CHAPTER FIFTEEN

Employees and the Corporation

Employees and employers are engaged in a critical relationship affecting the corporation's performance. There is a basic economic aspect to their association: Employees provide labor for the firm, and employers compensate workers for their contributions of skill and productivity. Yet, also present in the employee–employer exchange are numerous social, ethical, legal, and public policy issues. Attention to the rights and duties of both parties in this relationship can benefit the firm, its workers, and society.

This Chapter Focuses on These Key Learning Objectives:

LO 15-1 Understanding workers' rights to organize unions and bargain collectively.

LO 15-2 Knowing how government regulations assure occupational safety and health and what business must do to protect workers.

LO 15-3 Evaluating the limits of employers' duty to provide job security to their workers.

LO 15-4 Analyzing employer obligations to pay workers fairly and how pay policies can contribute to income inequality.

LO 15-5 Appraising the extent of employees' right to privacy, when businesses monitor employee communications, police romance in the office, test for drugs or alcohol, or subject employees to honesty tests.

LO 15-6 Debating if employees have a duty to blow the whistle on corporate misconduct, or if employees should always be loyal to their employer.

In 2015, Target announced that it would raise its workers' pay to at least $9 an hour. The discount retailer, which employed almost 350,000 people in 1,800 stores, did not disclose what it was currently paying, but at the time the federal minimum wage was $7.25. The announced raise came against a backdrop of a tightening labor market for low-paid workers as the economy recovered. "Our goal has always been to be competitive with the marketplace," said a Target spokesperson. But, the raise also came in the wake of efforts by the United Food and Commercial Workers union to organize Target workers, and by management to counter the union's appeal with a video in which narrators "Dawn" and "Ricardo" told viewers that if a union came in, "chances are they would change our fast, fun, and friendly culture."[1]

What is a fair pay level for workers? Who or what should determine wages—the free market, the employer acting unilaterally, collective bargaining negotiations between employers and unions, or government mandates such as minimum wage laws?

In 2014, Starbucks announced it would make changes to its scheduling practices to provide more "stability and consistency" for its 130,000 baristas. According to the new rules, the company said it would post hours at least a week in advance, end the practice of "clopening" (requiring a worker to close a store and then reopen it the next morning, just a few hours later), and allow local managers more say in overriding scheduling software. More than 27 million Americans, like most Starbucks baristas, worked part-time, and many found their family and schooling commitments in constant turmoil as employers kept them "on call" and made last minute changes to their hours. "Encouraging managers not to rely entirely on the automated software is the best thing they could do," said one Starbucks barista. "But I'm doubtful how many managers will actually do it."[2]

What is the best way to balance the employer's need for flexibility and efficiency in scheduling part-time workers' hours with the employee's need for predictability in organizing their lives and finances? Should scheduling be subject to government regulation, or be left to employers and employees to work out?

Applying for a position as a correctional officer, a man was startled when the interviewer asked him for his Facebook login information, saying it was needed to check for possible gang affiliations. The man did as he was asked but later complained, calling the demand "invasive" and a "violation of [my] personal privacy." Increasingly, employers are conducting background checks on prospective hires by reviewing their social media history, and some use specialized services that "scrape" the web for anything applicants might have done or said online. By 2014, legislation prohibiting employers from asking for access to applicants' social media accounts had been adopted in 11 states and was under consideration in several others.[3]

Should employers, like the correctional services department in this example, have a right to review job applicants' social media pages? What if the job was not in the correction services field but in some other line of work, would the employer have the right to review an applicant's Facebook page then? Who should be responsible for protecting applicant and employee privacy?

All of these difficult questions will be addressed later in this chapter. As the situations giving rise to them suggest, the rights and duties of employers and employees in the modern workplace are incredibly complex.

[1] "Target to Increase Wages to at Least $9/Hour for All Workers in April," *The Wall Street Journal*, March 19, 2015; "Target Plans to Raise Pay to at Least $9 an Hour," *The New York Times*, March 18, 2015; "Exclusive: Target's Cheesy Anti-Union Propaganda Gets a Modern Makeover," *Salon*, March 19, 2014.

[2] "Starbucks to Revise Policies to End Irregular Schedules for Its 130,000 Baristas," *The New York Times*, August 14, 2014; and "A Push to Give Steadier Shifts to Part-Timers," *The New York Times*, July 15, 2014.

[3] "Will Employers Still Ask for Facebook Passwords in 2014?" *USA Today*, January 10, 2014; and "Some U.S. Employers Asking for Applicants' Facebook Login Info," *Associated Press*, March 21, 2012. The current status of state legislation may be found on the website of the National Conference of State Legislatures, at *www.ncsl.org*.

FIGURE 15.1
Rights and Duties of Employees and Employers

Employee Rights/Employer Duties	Employee Duties/Employer Rights
• Right to organize and bargain • Right to a safe and healthy workplace • Right to privacy • Duty to discipline fairly and justly • Right to blow the whistle • Right to equal employment opportunity • Right to be treated with respect for fundamental human rights • Right to fair and decent wages	• No drug or alcohol abuse • No actions that would endanger others • Treat others with respect and without harassment of any kind • Honesty; appropriate disclosure • Loyalty and commitment • Respect for employer's property and intellectual capital

The Employment Relationship

As noted in Chapter 1, employees are a market stakeholder of business—and a critically important one. Businesses cannot operate without employees to make products, provide services, market to customers, run the organization internally, and plan for the future. At the same time, employees are dependent on their employers for their livelihood—and often much more, including friendship networks, recreational opportunities, health care, retirement savings, even their very sense of self. Because of the importance of the relationship to both parties, it must be carefully managed, with consideration for both legal and ethical obligations.

The employment relationship confers rights and duties on both sides. (As further explained in Chapter 5, a *right* means someone is entitled to be treated a certain way; rights often confer *duties* on others.) Some of these responsibilities are legal or contractual; others are social or ethical in nature. For their part, employers have an obligation to provide some measure of job security, a safe and healthy workplace, and equal opportunity for all. They must pay a fair and decent wage and respect workers' rights to organize and bargain collectively, as guaranteed by U.S. law (and the laws of many other nations). Employers are also obliged to respect employees' rights to privacy and—to some extent at least—their rights to free speech and to do what they want outside the workplace.

But employees also have a duty to behave in acceptable ways. For example, most would agree that employees should not abuse drugs or alcohol in a way that impairs their work performance, use company e-mail to send offensive messages, or take the employer's property for their own personal use. Employees should deal with customers and coworkers in an honest, fair, and nondiscriminatory way. They should not reveal proprietary information to others outside the company, unless there is compelling reason to do so—such as an imminent threat to the public's safety. Some main rights and duties of employers and employees are summarized in Figure 15.1. How to balance these sometimes conflicting obligations poses an ongoing, and frequently perplexing, challenge to business.

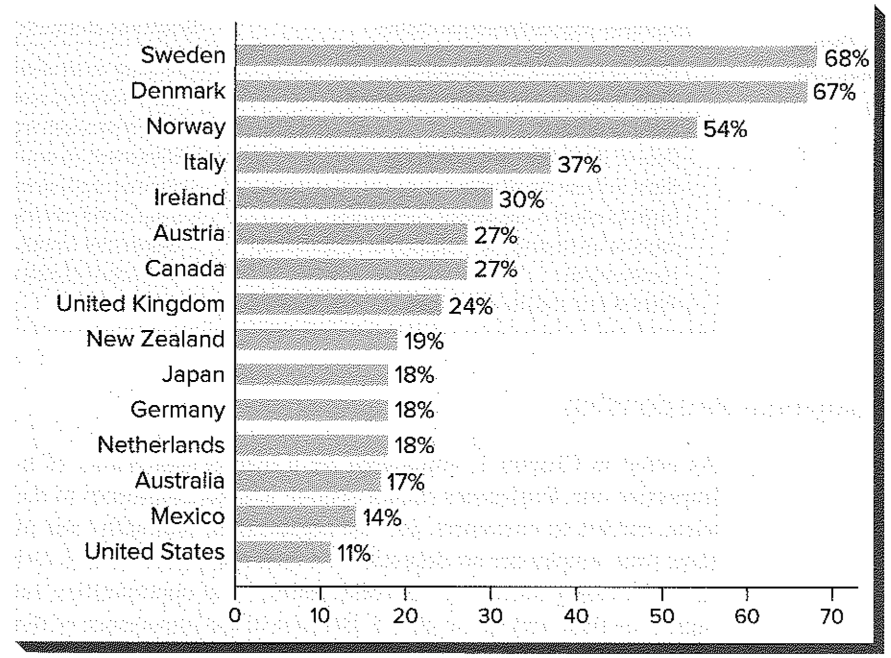
This chapter considers the rights and duties—both legal and ethical—of both parties in the employment relationship. The following chapter explores the related issue of workforce diversity and discusses the specific legal and ethical obligations of employers with respect to equal employment opportunity.

Workplace Rights

Employees in the United States enjoy several important legal guarantees. They have the right to *organize and bargain collectively,* to have a *safe and healthy workplace* and, to some degree, to have *job security.* This section will explore these three rights, emphasizing U.S. laws and regulation, but with comparative references to policies in other nations.

FIGURE 15.2
Unionization Rates in Selected Industrialized Countries

Source: Organization for Economic Cooperation and Development, at *https://stats.oecd.org*. Figures have been rounded to the nearest integer. All data are for 2013.



The Right to Organize and Bargain Collectively

In the United States, and in most other nations, employees have a fundamental legal right to organize **labor unions** and to bargain collectively with their employers. The exceptions are some communist countries (such as China, Vietnam, Cuba, and the People's Democratic Republic of Korea) and some military dictatorships (such as Eritrea), where workers are not permitted to form independent unions. Labor unions are organizations, such as the Service Employees International Union or the Teamsters, that represent workers on the job. Under U.S. laws, most private and public workers have the right to hold an election to choose what union they want to represent them, if any. Unions negotiate with employers over wages, working conditions, and other terms of employment. Employers are not required by law to agree to the union's demands, but they are required to bargain in good faith. Sometimes, if the two sides cannot reach agreement, a strike occurs, or employees apply pressure in other ways, such as appealing to politicians or refusing to work overtime.

Workers are more highly unionized in some countries than in others. Figure 15.2 shows the percentage of employees who are represented by unions in selected industrialized nations. It shows that unionization rates are very high in the Scandinavian countries; of all countries shown, the unionization rate is the lowest in the United States.

The influence of labor unions in the United States has waxed and waned over the years. During the New Deal period in the 1930s, many workers, particularly in manufacturing industries such as automobiles and steel, joined unions, and the ranks of organized labor grew rapidly. Unions negotiated with employers for better wages, benefits such as pensions and health insurance, and improved job safety—significantly improving the lot of many workers. In 2014, the median weekly pay of full-time workers who were members of unions ($970) was 27 percent higher than that of nonunion workers ($763). (All workers, whether or not they are members of unions, are protected by wage and hour laws that require employers to pay at least a minimum wage and extra pay for certain kinds of overtime work.) Since the mid-1950s, the proportion of American workers represented by unions has declined. In 2014, only about 11 percent of all employees were union members. The percentage was higher—36 percent—in government employment than in the private sector, where just 7 percent were unionized.[4]

In the wake of the Great Recession, elected officials in several states sought to weaken unions by limiting the rights of public sector workers. For example, the Wisconsin legislature passed a law that took away the right of public sector unions (except those representing public safety officers) to bargain over pensions and health care benefits. In 2015, Wisconsin joined 24 other states in adopting a so-called *right-to-work* law, which barred unions from requiring all workers they represented to pay dues or fees.[5]

Although unions overall remained weak, some groups of workers continued to organize.

> In 2015, for example, the Teamsters union successfully organized the drivers of what were widely known as the "Google buses." Many high-tech companies, including Google, contracted with local transportation firms to shuttle employees from their neighborhoods to their jobs and back. The gleaming white buses with darkened windows, lined up curbside in San Francisco, became a symbol of inequality between well-paid tech workers and other residents—and the bus drivers themselves, who often worked exhausting split shifts at low pay. After drivers for Facebook, Apple, eBay, Genentech, Yahoo!, and Zynga joined the Teamsters, they won big wage increases, a split-shift premium, and access to break rooms. "[The companies] should welcome this," said the president of the local union. "These [union contracts] allow the drivers who drive around a very valuable commodity—their workers—to have a decent life."[6]

Other significant recent union organizing wins occurred at IKEA's furniture factory in Virginia; Smithfield Pork in North Carolina, the world's largest pork slaughterhouse; Delta Pride, a catfish processor in Mississippi; and even Gawker Media, the publisher of the Gawker and Jezebel websites.[7]

Labor unions sought to exercise influence in other ways, as well. Unions organized in the political arena, using political action committees (PACs) and other methods (discussed in Chapter 8), and voted shares of stock in which their pension funds were invested (discussed in Chapter 13) to pursue their institutional objectives. A major legislative goal of unions was labor law reform; they sought legislation that would make it easier for workers to organize, for example, by shortening the time before an election and stiffening penalties for employers who intervened unfairly in the process.

One issue that unions and others have been concerned with is job safety and health. It is discussed next.

The Right to a Safe and Healthy Workplace

Many jobs are potentially hazardous and a threat to worker health and safety. In some industries, the use of high-speed and noisy machinery, high-voltage electricity, extreme temperatures, or hazardous gases or chemicals poses risks. Careful precautions, extensive training, strict regulations, and tough enforcement are necessary to avoid accidents, injuries, illnesses, and even deaths on the job.

[4] U.S. Bureau of Labor Statistics, "Union Members 2014," January 23, 2015, *www.bls.gov.*

[5] "Unions Suffer Latest Defeat in Midwest with Signing of Wisconsin Measure," *The New York Times,* March 9, 2015.

[6] "Bus Drivers for Apple, Yahoo, eBay, Zynga, Genentech Vote for Union Representation," *Forbes,* February 27, 2015, *www.forbes.com;* "Longtime Union Activist Helps Organize Facebook's Shuttle Drivers," *San Jose Mercury News,* April 17, 2015.

[7] "Gawker Media Employees Vote to Form a Union, and the Bosses Approve," *The New York Times,* June 4, 2015.

> A 31-year-old technician, on the job for only a month, was electrocuted while testing equipment at Ferro Magnetics, a manufacturer of high-frequency battery chargers in Bridgeton, Missouri, in 2014. Government investigators later found that his death could have been prevented if the company had provided appropriate protective equipment and trained him properly. "[A] company that operates with high-voltage electricity must train its workers to recognize hazards and use proper procedures to prevent electrical shock. No one should die on the job," said the regional OSHA director.[8]

Over the past few decades, new categories of accidents or illnesses have emerged, including the fast-growing job safety problem of repetitive motion disorders, such as the wrist pain sometimes experienced by supermarket checkers, meat cutters, or keyboard operators. Some workers have even complained of "BlackBerry thumb," hand strain caused by using their thumbs to tap out messages on the small keyboards of their smartphones when working away from the office. In response, many businesses have given greater attention to **ergonomics**, adapting the job to the worker, rather than forcing the worker to adapt to the job. For example, ergonomically designed office chairs that conform to the shape of the worker's spine may help prevent low productivity and lost time due to back injuries.

Annually, slightly more than three million workers in private industry are injured or become ill while on the job, according to the U.S. Department of Labor. This amounts to more than three hurt or sick workers out of every hundred. Some of the most dangerous jobs are in protective services (police, fire fighters, and prison guards); transportation and material moving; farming; and buildings and grounds maintenance and cleaning. In general, manufacturing and construction jobs are riskier than service jobs—although workers in nursing homes and hospitals suffer relatively high rates of injury.[9] More than 4,000 workers die on the job annually. The reasons range from vehicle accidents, to contact with dangerous equipment, to explosion and fire. For example, a massive explosion at the Upper Big Branch coal mine in West Virginia in 2010 killed 29 workers in the worst coal mining disaster in the United States in 40 years. The causes of this disaster are explored in a case study at the end of this book.

Workplace violence—a particular threat to employee safety—is profiled in Exhibit 15.A.

In the United States, the Occupational Safety and Health Act, passed in 1970 during the great wave of social legislation discussed in Chapter 7, gives workers the right to a job "free from recognized hazards that are causing or likely to cause death or serious physical harm." This law is administered by the **Occupational Safety and Health Administration (OSHA)**. Congress gave OSHA important powers to set and enforce safety and health standards. Employers found in violation can be fined and, in the case of willful violation causing the death of an employee, jailed as well. In 2009, for example, OSHA fined BP $87 million—on top of $21 million the company had already paid—for safety violations linked to an explosion of a refinery in Texas that killed 15 workers and injured 170, the largest fine ever levied by the agency.[10]

OSHA has had considerable success in improving worker safety and health. Although workers—such as the victims of the Upper Big Branch coal mine and BP refinery explosions—continue to die on the job, since OSHA's creation in 1970 the number of workplace deaths has fallen by more than two-thirds, even as the workforce has almost doubled. Very serious occupational illnesses, such as brown lung (caused when textile workers inhale cotton dust) and black lung (caused when coal miners inhale coal dust), have been

[8] "Lack of Safety Equipment and Training Cost Electrical Technician His Life," *OSHA Regional News Release*, May 18, 2015.

[9] U.S. Bureau of Labor Statistics data, *www.bls.gov*. These data are for 2013.

[10] "U.S. Department of Labor's OSHA Issues Record Breaking Fines to BP," press release, October 30, 2009, at *www.osha.gov*.

Exhibit 15.A

Violence in the Workplace

Stories of angry or distraught employees, ex-employees, or associates of employees attacking workers, coworkers, or superiors at work are disturbingly common. In some cases, workers who have lost their jobs—or who face some other financial threat—seek vengeance, often in calculated and cold-blooded fashion. In other cases, seemingly trivial events can provoke an assault. In one recent incident, a worker at a sign company in Minneapolis, Minnesota, was fired for chronic lateness and poor performance. He went out to his car, got a semiautomatic pistol and returned to the building, shooting and killing five people and wounding three others before turning the gun on himself.[11]

Homicide is the fourth leading cause of death on the job (only vehicle accidents, contact with objects or equipment, and falls kill more). Every year, around 400 workers are murdered, and as many as 2 million are assaulted at work in the United States. Police officers, prison guards, taxi drivers, and people who handle money are most at risk. Although workplace violence is often considered an American problem, a survey by the International Labor Organization found that workplace assaults were actually more common in several other industrial nations, including France, England, and Argentina, than in the United States. Four percent of workers in the European Union said they had been subjected to physical violence in the past year.

OSHA has developed recommendations to help employers reduce the risk of violence. Employers should try to reduce high-risk situations, for example, by installing alarm systems, convex mirrors, and pass-through windows. They should train employees in what to do in an emergency situation. Unfortunately, many companies are poorly prepared to deal with these situations. Only 24 percent of employers offer any type of formal training to their employees in coping with workplace violence.

Sources: "Fatal Occupational Injuries by Industry and Selected Event or Exposure, 2013," at *www.bls.org;* and International Labor Organization, *Violence at Work,* 3rd ed., 2006. Current statistics are available at *www.cdc.gov/niosh/topics/violence.*

significantly reduced. The rate of lead poisoning suffered by workers in smelters and battery plants, among other workplaces, has also fallen dramatically.

Although many businesses have credited OSHA with helping reduce lost workdays and worker compensation costs, others have criticized the agency's rules as being too costly to implement and administer. For example, OSHA withdrew a proposed noise exposure standard, intended to prevent hearing loss, after employers complained it would be too expensive.[12] Some studies showed that the burdens of complying with regulations fell hardest on small businesses.[13] In part in response to employer criticisms, OSHA has entered into cooperative partnerships with employers, aimed at improving occupational safety and health for the benefit of both companies and their workers.

Although problems remain, four decades of occupational safety and health regulation in the United States and efforts by businesses and unions have significantly lowered deaths and injuries on the job. In many developing nations, however, conditions remain brutally dangerous. In Bangladesh, for example, a fast-growing garment and textile industry—mostly sourcing apparel to Western companies—has been the site of numerous tragedies, including a terrible building collapse at the Rana Plaza garment factory complex in 2013 that killed more than 1,100 workers. This incident—and the involvement of Western retailers whose products were manufactured there—is profiled in a case at the end of this book.

[11] "Minneapolis Workplace Shooting: Gunman Was Fired, Then the Rampage Began," October 1, 2012, at *www.twincities.com.*

[12] "OSHA Withdraws Proposed Interpretation Involving Occupational Noise Exposure Standard," *Washington DC Employment Law Update,* January 19, 2011, at *www.dcemploymentlawupdate.com.*

[13] U.S. House of Representatives Committee on Oversight and Government Reform, *Assessing Regulatory Impediments to Job Creation,* February 9, 2011, at *http://oversight.house.gov.*

The Right to a Secure Job

Do employers have an obligation to provide their workers with job security? Once someone is hired, under what circumstances is it legal—or fair—to let him or her go? In recent years, the expectations underlying this most basic aspect of the employment relationship have changed, both in the United States and in other countries around the globe.

In the United States, since the late 1800s, the legal basis for the employment relationship has been **employment-at-will**. Employment-at-will is a legal doctrine that means that employees are hired and retain their jobs "at the will of"—that is, at the sole discretion of—the employer. However, over time, laws and court decisions have changed this. Today, employers' freedom to terminate workers has been dramatically curtailed. Some of the restrictions include the following:

- An employer may not fire a worker because of race, gender, religion, national origin, age, or disability. The equal employment and other laws that prevent such discriminatory terminations are further described in Chapter 16.
- An employer may not fire a worker if this would constitute a violation of public policy, as determined by the courts. For example, if a company fired an employee just because he or she cooperated with authorities in the investigation of a crime, this would be illegal.
- An employer may not fire a worker if, in doing so, it would violate the Worker Adjustment Retraining Notification Act (WARN). This law, passed in 1988, requires most big employers to provide 60 days' advance notice whenever they lay off a third or more (or 500 or more, whichever is less) of their workers at a work site. If they do not, they must pay workers for any days of advance notice that were missed.
- An employer may not fire a worker simply because the individual was involved in a union organizing drive or other union activity.
- An employer may not fire a worker if this would violate an implied contract, such as a verbal promise, or basic rules of "fair dealing." For example, an employer could not legally fire a salesperson just because he or she had earned a bigger bonus under an incentive program than the employer wanted to pay.

Of course, if workers are covered by a collective bargaining agreement, it may impose additional restrictions on an employer's right to terminate. Many union contracts say employees can be fired only "for just cause," and workers have a right to appeal the employer's decision through the union grievance procedure. Many European countries and Japan have laws that extend "just cause" protections to all workers, whether or not they are covered by a union contract.

The commitments that employers and employees make to each other go beyond mere legal obligations, however. Cultural values, traditions, and norms of behavior also play important roles. Some have used the term **social contract** to refer to the *implied understanding* (not a legal contract, but rather a set of shared expectations) between an organization and its stakeholders. This concept includes, perhaps most significantly, the understanding between businesses and their employees.

Research suggests that the social contract governing the employment relationship has varied across cultures, and also across time. For example, in Europe, employers have historically given workers and their unions a greater role in determining company policy than do most U.S. employers. Employee representatives are often included on boards of directors, in a practice sometimes called *codetermination.* For many years, big Japanese companies offered a core group of senior workers lifelong employment; in exchange, these workers felt great loyalty to the company. This practice has declined in recent years, however.

When the global recession hit Japan in 2008–2009, many employees found themselves without job security or a social safety net. By then, more than a third of the nation's workers were so-called nonregulars, hired on short-term contracts with fewer benefits and no protections against layoffs. In Japan, where workers must be employed for at least a year to get jobless benefits, many nonregulars who lost their jobs in the recession had nothing to fall back on. One worker who had been laid off from a Canon digital camera factory said, "We did our best, so Canon should have taken care of us. That is the Japanese way. But this isn't Japan anymore." As the economy recovered, unemployment dropped to a very low 3.6 percent—but not the use of nonregulars, who surged to 38 percent of the workforce.[14]

In the former Soviet Union, many enterprises felt an obligation to provide social benefits, such as housing and child care, to their workers. These benefits declined with the advent of privatization in these formerly state-run economies.

Fierce global competition and greater attention to improving the bottom line have resulted in significant corporate restructuring and downsizing (termination) of employees in many countries. This trend has led some researchers to describe a *new social contract.* Increasingly, bonds between employers and employees have weakened. Companies aim to attract and retain employees not by offering long-term job security, but rather by emphasizing interesting and challenging work, performance-based compensation, and ongoing professional training. For their part, employees are expected to contribute by making a strong commitment to the job task and work team and to assume a share of responsibility for the company's success. But they cannot count on a guaranteed job.[15]

An important aspect of the weakening of the social contract between employers and workers has been the elimination of defined benefit pensions (which provide a fixed payout based on age at retirement, years of service, and average pay). In the 1980s, about 60 percent of private sector employers in the United States offered such a pension. By 2015, this had dropped to around 10 percent, as employers such as IBM, Verizon, Lockheed Martin, and General Motors replaced them with 401(k) or similar plans where workers contributed to tax-deferred savings accounts, sometimes matched by employer contributions. In 2013, employees contributed $30 billion to their own retirement accounts. These so-called defined contribution plans gave workers more control over their investments and enabled them to carry their retirement savings with them when they changed jobs, but were also much less secure. "People just have to deal with a lot more risk in their lives, because all of these things that used to be more or less assured—a job, health care, a pension—are now variable," said one expert.[16]

Should companies have strong or weak bonds with their employees? When businesses invest in their employees by providing a well-structured career, job security, and benefits including pensions, they reap the rewards of enhanced loyalty, productivity, and commitment. But such investments are expensive, and long-term commitments make it hard for companies to adjust to the ups and downs of the business cycle. Some firms resolve this

[14] "Japan Has Plenty of Jobs, but Worker Still Struggle," *The Wall Street Journal,* March 12, 2015; and "In Japan, New Jobless May Lack Safety Net," *The New York Times,* February 8, 2009.

[15] James E. Post, "The New Social Contract," in Oliver Williams and John Houck, eds., *The Global Challenge to Corporate Social Responsibility* (New York: Oxford University Press, 1995).

[16] Towers Watson, "Defined Contribution Plans of Fortune 100 Companies in 2013," February, 2015, at *www.towerswatson.com;* and "Just How Common Are Defined Benefit Plans," at *http://money.cnn.com.* The quotation is from "IBM to Freeze Pension Plans to Trim Costs," *The New York Times,* January 6, 2006.

Exhibit 15.B Workers in the Sharing Economy

In 2015, the California Labor Commission (a state government agency that enforces labor laws) ruled that a particular driver for Uber, the ride-hailing service, should be considered an *employee*, not an *independent contractor*, and awarded her about $4,000 in expense reimbursements. It was a small amount of money for Uber, but a decision with potentially far-reaching implications for that company and others in the so-called sharing or on-demand economy.

On-demand companies like Uber, Lyft, and Sidecar (rides), Instacart (grocery delivery), and TaskRabbit (household errands and skilled tasks) were growing rapidly. Their business model was to deploy technology to match customers (for example, a person needing a ride) with someone willing to do the work (a driver with a car), and then take a portion of the payment. Such companies had attracted more than $9 billion in venture capital funding since 2010. A consulting firm, MBO Partners, estimated that 17.7 million Americans were working at least part-time as "independent contributors," but no one knew exactly how many of these were working in the sharing economy.

The Internal Revenue Service distinguished between employees, whose wages were reported on a W-2 form, and independent contractors, whose compensation was reported on a Form 1099. In 2015, the Labor Department issued further clarification, saying that workers who were "economically dependent" on an employer should be classified as employees, as contrasted with independent contractors, who were in business for him or herself. The distinction was important, because employers were required to comply with various labor laws governing employees, such as minimum wage and overtime rules; to pay various benefits such as workers' compensation and unemployment insurance; and to reimburse expenses, such as gasoline. They were not required to provide such benefits for independent contractors. Not surprisingly, most companies in the sharing economy insisted that they were not employers, but technology companies that simply brokered transactions.

Workers in the sharing economy were themselves split on the issue. Some felt they should have the rights of employees, like the driver who brought the case against Uber, who said, "I don't like being ripped off. . . . People who drive for Uber and Lyft [should] at least get minimum wages and get their expenses paid and [be] paid for overtime." But others appreciated the freedom to work whenever and wherever they wished, without being subject to an employer's dictates. And, classifying on-demand workers as employees could retard innovation in the new economy, some believed. "Many new platforms and other businesses that might have used on-demand labor may not emerge because of the risk they will be considered employers," said a New York University professor.

Sources: "Employee or Contractor? Labor Seeks to Clarify Rules," *The New York Times*, July 15, 2015; "Uber Driver an Employee, California Labor Commission Rules," *San Francisco Chronicle*, June 17, 2015; "California Says Uber Driver Is Employee, Not a Contractor," *The New York Times*, June 17, 2015; "In the Sharing Economy, Workers Find Both Freedom and Uncertainty," *The New York Times*, August 16, 2014; and "The On-Demand Mobile Industry in 9 Charts," May 28, 2015, at *www.CBInsights.com*.

dilemma by employing two classes of employees: permanent workers, who enjoy stable employment and full benefits, and temporary workers and independent contractors, who do not. The tax preparation software company Intuit has estimated that as high as 40 percent of the U.S. workforce could have at least some income from freelancing or work as independent contractors or temporary workers by 2020.[17] This temporary work sector is sometimes referred to as the "gig economy." The rise of the gig economy has allowed companies to become more cost-efficient, but it has also shifted risk to workers, sowed anxiety, and in many cases driven down incomes. And although some workers preferred the flexibility of jobs in the gig economy, many ended up there simply because they could not find stable, permanent employment.[18]

Some of the particular challenges facing workers in the so-called sharing economy, in which they function as independent contractors rather than employees, are further explored in Exhibit 15.B.

[17] "40 Percent of Americans Will Be Freelancers by 2020," *Business Insider*, March 21, 2015.

[18] "Growth in the 'Gig Economy' Fuels Work Force Anxieties," *The New York Times*, July 12, 2015.

Special Issue: Wages and Income Inequality

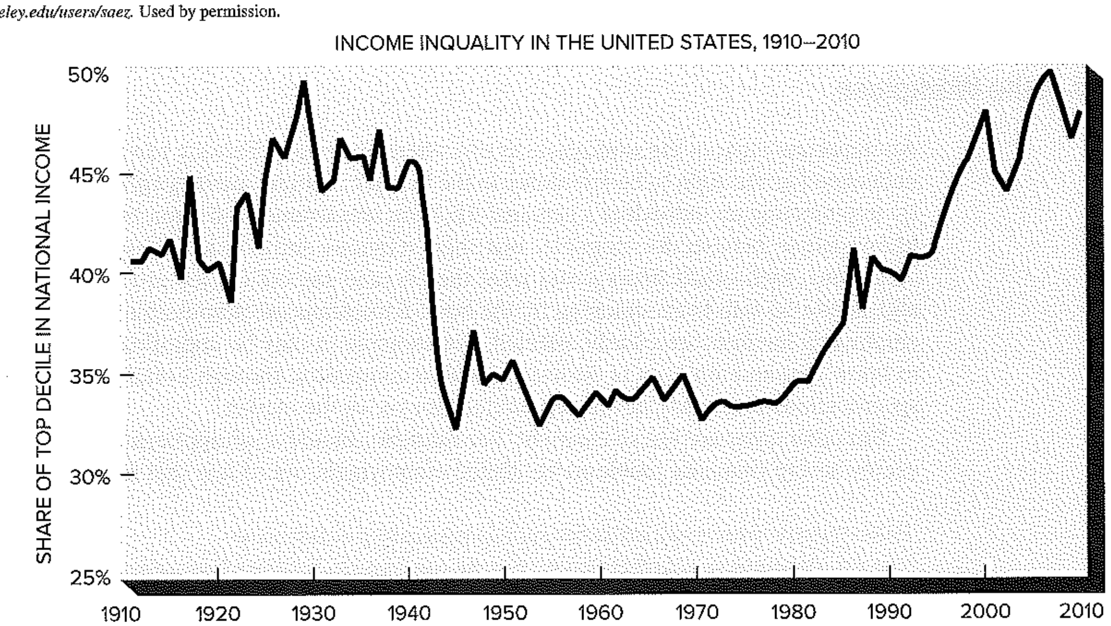
An important duty of employers, as noted in Figure 15.1, is to pay a fair and decent wage. Yet, how wages should be determined, and what exactly is fair or decent, remains contentious. This issue has taken on greater prominence in recent years, as public attention has turned to growing income inequality in the United States and other developed nations. What is the relationship between inequality and wages, and what responsibility if any does business bear for the sharp differences in life circumstances between those at the top and bottom of society?

Figure 15.3 shows changes in the level of income inequality in the United States over the past century, as measured by the share of all income going to the top 10 percent of households. (As explained in Chapter 4, inequality can be expressed for both wealth and income; this figure shows inequality of income.) The figure shows that income inequality fell dramatically during World War II and stayed low during the postwar years until around 1980, and since then has increased dramatically.

The rise in income inequality, as illustrated by Figure 15.3, has many causes, and some have little directly to do with business practices. These include federal and state minimum wage laws, taxation policy, economic growth, unionization rates, and other factors. But corporate policy plays an important role. When businesses decide to pay very high executive compensation (as discussed in Chapter 13) and to keep wages as low as possible for ordinary employees, they are contributing to inequality in the broader society. In the four decades between 1973 and 2013, hourly wages went up just 9.2 percent, adjusted for inflation (productivity went up 74.4 percent during this period). The situation was particularly dire for the lowest wage workers, whose compensation actually fell.[19]

FIGURE 15.3 Income Inequality in the United States, 1910–2010

Source: Thomas Piketty and Emmanuel Saez, "Income Inequality in the United States, 1913–1998," *Quarterly Journal of Economics*, 118(1), 2003, updated at *http://emlab.berkeley.edu/users/saez*. Used by permission.



[19] Economic Policy Institute, "Wage Stagnation in Nine Charts," January 6, 2015, *www.epi.org*.

What can companies do to address income inequality? The simple answer is to increase wages—and to reduce pay differentials within their organizations. When Target raised its minimum wage to $9, as mentioned in one of the opening examples of this chapter, it was making a small but important contribution to raising compensation at the bottom of the employment pyramid. Other employers of low-paid workers, including Walmart and McDonald's, have also recently raised their workers' pay. Aetna announced in 2015 it would pay all its employees, including part-timers, at least $16 an hour, a raise of as much as 33 percent for some of them. A few companies—such as Gravity Payments, discussed in Chapter 3—have taken even more dramatic actions to improve compensation for their employees.

One approach, taken by a small minority of companies, has been to commit to paying all employees what is called a **living wage**. This has been defined by the Ethical Trading Initiative as a wage "that enables workers, for their labor during a standard work week, to support half the basic needs of an average-sized family, based on local prices near the workplace."[20] Of course, figuring out what exactly this would mean can be challenging. For example, when Novartis, a major multinational pharmaceutical firm, committed to paying a living wage to all its employees around the world, it had to bring in an outside consultant to help estimate a "basic needs basket" of goods and services in the many nations where it operated.[21] U.S. companies that pay well above minimum wage for entry-level work (although they have not necessarily committed to the living wage concept) include Costco, Trader Joe's, In-N-Out Burger, Gap, REI, QuikTrip, and IKEA.[22]

Recent evidence suggests that companies that adopt such a "good jobs" strategy reap benefits from doing so. Of course, paying workers well costs more, and in that way can detract from the bottom line. But a study of four retail chains that paid above-average wages by MIT professor Zeynep Ton found that these firms had achieved healthy growth and excellent shareholder returns. They had done so because they had "invest[ed] in their employees with the expectation that they [would] get even more back in terms of labor productivity, customer service, cost-cutting, innovation, and flexibility during difficult times," the researcher concluded.[23] In short, a high-road strategy had paid off for these socially responsible companies.

Privacy in the Workplace

An important right in the workplace, as elsewhere, is privacy. Privacy can be most simply understood as the right to be left alone. In the business context, **privacy rights** refer primarily to protecting an individual's personal life from unwarranted intrusion by the employer. Many people believe, for example, that their religious and political views, their health conditions, their credit history, and what they do and say off the job are private matters and should be safe from snooping by the boss. Exceptions are permissible only when the employer's interests are clearly affected. For example, it may be appropriate for the boss to know that an employee is discussing with a competitor, through e-mail messages, the specifications of a newly developed product not yet on the market.

But other areas are not so clear-cut. For example, should a job applicant who is experiencing severe financial problems be denied employment out of fear that he may be more

[20] Ethical Trading Initiative, at *www.ethicaltrade.org/in-action/issues/living-wage/standards.*

[21] "Novartis: Implementing a Living Wage Globally," World Business Council for Sustainable Development, 2007, at *oldwww.wbcsd.org.*

[22] "IKEA, Gap, and 8 More Companies That Pay More Than Minimum Wage," *The Christian Science Monitor,* June 26, 2014.

[23] "Why Companies That Pay Above the Minimum Wage Come Out Ahead," July 1, 2014, at *www.forbes.com;* and Zeynep Ton, *The Good Jobs Strategy* (Boston: Houghton Mifflin, 2014).

inclined to steal from the company? Should an employee be terminated after the firm discovers that she has a serious medical problem, although it does not affect her job performance, since the company's health insurance premiums may dramatically increase? At what point do company interests weigh more heavily than an employee's right to privacy? This section will address several key workplace issues where these privacy dilemmas often emerge: electronic monitoring, office romance, drug and alcohol abuse (including medical marijuana), and honesty testing.

Electronic Monitoring

As discussed in Chapters 11 and 12, changing technologies have brought many ethical issues to the forefront. One such issue is employee **electronic monitoring.** A wide range of technologies—e-mail and messaging, social media sites, cell phones, location tracking, Internet browsing, and digitally stored video—enable companies to gather, monitor, and analyze information about employees' activities. For example, a company called Sociometric Solutions makes sensor-rich badges that can be worn by employees. They are equipped with microphones, a location sensor, and an accelerometer (similar to those used in fitness trackers). The company uses "big data" technology to analyze the resulting information and provides a summary in aggregated form to the employer. Another company, Volometrix, mines data from online calendars, e-mail, and messaging logs to analyze patterns of employee interaction with each other and with customers. Such data analytics can help companies make more productive use of their employees' time.[24]

A company's need for information, particularly about its workers, may be at odds with an employee's right to privacy, however.

> A police officer in Ontario, California, sued his employer, saying his Fourth Amendment rights against unreasonable search and seizure had been violated. The police department had reviewed transcripts of text messages the officer had sent on an employer-issued device, including highly personal ones sent to his wife and mistress. But the Supreme Court disagreed, saying that as a government employee, the officer should not have expected that messages sent using government equipment would be private.[25]

Management justifies the increase in employee monitoring for a number of reasons. Employers have an interest in efficiency. When employees log on to the Internet at work to trade stocks, plan their vacations, chat with friends—or text-message their wives or mistresses, as in the Ontario example—this is not a productive use of their time. Employers also fear lawsuits if employees act in inappropriate ways. An employee who views pornographic pictures on a computer at work, for example, might leave the company open to a charge of sexual harassment—if other workers observed this behavior and were offended by it. (Sexual harassment is further discussed in the following chapter.) The employer also needs to make sure that employees do not disclose confidential information to competitors or make statements that would publicly embarrass the company or its officers. And monitoring is often used for training and quality control purposes.

Is electronic monitoring by employers legal? For the most part, yes. The Electronic Communications Privacy Act (1986) exempts employers. In general, the courts have found that privacy rights apply to personal, but not business, information, and that employers have a right to monitor job-related communication. The courts have generally ruled that

[24] "The Office Is Watching You," May 22, 2015, at *www.fastcompany.com;* and "Unblinking Eyes Track Employees," *The New York Times,* June 21, 2014.

[25] "Privacy in the Cellular Age," *The New York Times,* June 18, 2010.

employers may monitor employee e-mail, messages, and texts. An evolving area of the law involves GPS tracking. A recent example involved a woman in California who worked as a regional sales representative. Her employer had required her to install a phone app so it could track her movements as she drove around her territory making sales calls. But she was offended that her employer could also track her movements while she was not working, so she deleted the app—and was promptly fired. The woman sued. The courts' response to cases like this is still evolving.[26] (Employee monitoring is further discussed in Chapter 12.)

In seeking to balance their employees' concerns about privacy with their own concerns about productivity, liability, and security, businesses face a difficult challenge. One approach is to monitor employee communication only when there is a specific reason to do so, such as poor productivity or suspicion of theft. For example, the chipmaker Intel Corporation chose not to check its employees' e-mail routinely, feeling this would undermine trust. Most management experts recommend that employers, at the very least, clearly define their monitoring policies, let employees know what behavior is expected, and apply any sanctions in a fair and evenhanded way.

Romance in the Workplace

Another issue that requires careful balancing between legitimate employer concerns and employee privacy is romance in the workplace. People have always dated others at work. In fact, a 2013 survey showed that 38 percent of workers said they had dated a coworker at least once during their careers, and of these relationships almost a third had led to marriage.[27] In fact, workplace dating has probably become more common as the average age of marriage has risen. (For women, that age is now around 27; for men, around 29.) Said one human resources director, "It's a reality that work is where people meet these days. When you don't meet at college, that's a pool of people that's taken away from you." Yet office romance poses problems for employers. If the relationship goes sour, one of the people may sue, charging sexual harassment—that is, that he or she was coerced into the relationship. When one person in a relationship is in a position of authority, he or she may be biased in an evaluation of the other's work, or others may perceive it to be so.

For many years, most businesses had a strict policy of forbidding relationships in the workplace outright. They assumed that if romance blossomed, one person—usually the subordinate—would have to find another job. Today, however, companies are more likely to draw distinctions, permitting some kinds of office relationships, and not others. A 2013 survey by the Society for Human Resource Professionals found that 42 percent of companies had either a written or verbal policy on workplace romance. Almost all of these policies (99 percent) banned relationships within a direct chain of command (such as between a supervisor and subordinate). Forty-five percent banned romances between employees of significantly different rank. But less than a third banned relationships between workers of the same rank who reported to the same supervisor, and only 12 percent banned relationships between workers in different departments. A small proportion of companies (about 5 percent) require their managers to sign a document, sometimes called a *consensual relationship agreement,* stipulating that an office relationship is welcome and voluntary—to protect against possible harassment lawsuits if the people involved later break up.[28]

[26] "Woman Fired After Disabling GPS on Work Phone," *CNN Money,* May 13, 2015. A summary of the law with respect to employee monitoring may be found in "Fact Sheet 7: Workplace Privacy and Employee Monitoring," at the website of the Privacy Rights Clearinghouse at *www.privacyrights.org.*

[27] "Thirty-Eight Percent of Workers Have Dated a Co-Worker, Find CareerBuilder Survey," press release, February 12, 2014, at *www.careerbuilder.com.*

[28] "Forbidden Love: Workplace-Romance Policies Now Stricter," September 24, 2013, at *www.shrm.org.*

Employee Drug Use and Testing

Abuse of drugs, both illegal drugs such as heroin and methamphetamine and legal drugs such as Oxycontin or Xanax when used inappropriately, can be a serious problem for employers. Only a small fraction of employees abuse illegal or prescription drugs. But those who do can cause serious harm. They are much more likely than others to produce poor-quality work, have accidents that hurt themselves and others, and steal from their employers. Some break the law by selling drugs at work to support their habits. Drug abuse costs U.S. industry and taxpayers an estimated $193 billion a year. This figure includes the cost of lost productivity, medical claims, rehabilitation services, and crime and accidents caused by drugs.[29]

One way business has protected itself from these risks is through **drug testing**. About two-thirds of companies test employees or job applicants for illegal substances, according to a 2015 study.[30] Significant drug testing first began in the United States following passage of the Drug-Free Workplace Act of 1988, which required federal contractors to establish and maintain a workplace free of drugs. At that time, many companies and public agencies initiated drug testing to comply with government rules. The use of drug tests has fallen somewhat in the past decade, as fewer people have tested positive. (The one class of drugs whose use has recently risen is prescription opiates—medicines such as hydrocodone that are used to treat pain.)

Typically, drug testing is used on three different occasions.

- *Preemployment screening.* Some companies test all job applicants or selected applicants before hiring, usually as part of a physical examination, often informing the applicant ahead of time that there will be a drug screening.
- *Random testing of employees.* This type of screening may occur at various times throughout the year. In many companies, workers in particular job categories (e.g., operators of heavy machinery) or levels (e.g., supervisors) are eligible for screening at any time.
- *Testing for cause.* This test occurs when an employee is believed to be impaired by drugs and unfit for work. It is commonly used after an accident or some observable change in behavior.

An emerging issue is whether or not employers may terminate workers for testing positive for marijuana in states that permit its medical use. In 2015, the Colorado Supreme Court upheld the decision of Dish Network, a satellite television company, to fire an employee who had failed a random drug test. The employee, a customer service representative, had used marijuana off the job to treat painful spasms caused by a serious car accident. Colorado was one of 23 states that permitted medical marijuana (and one of only four that permitted recreational use by adults). Even though Colorado law said that an employee could not be fired for "any lawful activity" outside of work, because marijuana was still illegal under federal law the court said the firing was justified.[31]

Employee drug testing is controversial. Although businesses have an interest in not hiring, or getting rid of, people who abuse drugs, many job applicants and employees who have never used drugs feel that testing is unnecessary and violates their privacy and due process rights. The debate over employee drug testing is summarized in Figure 15.4. In

[29] "Consequences of Illicit Drug Use in America," April 2014, at *www.whitehouse.gov*.

[30] "HireRight Annual Employment Screening Benchmark Report, 2015 Edition" at *http://hireright.com/benchmarking*.

[31] "Workers Can Be Fired for Marijuana Use, Colorado Court Rules," *The New York Times*, June 15, 2015.

FIGURE 15.4
Pros and Cons of Employee Drug Testing

Arguments Favoring Employee Drug Testing	Arguments Opposing Employee Drug Testing
• Supports U.S. policy to reduce illegal drug use and availability	• Invades an employee's privacy
• Improves employee productivity	• Violates an employee's right to due process
• Promotes safety in the workplace	• May be unrelated to job performance
• Decreases employee theft and absenteeism	• May be used as a method of employee discrimination
• Reduces health and insurance costs	• Lowers employee morale
	• Conflicts with company values of honesty and trust
	• May yield unreliable test results
	• Ignores effects of prescription drugs, alcohol, and over-the-counter drugs
	• Drug use an insignificant problem for some companies

general, proponents of testing emphasize the need to reduce potential harm to other people and the cost to business and society of drug use on the job. Opponents challenge the benefits of drug testing and emphasize its intrusion on individual privacy.

Alcohol Abuse at Work

Another form of employee substance abuse—which causes twice the problems of all illegal drugs combined—is alcohol use and addiction. About 9 percent of full-time employees are heavy drinkers—that is, they had five or more drinks on five or more occasions in the past month. Like drug abusers, they can be dangerous to themselves and others. Studies show that up to 40 percent of all industrial fatalities and 47 percent of industrial injuries are linked to alcohol. The problem is not just hard-core alcoholics, however. Most alcohol-related problems in the workplace, one study found, were caused by people who occasionally drank too much after work and came in the next day with a hangover, or who went out for a drink on their lunch break. U.S. businesses lose an estimated $88 billion per year in reduced productivity directly related to alcohol abuse.[32]

Company programs for drug abusers and alcohol abusers are often combined. Many firms recognize that they have a role to play in helping alcoholic employees. As with drug rehabilitation programs, most alcoholism programs work through **employee assistance programs (EAPs)** that offer counseling and follow-up. Almost all U.S. companies employing 1,000 or more workers provide EAPs for alcohol and drug abusers. Even small companies (employing 50 to 99) are involved; almost three-quarters now offer assistance, often by contracting with outside vendors.[33]

[32] The statistics reported in this paragraph are from the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) at *www.samhsa.gov;* 10th Annual Report to the U.S. Congress on Alcohol and Health, at *http://pubs.niaaa.nih.gov/publications/10report/intro.pdf;* and the website of the National Drug-Free Workplace Alliance at *www.ndwa.org.*

[33] Kenneth Matos and Ellen Galinsky, "2014 National Study of Employers," at *http://familiesandwork.org.*

Employee Theft and Honesty Testing

Employees can irresponsibly damage themselves, their coworkers, and their employer by stealing from the company. Employee theft has emerged as a significant economic, social, and ethical problem in the workplace. A 2015 survey of large retail stores in the United States showed that almost 35 percent of all inventory losses were due to employee theft (shoplifting, administrative error, and vendor fraud accounted for most of the rest). The retail value of goods stolen by employees was more than $15 billion.[34]

Employee theft is also a problem in other parts of the world, as well. According to the 2013–14 Global Retail Theft Barometer, so-called retail crime costs European, North American, and Asian-Pacific businesses around $129 billion annually, or about 1.3 percent of sales. Of this, 28 percent was due to employee theft (shoplifting, administrative error, and vendor fraud accounted for the rest). The items most commonly stolen were clothing, accessories, power tools, wines, and make-up.[35]

Many companies in the past used polygraph testing (lie detectors) as a preemployment screening procedure or on discovery of employee theft. In 1988, the Employee Polygraph Protection Act became law. This law severely limited polygraph testing by employers and prohibited approximately 85 percent of all such tests previously administered in the United States. In response to the federal ban on polygraphs, many corporations have switched to written psychological tests that seek to predict employee honesty on the job by asking questions designed to identify desirable or undesirable qualities. When a British chain of home improvement centers used such tests to screen more than 4,000 applicants, theft dropped from 4 percent to 2.5 percent, and actual losses from theft were reduced from £3.75 million to £2.62 million.

The use of **honesty tests**, however, like polygraphs, is controversial. The American Psychological Association noted there is a significant potential for these tests to generate false positives, indicating the employee probably would or did steal from the company even though this is not true. Critics also argue that the tests intrude on a person's privacy and discriminate disproportionately against minorities.

In all these areas—monitoring employees electronically, policing office romance, testing for drugs, and conducting psychological tests—businesses must balance their needs to operate safely, ethically, and efficiently with their employees' right to privacy.

Whistle-Blowing and Free Speech in the Workplace

Another area where employer and employee rights and duties frequently conflict involves free speech. Do employees have the right to openly express their opinions about their company and its actions? If so, under what conditions do they have this right?

The U.S. Constitution protects the right to free speech. This means the government cannot take away this right. For example, the legislature cannot shut down a newspaper that editorializes against its actions or those of its members. However, the Constitution does not explicitly protect freedom of expression in the workplace. Generally, employees are

[34] Richard C. Hollinger and the National Retail Federation, *2015 National Retail Security Survey* (University of Florida and the National Retail Federation, 2015).

[35] These data are for the 12-month period ending December 2013. The Global Retail Theft Barometer is available at *www.globalretailtheftbarometer.com*.

not free to speak out against their employers, since companies have a legitimate interest in operating without harassment from insiders. Company information is generally considered to be proprietary and private. If employees, based on their personal points of view, were freely allowed to expose issues to the public and allege misconduct, a company might be thrown into turmoil and be unable to operate effectively.

On the other hand, there may be situations in which society's interests override those of the company, so an employee may feel an obligation to speak out. When an employee believes his or her employer has done something that is wrong or harmful to the public, and he or she reports alleged organizational misconduct to the media, government, or high-level company officials, **whistle-blowing** has occurred.

> An example of a whistle-blower was Michael Winston, a former executive at Countrywide Financial Corporation with responsibility for leadership development. Countrywide, which was later acquired by Bank of America, was a leading subprime lender during the housing boom of the mid-2000s. Winston had complained vigorously to the chief production officer about the company's strategy of funding almost all loans, whether or not the borrower was qualified. "I told him that you need to focus on customer satisfaction, on the quality of the loan portfolio, and on building leaders who would focus their people on that," Winston recalled. "I wrote him a very comprehensive memo." Soon afterward, Winston's budget was cut, he was excluded from meetings, and his office was relocated. Eventually, he was fired. In 2011, he won a lawsuit against his former employer. "It [was] the littlest of Davids beating the biggest of Goliaths," said Winston.[36]

Speaking out against an employer can be risky; many whistle-blowers find their charges ignored—or worse, find themselves ostracized, demoted, or even fired for daring to go public with their criticisms. Whistle-blowers in the United States have some legal protection against retaliation by their employers, though. As noted earlier in this chapter, most workers are employed *at will,* meaning they can be fired for any reason. However, most states now recognize a public policy exception to this rule. Employees who are discharged in retaliation for blowing the whistle, in a situation that affects public welfare, may sue for reinstatement and in some cases may even be entitled to punitive damages. The federal Sarbanes-Oxley Act, passed in 2002 (and described more fully in Chapters 5 and 13), makes it illegal for employers to retaliate in any way against whistle-blowers who report information that could have an impact on the value of a company's shares. More recently, the Dodd-Frank Act of 2010 (described more fully in Chapters 7 and 14) requires the government to pay a reward to whistle-blowers who voluntarily provide information that leads to successful prosecutions for violations of federal securities laws. Dodd-Frank also prohibits retaliation against employees who do so.[37]

Moreover, whistle-blowers sometimes benefit from their actions. The U.S. False Claims Act (also known as the Lincoln Law), as amended in 1986, allows individuals who sue federal contractors for fraud to receive up to 30 percent of any amount recovered by the government. In the past decade, the number of whistle-blower lawsuits—perhaps spurred by this incentive—increased significantly, exposing fraud in the country's defense, health care, municipal bond, and pharmaceutical industries.

[36] "How a Whistle-Blower Conquered Countrywide," *The New York Times*, February 19, 2011.

[37] "SEC Approves New Rewards for Whistleblowers," *Washington Post*, May 25, 2011; and Securities and Exchange Commission, "Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934," August 12, 2011, at *www.sec.gov*.

For example, several whistle-blowers at Johnson & Johnson, the pharmaceutical company, shared a $112 million reward in 2013 after they helped the government bring a successful case against their employer for illegally marketing the anti-psychotic drug Risperdal (which had been approved to treat schizophrenia and bipolar disorder). The government said the company had promoted the drug for unapproved uses, such as for elders with dementia, children with attention deficit hyperactivity disorder, and people with developmental disabilities, in spite of known health risks for these groups. Johnson & Johnson eventually paid $2.2 billion in criminal and civil fines to settle the charges. The government was able to build a successful case against Johnson & Johnson because several employee whistle-blowers came forward. Said one of the whistle-blowers' lawyers, "She quit without a job. They were asking her to market the drug for the elderly. She knew that was dangerous."[38]

Whistle-blowing has both defenders and detractors. Defenders point to the successful detection of fraudulent activities and prosecution of wrongdoers. Under the False Claims Act, through 2012 $55 billion had been recovered by the federal and state governments that would otherwise have been lost to fraud.[39] Situations dangerous to the public or the environment have been exposed and corrected because insiders have spoken out. Yet opponents cite hundreds of unsubstantiated cases, often involving disgruntled workers seeking to blackmail or discredit their employers.

When is an employee morally justified in blowing the whistle on his or her employer? According to one expert, four main conditions must be satisfied to justify informing the media or government officials about a corporation's actions. These are

- The organization is doing (or will do) something that seriously harms others.
- The employee has tried and failed to resolve the problem internally.
- Reporting the problem publicly will probably stop or prevent the harm.
- The harm is serious enough to justify the probable costs of disclosure to the whistle-blower and others.[40]

Only after each of these conditions has been met should the whistle-blower go public.

Employees as Corporate Stakeholders

The issues discussed in this chapter illustrate forcefully that today's business corporation is open to a wide range of social forces. Its borders are very porous, letting in a constant flow of external influences. Many are brought inside by employees, whose personal values, lifestyles, and social attitudes become a vital part of the workplace.

Managers and other business professionals need to be aware of these employee-imported features of today's workforce. The employment relationship is central both to getting a corporation's work done and to helping satisfy the aspirations of those who contribute their skills and talents to the company.

[38] "How Risperdal Whistle-Blowers Made Millions From J&J," *BloombergBusiness*, December 9, 2013; and "J&J to Pay $2.2 Billion in Risperdal Settlement," *The New York Times*, November 4, 2013.

[39] U.S. Department of Justice statistics, summarized at the website of Taxpayers against Fraud, *www.taf.org*.

[40] Manuel G. Velasquez, *Business Ethics: Concepts and Cases*, 7th ed. (Upper Saddle River, NJ: 2012), p. 430.

Summary

- U.S. labor laws give most workers the right to organize unions and to bargain collectively with their employers. Although unions have weakened over time, they continue to represent workers in some parts of the economy, particularly in the public sector.
- Job safety and health concerns have increased as a result of rapidly changing technology in the workplace. U.S. employers must comply with expanding OSHA regulations and respond to the threat of violence at work.
- Employers' right to discharge "at will" has been limited, and employees now have a number of bases for suing for wrongful discharge. The expectations of both sides in the employment relationship have been altered over time by globalization, business cycles, and other factors.
- Corporate wage policies contribute to growing income inequality. Pursuing a high-wage "good jobs" strategy can benefit a company through high productivity, strong customer service, and innovation.
- Employees' privacy rights are frequently challenged by employers' needs to have information about their health, their work activities, and even their off-the-job lifestyles. When these issues arise, management has a responsibility to act ethically toward employees while continuing to work for a high level of economic performance.
- Blowing the whistle on one's employer is often a last resort to protest company actions considered harmful to others. In recent years, U.S. legislation has extended new protections to whistle-blowers.

Key Terms

drug testing, *339*
electronic monitoring, *337*
employee assistance programs (EAPs), *340*
employment-at-will, *332*
ergonomics, *330*
honesty tests, *341*
labor union, *328*
living wage, *336*
Occupational Safety and Health Administration (OSHA), *330*
privacy rights, *336*
social contract, *332*
whistle-blowing, *342*

Internet Resources

www.drugfreeworkplace.org	Institute for a Drug-Free Workplace
www.osha.gov	Occupational Safety and Health Administration
www.whistleblowers.org	National Whistleblowers Center
www.aclu.org	American Civil Liberties Union
www.afl-cio.org	American Federation of Labor-Congress of Industrial Organizations
www.workrights.org	National Workrights Institute
www.business.com/human-resources	Business.com (human resources topics)
www.ethicaltrade.org	Ethical Trading Initiative

Discussion Case: *The Ugly Side of Beautiful Nails*

For many people, going to a nail salon for a manicure or pedicure is a small, affordable luxury and a pleasant way to relax. For workers in these salons, however, the story is often less glamorous: low pay, abusive working conditions, and constant exposure to dangerous chemicals that threaten to ruin their health.

In 2015, nail care was riding a wave of popularity. Women (and some men) spent more than $8 billion a year on nail care at around 200,000 nail salons across the nation. The publisher of the magazine *Nails* explained the phenomenon this way: "Nail care isn't just about grooming anymore; it's self-expression. Just as tattoos have become mainstream, nail art has too." Technical innovations such as gel polishes, which lasted longer and were easier to remove, also drove the trend. For most customers, the price of the service—averaging less than $20 for a manicure—was easy to fit into their budgets.

Who were the manicurists and pedicurists laboring over all these hands and feet? According to *Nails,* 380,000 people worked in nail salons in the United States in 2014. Ninety-four percent were women. Over half were Vietnamese, although ethnicity varied by location; in New York City, for example, Koreans dominated the industry. Many workers had limited English proficiency, and a significant proportion were undocumented immigrants.

Wages were very low. According to government data, the median annual wage for a manicurist was $19,620. Only a quarter of the 100 workers interviewed by a reporter for *The New York Times* said they had been paid the equivalent of the state minimum wage. The *Times'* exposé also reported that sometimes workers were not paid at all; many new workers were required to pay a so-called training fee and to work without wages during an apprenticeship period. Overtime pay was "almost unheard-of," the newspaper found, even though long work days and weeks were commonplace. *Nails* magazine reported that more than a fifth of nail salon workers' income came from tips, which relied entirely on the goodwill of customers.

Most salons were small. Barriers to entry were low: an operator could set up business by renting a storefront and investing a few thousand dollars in furnishings, equipment, and supplies. Eighty-one percent of manicurists and pedicurists worked in a shop with three or fewer technicians. The industry was highly competitive, and salons went in and out of business frequently.

Nail technicians worked with polishes, solvents, hardeners, and glues that caused respiratory and skin ailments, reproductive harm, and even cancer. Although occupational health in nail salons had not been fully studied, the three most dangerous chemicals used there were believed to be toluene (which made polish glide on smoothly), dibutyl phthalate (which made it pliable), and formaldehyde (which hardened it). Workers also inhaled acrylic dust; acquired fungal infections from customers' hands and feet; and injured their backs, necks, and shoulders from constant repetitive motion. *Nails* reported that more than half of nail technicians said they suffered from a work-related ailment.

The Occupational Safety and Health Administration set standards for workplace exposure to many of the chemicals used in nail salons, and urged workers to wear protective gear like gloves and masks and to properly ventilate their salons. States also set safety and health rules. But as a practical matter these rules were routinely ignored, and inspections were conducted only in response to specific complaints.

In New York, in the wake of the exposé published by *The New York Times,* officials rushed to assemble a task force to address conditions in the industry and said they would post a manicurist's "bill of rights" in 10 languages in every salon, describing minimum wage laws and required safety measures. "We will not stand idly by as workers are deprived of their hard-earned wages and robbed of their most basic rights," said the governor of New York. But it was unclear how much impact these measures would have. One official observed that manicurists were particularly reluctant to cooperate with investigators, saying, "They are totally running scared in this industry."

Sources: "The Price of Nice Nails," *The New York Times,* May 7, 2015; "Perfect Nails, Poisoned Workers," *The New York Times,* May 8, 2015; "Cuomo Orders Emergency Measures to Protect Workers at Nail Salons," *The New York Times,* May 11, 2015; "New York Salons Now Required to Post Workers' Bill of Rights," *The New York Times,* May 29, 2015; California Health Nail Salon Collaborative, *Overexposed and Underinformed: Dismantling Barriers to Health and Safety in California Nail Salons* (April 2009); and *2014–2015 Nails Big Book,* at *http://files.nailsmag.com/site/NAILS-Magazine-Big-Book-2014.pdf.* Wage data are from the Bureau of Labor Statistics at *www.bls.gov.*

Discussion Questions

1. This section describes several "workplace rights." Which of these rights are violated in the nail salon industry, and what evidence do you have of this?
2. To what degree do you think managers in the nail salon industry would be able to improve conditions voluntarily if they wished to do so, and why do you think so?
3. What factors make it particularly difficult for workers in the nail industry to organize to improve their own conditions, and how could these factors be overcome?
4. What factors make it particularly difficult for government policy makers and regulators to make rules for the nail industry and enforce them? How could these factors be overcome?
5. What do you think is the best way to improve conditions for workers in the nail industry?