EMPLOYMENT LAW SYLLABUS

ASSIGNMENTS: The required texts for this class are MARION CRAIN, PAULINE KIM, MIKE SELMI, & BRISHEN ROGERS, WORK LAW: 4TH ED. CASES AND MATERIALS (2020), and the Statutory Supplement: SAMUEL ESTREICHER & MICHAEL HARPER, CASES & MATERIALS ON EMPLOYMENT DISCRIMINATION AND EMPLOYMENT LAW 5TH 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, trade secrets, etc.), 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.

COURSE GOALS FOR THIS COURSE:

• To learn the history and structure of employment relations in the United States and Western Europe.

• To present an overview of the employment law in the United States.

• To gain an understanding of how employment works in practice.

• To learn how arguments, strategies, economics, and values affect employment law, the outcomes of cases and the passage of new federal and state statutes.

• To develop critical reasoning and problem-solving skills.

IN CLASS:
As I write this syllabus, this class will be meeting in person. Given the uncertainties of the Covid-19 pandemic, we may have to switch to online teaching under Microsoft Teams so I am including a discussion of online teaching in case that becomes necessary. I will also be using Teams for make-up classes if that is needed as well. Please also sign up for the Employment Law Twen site as well,
ONLINE CLASSROOM: This course may be online this semester. If we are online, we will try to conduct the course as close to what we would do if we were in an in-person class. With Microsoft Teams, please follow the following protocols:

- Please keep your cameras on while the class is in session, so I know who is in the class.
- Please mute your microphones muted until you are asked to speak. This keeps the noise down while others are speaking.
- Please arrive on time to class. If you have to arrive late or leave early, please notify me in advance just as you would when we had in-person classes.
- Class participation is critical and necessary to the success of this and any other classes. You can raise you hand in Teams and I will see that in the chat feature. I will also call on you in class.
- I expect you to be as prepared for an online class as you would be for an in-person class.
- I will tape each class and the class will be available for you to review on Microsoft Stream.
- Please sign up for the Employment Law Twen site. I will be posting assignments, cases and PowerPoints on the site.
- I will keep attendance using the chat feature in Teams. Please write something in the chat feature telling me you are in the class.

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

Ch. 1 Origins (overview p. 3-5)
   A. The Meaning of Work (pp. 6-11)
   B. The Rise and Fall of Freedom of Contract (pp. 12-31)
   C. The Individual Rights Model (pp. 42-45)

Ch. 2 The Contemporary Era – Shifts in the Demographics and Structure of Work (overview p. 47)
   A. The Workforce of the Future (pp. 48-57)
   B. Defining the Boundaries of the Employment Relationship (pp. 57—80)
PART TWO: Balancing Employer and Employee Interests: Individual Versus Collective Responses (overview pp. 103-105)

Ch. 3 Contracting for Individual Job Security (overview p. 107-108)
   A. The Presumption of Employment At-Will (pp. 108-115)
   B. Alternative Models (pp. 115-119)
   C. Express Agreements (pp. 127-137)
   D. Implied Agreements (pp. 137-167)

Ch. 4 Public Policy Protections for Individual Job Security (overview pp. 169-170)
   A. The Public Policy Exception (pp. 170-180)
   B. What Constitutes Public Policy? (pp. 180-203)
   C. What is a “Discharge” (pp. 203-207)
   D. The Special Case of Attorneys (pp. 211-216)
   E. Statutory Protection for Whistleblowers: Dodd-Frank & Sarbanes-Oxley (Ch. 8, pp. 493-513).
   F. Revisiting the Presumption of At-Will Employment (pp. 216-226).

Ch. 6 Employee Mobility (overview pp. 287-288)
   A. Covenants Not to Compete (pp. 289-304)
   B. Nonsolicitation Agreements (pp. 304-308)
   C. Trade Secrets (pp. 308-317)
   D. Employee Inventions (pp. 331-337).

Ch. 7 Dignitary Interests (overview pp. 339-340)
   A. Avoiding Emotional Harm (pp. 340-354)
   B. Privacy (pp. 354-380)
C. Privacy as to Electronic Communications (pp. 386–416)

D. Medical and Genetic Information (pp. 416-420)

E. Testing, Screening and Monitoring (pp. 421-427)

F. Off-Duty Conduct and Associations (pp. 427-433).

Part Three. Equality and Non-Discrimination

Ch. 9 Employment Discrimination Law (Overview, pp 545-549,

A. Intentional Discrimination: The Disparate Treatment Model (pp. 550-587), *Bostock v. Clayton County, Ga*, 2020 WL 3146686 (Twen)

B. Disparate Impact Claims and Their Relationship to other Theories of Discrimination (pp. 587-599)

C. Sexual Harassment Law (pp. 599-629)

D. Age Discrimination Law (pp. 629-635)

PART FOUR. Government Intervention for the Public Good: Legislating a Safety Net

(Overview pp. 675-676)

Ch. 11. The Regulation of Wages and Hours

A. Historical Origins (pp. 677-678)

B. Overview of the FLSA and Enforcement of FLSA (pp. 679-690, 769-776)

C. Policy Debate around the Minimum Wage (pp. 690-698)

E. Who is Covered? (pp. 698-721)

F. What is Covered Work? (pp. 721-740)

G. The Overtime Exemptions (pp. 741-768)

PART FIVE. Systems of Justice: Public versus Private, Collective versus Individual

(Overview, pp. 863-884)

Ch. 13. Arbitration of Workplace Disputes
A. Arbitration as a Workplace Dispute Resolution Mechanism (pp. 885-893)

B. Arbitration in the Nonunion Workplace (pp. 893-902)

D. Uses and Limits of Mandatory Employment Arbitration Agreements (pp. 902-939)

E. Reconsidering Employment-Promulgated Arbitration Systems (pp. 939-949)