UNFAIR DISMISSAL ISSUES IN AMERICAN LABOR LAW AND THEIR SOLUTIONS

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Abstract

American common law has long recognized that employment relationships are terminable at the will of either party, absent a contractual commitment to the contrary. Although several federal and state statutes have limited the applicability of this doctrine, protecting employees from discharge because of race, religion, sex, national origin, military service, age, or union activity, employers still have considerable freedom in deciding whether or not to discharge a non-union employee. In order to provide better protection for employees, an increasing number of jurisdictions have recognized a cause of action for wrongful discharge or dismissal since the late 70s. These litigations have gradually become the new frontier of labor law in recent years and their development merits detailed analysis.

The main contents of this paper are divided into four parts. The first section sets forth briefly the history of the so-called employment-at-will doctrine and discusses both the justification for its long-standing existence and the reasons for its abolition. The second section describes in detail three exceptions: i.e., public policy, implied contract theory and implied covenant of good faith and fair dealing, to the employment-at-will doctrine. It tries to analyze a number of representative court decisions and their legal basis. The third section discusses the possibility of enacting a comprehensive legislation to deal with unfair dismissal problems, which on the one hand would provide the employees with more access to an impartial tribunal and on the other hand would limit the employers' liability. The fourth section outlines several

preventive measures adopted by the employers to forestall unfair dismissal litigations and to promote employee-employer cooperative relations.