Employment

1. Basic rules
   A. Employment act will
   B. Exceptions
      1. Contract
      2. Public Policy
      3. Discrimination

2. Emp. Law in M&A contest
   1. Due Diligence
   2. Golden Parachutes / Civ C
   3. Noncompete
   4. Successorship Issues
   5. WARN / Layoffs
   6. Benefit Plans

4. Emp. at will - Rule for all employees, not union employees.
   Emp. can be hired, fired, promoted at any time for any reason. Your emp. can fire you any time, any reason, no warning...
   True in all states in US. Notice or severance pay not required.
   
   This is not true in union context - "just cause" provision is an item on union bargaining agenda.

   Your job is not a right, it is a privilege.
B. Exceptions

1. Contract exception - in each firm, get paid at a certain rate.
   "At will" rule still applies to terminate employment.
   Contract can be used to vary or change the "Atw" rule.

- oral
- written

- express
- implied

? is why don't we believe in evidence issue.
Not enforceability issue.

What firm owes you: Damages of breach of contract are damages to put A back in position before breach.
And, you have a duty to mitigate ... owe here. The difference between balance of 5 years and her current salary. E.g., if she quits and is better off, you owe 0.

US: Winner gets loser pay own legal fees. Except for discrimination rule. Why is this true? Keeps # lawsuits.
2. Public policy - narrow i.e. Mass.
   = can't fire someone for refusing to break the law, exercising a legal right, whistleblowing (within a range). Being fired to deprive you of income you've earned but not received.

   Salaman and
   11AM about shipping -
   file a that night...

Exercise a legal right: e.g., wearing anti-war button, employee cons in. Can be fired for this? For speaking? Yes. First Am. not constrain employment; govt can't restrict you but employer can. Yet not public employers.

3. Discrimination: Can't take into account in any work situation: sex
   pregnancy
   age
   national origin
   ancestry
   religion
   creed
   race
   color
   disability
   veteran status

Federal Law =

Each state has our baby version to add to this list. Mass. adds sexual orientation.
sex - bona fide occupational qualification issue. e.g.
   ladies in washrooms. Famous case e.g. Pan Am.
   pregnancy - revision of sex. Litigation now: nuclear reactors, etc.
   age - only protects you if you are only 40. Over 40,
   under 40 no rights. Can be fired for too young.
   no mandatory retirement age.
   national origin, ancestry
   religion, creed
   color
   race - no bona fide occup. qualification here.
   disability - only protected if you are disabled and can
   perform all the functions of the job. Issue of
   reasonable accommodation - e.g., be willing to
   buy voice recognition software, then the "blind"
   to their disability. Issue of reasonable is
   situation specific.

US nationals
protected by
US law
overseas
unless this
would violate
local law.
2. Must context
   1. Diligence = looking for what contracts are out there. What do the employment manuals look like?
   What's the discrimination policy?
   
   All 0 finding instances of
   ①. How much employment at will has been enforced and ②. # and type of exceptions issued by?

2. Golden parachutes - Change of Control (COC can be sale of assets, change in ownership structure, etc.)

   These now regulated via change to tax law. Now expensive to company if q's are excess parachutes.

   If you receive in parachute payout of any type, benefits valued at 3x your average total comp for last three years, a/t. Over deemed excessive. Big excise tax a/x and company not get tax breaks.

CA here:

3. Non compete - Hot issue is what will remain. Set timeframe and what not to be able to do.

   N+ - employer
   N- - employer

   ③. Non-comp. enforceable if judge says so.

4. Successorship: Stock transaction - if do this, you are the successor by law, you are the CO.

   Issue as to when claims can be transferred by n.

   Asset - you are not the company, old CO left behind.
If you are the same right, team: fact that it is an asset
dead run protect a n. Maint duplicate being a success.

s. WARN I layoffs if of a certain size and will
fire enough employees (mass layoff)
or shut down plant, need give
60 days notice to legal (like
giving 60 days severance pay).

In M&A context, A buys B and slashes people. So...
John sells B to me, I buy Tuesday, fire Wed. John knows.
Problem: notice had to be given while John owned co.
even though I did the firing.

—So — John puts in clause that I wait fire my I do
1 indemnify him.

Whatever judge feels is fair: inc: employee
compensation, competition, etc employees, etc.
—are poor question.
-only enforceable:

non-comp — must protect legitimate interests of co:
—confidential info
—goodwill — customers

—reasonable in time
—gen: 1 year max, not 2 + years

—reasonable in geographic scope.
—geo: scope of co's biz.