

# Employment Law

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Room 107  
Mondays & Wednesdays, 8:30–10:15 am

## Description

This course surveys federal and state laws governing employment. Topics to be covered include establishing an employment relationship; recruitment & hiring; supervisory control and employee autonomy; confidentiality & competition; wages & hours; workplace safety & health; termination of employment; and enforcement & remedies. Some of the issues touched on in this course are covered in further depth in other courses, such as Employment Discrimination and Labor Law.

After completing the course, you should be able to recognize and diagnose legal issues and problems arising in the employment context, to analyze those issues and problems under the applicable law, and to help clients avoid those issues and problems or remedy them when they arise. Simulation problems provide an opportunity to develop practical skills for representing clients in employment matters.

## Requirements & Grading

Class sessions for this course will combine traditional law school format (lecture & discussion of assigned readings) and simulation problems. I expect you to complete all reading assignments before class, to attend each class session, and to engage constructively in class discussions and simulations.

Your grade for the course will be based on your contributions to in-class discussions and simulations (20%), your performance on written simulation assignments (20%), and a final take-home examination (60%). Excessive absences (3 or more classes), persistent lack of preparation, or inattention during class (including but not limited to inappropriate use of computers or electronic devices) may result in a reduction of your grade.

Elon Law School has adopted the following attendance policy for all courses:

*The Law School administers a policy that a student maintain regular and punctual class attendance in all courses in which the student is registered, including externships, clinical*

*courses, or simulation courses. Faculty members will give students written notice of their attendance policies before or during the first week of class. These policies may include, but are not limited to: treating late arrivals, early departures, and/or lack of preparation as absences; imposing grade or point reductions for absences, including assigning a failing grade or involuntarily withdrawing a student from the class; and any other policies that a professor deems appropriate to create a rigorous and professional classroom environment.*

*In case of illness or emergency, students may contact the Office of Student and Professional Life, which will then notify the student's instructors. A student may notify the faculty member directly of a planned absence and should refer to individual faculty members regarding any policy that may apply. In the case of prolonged illness or incapacity, the student should contact the Office of Student and Professional Life.*

The Law School honor code applies to all activities related to your law school study, including but not limited to conduct during class and examinations.

## Required Materials

Assigned readings (see "Outline & Reading Assignments" below) are available via the course website: [emfink.net/EmploymentLaw](http://emfink.net/EmploymentLaw)

Rachel Arnow-Richman & Nantiya Ruan, *Developing Professional Skills: Workplace Law* (West Academic 2016)

## Outline & Reading Assignments

### 1 Introduction

#### 1.1 Historical Background

*Reading*

- Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States*, chap. 3 (1991)
- *Pollock v. Williams*, 322 U.S. 4 (1944)

#### 1.2 Contemporary Labor Markets

*Reading*

- Elizabeth Anderson, *How bosses are (literally) like dictators*, *Vox* (July 17, 2017)
- Keith Cunningham-Parmeter, *From Amazon to Uber: Defining Employment in the Modern Economy*, 96 *B.U.L.Rev.* 1673 (2016)
- Arne L. Kalleberg, *Prekarious Work, Insecure Workers: Employment Relations in Transition*, 74 *American Sociological Review* 1 (2009)

## 2 The Employment Relationship

### 2.1 Employees

#### *Problem*

- The Canine Trainer (Workplace Law, Chap. 1)

#### *Reading*

- Lemmerman v. A.T. Williams Oil Co., 350 S.E.2d 83 (N.C. 1986)
- Alexander v. FedEx Ground Package System, Inc., 765 F. 3d 981 (9th Cir. 2014)
- Glatt v. Fox Searchlight Pictures, Inc., 791 F.3d 376 (2d Cir. 2015)
- U.S. Department of Labor, Factsheet 71: Internship Programs Under the Fair Labor Standards Act (April 2010)

### 2.2 Employers

#### *Reading*

- Amarnare v. Merrill Lynch, Pierce, Fenner, & Smith, Inc., 611 F. Supp. 344 (S.D.N.Y. 1984)
- Zheng v. Liberty Apparel Co., 355 F.3d 61 (2d Cir. 2003)
- Kology v. My Space NYC Corp., 177 F. Supp. 3d 778 (E.D.N.Y. 2016)
- EEOC, Enforcement Guidelines on Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms, Notice No. 915.002 (Dec. 3, 1997)

## 3 Recruitment & Hiring

### 3.1 Pre-Employment Screening & References

#### *Problem*

- The High-End Mechanic (Workplace Law, Chap. 3)

#### *Reading*

- Harrison v. Benchmark Electronics Hunstville, Inc., 593 F.3d 1206 (11th Cir. 2010)
- Starbucks v. Superior Court, 168 Cal.App.4th 1436 (2008)
- Malorney v. B&L Motor Freight, Inc., 496 N.E.2d 1086 (Ill. App. 1986)
- Kadlec Medical Center v. Lakeview Anesthesia Associates, 527 F.3d 412 (5th Cir. 2008)

### 3.2 Discrimination in Recruitment & Hiring

#### *Reading*

- McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)
- Griggs v. Duke Power Co., 401 U.S. 424 (1971)

## 4 Supervision & Control

### 4.1 Supervision & Control in the Workplace

#### *Reading*

- *Jespersen v. Harrah's Operating Co.*, 444 F.3d 1104 (9th Cir. 2006)
- *T-Mobile USA, Inc.*, 363 NLRB No. 171 (2016)
- *Cloutier v. Costco Wholesale Corp.*, 390 F.3d 126 (2004)
- *Bodewig v. K-Mart, Inc.*, 635 P.2d 657 (Or. Ct. App. 1981)
- *Hernandez v. Hillside, Inc.*, 211 P.3d 1063 (Cal. 2009)
- *Stengart v. Loving Care Agency, Inc.*, 990 A.2d 650 (N.J. 2010)
- Josh Rosenthal, *Wisconsin Company to Implant Microchips in Employees*, KSTP-TV (July 24, 2017)

### 4.2 Supervision & Control Outside the Workplace

#### *Problem*

- The Facebook Post (Workplace Law, Chap. 6)

#### *Reading*

- *Curay-Cramer v. Ursuline Academy*, 450 F.3d 130 (2006)
- *Rulon-Miller v. International Business Machines Corp.*, 162 Cal. App. 3d 241 (1984)
- *Triple Play Sports Bar & Grille*, 361 NLRB No. 31 (2014), *aff'd*, *Three D, LLC v. NLRB*, No. 14-3284 (2d Cir. Oct. 21, 2015)
- California Labor Code, § 980 (Employer Use of Social Media)
- California Labor Code, §§ 1101-1106 (Political Affiliation)
- Alexander Hertel-Fernandez, *How Employers Recruit Their Workers into Politics—And Why Political Scientists Should Care*, 14 *Perspectives on Politics* 410 (2016)

### 4.3 Employee Dignity

#### *Problem*

- A Troublesome Crew (Workplace Law, Chap. 7)

#### *Reading*

- *Burlington Industries, Inc. v. Ellerth*, 524 US 742 (1998)
- *Faragher v. Boca Raton*, 524 US 775 (1998)
- *Hall v. May Department Stores Co.*, 637 P.2d 126 (Ore. 1981)
- *Hogan v. Forsyth Country Club Co.*, 340 S.E.2d 116 (N.C. App. 1986)

## 5 Employee Duties Toward Employer

### 5.1 Loyalty & Confidentiality

#### *Reading*

- *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, 951 F.Supp. 1224 (M.D.N.C. 1996), *aff'd* in relevant part, 194 F.3d 505 (4th Cir. 1999)

- Dalton v. Camp, 548 S.E.2d 704 (N.C. 2001)
- NC Trade Secrets Protection Act, N.C.G.S. § 66-152 et seq.

## 5.2 Restrictions on Future Employment

### *Problem*

- The Doctor Is In (Workplace Law, Chap. 5)

### *Reading*

- TSG Finishing, LLC v. Bollinger, 767 S.E.2d 870 (N.C. App. 2014)
- Edwards v. Arthur Anderson, LLP, 44 Cal.4th 937 (2008)
- Conor Dougherty, How Noncompete Clauses Keep Workers Locked In, N.Y. Times (June 9, 2017)
- Conor Dougherty, Noncompete Pacts, Under Seige, Find Haven in Idaho, N.Y. Times (July 14, 2017)

## 6 Wages & Hours

### *Problem*

- At Your Service (Workplace Law, Chap. 11)

### *Reading*

- Lochner v. New York, 198 U.S. 45 (1905)
- Fair Labor Standards Act, 29 U.S.C. § 201 et seq.
- Donovan v. DialAmerica Marketing, Inc., 757 F.2d 1376 (3d Cir. 1985)
- Christopher v. SmithKline Beecham Corp., 132 S.Ct. 2156 (2012)
- IBP, Inc. v. Alvarez, 546 U.S. 21 (2005)
- FLSA Regulations: Wage Payments, 29 C.F.R. § 531.1 et seq.
- NC Wage & Hour Act, N.C.G.S. § 95-25.1 et seq.

## 7 Health & Safety

### 7.1 Workers' Compensation

- NC Workers' Compensation Act, N.C.G.S. §§ 97-1 et seq.
- McGrady v. Olsten Corp., 583 S.E.2d 371 (N.C. App. 2003)
- Deem v. Treadaway & Sons Painting & Wallcovering, Inc., 543 SE 2d 209 (N.C. App. 2001)

### 7.2 Occupational Safety & Health

- Occupational Safety & Health Act, 29 U.S.C. § 651 et seq.
- Durez Division of Occidental Chemical Corp. v. OSHA, 906 F.2d 1 (DC Cir. 1990)
- SeaWorld of Florida, LLC v. Perez, 748 F.3d 1202 (DC Cir. 2014)
- Brennan v. OSHRC (Republic Creosoting Co.), 501 F.2d 1196 (7th Cir. 1974)
- Whirlpool Corp. v. Marshall, 445 U.S. 1 (1980)

## **8 Terminating Employment**

### **8.1 Employment-at-Will**

#### *Reading*

- Skagerberg v. Blandin Paper Co., 266 N.W. 872 (Minn. 1936)
- Pugh v. See's Candies, Inc., 116 Cal. App. 3d 311 (1981)
- Robert C. Bird & Donald J. Smythe, The Structure of American Legal Institutions and the Diffusion of Wrongful-Discharge Laws, 1978-1999, 42 Law & Society Review 833 (2008)

### **8.2 Contract & Tort Claims for Wrongful Termination**

#### **8.2.1 Breach of Contract & Estoppel**

##### *Problem*

- In-House at Big Pharm (Workplace Law, Chap. 2)

##### *Reading*

- Woolley v. Hoffmann-La Roche, Inc., 491 A. 2d 1257 (N.J. 1985)
- Harris v. Duke Power Co., 356 S.E.2d 357 (N.C. 1987)
- Kurtzman v. Applied Analytical Industries, Inc., 493 S.E.2d 420 (N.C. 1997)

#### **8.2.2 Bad Faith & Intentional Torts**

##### *Reading*

- Fortune v. National Cash Register Co., 364 NE 2d 1251 (Mass. 1977)
- Murphy v. American Home Products Corp., 58 N.Y.2d 293 (1983)
- Salt v. Applied Analytical, Inc., 412 S.E.2d 97 (N.C. App. 1991)
- Wilson v. Monarch Paper Co., 939 F. 2d 1138 (5th Cir. 1991)

#### **8.2.3 Negligence**

##### *Reading*

- Mission Petroleum Carriers, Inc. v. Solomon, 106 S.W.3d 705 (Tex. 2003)

#### **8.2.4 Tort Against Public Policy**

##### *Reading*

- Garner v. Rentenbach Constructors Inc., 515 S.E.2d 438 (N.C. 1999)
- Hansen v. America Online, Inc., 96 P.3d 950 (Utah 2004)

### **8.3 Statutory Limits on At-Will Termination**

#### **8.3.1 Discrimination, Retaliation, & Whistle-Blower Protection**

##### *Problem*

- The Smart-Tek IPO (Workplace Law, Chap. 4)

*Reading*

- Kraft v. Police Commissioner of Boston, 571 N.E.2d 380 (1991)
- Nelson v. Knight, 834 N.W.2d 64 (Iowa 2013)
- Yanowitz v. L'Oreal USA, Inc., 116 P.3d 1123 (Cal. 2005)

**8.3.2 Statutory Good Cause Requirement***Reading*

- Marcy v. Delta Airlines, 166 F.3d 1279 (9th Cir. 1999)

**8.4 Unemployment Compensation***Reading*

- NC Employment Security Law, N.C.G.S. § 96-1 et seq.
- Intercraft Industries Corp. v. Morrison, 289 S.E.2d 357 (NC 1982)
- Lindsey v. Qualex, Inc., 406 S.E.2d 609 (N.C. App. 1991)
- Lynch v. PPG Industries, 412 S.E.2d 163 (N.C. App. 1992)

**9 Enforcement & Remedies****9.1 Administrative Enforcement***Reading*

- Marshall v. Barlow's, Inc., 436 U.S. 307 (1978)

**9.2 Arbitration***Problem*

- The Aging Chocolatier (Workplace Law, Chap. 10)

*Reading*

- Lewis v. Epic Systems Corp., 823 F.3d 1147 (7th Cir. 2016)
- D.R. Horton, Inc. v. NLRB, 737 F.3d 344 (5th Cir. 2013)
- California Labor Code, § 925 (Contracts Against Public Policy)