

## PREFACE

*This first edition of Construction Industry Labor and Employment Law is current through 2014.*

The construction business has always had employment patterns, contracting relationships, and even certain separate legal doctrines that differentiate it from other industries. It might even be said that, regarding employment and labor relations, construction is its own “little world.” In addition, there has not been a general treatise published on this important industry regarding employment matters in many, many years. The authors intend and hope that this volume, together with its annual supplements, will become a “Bible” for labor and employment law issues in the construction industry. Unlike in many industries in the U.S., employers in the construction industry cannot outsource the construction of structures. Construction requires people to do the work, and their rights are governed by laws, some of which are unique to the construction industry, both commercial and residential.

We intend to distinguish this book from every other treatise on labor and employment law. We intend to relate all relevant labor and employment issues specifically to construction. We hope we have achieved that goal, and our annual supplements will keep readers updated in the future. At the end of the day, we are providing a schematic for proper business practices which keeps companies, organized labor, and employees working within the confines of the existing legal framework.

The volume is needed due to the uniqueness of labor and employment issues in construction. In fact, when the National Labor Relations Act was first passed in 1935, the National Labor Relations Board (NLRB) did not assume jurisdiction over the construction industry, and it did not do so until many years later. The fact that “minority” unions without majority representation can be legally recognized in the construction industry is unique among all industries. Similarly, the craft nature of the work creates additional bargaining unit issues, leading to the potential for jurisdictional and other disputes as many employers may exist together on a single job site. The presence of multiemployer bargaining agreements in the union sector is atypical of other industries. Also unusual is the fact that in the union segment of the industry low-level supervisors are often union members, as is the use of union hiring halls for new hires.

Furthermore, construction industry union agreements generally have certain unique and controversial terms. These include “dual shop” operations and issues, with union and non-union subsidiaries, which present unique legal and practical issues.

Many of the unique labor and employment issues developed due to the short-term and occasional nature of construction work, and the need for employers to know their labor costs before bidding. The use of so-called “permanent” hires versus project-by-project hiring is also unique to construction.

Union tactics in the construction industry also differ from those in other businesses. In addition to the use of “project labor agreements,” which in essence require participation by firms willing to become unionized, the utilization of various types of “corporate campaigns” by unions differ between construction and other employers. So called “area standards campaigns” involve not only job site picketing, but also handbilling, bannering, and other forms of informational campaigns which are not common in other industries. Construction unions also attempt to make up competitive disadvantages through strategies such as “market recovery programs,” designed to reduce pay and benefit levels to be competitive with non-union employers on certain jobs. A related approach is used in construction through job-targeting programs, in which union dues are allocated to union contractors seeking to be more competitive in their job bidding. In addition, unions constantly seek to support and influence the government’s prevailing wage rules to discourage labor competition.

Not only are many features in labor relations different in construction from other industries, but the difference also spills over into the types of discrimination cases typically litigated. The use of union hiring halls and apprenticeship programs presents special issues, as do the special federal affirmative action plan requirements for construction.

In the area of construction work being performed by private sector companies for the federal government, special statutes apply. An entire body of law has developed, and complying with the procedures and wage determinations in paying the employees for their work (including fringe benefits like health insurance and retirement insurance) is also specifically prescribed. It is hoped that this book will better clarify for employers, employees, and their lawyers the rules of the game for this type of work.

The employment of individuals in a company always carries with it the obligation to adhere to the minimum wage and overtime provisions of the Fair Labor Standards Act. This federal law has stung many an employer who knowingly or unknowingly did not pay an employee for all hours worked for compensable time. In this book, we explore the rules of the road in those areas that affect the construction industry. With the advent of expensive collective actions, construction companies (which

are in a low-margin business) can suffer serious losses in the event of unanticipated monies due for overtime and other backpay obligations.

The authors of this treatise are labor and employment lawyers who represent management and the “defense side” of the employment law. However, the treatise is intended to be of use not only to employers and their labor and employment counsel, but to anyone connected to labor and employment issues in the construction industry. Certain documents and arguments are indicated as being presented from the management side, and in other places certain similar references are made from the union perspective. Thus, the treatise should be helpful not only to labor organizations, but also to government attorneys and individual employees, as well as their counsel.

The organizational structure of the book begins with a discussion of the unique employment and legal features of the construction industry. Part I deals with wage and hour and government contract laws; Part II deals with equal employment opportunity issues; Part III deals with safety and workers’ compensation law; Part IV deals with NLRA concerns; Part V deals with miscellaneous issues; and Part VI deals with trust fund and ERISA concerns. This structure is intended to organize chapters within each part into logical sequences, such as background and technical issues, practical application issues, union economic weapons and their limitations, and employer responses to union job actions. Separate chapters deal with special issues unique to construction, including particularly controversial union contract provisions, grievance handling, dual shop operations, union hiring halls and apprenticeship programs, job foremen and union stewards, job targeting, and antitrust issues. A substantial set of appendix documents is included at the end of the book which includes various sample documents and an indication as to whether any given document is provided from a management perspective or a union perspective. Each chapter identifies which appendices, if any, are relevant to that chapter.

We hope that this treatise will be of interest to individuals involved with many different aspects of the construction industry, from employer counsel, property owners, property managers, and even tenants to academics, labor organizations, and employees and their counsel.

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