

Employment Law

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Elon Law School
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Tuesday & Thursday, 9:00–10:45 am
Room 204

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 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 those issues or remedy them when they arise. Simulation problems provide an opportunity to develop practical skills for representing clients in employment matters.

Materials

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

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

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

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 take-home problems (from the *Developing Professional Skills: Workplace Law* book) are indicated in the “Outline & Assignments” section below.

The in-class performance component of your grade depends on your preparation before class (completing all assigned reading and reviewing the discussion problems), regular and prompt class attendance, and constructive engagement during class. Elon Law School’s standards and ABA guidance for awarding course credit assume at least two hours of out-of-class student work for each hour of classroom instruction.

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

1 Introduction: 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)

2 The Employment Relationship

2.1 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)
- Alexander v. FedEx Ground Package System, Inc., 765 F. 3d 981 (9th Cir. 2014)
- 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)

2.2 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)

3 Recruitment & Hiring

- In-Class Problem: The High-End Mechanic (Workplace Law, Chap. 3)
- Harrison v. Benchmark Electronics Huntsville, 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)
- McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)
- Griggs v. Duke Power Co., 401 U.S. 424 (1971)

Writing Assignment 1: The Canine Trainer (Workplace Law, Chap. 1), due Jan. 15

4 Supervision & Control

4.1 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)

4.2 Workplace Discrimination & 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)
- Ramit Mizrahi, *Sexual Harassment Law After #MeToo: Looking to California as a Model*, Yale Law Journal Forum (June 18, 2018)

4.3 Supervision & Control Outside the Workplace

- In-Class Problem: The Facebook Post (Workplace Law, Chap. 6)
- *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
- 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
- N.C.G.S. § 95-28.2

Writing Assignment 2: A Troublesome Crew (Workplace Law, Chap. 7), due Jan. 29

5 Employee Loyalty & Confidentiality

5.1 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

5.2 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)

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

6 Wages & Hours

- In-Class Problem: At Your Service (Workplace Law, 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)

7 Health & Safety

7.1 Disability Discrimination & Accommodation

- In-Class Problem: The Sleepy Cashier (Workplace Law, Chap. 8)
- *Weaving v. City of Hillsboro*, 763 F.3d 1106 (9th Cir. 2014)
- *US Airways, Inc. v. Barnett*, 535 U.S. 391 (2002)

7.2 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)

7.3 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

- *Skagerberg v. Blandin Paper Co.*, 266 N.W. 872 (Minn. 1936)
- *Pugh v. See's Candies, Inc.*, 116 Cal. App. 3d 311 (1981)

8.2 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)

8.3 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)

8.4 Statutory Claims for Wrongful Termination

- *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)

8.5 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)

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

9 Employment Arbitration

- In-Class Problem: The Aging Chocolatier (Workplace Law, Chap. 10)
- *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612 (2018)
- Jean Sternlight [Mandatory Arbitration Stymies Progress Towards Justice in Employment Law: Where To, #MeToo?](#), 54 Harvard Civil Rights-Civil Liberties Law Review (2019)
- Jessica Silver-Greenberg & Michael Corkery, In Arbitration, a “Privatization of the Justice System”, N.Y. Times (Nov. 1, 2015)