

agent (voted in by the majority of the workers). New employees must also join the union under the union-shop policy. The Taft-Hartley Act, however, allows individual states to outlaw the union-shop policy. Most union contracts negotiated in the 1990s operated under the union-shop policy.

The agency-shop policy allows both union and nonunion workers to be employed by an organization, but the nonunion employees must pay a union fee equal to union dues. This policy requires nonunion workers to pay their "fair share" of the expenses of the union's representing them in negotiations, but none of the cost of the union's political activities. The open-shop policy allows voluntary union membership or nonmembership for all workers. It does not require nonunion workers to pay any union dues or fees.

LABOR LEGISLATION

Both labor unions and management have been affected by federal legislation since 1932, when the Norris-LaGuardia Act was passed. This law protects union activities such as strikes and picketing by making it difficult for management to obtain injunctions against them. In 1935 the Wagner Act (also known as the National Labor Relations Act) made collective bargaining legal and forced employers to negotiate with union officials. The National Labor Relations Board was established by this act. The board oversees union elections and guards against unfair labor practices.

The Fair Labor Standards Act of 1938 set a maximum of forty hours for a basic workweek, outlawed child labor, and set a minimum wage. The Taft-Hartley Act limited the power of unions by prohibiting unions from such activities as coercing employees to join unions, charging excessive fees, refusing to bargain collectively with an employer, and using union dues for political contributions. The Taft-Hartley Act was amended in 1959 by the Landrum-Griffin Act, which requires a union to have a constitution and bylaws, secret-ballot elections of officers, and a financial reporting procedure. Management procedures are also regulated by legislation, such as the Plant-Closing Notification Act of 1988, which requires employers to give workers a sixty-day warning of mass layoffs or plant closings.

OUTLOOK

Labor unions were born out of necessity, to protect the health and well-being of American workers. Through the years, they have provided a unified voice for workers and obtained fair treatment of them in the workplace. During the twentieth century, however, laws were passed that guarantee employees many of the rights that once had to

be negotiated in labor-management contracts. An increase in employee-management teamwork and communication has also reduced the need for workers to be represented by labor unions. Thus, labor unions no longer play the vital role they once did in American labor-management relations.

SEE ALSO *Collective Bargaining; Negotiation*

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SEE *Factors of Production*

LAW IN BUSINESS

Law governs and regulates virtually all aspects of the business process, from the right to engage in a business or trade, to the legal form of a business, to agreements for buying and selling merchandise or rendering services. Law regulates the quality of products sold and the advertising of products for sale. Law governs the employment relationship, protects business property, and taxes business income. This article explores the relationship of business and law in several of these areas.

BUSINESS LAW AND LAWYERS

Business in the United States is regulated by federal and state laws as well as by local ordinances. State law regulating forms of business, business agreements, and some taxes is the most important. Federal law regulates such things as advertising, civil rights, and protection of such property as inventions. Local law typically regulates business hours, where one can do business (zoning), and health and safety.

To qualify as a lawyer, a person must usually earn both a college degree and a three-year law degree and then pass a rigorous examination (the bar exam). Lawyers are normally certified in one or possibly two states. Thus lawyers certified in Massachusetts would not be qualified to answer a question about law in Texas or even a question about local law in a distant city within their own state. The rules and ethics of law practice are governed by the supreme court of each state.

Most lawyers do not have degrees in business. Their expertise is law, not business. All businesses need lawyers from time to time, but it is important for the businessperson to know as much as possible about the law to better weigh the legal advice and the needs of business.

FORMS OF BUSINESS

There are three basic legal forms of business: proprietorship, partnership, and corporation.

Proprietorship. Many businesses begin with an idea worked out at the kitchen table, in a garage workshop, or today, on the computer. There are no legal impediments to or requirements for starting most businesses. One needs only an idea, perhaps inventory, and customers. When one simply starts a business with nothing more, it is called a sole proprietorship. For some business, licenses are necessary. Plumbers, beauticians, and, of course, lawyers and physicians must be licensed by the state. Carpenters, psychologists, tax advisers, and bookkeepers, while they often have professional qualifications, do not need to be legally certified or licensed.

The sole proprietor is responsible for all the debts of the business and in turn receives, after taxes, all of the profits. The sole proprietor may hire employees. A sole proprietorship tends to have no more than up to twelve to fifteen employees. If the number of employees increases beyond this, the business normally evolves into another form.

Partnership. The Uniform Partnership Act, recognized by more than forty states, states that “a partnership is an association of two or more persons to carry on as coowners a business for profit” (UPA 6[11]). A number of factors differentiate this form of business from a sole proprietorship. More than one person is involved, and they are co-owners of the business. A partnership, like a sole proprietorship, may employ workers who are not owners.

Business may be defined as “every trade, occupation, or profession.” A partnership may be made up of members of any occupation. The goal of the partnership is profit; therefore, an organization of persons whose pur-

pose is to encourage recycling or advocate a political cause is not a partnership.

A partnership can be created very easily. If Sam and Mike are mechanics and put on a sign “Sam and Mike’s Garage—Open for Business,” they have formed a partnership under the law. Any income or losses are split half and half in the absence of an agreement that says otherwise. Normally a partnership is created by written document with the help of a lawyer. Suppose Jill and Joan wanted to start a sporting-goods store. Suppose Jill could work only half time but could contribute \$50,000 to start the business, while Joan had no money but knew the business and could work full time. With the help of a lawyer, they might agree as follows: The business would operate month to month. If there was income, Joan would draw the first \$1,500 as salary. Then Jill would draw \$750 as salary. Additional income would pay Jill 6 percent per year on the \$50,000 she contributed. Finally, any additional income, if available, would be split evenly between the partners.

If Sam and Mike call their business “Quality Mechanics” or Jill and Joan call their business “Sports Unlimited,” the names must be registered with the state and may not be the same as a name previously registered. The purpose of registration is to let the public know Quality Mechanics really means Sam and Mike.

A partnership is easy to create, but its drawback is liability. Suppose Joan buys a large inventory that will not sell. Each partner is fully responsible for company debts. It may cost them their life savings. Accounting or law partnerships may have hundreds of partners. The limited liability partnership and the limited liability company, now recognized in all states, provides the simplicity of partnership and protection from wrongful or negligent acts of other partners. Any business may be called a company. A corporation, which also provides protection from personal liability, is different.

Corporations. A corporation is the form of most large businesses and increasingly small ones. The corporate name is registered with the state and must include the words *corporation*, *incorporated*, *limited*, or *professional corporation*. The latter is most commonly used for corporations rendering legal, medical, or other services. The owners or shareholders contribute money, property, or services for shares. If the shares are traded on an exchange the corporation is public. Shares in private—usually smaller—corporations are often held by a few individuals or a single person.

Shareholders elect a board of directors, which in turn appoints corporate officers who hire employees. After salaries and other expenses are paid, the profits may be distributed to the shareholders in the form of dividends or

reinvested in the corporation to allow it to grow. The corporation insulates the owners from liability. If Jill and Joan's sporting-goods store was a corporation and declared bankruptcy, Jill and Joan would not have to pay any remaining debt from their own money.

Those wishing to start a business may consult with a lawyer to determine which legal form the business should take.

CONTRACT LAW

Contract law regulates the day-to-day business of buying and selling goods or performing services. A contract is defined in law as an agreement between two parties with an offer, acceptance, and consideration. Assume Jill and Joan have a corporation named Sports Unlimited, Inc. Ed comes in and decides to buy a tent priced at \$225. He offers \$225 to Sports Unlimited, which accepts the offer by ringing it up on the cash register. The consideration is what is exchanged; that is, \$225 and the tent. When the store accepts the price, there is a binding contract. Suppose a sign clearly in Ed's view says "All returns must be made within thirty days with cash receipt." This sign becomes part of the agreement. If Ed brings the tent back twenty-nine days later, he can get his money back; if he brings it back thirty-one days later, it would be too late. Even though it is not stated by either party, if Ed used the tent on a camping trip, it would not be returnable. If, however, the tent leaked, it is not "fit for the purposes for which it was intended" and Ed could get his money back within a reasonable time.

Suppose Sam and Mike form the partnership Quality Mechanics and Mary comes in and says, "The brakes aren't right. Please fix them by 5 P.M." Mike says, "It will be done!" A contract now exists, even though many terms are missing. Sam and Mike have agreed to fix what is wrong with the brakes, and Mary has agreed to pay a reasonable price. The brakes may need a simple adjustment or a complete overhaul. If Sam and Mike see that additional work is necessary, it would be best to call Mary and extend the contract to include more work. Note that while writing can help avoid misunderstanding, oral contracts are valid for business services.

WARRANTIES AND PRODUCT LIABILITY

Warranties and guarantees may be implied or express. If nothing else is said, it is implied that a product is guaranteed to be fit for the purposes for which it is intended. A tent will not leak for a reasonable time and an article of clothing will stand up to reasonable wear and tear. Most products come with express warranties. Most common among express warranties are limited warranties, whereby

the manufacturer guarantees all parts and workmanship for a period of one year. If the product breaks down or wears out after that, the customer is responsible, although extended warranties can be purchased on many products, such as cars and appliances. Occasionally products are clearly labeled "Sold as is. No warranty of any kind."

Product liability is a further step in consumer protection. Products must by law be free from hidden defects. A hidden defect may come from a poor design or poor manufacturing. If a hidden defect injures someone, the maker must pay damages. If manufacturers deliberately or recklessly put defective products on the market, they are liable for additional damages, called punitive damages. To protect themselves, makers warn buyers of possible dangers. Major issues have included the side effects of drugs and, in the auto industry, vehicles that roll over too easily or have gas tanks placed in dangerous positions.

EMPLOYMENT LAW

As a business grows, employees are normally hired, and the legal aspects can become very complicated. An agreement to employ is a contract of offer and acceptance. The consideration is an exchange of services for a wage or salary. In the United States, contracts of employment can be quite simple. Bob agrees to work for Sports Unlimited, Inc., for \$500 a week. He agrees to work under the direction of Jill and Joan for a set number of hours. He, in the words of the law, is an employee at will. He may quit or be fired at any time. Sports Unlimited is not required to give a reason if it fires him. Bob may request a raise at any time and has no legal right to health benefits, pension, or even vacation.

The law does, however, require a number of things of employers. Sports Unlimited must pay Bob at least the hourly minimum wage. In addition Sports Unlimited must withhold income taxes and pay social security taxes for Bob. Sports Unlimited must also pay workers' compensation and unemployment insurance in case Bob is injured on the job or laid off. The law also makes a distinction between an employee and an independent contractor. If Sports Unlimited hires a painter to paint the building or a lawyer to draw up the corporation papers, the service is done by an independent contractor. Typically, a gardener who cuts the grass and trims the hedges is an independent contractor and is simply paid. A cleaning person working inside the house under the direction of the owner is an employee, and thus the law requires additional paperwork and taxes.

Federal law allows employees of larger companies to form unions and make a single employment contract. The process is known as collective bargaining. If employees wish, the National Labor Relations Board will conduct an election; if a majority of workers want a labor union, the

employer must recognize the union. A typical contract spells out wages, benefits such as health insurance and vacation, rights to compete for promotions, and the circumstances in which employees may be laid off or fired. In the United States in 2005, unions represented only about 15 percent of employees.

CIVIL RIGHTS LAWS

It is well known that almost all workers are protected by the Civil Rights Act of 1964, the Equal Pay Act of 1963, and the Americans with Disabilities Act (ADA) of 1990. These acts apply to companies large and small, unionized or not. The law says that employees may not be discriminated against in terms of conditions of employment including hiring and promotion because of race, religion, creed, national origin, sex, and disability. In the not too distant past, many companies would not hire members of racial or religious minorities for positions of authority regardless of their ability. Women were discouraged from entering many trades, such as construction, or professions, such as law and medicine. State laws often forbid women from “dangerous” jobs such as mining although the jobs were no less dangerous for men. These civil rights acts have been very successful in expanding opportunity in America.

Affirmative action is not a federal law but an executive policy (ordered by the president) that requires companies that do business with the government, or institutions such as schools that receive federal funds, to work to increase numbers of workers (or students) from underrepresented classes. This can be tricky because companies are required to seek out and promote members of certain minority groups without discriminating against others. This is not an easy task, but it was part of American policy in 2005.

BFOQ stands for “bona fide occupational qualification” and represents an exception to civil rights laws. One may discriminate if there is a good reason to do so. Since people have a right to privacy, an attendant in a restroom can be required to be of the same sex. Models for a line of dresses can be exclusively young, slim females, and casting for a movie or play may discriminate on any basis. In a 1977 U.S. Supreme Court case, the Court held the state could require guards in a male maximum-security prison to be male. Some questions remain open. Could a Chinese restaurant wishing to create the atmosphere of China have only Chinese servers? That is an open question.

In the 1970s Congress added older workers to the list of protected classes. Legal protection is given only to persons over the age of forty. A company may refuse to hire a twenty-five-year-old as being “too young” or, in an actual case, a thirty-seven-year-old as being “too old” for a job. Persons with disabilities received protection from discrim-

ination in 1990 with the passage of the ADA. The ADA represents a strong national policy that opportunity to achieve to the limit of one’s ability should extend to all.

All businesses need to know a few basics about civil rights law. In interviews, no question may be asked about a person’s health history or physical or mental condition except “is there any reason physical or otherwise that would prevent you from doing this job?” Reasonable accommodation must be made for those with disabilities. A simple example would be that a desk would be built a little higher for an employee in a wheelchair. The extent of “reasonable” remains an open question. A person subject to occasional seizures would be qualified to work for Sports Unlimited, Inc., as a clerk but probably not for Quality Mechanics as a test driver.

A business must also make sure it is accessible to customers with disabilities. This includes both access to facilities and equal service as a customer. Many open questions remain. For example, to what extent must an Internet sales company provide access to those with vision or hearing impairments? All companies should consult lawyers or specialists on ADA compliance.

There are exceptions. Someone with a history of drug problems need not be hired as an airline pilot or railroad engineer. If drug or alcohol problems come to light, employees must be given reasonable treatment—but if they do not respond, they may be fired.

PROTECTION OF PROPERTY AND INTELLECTUAL PROPERTY

Local authorities, of course, provide police protection from theft of inventory and other company property by customers, employees, and outsiders. Yet, other properties that many businesses have are at least as valuable, and are also protected by law. Among them are business secrets, patents, copyrights, and trademarks/names.

Business Secrets. Businesses frequently keep secret information that is the heart of their business. Customer lists for an insurance company or a stockbroker are examples. State and federal law severely punish anyone who steals or makes use of such property. The most famous secret in the world might be the formula for Coca-Cola. If any person or company can duplicate Coca-Cola, they may produce and sell it under their own name. The law protects the secret from theft but not from duplication.

Patents. Patents are a protection given by the federal government for inventions. A patent gives the inventor the exclusive rights for seventeen years to use or license the invention. Anyone infringing on the patented product is subject to fine and imprisonment. A drug company’s new

pharmaceuticals enjoy patent protection, but when the patent expires, the drug becomes generic and anyone can make and sell it.

Copyrights. Copyrights give authors protection for their works for their lifetime plus seventy years. Works include literary works, musical compositions, and computer software. While there are exceptions, it is illegal to copy tapes, compact disks, or software. This is theft and is punishable by fines. It is important for business today to set high legal standards for employees for proper business use of copyrighted material.

Trademarks and Trade Names. Substantial growth has been made in the area of trademarks and trade names since the 1990s. Trademarks and trade names can be of enormous value, and businesses work hard to protect their property. Coca-Cola and Coke, both the names and the distinctive script, are among the best known of these. Names and logos are valuable property. Universities, for example, often make substantial money by licensing use of their name, logo, and other associated symbols on clothing and other items. Trademarks and trade names are registered with the federal government. Exclusive use of them lasts as long as they are used.

SEE ALSO *Careers in Law for Business; Ethics in Law for Business*

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LEADERSHIP

Leadership is a fascinating subject for many people. The term conjures up a familiar scene of a powerful, heroic, triumphant individual with a group of followers returning home after winning a national championship or a war against the evil enemy. They all march through town surrounded by a crowd waving flags. An enthusiastic orator

may deliver an energetic speech, hands waving in the air, to thousands of people gathered in a plaza.

The widespread fascination with leadership may be because of the impact that leadership has on everyone's life. Stories of heroic leadership go back thousands of years: Moses delivering thousands of Hebrews from Egypt or Alexander the Great building a great empire. Why were certain leaders able to inspire and mobilize so many people, and how did they achieve what they achieved? There are so many questions that beg answers, but many remain as puzzling as ever. In recent decades, many researchers have undertaken a systematic and scientific study of leadership.

Leadership is defined in so many different ways that it is hard to come up with a single working definition. Leadership is not just a person or group of people in a high position. Understanding leadership is not complete without understanding interactions between a leader and his or her followers. Neither is leadership merely the ability or static capacity of a leader. The dynamic nature of the relationship between leader and followers must be researched. In these unique social dynamics, all the parties involved attempt to influence each other in the pursuit of goals. These goals may or may not coincide as participants actively engage in defining and redefining the goal for the group and for themselves.

Thus, leadership is a process in which a leader attempts to influence his or her followers to establish and accomplish a goal or goals. In order to accomplish the goal, the leader exercises his or her power to influence people. That power is exercised in earlier stages by motivating followers to get the job done and in later stages by rewarding or punishing those who do or do not perform to the level of expectation. Leadership is a continuous process, with the accomplishment of one goal becoming the beginning of a new goal. The proper reward by the leader is of utmost importance in order to continually motivate followers in the process.

What does leadership do for an organization? If leadership is defined as a process involving interactions between a leader and followers, usually subordinate employees of a company, leadership profoundly affects the company. It defines or approves the mission or goal of the organization. This goal setting is a dynamic process for which the leader is ultimately responsible. A strong visionary leader presents and convinces followers that a new course of action is needed for the survival and prosperity of the group in the future. Once a goal is set, the leader assumes the role of ensuring successful accomplishment of the goal. Another vital role of leadership is to represent the group/organization and link it to the external world in order to obtain vital resources to carry out its mission.