

Employment Law

Elon Law School
Winter 2022
Mondays & Wednesdays, 10:30 am – 12:30 pm
Room 105

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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; employee health & workplace injuries; termination of employment; and arbitration of employment disputes.

After completing the course, you should be able to recognize and diagnose legal issues arising in the employment context, analyze those issues under the applicable law, and help clients avoid legal problems or pursue remedies when they arise. Simulation problems, including in-class discussion and take-home assignments, provide an opportunity to develop practical skills for representing clients in employment matters.

Materials

Required

Cases, statutes, and other assigned readings are available online via the course website, emfink.net/EmploymentLaw

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

Suggested

Ann Hodges & Rafael Gely, *Principles of Employment Law* (West Academic 2016)

Note: You can access the *Developing Professional Skills* workbook and the *Principles of Employment Law* hornbook through the law school's subscription to the [West Academic Online Study Aids Collection](#).

Policies

Grading

Your final grade for the term will be based on three take-home research & writing problems (25% each; 75% total) and your in-class performance (25%). There will be no final exam or paper for this course.

The graded problem assignments (from the *Developing Professional Skills* workbook) and due dates are

indicated in the “Schedule & Assignments” section of the syllabus.

I have assigned students to [discussion panels](#). Each panel will serve as lead discussants for 4 class sessions. This will include preparing a brief memo (2-3 page) summarizing the assigned reading and suggesting questions for discussion. You should send a copy of the memo to me by email, no later than 9:00 am on the day of class. I will share the memo with the rest of the class.

Attendance

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.

Excessive absences (more than 2 classes) may result in a reduction of your grade.

Disability Accommodations

For disability accommodation requests, contact the Elon Law Registrar's Office.

Honor Code

The Law School honor code applies to all activities related to your law school study, including conduct during class and examinations.

Schedule & Assignments

Introduction

Foundations of Employment Law

3 January

- Karen Orren, [Belated Feudalism: Labor, the Law, and Liberal Development in the United States](#), chap. 3 (1991)
- Elizabeth Anderson, “Lecture II: Private Government”, 35 [Tanner Lectures in Human Values](#), 94-118 (2016)
- [Pollock v. Williams](#), 322 U.S. 4 (1944)
- Richard Epstein, [In Defense of the Contract at Will](#), 51 [University of Chicago Law Review](#) 947 (1984)
- Clyde W. Summers, [Employment at Will in the United States: The Divine Right of Employers](#), 3 [University of Pennsylvania Journal of Labor & Employment Law](#) 65 (2000)
- Kenneth Casebeer, [It's Not Just Contract, It's Capitalism: Inequality and the Restatement of Employment Law Chapter on Termination](#), 21 [Employee Rights and Employment Policy Journal](#) 325 (2017)
- [Lochner v. New York](#), 198 U.S. 45 (1905)
- [Fair Labor Standards Act](#), 29 U.S.C. §§ 201, 202, 206, 207, 212

Labor Organizing & Collective Bargaining

5 January

- *Commonwealth v. Pullis* (1806), reprinted in Commons, et al, 3 A Documentary History of American Industrial Society 59 (2d ed. 1910)
- *Lowe v. Lawler*, 208 U.S. 274 (1908)
- Clayton Antitrust Act, 15 U.S.C. § 17 (1914)
- *Coppage v. Kansas*, 236 U.S. 1 (1915)
- Norris LaGuardia Act, 29 U.S.C. §§ 101-105 (1932)
- National Labor Relations Act, 29 U.S.C. §§ 151-153, 157-159, 163 (1935)
- *NLRB v. Washington Aluminum*, 370 U.S. 9 (1962)
- *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822 (1984)

Establishing an Employment Relationship

Identifying Employees

10 January

- *Razak v. Uber Technologies, Inc.*, 951 F.3d 137 (3d Cir. 2020)
- *Henry v. Adventist Health Castle Medical Center*, 970 F.3d 1126 (9th Cir. 2020)
- California Assembly Bill No. 5 (2019)
- California Proposition 22 (2020)
- *Lemmerman v. A.T. Williams Oil Co.*, 350 S.E.2d 83 (N.C. 1986)
- *Wang v. Hearst Corp.*, 877 F.3d 69 (2d Cir. 2015)
- *Livers v. Nat'l Collegiate Athletic Ass'n*, No. 17-4271, 2018 WL 3609839 (E.D. Pa. July 26, 2018)
- *Dawson v. Nat'l Collegiate Athletic Ass'n*, 932 F.3d 905 (9th Cir. 2019)

Identifying Employers

12 January

- *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)
- *Hall v. DirecTV, LLC*, 846 F.3d 757 (4th Cir. 2017)

Recruitment & Hiring

19 January

- In-Class Problem
 - Defamation: The High-End Mechanic (Developing Professional Skills, Chap. 3)
- *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)
- N.C.G.S. § 1-539.12

Problem Assignment—Foundational Workplace Law Skills: The Canine Trainer
(Developing Professional Skills, Chap. 1), due 21 January

Scope & Limits of Employer Control

Control at Work

24 January

- T-Mobile USA, Inc., 363 NLRB No. 171 (2016)
- Cloutier v. Costco Wholesale Corp., 390 F.3d 126 (2004)
- Jespersen v. Harrah's Operating Co., 444 F.3d 1104 (9th Cir. 2006)
- Hernandez v. Hillsides, Inc., 211 P.3d 1063 (Cal. 2009)
- Stengart v. Loving Care Agency, Inc., 990 A.2d 650 (N.J. 2010)
- Bodewig v. K-Mart, Inc., 635 P.2d 657 (Or. Ct. App. 1981)
- Hall v. May Department Stores Co., 637 P.2d 126 (Ore. 1981)

Control Outside of Work

26 January

- In-Class Problem
 - Concerted Activity, Speech, & Privacy: The Facebook Post (Developing Professional Skills, Chap. 6)
- 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)
- NLRB v. IBEW Local 1229, 346 U.S. 464 (1953)
- California Labor Code § 980
- N.C.G.S. § 95-28.2
- Curay-Cramer v. Ursuline Academy, 450 F.3d 130 (2006)
- California Labor Code §§ 1101-1106

Discrimination & Harassment

31 January

- In-class problem
 - Sexual Harassment: A Troublesome Crew (Developing Professional Skills, Chap. 7)
- EEOC, Race/Color Discrimination
- EEOC, Sex-Based Discrimination
- McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)
- Griggs v. Duke Power Co., 401 U.S. 424 (1971)
- EEOC, Harassment
- Burlington Industries, Inc. v. Ellerth, 524 US 742 (1998)
- Faragher v. Boca Raton, 524 US 775 (1998)
- Hogan v. Forsyth Country Club Co., 340 S.E.2d 116 (N.C. App. 1986)

Confidentiality

2 February

- 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)
- T-Mobile USA, Inc., 363 NLRB No. 171 (2016)
- NC Property Protection Act, N.C.G.S. § 99A-2

- NC Trade Secrets Protection Act, N.C.G.S. § 66-152 et seq.
- *American Air Filter Co. v. Price*, No. 16 CVS 13610, 2017 WL 2797794 (N.C. Super. June 26, 2017)

Restrictions on Future Employment

7 February

- *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)
 - *Bollinger Noncompete Agreement*
- Alan B. Krueger & Eric A. Posner, *A Proposal for Protecting Low-Income Workers from Monopsony and Collusion*, The Hamilton Project (Feb. 2018)
- Jonathan M. Barnett & Ted Sichelman, *The Case for Noncompetes*, 87 University of Chicago Law Review 953 (2020)

Problem Assignment—Covenants Not to Compete: The Doctor Is In (Developing Professional Skills, Chap. 5), due 11 February

Wages & Hours

9 February

- In-Class Problem
 - Wage & Hour Collective Actions: At Your Service (Developing Professional Skills, Chap. 11)
- 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)
- N.C. Wage and Hour Act
- David Cooper and Teresa Kroeger, *Employers Steal Billions from Workers' Paychecks Each Year*, Economic Police Institute (May 10, 2017)

Health & Safety

Medical Leave & Disability Accommodation

14 February

- In-Class Problems
 - Disability Accommodation: The Sleepy Cashier (Developing Professional Skills, Chap. 8)
 - Pregnancy and Medical Leave; A Hasty Decision (Developing Professional Skills, Chap. 9)
- Americans with Disabilities Act, Findings & Purpose, 42 U.S. Code § 12101; Definition of Disability, 42 U.S. Code § 12102; Employment, 42 U.S. Code §§ 12111 et seq.
- Family & Medical Leave Act, Findings & Purpose, 29 U.S. Code §§ 2601; General Requirements for Leave, 29 U.S. Code §§ 2611-20; Miscellaneous Provisions, 29 U.S. Code §§ 2651-54
- *Weaving v. City of Hillsboro*, 763 F.3d 1106 (9th Cir. 2014)
- *Harrison v. Benchmark Electronics Hunstville, Inc.*, 593 F.3d 1206 (11th Cir. 2010)

OSHA & Workers' Compensation

16 February

- In-Class Problem
 - 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)
- Tompkins v. Morgan Stanley Dean Witter, 766 N.Y.S.2d 923 (N.Y. App. Div. 2003)
- Betro v. Salomon Smith Barney, 779 N.Y.S. 2d 147 (N.Y. App. Div. 2004)
- Durez Div. of Occidental Chemical Corp. v. OSHA, 906 F.2d 1 (D.C. Cir. 1990)
- Seaworld of Florida v. Perez, 748 F.3d 1202 (D.C. Cir. 2014)

Terminating Employment

Contract Claims for Wrongful Termination

21 February

- In-Class Problem
 - Employee Handbooks: In-House at Big Pharm (Developing Professional Skills, Chap. 2)
- Skagerberg v. Blandin Paper Co., 266 N.W. 872 (Minn. 1936)
- Pugh v. See's Candies, Inc., 116 Cal. App. 3d 311 (1981)
- 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)
- Salt v. Applied Analytical, Inc., 412 S.E.2d 97 (N.C. App. 1991)
- Kurtzman v. Applied Analytical Industries, Inc., 493 S.E.2d 420 (N.C. 1997)

Tort Claims for Wrongful Termination

23 February

- Fortune v. National Cash Register Co., 364 NE 2d 1251 (Mass. 1977)
- Murphy v. American Home Products Corp., 58 N.Y.2d 293 (1983)
- Wilson v. Monarch Paper Co., 939 F. 2d 1138 (5th Cir. 1991)
- Mission Petroleum Carriers, Inc. v. Solomon, 106 S.W.3d 705 (Tex. 2003)
- Garner v. Rentenbach Constructors Inc., 515 S.E.2d 438 (N.C. 1999)
- Hansen v. America Online, Inc., 96 P.3d 950 (Utah 2004)

Statutory Claims for Wrongful Termination

28 February

- Civil Rights Act of 1964, Title VII
- EEOC, Facts About Retaliation
- Bostock v. Clayton County, Georgia, 140 S.Ct. 1731 (2020)
- Nelson v. Knight, 834 N.W.2d 64 (Iowa 2013)
- Yanowitz v. L'Oreal USA, Inc., 116 P.3d 1123 (Cal. 2005)
- Whirlpool Corp. v. Marshall, 445 U.S. 1 (1980)
- Myers v. Howmedica Osteonics Corp., No. CV 14-248-M-DLC, 2016 WL 1259385 (D. Mont. 2016)

Unemployment Compensation

2 March

- 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)

Problem Assignment—Whistleblowers: The Smart-Tek IPO (Developing Professional Skills, Chap. 4), due 4 March

Employment Arbitration

7 March

- In-Class Problem
 - Arbitration Agreements: The Aging Chocolatier (Developing Professional Skills, Chap. 10)
- Epic Systems Corp. v. Lewis, 138 S.Ct. 1612 (2018)
- Jessica Silver-Greenberg & Michael Corkery, In Arbitration, a 'Privatization of the Justice System', N.Y. Times (Nov. 1, 2015)

Trending Topic: Local Government Protections for Precarious Employment

9 March

- National Employment Law Project Fired on a Whim: The Precarious Existence of NYC Fast-Food Workers (Feb. 13, 2019)
- Keystone Research Center, Parking Industry Fuels Poverty in Philadelphia (March 2019)
- NY City Fair Work Week Law
- Julia Wolfe, Janelle Jones, & David Cooper, 'Fair Workweek' Laws Help More Than 1.8 Million Workers, Economic Policy Institute (July 19, 2018)
- Panos Mourdoukoutas, San Francisco and NYC Begin to See the Ugly Side of 'Fair Workweek' Laws, Forbes.com (Nov. 16, 2019)
- Alexia Elejalde-Ruiz, Chicago's Fair Workweek Law Takes Effect Wednesday as Businesses Grapple with Pandemic Uncertainty, Chicago Tribune (June 29, 2020)
- Juliana Feliciano Reyes, City Council Approves 'Just-Cause,' a Cutting-Edge Worker Protection Law, for the Parking Industry, Philadelphia Inquirer (May 16, 2019)
- Steven Greenhouse, Firing Workers on the Boss's Whim? New York Puts a Stop to That, The American Prospect (Dec. 24, 2020)