

## EMPLOYMENT LAW SYLLABUS

**ASSIGNMENTS:** The required texts for this class are Marion Crain, Pauline Kim & Mike Selmi, **WORK LAW: 3<sup>RD</sup> ED. CASES AND MATERIALS (2015)**, **Casebook Supplement 2018**, and **Statutory Supplement: Samuel Estreicher & Michael Harper, Cases & Materials on Employment Discrimination and Employment Law 5<sup>th</sup> ed.**

**COURSE COVERAGE:** This course will focus on the law governing private employers and employees. Employment issues typically give rise to multiple claims arising under different sources of law, so a competent employment lawyer must have a working knowledge of a variety of statutes and common law doctrines. Accordingly, this is a survey course designed to familiarize you with a variety of sources of employment law. We will be covering the following areas of employment law in the course: the common law of wrongful discharge and post-employment restrictions on employees (covenants not to compete and trade secrets), workplace privacy and testing, employment discrimination, wages and hours, and if time allows, the arbitration of workplace disputes. I may change the syllabus as the course progresses.

**FINAL EXAMINATION:** The final examination will be a take-home exam. I will provide details later in the course.

Page numbers below refer to **Work Law**, the main text.

### **PART ONE. Introduction: Regulating Work** (overview pp. 1-2)

#### Ch. 1 Origins (overview p. 3)

A. The Meaning of Work (pp. 4-9)

B. The Rise and Fall of Freedom of Contract (pp. 9-28)

C. The Individual Rights Model (pp. 38 - 41)

#### Ch. 2 The Contemporary Era -- Shifts in the Demographics and Structure of Work (overview p. 43)

A. The Workforce of the Future (pp. 44-49)

B. Defining the Boundaries of the Employment Relationship (pp. 64-74) 2018 Supp. pp. 3-6

### **PART TWO: Balancing Employer and Employee Interests: Individual Versus Collective Responses** (overview pp. 97-99)

- Ch. 3 Contracting for Individual Job Security (overview p. 101)
  - A. The Presumption of Employment At-Will (pp. 102-112)
  - B. Express Agreements (pp. 122-133)
  - C. Implied Agreements (pp. 133-177)
  
- Ch. 4 Public Policy Protections for Individual Job Security (overview pp. 179-180)
  - A. The Public Policy Exception (pp. 180-190)
  - B. What Constitutes Public Policy? (pp. 190-212)
  - C. What is a “Discharge” (pp. 212-215)
  - D. The Special Case of Attorneys (pp. 219-230)
  - E. Statutory Protection for Whistleblowers: Dodd-Frank & Sarbanes –Oxley (Ch. 7, pp. 498-523) 2018 Supp. Pp. 19-21.
  - F. Revisiting the Presumption of At-Will Employment (pp. 230-239)
  
- Ch. 6 Employee Mobility (overview pp. 303-304)
  - A. Covenants Not to Compete (pp. 304-320)
  - B. Trade Secrets (pp. 320-328), 2018 Supp. pp. 10-12
  - C. Employee Inventions (pp. 344-351)
  
- Ch. 7 Dignitary Interests (p. 353-54) overview
  - A. Avoiding Emotional Harm (pp. 354-368)
  - B. Privacy (pp. 368-387)
  - C. Privacy as to Electronic Communications (pp. 398-420)
  - C. Off-Duty Conduct and Associations (pp. 420-430)
  - D. Testing, Screening and Monitoring (pp. 430-439), 2018 Supp. pp. 13-18

**Part Three. Equality and Non-Discrimination** (Overview p.561)

**Ch. 9** Employment Discrimination Law (Overview, pp 563-5670)

- A. Intentional Discrimination: The Disparate Treatment Model (pp. 567-619)
- B. Disparate Impact Claims and Their Relationship to other Theories of Discrimination (pp. 619-630)
  - B. Sexual Harassment Law (pp. 630-658), 2018 Supp. *Zarda v. Altitude Express* (2d.Cir. 2018), pp 25-49.
- C. Age Discrimination Law (pp.686-698)
- D. Disability Law (pp. 658- 686)

**PART FOUR. Government Intervention for the Public Good: Legislating a Safety Net**  
(Overview pp. 765-766)

**Ch. 11.** The Regulation of Wages and Hours

- A. Historical Origins (pp. 766-776)
- B. Overview of the FLSA (pp. 776- 79). 2018 Supp., p. 50
- C. The FLSA's: Wealth's Redistribution and Work Spreading (pp. 792-809), 2018 Supp, pp 50-52
- D. Who is Covered? (pp.810-825, *Glatt v. Fox Searchlight Pictures* and notes in 2018 Supp, pp 53-65
- E. What is Covered Work? (pp. 839-864)
- F. The Overtime Exemptions (pp. 864-891). 2018 Supp., pp. 65-68.

**PART FIVE. Systems of Justice: Public versus Private, Collective versus Individual**  
(Overview, pp. 1027-1028)

**Ch. 14.** Arbitration of Workplace Disputes (overview pp. 995-996)

- A. Arbitration as a Workplace Dispute Resolution Mechanism (pp.997-1003)
- B. Labor Arbitration and Overlapping Dispute Remedies (pp. 1003-1006)
- C. Arbitration in the Nonunion Workplace (pp. 1006-1015)

D. Uses and Limits of Predispute Employment Arbitration Agreements (pp. 1015-1024), 2018  
Supp. pp. 69-93.