4. Filing of Charge Sufficient to Preserve Timeliness
- § 3.6. Administrative Filing Not Required
- § 3.7. Burden of Proof
  - § 3.7.1. Mixed Motives Under Title VII
  - § 3.7.2. Motivating Factor

- § 3.7.3. Classes of Disparate Treatment
- § 3.7.4. Pennsylvania Human Relations Act and Title VII
- § 3.7.5. *Price Waterhouse* Test
  - § 3.7.5.1. Pretext case
  - § 3.7.5.2. Plaintiff's *prima facie* case
- § 3.7.6. Lack of Plaintiff's Direct Proof
- § 3.7.7. Age Discrimination
  - § 3.7.7.1. Beneficiary sufficiently younger
  - § 3.7.7.2. No mixed motives under ADEA
  - § 3.7.7.3. *McDonnell Douglas* analysis under ADEA
  - § 3.7.7.4. Alternative legal basis
  - § 3.7.7.5. Release or waiver
  - § 3.7.7.6. SSDI preclusion of ADEA claim
- § 3.7.8. Whistleblower
- § 3.7.9. Nondiscriminatory Motives
  - § 3.7.9.1. Motivating factor—mixed-motives instruction
- § 3.8. Burden of Proof—Summary Judgment
  - § 3.8.1. Title VII
    - § 3.8.1.1. Sufficient evidence of record
    - § 3.8.1.2. Four inferences
    - § 3.8.1.3. Plaintiff's burden
    - § 3.8.1.4. Adverse employment action
    - § 3.8.1.5. Successor liability
    - § 3.8.1.6. Reservation to appeal consent judgment
  - § 3.8.2. Miscellaneous Provisions
    - § 3.8.2.1. Age-related animus
    - § 3.8.2.2. Past employment history
    - § 3.8.2.3. Prior experience of employer
    - § 3.8.2.4. Constructive discharge as jury question
    - § 3.8.2.5. Depositions to rebut poor work performance
    - § 3.8.2.6. No discrimination against the young
- § 3.9. Jury Charge
  - § 3.9.1. Age Discrimination
    - § 3.9.1.1. Plaintiff's burden
  - § 3.9.2. Mixed Motives
  - § 3.9.3. Miscellaneous Provisions
- § 3.10. Disparate Impact
  - § 3.10.1. Burdens of Proof
  - § 3.10.2. Age Discrimination in Employment Act (ADEA)
    - § 3.10.2.1. Employer's affirmative defense: burden of proof
  - § 3.10.3. Disparate Impact v. Disparate Treatment
  - § 3.10.4. Class Action in Disparate Impact

- § 3.11. Illegal Substances
  - § 3.11.1. Use of Drugs
    - § 3.11.1.1. Drug testing
  - § 3.11.2. Use of Alcohol
  - § 3.11.3. Rehabilitated Drug Addicts
- § 3.12. Bona Fide Occupational Qualification
  - § 3.12.1. Therapeutic Needs and Privacy Concerns
  - § 3.12.2. Privacy Concerns
  - § 3.12.3. Security Clearance
- § 3.13. Individual Liability
- § 3.14. Damages
  - § 3.14.1. Punitive Damages Recoverable
  - § 3.14.2. Punitive Damages Not Recoverable
  - § 3.14.3. Compensatory Damages
  - § 3.14.4. Blacklist
  - § 3.14.5. After-acquired Knowledge of Wrongdoing
  - § 3.14.6. Back Pay
  - § 3.14.7. Front Pay
  - § 3.14.8. Liquidated Damages/Pre-judgment Interest
  - § 3.14.9. Expert Fees/Delay Interest/Attorney's Fees
  - § 3.14.10. Attorney's Fees
    - § 3.14.10.1. Pennsylvania Human Relations Act and Title VII
    - § 3.14.10.2. Appellate review
    - § 3.14.10.3. Marketplace billing rate
    - § 3.14.10.4. Lodestar
    - § 3.14.10.5. Reasonable hourly rate
    - § 3.14.10.6. Documentation of hours
    - § 3.14.10.7. Appellate review of hours claimed
    - § 3.14.10.8. Proportionality between fees and damages
    - § 3.14.10.9. Fee award to extent litigant was successful
    - § 3.14.10.10. Fee disproportionate to recovery
    - § 3.14.10.11. Hours spent litigating unsuccessful claims
    - § 3.14.10.12. Court's discretion
  - § 3.14.11. Mitigation
- § 3.15. Retaliation
  - § 3.15.1. Discriminatory Retaliation Under Title VII
  - § 3.15.2. Title VII Anti-retaliation Provision
  - § 3.15.3. Failure to Accommodate Under Title VII
  - § 3.15.4. No Impact on Employment Relationship
  - § 3.15.5. Good-Faith Belief in Protesting Conduct
  - § 3.15.6. Generality of Protest

- § 3.15.7. Post-termination Retaliation
- § 3.15.8. Anti-union Animus
- § 3.15.9. Report and First Amendment
- § 3.15.10. Causal Link Between Activity and Discharge
- § 3.15.11. Federal Sector Provision of the ADEA
- § 3.15.12. Section 1981 Retaliation
- § 3.16. Reverse Discrimination/Affirmative Action Plans
  - § 3.16.1. Strict Scrutiny
    - § 3.16.1.1. Justification of conclusions regarding discrimination
    - § 3.16.1.2. Requirements to challenge race-based preferences
  - § 3.16.2. Burden of Persuasion
    - § 3.16.2.1. Intent unrelated to past discrimination
    - § 3.16.2.2. Shifting burden
  - § 3.16.3. Basis for Adopting Race-Based Preferences
    - § 3.16.3.1. Non-remedial racial preference
    - § 3.16.3.2. Leading cases
    - § 3.16.3.3. Burden of achieving racial equality
    - § 3.16.3.4. Affirmative action plan
    - § 3.16.3.5. Intent to hire a woman
- § 3.17. Seniority System and Early Retirement
  - § 3.17.1. Seniority System
  - § 3.17.2. Early Retirement
- § 3.18. Reduction in Force
  - § 3.18.1. Elements
  - § 3.18.2. Setting Up Employee
  - § 3.18.3. Enhanced Benefits for General Release
  - § 3.18.4. Relaxed Standard
  - § 3.18.5. Requirements for Claim
- § 3.19. Americans With Disabilities Act of 1990 (ADA)
  - § 3.19.1. Coverage
  - § 3.19.2. Scope and Requirements
  - § 3.19.3. Disability Defined
    - § 3.19.3.1. Mistake as to disability
    - § 3.19.3.2. Current drug use
    - § 3.19.3.3. Substantially limited in a major life activity
      - § 3.19.3.3.1. Temporary impairment
      - § 3.19.3.3.2. Major life activity
    - § 3.19.3.4. Reactions and perceptions
    - § 3.19.3.5. Considered disabled by employer
    - § 3.19.3.6. Side effects of medication

- § 3.19.3.7. Regarded as having an impairment
    - § 3.19.3.8. Retaliation for requested accommodation
  - § 3.19.4. Damages and Recovery of Additional Sum to Compensate for Negative Tax Consequences of Lump Sum Award
  - § 3.19.5. Pennsylvania Human Relations Act
    - § 3.19.5.1. Local law
    - § 3.19.5.2. Promotion to position outside U.S.
    - § 3.19.5.3. Independent contractor
    - § 3.19.5.4. Discrimination by years of service, as opposed to age
    - § 3.19.5.5. Prior inconsistent statements—disability
  - § 3.19.6. Reasonable Accommodation
    - § 3.19.6.1. Monocular vision
    - § 3.19.6.2. Sub-par performance
    - § 3.19.6.3. Mitigation of impairment
    - § 3.19.6.4. Second-hand smoke
    - § 3.19.6.5. Interactive process
    - § 3.19.6.6. Accommodations in getting to work
    - § 3.19.6.7. Undue hardship
  - § 3.19.7. Rehabilitation Act
    - § 3.19.7.1. Scope
    - § 3.19.7.2. Applicability
    - § 3.19.7.3. Individuals incapable of performing duties
      - § 3.19.7.3.1. *Prima facie* case
      - § 3.19.7.3.2. Otherwise qualified for position
      - § 3.19.7.3.3. Duty to reassign
      - § 3.19.7.3.4. Substantive standards
      - § 3.19.7.3.5. Violation of affirmative action plan
  - § 3.19.8. Transsexualism as Disability
- § 3.20. Veterans' Reemployment Rights
  - § 3.20.1. Non-school Service Credit
  - § 3.20.2. Miscellaneous Provisions
    - § 3.20.2.1. No absolute preference
  - § 3.20.3. Vietnam Era Veterans' Readjustment Assistance Act
    - § 3.20.3.1. Immunity
  - § 3.20.4. Veterans' Preference Act (VPA)
  - § 3.20.5. Notification Provision of Intent to Return to Work Under Uniformed Services Employment and Reemployment Rights Act (USERRA)
- § 3.21. Sexual Harassment/Respondeat Superior

- § 3.21.1. Standard for Claim for Sexual Harassment
    - § 3.21.1.1. *Respondeat superior*
    - § 3.21.1.2. *Ellerth/Faragher* affirmative defense
    - § 3.21.1.3. Sexual harassment, constructive discharge
  - § 3.21.2. No Tangible Employment Action
  - § 3.21.3. Men and Women Treated Equally
  - § 3.21.4. Test for Number of Employees
- § 3.22. Social Media

## Chapter 4

### STATE LAW PROTECTIONS

- § 4.1. Violation of Public Policy
- § 4.2. Specific Public Policies
  - § 4.2.1. Workers' Compensation
  - § 4.2.2. Polygraph Testing
  - § 4.2.3. Whistleblower
  - § 4.2.4. Unemployment Compensation
  - § 4.2.5. Duty Under the Law
  - § 4.2.6. Substantial and Highly Offensive Invasion of the Employee's Privacy
  - § 4.2.7. Jury Service
  - § 4.2.8. Political Lobbying
  - § 4.2.9. Right to Bring Medical Malpractice Claim Arguably Sufficient
- § 4.3. Not Sufficient Public Policy
  - § 4.3.1. Accusation of Theft
  - § 4.3.2. Failure to Pay Commissions
  - § 4.3.3. Waiver of Jury Trial
  - § 4.3.4. Disagreement on Legality of Course of Action
    - § 4.3.4.1. Employee overreaction
    - § 4.3.4.2. Productivity quotas
  - § 4.3.5. Reputation
  - § 4.3.6. Negligent Dismissal
  - § 4.3.7. Noncompete
  - § 4.3.8. Specific Intent to Harm the Employee
    - § 4.3.8.1. Commissions
    - § 4.3.8.2. Conspiracy to fire
    - § 4.3.8.3. Official government policy
- § 4.4. Implied Contracts of Employment

- § 4.4.1. Oral Promises Made at Time of Hiring
  - § 4.4.1.1. Specificity of promise
  - § 4.4.1.2. Additional consideration
  - § 4.4.1.3. Jury issue
  - § 4.4.1.4. Specifically contracted for employment at will
  - § 4.4.1.5. Implied contract for reasonable time
- § 4.4.2. Duty of Good Faith
  - § 4.4.2.1. Reasonable expectations
- § 4.4.3. Employment for Life
- § 4.4.4. Employee Handbook
  - § 4.4.4.1. Doubtable enforceability
  - § 4.4.4.2. Mere existence of policy
  - § 4.4.4.3. Justified reliance
  - § 4.4.4.4. Reasonable person standard
  - § 4.4.4.5. Handbook as contract
  - § 4.4.4.6. Custom or usage creating rights
- § 4.4.5. Equitable Estoppel
  - § 4.4.5.1. Detrimental reliance
- § 4.4.6. Bylaws
  - § 4.4.6.1. Contract and tort claims not barred
  - § 4.4.6.2. Nonprofit corporations
- § 4.4.7. Oral Promises Require Consideration
- § 4.5. At-Will Employment
  - § 4.5.1. Roots of At-will Employment
  - § 4.5.2. At-will Rule in Pennsylvania
  - § 4.5.3. Public Policy Exception
  - § 4.5.4. Clear Mandate of Public Policy
  - § 4.5.5. At-will in Pennsylvania's Federal Courts
  - § 4.5.6. Scope of At-will Doctrine
  - § 4.5.7. Application of the Public Policy Exception
  - § 4.5.8. Limitation on the Public Policy Exception
  - § 4.5.9. Public Employers
  - § 4.5.10. Overcoming the Presumption of Employment at Will
  - § 4.5.11. No Tortious Interference with Existing At-will Employment Contract
- § 4.6. Fraud
  - § 4.6.1. Failure of Reliance
  - § 4.6.2. Guidelines for Employment Fraud
- § 4.7. Negligence/Bailment
- § 4.8. Child Labor Law
  - § 4.8.1. Extraordinary Damages



- § 4.9. Health Services Plan Corporations Act
- § 4.10. Pennsylvania Human Relations Act (PHRA)
  - § 4.10.1. Social Security Act Claim Bar of PHRA Claim
- § 4.11. Wage Payment And Collection Law (WPCL)
  - § 4.11.1. Preemption
  - § 4.11.2. Attorney's Fees
  - § 4.11.3. Corporation as Employee
  - § 4.11.4. Earnings
  - § 4.11.5. Definition of Employer Under the WPCL
- § 4.12. Pennsylvania's Minimum Wage Act Of 1968
  - § 4.12.1. Independent Contractors
  - § 4.12.2. Domestic Services Exemption
- § 4.13. The Heart and Lung Act

## **Chapter 5**

### **PUBLIC EMPLOYEES**

- § 5.1. Due Process Rights
  - § 5.1.1. What Process Is Constitutionally Due
  - § 5.1.2. Due Process
    - § 5.1.2.1. Municipal employees are at-will employees
    - § 5.1.2.2. Property interest
      - § 5.1.2.2.1. Property right of probationary employee
    - § 5.1.2.3. Local agency law
      - § 5.1.2.3.1. Standard of review of local agency decision
    - § 5.1.2.4. Pleading of deprivation of property interest
    - § 5.1.2.5. Guaranteed expectation
    - § 5.1.2.6. Right to a specific job
    - § 5.1.2.7. No *per se* right to employment
    - § 5.1.2.8. Municipal employees
    - § 5.1.2.9. Pre-termination hearing
      - § 5.1.2.9.1. Biased pre-termination hearing
    - § 5.1.2.10. Secretary of Education as impartial fact finder
    - § 5.1.2.11. Failure to exempt from civil service
    - § 5.1.2.12. Ability to act quickly
    - § 5.1.2.13. Failure to establish personal or property right
    - § 5.1.2.14. Governor's power of early removal
    - § 5.1.2.15. Appropriate notice
    - § 5.1.2.16. Political issues

- § 5.1.2.17. Delegation of hearing authority
- § 5.1.2.18. Professional licenses
  - § 5.1.2.18.1. Adjudicative and prosecutorial functions
- § 5.1.2.19. Letter as an adjudication
- § 5.1.2.20. When due process claim can be stated
- § 5.1.2.21. Exception to notice requirement in the case of *sua sponte* summary judgment
- § 5.1.2.22. Establishing harm or prejudice as a result of unreasonable delay
- § 5.1.2.23. Due process as applied to physician re-credentialing
- § 5.1.2.24. Board's independent review of pending prior disciplinary actions
- § 5.1.3. Due Process Not Applicable
  - § 5.1.3.1. Nonprofessional school employee
  - § 5.1.3.2. Suspension of medical license
  - § 5.1.3.3. Right to confront and address allegations
  - § 5.1.3.4. Due process or hearing not required; Heart and Lung Act, Act 632, 61 P.S. § 951
    - § 5.1.3.4.1. Exhausting civil service state remedies
    - § 5.1.3.4.2. Res judicata
- § 5.2. Protected Activity, Speech, and Political Affiliation
  - § 5.2.1. Intraparty Conflicts
  - § 5.2.2. Exception for Advisors
  - § 5.2.3. Government as Employer
  - § 5.2.4. Protection of Public Employees
  - § 5.2.5. Mandated Wearing of Flag Patch
  - § 5.2.6. Performing Task Employed to Perform
  - § 5.2.7. Punitive Damages
  - § 5.2.8. Exaction of Administrative Remedies
  - § 5.2.9. Liability of County Executive
  - § 5.2.10. Union Employee
  - § 5.2.11. Right to Remain Silent
  - § 5.2.12. Interview with Media
  - § 5.2.13. First Amendment
  - § 5.2.14. Government Predictions of Harm
  - § 5.2.15. Retaliation for Lack of Political Support
  - § 5.2.16. Retaliation for Appearing in Civil Action

- § 5.2.17. Sexual Harassment
  - § 5.2.17.1. Burden of persuasion
  - § 5.2.17.2. County ordinance restricting political activities
- § 5.3. Certified Professional Employees
  - § 5.3.1. School District
  - § 5.3.2. Showing of Bias
  - § 5.3.3. Seniority
  - § 5.3.4. Substantial Decrease in Student Enrollment
  - § 5.3.5. School Employment Contracts
    - § 5.3.5.1. School board's eligibility list form
  - § 5.3.6. Order of Mandamus to Enforce School Board's Compliance with School Code
  - § 5.3.7. Lack of Knowledge
  - § 5.3.8. Loss of Certification Versus Termination
    - § 5.3.8.1. Immorality as basis for termination of teacher
  - § 5.3.9. Discipline of Certified Teacher
  - § 5.3.10. Disciplinary Hearing
    - § 5.3.10.1. Transfer of Entities Act
    - § 5.3.10.2. Acquittal of criminal charges not a bar to disciplinary hearing
    - § 5.3.10.3. Scope of review
    - § 5.3.10.4. Substantial evidence in support of credibility
    - § 5.3.10.5. One-year limitation not implicated
    - § 5.3.10.6. No remand for harmless procedural errors
  - § 5.3.11. Revocation of Medical License
    - § 5.3.11.1. Revocation of hospital privileges with immunity pursuant to HCQIA
  - § 5.3.12. School Code's Removal Provision of Superintendents
- § 5.4. Residency Requirements
- § 5.5. Petition Clause, United States Constitution
- § 5.6. Pennsylvania Civil Service
  - § 5.6.1. Attainment of Regular Status
  - § 5.6.2. Appeals
  - § 5.6.3. Police Dismissals
  - § 5.6.4. Just Cause
  - § 5.6.5. Termination of Benefits
  - § 5.6.6. Attorney Fees
  - § 5.6.7. Back Pay Offset

- § 5.6.8. Scope of Review
- § 5.6.9. Right to Hearing
  - § 5.6.9.1. Commission's authority to employ hearing examiners to conduct hearings
- § 5.6.10. Public Employment Discrimination
- § 5.6.11. Sick Leave
- § 5.6.12. Governing Body's Attempt to Bind a Successor Body
- § 5.7. Privacy
- § 5.8. State Ethics Law
- § 5.9. Pension Benefits of Public Employees
  - § 5.9.1. Pension Benefits Affected by Arbitration Awards
  - § 5.9.2. Independent Contractor or Employee
  - § 5.9.3. Workers' Compensation Benefits
  - § 5.9.4. Pregnancy
  - § 5.9.5. Purchase of Credit for Graduate Study
  - § 5.9.6. Date of Cessation of Duties
  - § 5.9.7. Executive Marketing Incentive Program
  - § 5.9.8. Authority of Mayor
  - § 5.9.9. Second Class County Detectives
  - § 5.9.10. Withholding Money from Accumulated Leave Pay
  - § 5.9.11. Police Pension Under Third Class City Code
  - § 5.9.12. Pensions for Non-Work-Related Disability of Police Officers
  - § 5.9.13. Township's Unilateral Altering of Pension Benefits of Police Officers
  - § 5.9.14. Philadelphia Ordinance and Set-off of Workers' Compensation Award
  - § 5.9.15. School Employees Receiving Workers' Compensation
    - § 5.9.15.1. School employees' eligibility for disability annuity
  - § 5.9.16. Back Pay Award and Benefits
  - § 5.9.17. Department of Corrections' Refusal to Carry Over Leave in Excess of 45 Days
  - § 5.9.18. Statutory Challenge to Reduce Pension
  - § 5.9.19. Laws Removing Caps on Pension Benefits
  - § 5.9.20. Purchase of Credit for Part-time School Service Prior to PSERS Membership
  - § 5.9.21.

PSERS Notice to Elect Class Membership of Retirement System

§ 5.9.22.

PSERS Reclassification of Membership Affecting Pension Benefits

§ 5.9.23. Employer's Contribution for Uncredited State Service

§ 5.9.24.

Retirement Service Credit for Substitute Teacher Provided Through Private Corporation

§ 5.9.25. Retirement Benefit Selection Binding

§ 5.9.25.1. Employee's beneficiary nomination

§ 5.9.26.

Temporary Employees' Eligibility for Membership in State

Employees' Retirement System

§ 5.9.27.

Requirements of a Member of SERS to Receive State Disability Retirement Benefits

§ 5.9.28. Actuarial Soundness Required for Arbitration Benefit Award

§ 5.9.29.

Pension Benefits Affected by Ceasing to Be a Full-time, Salaried State Employee

§ 5.9.30. Pension Benefits Due a Common-law Spouse Widow

§ 5.9.31. Modification of Retirement Benefits

§ 5.9.32. Waiver of Adjustment for Erroneous Calculations

§ 5.9.33.

Immunity from Gross Negligence in Management of Deferred Compensation Fund

§ 5.9.34. Good Faith Reliance on Power of Attorney

§ 5.9.35. DROP Under Act 600

§ 5.9.36. Double Dipping Under PSERS

§ 5.9.37. Computation of Pension Benefits

§ 5.9.38. Retirement Date

§ 5.10. Indemnity

§ 5.11. Nonstate Service Credit

§ 5.11.1. Teaching in Foreign Country

§ 5.11.2. Resident in Medical Program

§ 5.11.3.

Purchase of Nonstate Credit for Civilian (Vietnam War) Service in Red Cross

§ 5.12.

Governmental Immunity for Governmental Employees

§ 5.13. Police Officers

§ 5.13.1. Disqualifying Criminal Offense

- § 5.13.2. Dismissal Under First Class Township Code and Police Tenure Act
- § 5.13.3. Standard of Review for Disciplinary Actions Against Police Officers
- § 5.13.4. Chain of Command Policy
- § 5.13.5. Promotions

- § 5.14. Prevailing Minimum Wage for the Prevailing Wage Act (PWA)
  - § 5.14.1. Unintentional Violation of Prevailing Wage Act (PWA)
  - § 5.14.2. Maintenance Exclusion
- § 5.15. Local Government
  - § 5.15.1. Salary Board
  - § 5.15.2. Removal Provision for Elected Officials
- § 5.16. Equitable Estoppel

## **Chapter 6**

### **CONSTRUCTIVE DISCHARGE**

- § 6.1. Definition of Constructive Discharge
- § 6.2. Age Discrimination
- § 6.3. Pattern of Discriminatory Treatment
- § 6.4. Knowledge of Other Staff
- § 6.5. Strikes/Work Stoppages
- § 6.6. Factors Considered

## **Chapter 7**

### **DEFAMATION**

- § 7.1. Plaintiff's Burden
- § 7.2. Defendant's Burden
- § 7.3. Definition of Defamation
- § 7.4. Absolute or Conditional/Qualified Privilege
- § 7.5. Termination as Defamation
- § 7.6. Conditional Privilege
- § 7.7. Not Meant in a Literal Sense

- § 7.8. Plaintiff's Burden on Damages
- § 7.9. Nature of Audience
- § 7.10. Discovery Rule
- § 7.11. Workers' Compensation Act
- § 7.12. Governmental Immunity
- § 7.13. Employer Immunity

## **Chapter 8**

### **MISCELLANEOUS**

- § 8.1. The Employee Retirement Income Security Act (ERISA)
  - § 8.1.1. Fiduciaries
    - § 8.1.1.1. Authority
    - § 8.1.1.2. Functions
    - § 8.1.1.3. Pension and welfare plans
      - § 8.1.1.3.1. Eligibility of plan participants
    - § 8.1.1.4. Prudent person rule
    - § 8.1.1.5. Outside consultants
    - § 8.1.1.6. Understandability of plan description
    - § 8.1.1.7. Breach of fiduciary duty
      - § 8.1.1.7.1. Breach of fiduciary duty, misrepresentations
      - § 8.1.1.7.2. Breach of fiduciary duty, conflicting or ambiguous statements
      - § 8.1.1.7.3. Breach of fiduciary duty, omission of information
    - § 8.1.1.8. Misleading employees regarding security of benefits
    - § 8.1.1.9. Breach of fiduciary duty, damages
    - § 8.1.1.10. Affirmative misstatements to plan participants
    - § 8.1.1.11. Extraordinary circumstances
    - § 8.1.1.12. Actions against former trustee
    - § 8.1.1.13. Statutes of limitation
    - § 8.1.1.14. Court's deference to administrator
    - § 8.1.1.15. Pennsylvania's prevailing wage and apprenticeship regulations
    - § 8.1.1.16. Multiple plaintiffs seeking injunctive relief for breach of fiduciary duty

- § 8.1.1.16.1. Injunctive relief for breach of fiduciary duty, irreparable harm
    - § 8.1.1.17. Breach of fiduciary duty, standing
    - § 8.1.1.18. Breach of fiduciary duty, equitable estoppel
    - § 8.1.1.19. Appropriate equitable relief
  - § 8.1.2. ERISA Preemption
  - § 8.1.3. Subrogation
    - § 8.1.3.1. Method to determine subrogation rights
  - § 8.1.4. Retaliation
    - § 8.1.4.1. Retaliation, presumptions, and burdens of proof
  - § 8.1.5. Waiver of Rights/Release
  - § 8.1.6. Standards of Review
    - § 8.1.6.1. Conflict of interest
    - § 8.1.6.2. Discretion of administrator
    - § 8.1.6.3. Income from other sources
    - § 8.1.6.4. Payment of interest
  - § 8.1.7. Top-Hat Plans
    - § 8.1.7.1. Definition
    - § 8.1.7.2. ERISA exemption
    - § 8.1.7.3. Available remedies
  - § 8.1.8. Early Retirement
  - § 8.1.9. Consolidated Omnibus Budget Reconciliation Act (COBRA)
  - § 8.1.10. Reimbursement Provisions
  - § 8.1.11. Arbitration of ERISA Benefits under a CBA
  - § 8.1.12. Collective Bargaining Agreement Under ERISA

§ 8.2.

Invasion of Privacy/Interference with Contractual Relationship

§ 8.3. Whistleblower Law

- § 8.3.1. Good Faith Report
- § 8.3.2. Special Counsel
- § 8.3.3. 180-Day Limitation Period
- § 8.3.4. Whistleblower Protection Under the Adult Protective Services Act
- § 8.3.5. Affordable Care Act

§ 8.4. Past Criminal History

- § 8.4.1. Sovereign Immunity
- § 8.4.2. Hiring Decisions
- § 8.4.3. Termination Decisions
- § 8.4.4. Child Protective Services Law (CPSL)



- § 8.5. The Family And Medical Leave Act Of 1993
  - § 8.5.1. Twelve-week Requirement
  - § 8.5.2. Sovereign Immunity Not Abrogated
  - § 8.5.3. Punitive Damages and Physical and Emotional Distress Damages
  - § 8.5.4. Limitation on Actions
  - § 8.5.5. Jury Findings and Instructions
  - § 8.5.6. Sufficient Evidence of Serious Health Condition
- § 8.6. Antitrust
  - § 8.6.1. Sherman Act
    - § 8.6.1.1. Multiple party requirement
    - § 8.6.1.2. Peer review
    - § 8.6.1.3. Type of injuries
    - § 8.6.1.4. Doctor's cause of action
  - § 8.6.2. Labor Agreements—Nonstatutory Labor Exemption
- § 8.7. Covenants Not To Compete
  - § 8.7.1. Enforceability
  - § 8.7.2. Subsequent to Commencement of Employment
  - § 8.7.3. Post-employment Restrictive Covenants
  - § 8.7.4. Unequal Bargaining Position
  - § 8.7.5. Time and Territory Restrictions
  - § 8.7.6. Heightened Scrutiny
  - § 8.7.7. Quality of Job Performance
  - § 8.7.8. Reformation
  - § 8.7.9. Medical Context
  - § 8.7.10. Assignment of Contract
  - § 8.7.11. Employer Protection Without Covenant
- § 8.8. Worker Adjustment and Retraining Notification Act (WARN)
  - § 8.8.1. Notice Provision
  - § 8.8.2. Seasonal Layoffs
  - § 8.8.3. Statute of Limitations
- § 8.9. Veterans' Preference Act (VPA)
  - § 8.9.1. Constitutionality
  - § 8.9.2. Public Position
  - § 8.9.3. National Guard/Reserves
  - § 8.9.4. Rule of Three
  - § 8.9.5. Property Interest Under the VPA
- § 8.10. Unemployment Compensation Law
  - § 8.10.1. Employer/Employee Relationship
  - § 8.10.2. Willful Misconduct
    - § 8.10.2.1. Definition

- § 8.10.2.2. After-discovered conduct
- § 8.10.2.3. Employee's ability to perform assigned duties
- § 8.10.2.4. Surrounding circumstances
- § 8.10.2.5. Specific detriment
- § 8.10.2.6. Misrepresenting whereabouts
- § 8.10.2.7. Temporary restraining order
- § 8.10.2.8. Negligent and unintentional conduct
- § 8.10.2.9. AIDS
- § 8.10.2.10. Drug testing
  - § 8.10.2.10.1. Off-the-job drug use
- § 8.10.2.11. Freedom of speech
- § 8.10.2.12. Racial comments
- § 8.10.2.13. Employee's mood disorder
- § 8.10.2.14. Sufficiently provoked reaction
- § 8.10.2.15. Smoking in the girls' room
- § 8.10.2.16. Improper access to records
- § 8.10.2.17. Using employer's time, site, and materials for own personal benefit
- § 8.10.2.18. Willful misconduct, disparate treatment
  - § 8.10.2.18.1. Willful misconduct, failure to disclose covenant not to compete
- § 8.10.2.19. Violation of employer's privacy expectation
- § 8.10.2.20. Affirmative act to deceive employer
- § 8.10.2.21. Searching for new job during work hours
- § 8.10.2.22. Improper use of employer's computer
- § 8.10.2.23. Lack of good cause for violating no show/no call policy
- § 8.10.2.24. Failure to join the union as required
- § 8.10.3. Major Non-tenured Policy-making or Advisory Position
- § 8.10.4. Unemployment Due to Labor Dispute
  - § 8.10.4.1. Disqualification standards
  - § 8.10.4.2. Non-union probationary employees
  - § 8.10.4.3. Constructive discharge
  - § 8.10.4.4. Strike or lockout
    - § 8.10.4.4.1. Strike or lockout, availability of alternative remedies
    - § 8.10.4.4.2. Reasonable length of time to maintain the status quo
    - § 8.10.4.4.3. Good-faith impasse
- § 8.10.5. Computation of Benefits
  - § 8.10.5.1. Annual and sick leave

- § 8.10.5.2. Rate and amount of compensation
    - § 8.10.5.3. Pension offset statute
    - § 8.10.5.4. Plant closings
    - § 8.10.5.5. Designated vacation time
    - § 8.10.5.6.
      - Teacher's benefits during break between academic terms
  - § 8.10.6. Unemployment and Motor Vehicle Under/Uninsurance
  - § 8.10.7. Federal Unemployment and Federal Tort Claims
  - § 8.10.8. Necessitous and Compelling Reasons, Voluntary Quit
    - § 8.10.8.1. Sexual harassment
    - § 8.10.8.2.
      - Voluntary quit, necessitous and compelling reasons, demotion
    - § 8.10.8.3. Unsafe working conditions
    - § 8.10.8.4. Necessitous and compelling reasons
    - § 8.10.8.5. Hostile work environment
    - § 8.10.8.6. Early retirement (or layoff) incentives
  - § 8.10.9.
    - Disqualification for Non-Work-related Misconduct Under Section 3
  - § 8.10.10. Scope of Review
    - § 8.10.10.1. Scope of review, findings of fact
  - § 8.10.11. Waiver of Issues
  - § 8.10.12. Burdens of Proof
- § 8.11.
- Racketeer Influenced and Corrupt Organizations Act (RICO)
- § 8.11.1. Standing to Sue
  - § 8.11.2. Statute of Limitations
- § 8.12. Fair Labor Standards Act (FLSA)
- § 8.12.1. Overtime
    - § 8.12.1.1. Fair Labor Standards Act
    - § 8.12.1.2. Employer's burden
    - § 8.12.1.3. Companionship exemption
    - § 8.12.1.4. Remuneration included in regular rate of pay
    - § 8.12.1.5. Accrued compensatory time
    - § 8.12.1.6. Custom or practice—uniform changing time
    - § 8.12.1.7. Retail commission exception
  - § 8.12.2. Exempt Employees
    - § 8.12.2.1. Duties test and salary test
    - § 8.12.2.2. Docking exempt employee's pay
    - § 8.12.2.3. Employer's strict compliance
    - § 8.12.2.4. Loss of exempt status
    - § 8.12.2.5. Salary basis statutory language
    - § 8.12.2.6. Exceptions to salary basis test

- § 8.12.2.7.  
Actuality or likelihood of impermissible reduction
- § 8.12.2.8. Personal time off and sick leave
- § 8.12.3. Window of Correction
- § 8.12.4. Statute of Limitations
- § 8.12.5. Retaliatory Discharge
- § 8.12.6. FLSA Preemption
- § 8.13. Personnel Files Act
- § 8.14. The Health Care Quality Improvement Act of 1986
  - § 8.14.1. Purpose
    - § 8.14.1.1. Antitrust suits deterred
    - § 8.14.1.2. Professional review activity—immunity
  - § 8.14.2. Due Process
- § 8.15. Arbitration
  - § 8.15.1. Arbitration Agreement as Unconscionable
  - § 8.15.2. Waiver of Arbitration Agreement
  - § 8.15.3. Section 3 of the FAA
- § 8.16. Picketing
- § 8.17. Pennsylvania Labor Anti-Injunction Act
- § 8.18. Striker Replacement
- § 8.19. “Yellow-Dog” Contracts
- § 8.20. Toxic Substances (Right To Know)
- § 8.21. Vicarious Admission by Employee Against Employer
- § 8.22.  
Actions Against Commonwealth When Commonwealth Is Indispensable Party
- § 8.23.  
Non-Attorneys Are Sometimes Permitted to Represent Parties Before Administrative Courts
- § 8.24. Declaratory Judgments Act
- § 8.25. Statute Fixing Time for an Adjudicating Body
- § 8.26. Preemption Under The National Bank Act (NBA)
- § 8.27. FICA Tax for Medical Residents
- § 8.28. Discovery in Trade Secret Litigation

## Chapter 9

### WORKERS' COMPENSATION—WHEN IT BARS LAWSUIT AGAINST EMPLOYER

- § 9.1. Exclusivity of the Workers' Compensation Act
  - § 9.1.1. Exceptions
    - § 9.1.1.1. Personal animus
    - § 9.1.1.2. Violation of law
    - § 9.1.1.3. Fraudulent misrepresentations
    - § 9.1.1.4. Property owner versus employer
    - § 9.1.1.5. Underinsured motorist benefits
    - § 9.1.1.6. Product liability—dual capacity
    - § 9.1.1.7. Non-work-related injury
    - § 9.1.1.8. Commonwealth and its agencies are not distinct entities for purposes of the Workers' Compensation Act
- § 9.2. Work-Relatedness
  - § 9.2.1. Final Adjudication
  - § 9.2.2. Parking Lot Injuries
  - § 9.2.3. Acts of Third Parties
- § 9.3. Same Employ
- § 9.4. Handling of Benefits
  - § 9.4.1. Malicious and Fraudulent Conduct
- § 9.5. Double Dip
- § 9.6. Course and Scope of Employment
  - § 9.6.1. Transportation—Coming and Going Rule
  - § 9.6.2. Alcohol Consumption
- § 9.7. Hospital as Employer
- § 9.8. Issue Preclusion
  - § 9.8.1. Sexual and Racial Harassment
  - § 9.8.2. Full Faith and Credit
  - § 9.8.3. Preclusive Effect in Later State Court Proceedings
  - § 9.8.4. Identity of Issues
- § 9.9. Defamation
- § 9.10. Psychic Injury
  - § 9.10.1. Single Episode
  - § 9.10.2. Psychic Injury with Physical Manifestations Requires Abnormal Working Conditions
- § 9.11. Statutory Employer

- § 9.11.1. Elements
- § 9.11.2. Strictly Construed
- § 9.11.3. Actual Control
- § 9.11.4. Borrowed Servant
- § 9.11.5. Judicial Estoppel as to Status
- § 9.12. Termination
  - § 9.12.1. Working Under Suspension
  - § 9.12.2. Burden If Fired for Cause
  - § 9.12.3. Retaliatory Discharge
  - § 9.12.4. Multiple Termination Petitions
  - § 9.12.5. Voluntary Removal from Workforce
- § 9.13. Temporary Service Employees
  - § 9.13.1. Borrowed Servant/Employee
    - § 9.13.1.1. Definition
    - § 9.13.1.2. Employee of entity where actually working
  - § 9.13.2. Liability of Temporary Agencies
- § 9.14. Loss of Earning Power
- § 9.15. Subrogation
- § 9.16. Offset of Benefits
- § 9.17. Scope and Standard of Review
- § 9.18.  
Agreement to Choice of Law for Pennsylvania Injuries Is Void
- § 9.19. Procedural Issues
  - § 9.19.1. Waiver of Issues
- § 9.20.  
Job Unavailability When It Causes Substantial Loss in Pension
- § 9.21. Workers' Compensation Disclaimer

**Chapter 10**  
**LIMITATIONS ON ACTIONS—**  
**STATUTES OF LIMITATIONS**

**APPENDIXES**

- Appendix A. EEOC Regulations
- Appendix B. PHRC Regulations
- Appendix C. Sample Personnel Manuals
- Appendix D. Complaints
  - D-1. Age Discrimination
  - D-2. Disability
  - D-3. Race
  - D-4. RICO
  - D-5. Termination
  - D-6. Whistleblower
  - D-7. Workers' Compensation

Index