

Book Review

Personnel Law, Sovereign, Kenneth L., 4th ed. (Prentice-Hall, 1999
362 pp. \$40.00)

reviewed by Cristina M. Fraccalvieri†

I. INTRODUCTION

Human resource managers in the twenty-first century are faced with an unprecedented intrusion of law into the workplace. The recent rise in employment litigation and heightened awareness of employee rights in the last decade should signal to management that now more than ever, educating personnel executives in the trends and developments of employment law is crucial. Through preventive measures, such as personnel law training, employers not only create more stable, harmonious workplaces, but come one step closer to closing the floodgates of litigation.

Kenneth L. Sovereign's fourth edition of *Personnel Law* remains an important resource that employers can turn to for practical guidance in dealing with the myriad labor and employment issues arising in today's corporate environment. Whether used as part of management training or as a desk-side reference, the text provides a comprehensive yet concise overview of the complex laws and regulations affecting the workplace. As the author addresses each topic, he provides valuable advice drawn from his many years of experience with employee relations.

Sovereign, whose first edition of *Personnel Law* was published in 1984, has worked as personnel executive, consultant and corporate counsel, holding positions such as Vice President of Industrial Relations for Hoerner Waldorf Corporation and Associate General Counsel for Champion International Corporation. With experience including eighteen years as a safety director and ten years as counsel representing management in OSHA

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cases, Sovereign also served for eighteen years on the Minnesota OSHA Review Board as both a member and a chair. Since 1995, much of his time has been spent teaching personnel law to managers. As he admits in the Preface, *Personnel Law* is "unintentionally management oriented. With this background, it is difficult to write anything else."¹ Sovereign's description of his work is accurate, "[i]t tells what to do, how to do it, when to do it, and why."² Readers are certain to find this latest edition from Sovereign a straightforward, understandable reference that incorporates the author's insightful interpretation of the subjects covered.

II. SYNOPSIS

Personnel Law is divided into twenty-one chapters with an Appendix, Glossary and Index. Each chapter is subdivided into several headings, all of which are set forth in the Table of Contents. This highly organized format makes it easy for the reader to locate topics. Many chapters contain exhibits, which provide salient data, tables, and legal and human resource forms that illustrate and amplify the author's thoughts. Also included is an Appendix that lists cases found in the text, along with reporter citations and a Glossary that, while limited in scope, is a helpful addition.

Chapter One provides Sovereign's view on the influence of the law on personnel practitioners. Here the author traces the evolution of the personnel function and the "law's encroachment into the personnel office" that has forced human resource managers to consider in tandem traditional employee relations consequences and the legal implications of new statutes and regulations.³ While such legislation does not necessarily restrict management, it certainly creates new administrative duties for those involved in human relations.⁴ As Sovereign astutely notes, the law does not interfere with good management, but does require a change in practices while increasing the workload of the personnel practitioner.

Sovereign believes that it is important for the reader to have a basic understanding of the country's court system and therefore in the second chapter sets forth a brief description of the structure of the federal, state and Supreme courts. He follows with an explanation in layperson's terms, with the aid of exhibits, of the legal documents human resource managers most often encounter, including interrogatories, depositions, subpoenas, summonses and complaints. More than half of the chapter is then devoted

1. See KENNETH J. SOVEREIGN, *PERSONNEL LAW* xvii (4th ed. 1999).

2. *Id.*

3. *Id.* at 1.

4. *Id.* (citing Leah H. Maguire, *Employment and Labor Law*, 42 WAYNE L. REV. 757 (1996)); Robert Fitzpatrick & Marlissa S. Brigget, *Recent Developments in Employment Law (Annual Survey of Tort and Insurance Law)*, 30 TORT & INS. L.J. 316-39 (1993).

to a discussion of the increase in litigation and the use of legal counsel for personnel law issues. Here the author emphasizes the importance of seeking legal advice early when faced with important and potentially risky personnel decisions. The author cautions that when requesting a legal opinion, management and employees should be forthcoming and truthful; the attorney must be given all the known facts, whether damaging or not. This advice, named by some as one of the "Ten Commandments" of personnel management, cannot be emphasized enough.⁵

Alternative dispute resolution (ADR) is addressed in the third chapter. This discussion is particularly timely, as today's legal community, seeking to reduce costs and save time, turns from the traditional focus on the courts to resolve conflicts to various forms of ADR.⁶ The author lays out the different types of ADR: mediation, arbitration, mini-trial, summary jury trial, moderated settlement conference, neutral fact-finding and private judging and provides a concise description of each.

Sovereign then begins his review of the federal statutes that affect all phases of the employment process, from initial advertising of a job vacancy through hiring, promotion, discipline, discharge and retirement of an employee. He starts with a discussion of discrimination under the Civil Rights Act of 1866 and its amendments and moves to a more detailed analysis of Title VII, the principal source of anti-bias rules for employment practices. Included are practical guidelines that the employer can follow to avoid litigation.

Selecting qualified applicants is the topic of Chapter Five. Here the focus is on the Civil Rights Act of 1991, pre-employment procedures, selection process, national origin discrimination and the Immigration Reform and Control Act of 1986. Sovereign attempts to dispel the notion held by some that it is not possible to select a qualified candidate because of the restrictions of anti-discrimination laws.

Devoted to a discussion of accommodations for religious beliefs and physical handicaps, the sixth chapter has its primary focus on the Americans with Disabilities Act (ADA). Since the "heart of the ADA" for employers is the requirement that they make "reasonable accommodations" for those employees who can perform the essential functions of the job, the chapter appropriately focuses on this issue.⁷

Gender and age discrimination are the next two important areas of law that Sovereign tackles. Here Sovereign provides the reader with an overview of the Title VII restrictions on sex discrimination, and a thorough

5. Alexandra Krueger Hedrick, *Ten Commandments of Personnel Management*, 4 LEGAL MGMT. 12 (1994).

6. See generally, JAY E. GREINIG, ALTERNATIVE DISPUTE RESOLUTION WITH FORMS (2d ed. 1997).

7. SOVEREIGN, *supra* note 1, at 69.

treatment of the issues surrounding sexual harassment in the workplace, including control and investigation of such behavior. While the fourth edition of *Personnel Law* does not discuss⁸ the landmark Supreme Court decisions, *Faragher v. City of Boca Raton*⁹ and *Burlington Industries, Inc. v. Ellerth*,¹⁰ in which the Court establishes and applies new rules on employer liability for supervisory harassment under Title VII, it nonetheless remains a good resource for human resource managers looking for guidance in this area.

Next, *Personnel Law* turns to a discussion of affirmative action plans and performance appraisals, followed by a detailed discussion of regulation of benefit plans and the effective use of employee agreements. In these chapters, Sovereign touches upon a host of important laws, including the Family and Medical Leave Act (FMLA), the Worker Adjustment and Retraining Notification Act (WARN), the Older Workers Benefit Protection Act (OWBPA), the Consolidated Omnibus Budget Reconciliation Act (COBRA) and the Employee Retirement Income Security Act (ERISA). While an examination of each of these acts could fill volumes,¹¹ *Personnel Law's* succinct treatment adequately covers the basics and would make an excellent primer on these topics.

The second half of *Personnel Law* delves into the at-will doctrine and preventing wrongful discharge litigation. Chapter Twelve prudently includes guidance on drafting employee handbooks and policy manuals, a task that undoubtedly causes anxiety for personnel managers. While the exhibits in Chapter Twelve are helpful templates for a handbook, the law of the state in which the handbook will be used must be consulted to ensure that the handbook does not, unintentionally, create an enforceable employment contract.¹² As Sovereign astutely remarks, in our "litigation-happy" society, the "handbook still can be useful as a communication tool, but it must have a different objective in the past and more care must be used in its language."¹³

Personnel Law continues in Chapter Thirteen with the author's views on balancing employee privacy rights and an employer's right to know. A summary of the statutory requirements to retain certain records (for example, under Title VII, COBRA, ERISA and the Immigration Reform and Control Act of 1986) is particularly helpful. Also discussed is the use

8. In the Preface, the author states that editing and production schedules prevented research beyond July 1997.

9. 524 U.S. 775 (1998).

10. 524 U.S. 742 (1998).

11. See e.g., PAUL M. HAMBURGER, MANDATED HEALTH BENEFITS: THE COBRA GUIDE (1999); PETER A. SUSSER, FAMILY AND MEDICAL LEAVE HANDBOOK (1998).

12. See ROBERT J. NOBILE, GUIDE TO EMPLOYEE HANDBOOKS 3-32, 3-33, 3-34, 4-6, 4-7 (2000).

13. See SOVEREIGN, *supra* note 1, at 180.

of polygraph tests, search and seizure, disclosure of employee information, as well as liability for negligent hiring and retention and defamation. As the book is management oriented, focus is drawn to the defenses to defamation: (1) privilege; (2) no publication; (3) truth; (4) lack of defamatory meaning; (5) opinion; and (6) plaintiff's consent.¹⁴

Next, Sovereign turns to the Fair Labor Standards Act and the law regarding independent contractors, followed by a discussion of safety law, a topic not found in the third edition of *Personnel Law*. The chapter centers on the Occupational Safety and Health Act of 1970,¹⁵ whose explicit purpose, as stated by Congress, is to "assure as far as possible every working man and woman in the Nation safe and healthful working conditions."¹⁶

Here, the author draws on his many years experience as a safety director and member of the Minnesota OSHA Review Board, crafting a philosophy for good safety programs and OSHA compliance based on the premise that "safe workers are not born – they are made."¹⁷ Sovereign postulates that safety is a "training function with a legal connection"¹⁸ and that the best safety program is really "accident-prevention awareness."¹⁹ According to the author, such a program has certain elements at its core, namely, identification and analysis of existing hazards, effective communication of safety programs, investigation of each accident, and above all, the involvement of top management. No doubt, including these procedures in a company's safety program controls workers' compensation costs, as does several other steps the author outlines in Chapter Sixteen (among them, early monitoring of injuries, prompt medical evaluations, obtaining rehabilitation assessments and close monitoring of the medical aspects of the case).²⁰ Sovereign's suggestions for reduction of unemployment compensation costs are found in Chapter Seventeen.

Sovereign next devotes two chapters to the National Labor Relations Act and one to avoiding "management malpractice" (defined as "conduct that has serious consequences on the employee's personal or physical well-being").²¹ *Personnel Law* concludes with the author "gazing into the

14. *Id.* at 205.

15. 29 U.S.C. §§ 651-78 (2000).

16. See OCCUPATIONAL SAFETY AND HEALTH LAW 59 (Stephen A. Bokart & Horace A. Thompson III eds., 1988).

17. SOVEREIGN, *supra* note 1, at 229.

18. *Id.*

19. *Id.* at 232.

20. *Id.* at 254 (citing MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY, CONTROLLING WORKERS COMPENSATION COSTS: A GUIDE FOR EMPLOYERS (1985) (The author includes steps he has practiced and found successful, noting that those mentioned have been confirmed by various state departments charged with administration of workers' compensation.)).

21. SOVEREIGN, *supra* note 1, at 302-03.

crystal ball" at the personnel function and offering the reader his predictions for the role of the human resource manager in the twenty-first century.

III. CONCLUSION

Overall, *Personnel Law* is a well-written, concise treatise covering the basics of labor and employment law for management and human resource professionals. Sovereign's latest edition offers practical advice on approaching many of today's most important and difficult workplace issues. The text presents a balanced mix of legal principles and human relations concerns, while steering clear of confusing jargon. Readers will appreciate the book's straightforward, highly organized format, finding the text easy to navigate and understand. There is no doubt that personnel practitioners will find the text a welcome and frequently used addition to their bookshelves.