

# Employment Law

Elon Law School

Winter 2021

Mondays & Wednesdays, 9:15 – 11:00 a.m.

Room 206

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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. 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 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 research and writing 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](https://emfink.net/EmploymentLaw)

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

### Suggested

Paul M. Secunda, Richard Bales, Jeffrey M. Hirsch, *Understanding Employment Law* (3d ed., Carolina Academic Press 2019)

## Policies

### Grading

Your final grade for the term will be based on four take-home research & writing problems (20% each; 80% total) and your in-class performance (20%). 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.

### 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.

## Outline & Assignments

### Introduction

*4 January*

#### Employment as a Socio-Legal Institution

- 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)

### The Employment Relationship

*6 January*

#### Employees

- *Lemmerman v. A.T. Williams Oil Co.*, 350 S.E.2d 83 (N.C. 1986)
- *Razak v. Uber Technologies, Inc.*, No. 16-573 (E.D. Pa. April 11, 2018)
- *Berwick v. Uber Technologies, Inc.*, No. 11-46739 EK (Cal. Labor Comm'r June 3, 2015)
- California Assembly Bill No. 5
- California Proposition 22
- *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903 (2018)
- *Wang v. Hearst Corp.*, 877 F.3d 69 (2d Cir. 2015)
- *Livers v. Nat'l Collegiate Athletic Ass'n*, No. CV 17-4271, 2018 WL 2291027 (E.D. Pa. May 17, 2018)

*11 January*

#### Employers

- *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)

*13 January*

#### Recruitment & Hiring

- In-Class Problem: *The High-End Mechanic* (Workplace Law, 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
- Civil Rights Act of 1964, Title VII
- 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)

Problem Assignment 1: *The Canine Trainer* (Workplace Law, Chap. 1), due 15 January

### Supervision & Control of Employees

*20 January*

#### Workplace Supervision & Control

- *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)

25 January

### Workplace Harassment

- Civil Rights Act of 1964, Title VII
- EEOC, Harassment
- *Hogan v. Forsyth Country Club Co.*, 340 S.E.2d 116 (N.C. App. 1986)
- *Burlington Industries, Inc. v. Ellerth*, 524 US 742 (1998)
- *Faragher v. Boca Raton*, 524 US 775 (1998)

27 January

### Control Beyond the Workplace

- In-Class Problem: The Facebook Post (Workplace Law, 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)
- California Labor Code § 980
- CASE ON NON-WORK SMOKING, ALCOHOL, EXERCISE???
- N.C.G.S. § 95-28.2
- *Curay-Cramer v. Ursuline Academy*, 450 F.3d 130 (2006)
- Alexander Hertel-Fernandez, *How Employers Recruit Their Workers into Politics—And Why Political Scientists Should Care*, 14 Perspectives on Politics 410 (2016)
- California Labor Code §§ 1101-1106

Problem Assignment 2: A Troublesome Crew (Workplace Law, Chap. 7), Due 29 January

## Confidentiality & Employee Loyalty

1 February

### Disclosure & Misuse of Confidential Information

- *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)
- *American Air Filter Co. v. Price*, No. 16 CVS 13610, 2017 WL 2797794 (N.C. Super. June 26, 2017)
- NC Trade Secrets Protection Act, N.C.G.S. § 66-152 et seq.
- NC Property Protection Act, N.C.G.S. § 99A-2

3 February

### Restrictions on Future Employment

- *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)

Problem Assignment 3: The Doctor Is In (Workplace Law, Chap. 5), due 5 February

## Wages & Hours

8 February

### Minimum Wage & Overtime

- In-Class Problem: At Your Service (Workplace Law, Chap. 11)
- Fair Labor Standards Act, 29 U.S.C. § 201 et seq.
- U.S. Department of Labor, Minimum Wage
- U.S. Department of Labor, Overtime Pay
- *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)

10 February

### Wage Payment & Deductions

- N.C. Wage and Hour Act
- Cases on payments and deductions
- David Cooper and Teresa Kroeger, *Employers Steal Billions from Workers' Paychecks Each Year*, Economic Police Institute (May 10, 2017)

## Employee Health, Disabilities, & Injuries

15 February

### FMLA & ADA

- In-Class Problem: The Sleepy Cashier (Workplace Law, Chap. 8)
- Americans with Disabilities Act, Title I
- EEOC, Disability Discrimination
- *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)
- Family & Medical Leave Act
- U.S. Department of Labor, FMLA
- FMLA CASE

17 February

### 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)

## Terminating Employment

22 February

### The At-Will Presumption

- *Skagerberg v. Blandin Paper Co.*, 266 N.W. 872 (Minn. 1936)
- *Pugh v. See's Candies, Inc.*, 116 Cal. App. 3d 311 (1981)
- National Employment Law Project *Fired on a Whim: The Precarious Existence of NYC Fast-Food Workers* (Feb. 13, 2019)
- Patrick McGeehan, *After Winning a \$15 Minimum Wage, Fast Food Workers Now Battle Unfair Firings*, N.Y. Times (Feb. 12, 2019)

24 February

### Contract & Reliance Claims for Wrongful Termination

- In-Class Problem: In-House at Big Pharm (Workplace Law, Chap. 2)
- *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)

1 March

### Tort Claims for Wrongful Termination

- *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)
- *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)

*4 March*

### Statutory Claims for Wrongful Termination

- Civil Rights Act of 1964, Title VII
- EEOC, Facts About Retaliation
- 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)
- Marcy v. Delta Airlines, 166 F.3d 1279 (9th Cir. 1999)

*8 March*

### Unemployment Compensation

- 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 4: The Smart-Tek IPO (Workplace Law, Chap. 4), due 12 March

*10 March*

### Employment Arbitration

- In-Class Problem: The Aging Chocolatier (Workplace Law, 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)