

# Employment Law

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Elon Law School  
Summer Term I 2019  
Monday, Wednesday, & Thursday, 1:30–4:00 pm  
Room 105

## 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.

## Policies

### Grading

In-class performance and the final exam will each count for 50% of your final grade.

The in-class performance component of your final grade depends on your preparation before class (completing all assigned reading and reviewing simulation problems),<sup>1</sup> regular and prompt class attendance, and constructive engagement during class.

The final exam will be a take-home research and writing assignment that will involve both doctrinal and policy analysis. The exam will be distributed on the last day of class (July 18) and is due on the last day of the exam period (July 23).

### Attendance

Elon Law School has adopted the following attendance policy for all courses:

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<sup>1</sup>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.

*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.

### Honor Code

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

## 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 materials (see [Schedule & Assignments](#) below) are available online.

## Class Schedule & Assignments

### 1 Employment as a Socio-Legal Institution

*June 17*

*Understanding Employment Law, Chapter 1*

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

*June 19*

*Understanding Employment Law, Chapter 2*

## 2.1 Who is an Employee?

Problem: The Canine Trainer (Workplace Law, Chap. 1)

Cases:

- 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 Who is an Employer?

Cases:

- 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)

## 3 Recruitment & Hiring

*June 20*

Understanding Employment Law, Chapter 10

Problem: The High-End Mechanic (Workplace Law, Chap. 3)

Cases:

- Kadlec Medical Center v. Lakeview Anesthesia Associates, 527 F.3d 412 (5th Cir. 2008)
- 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)
- McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)
- Griggs v. Duke Power Co., 401 U.S. 424 (1971)

## 4 Employment-at-Will

Understanding Employment Law, Chapters 3-7

### 4.1 The At-Will Presumption & Contractual Exceptions

*June 24*

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

Cases:

- *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)
- *Kurtzman v. Applied Analytical Industries, Inc.*, 493 S.E.2d 420 (N.C. 1997)
- *Fortune v. National Cash Register Co.*, 364 NE 2d 1251 (Mass. 1977)
- *Salt v. Applied Analytical, Inc.*, 412 S.E.2d 97 (N.C. App. 1991)

## 4.2 Tort & Statutory Claims for Wrongful Discharge

July 26

Problem: The Smart-Tek IPO (Workplace Law, Chap. 4)

Cases:

- *Murphy v. American Home Products Corp.*, 58 N.Y.2d 293 (1983)
- *Mission Petroleum Carriers, Inc. v. Solomon*, 106 S.W.3d 705 (Tex. 2003)
- *Hansen v. America Online, Inc.*, 96 P.3d 950 (Utah 2004)
- *Yanowitz v. L'Oreal USA, Inc.*, 116 P.3d 1123 (Cal. 2005)
- *Nelson v. Knight*, 834 N.W.2d 64 (Iowa 2013)
- *Warren v. Smithfield Packing*, No. 5:14-CV-71-D, 2014 WL 1691513 (E.D.N.C. Apr. 29, 2014)
- *Garner v. Rentenbach Constructors Inc.*, 515 S.E.2d 438 (N.C. 1999)
- *Pierce v. Atlantic Group, Inc.*, 724 SE 2d 568 (N.C. App 2012)

## 5 Supervision & Control of Employees

June 27

### 5.1 Employee Privacy & Autonomy

Understanding Employment Law, Chapter 9

Cases:

- *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)
- *Jespersen v. Harrah's Operating Co.*, 444 F.3d 1104 (9th Cir. 2006)
- *Cloutier v. Costco Wholesale Corp.*, 390 F.3d 126 (2004)
- *Rulon-Miller v. International Business Machines Corp.*, 162 Cal. App. 3d 241 (1984)

### 5.2 Workplace Harassment

Problem: A Troublesome Crew (Workplace Law, Chap. 7)

Cases:

- *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)

### 5.3 Employee Speech & Political Activity

*July 1*

Understanding Employment Law, Chapters 8

Problem: The Facebook Post (Workplace Law, Chap. 6)

Cases:

- 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)
- *Curay-Cramer v. Ursuline Academy*, 450 F.3d 130 (2006)
- *NLRB v. IBEW Local 1229*, 346 US 464 (1953)
- *T-Mobile USA, Inc.*, 363 NLRB No. 171 (2016)

## 6 Loyalty, Confidentiality, & Competition

*July 3*

Understanding Employment Law, Chapter 11

### 6.1 Duty of Loyalty

- *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)

### 6.2 Trade Secrets & Non-Compete Agreements

Problem: The Doctor Is In (Workplace Law, Chap. 5)

Cases:

- *TSG Finishing, LLC v. Bollinger*, 767 S.E.2d 870 (N.C. App. 2014)
- *Edwards v. Arthur Anderson, LLP*, 44 Cal.4th 937 (2008)
- *American Air Filter Co. v. Price*, No. 16 CVS 13610, 2017 WL 2797794 (N.C. Super. June 26, 2017)

## 7 Wages & Hours

*July 8*

Understanding Employment Law, Chapter 12

### 7.1 Fair Labor Standards Act

Problem: At Your Service (Workplace Law, Chap. 11)

Cases:

- *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)

## 7.2 Family & Medical Leave Act

Problem: A Hasty Decision (Workplace Law, Chap. 9)

Cases:

## 8 Disability Discrimination & Accommodation

*July 10*

Problem: The Sleepy Cashier (Workplace Law, Chap. 8)

Cases:

- *Harrison v. Benchmark Electronics Hunstville, Inc.*, 593 F.3d 1206 (11th Cir. 2010)
- *Weaving v. City of Hillsboro*, 763 F.3d 1106 (9th Cir. 2014)
- *US Airways, Inc. v. Barnett*, 535 U.S. 391 (2002)

## 9 Employee Health & Safety

*July 11*

### 9.1 Workers' Compensation

Problem: A Bad Day in Greensboro

Cases:

- *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)

### 9.2 Occupational Safety & Health Act

Understanding Employment Law, Chapter 15

- *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)

## 10 Unemployment Compensation

*July 15*

Understanding Employment Law, Chapter 13

Cases:

- *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)

## **11 Enforcement & Remedies**

*July 17*

### **11.1 Agency & Judicial Enforcement**

Understanding Employment Law, Chapter 16

### **11.2 Arbitration**

Understanding Employment Law, Chapter 17

Problem: The Aging Chocolatier (Workplace Law, Chap. 10)

Cases:

- Epic Systems Corp. v. Lewis, 138 S.Ct. 1612 (2018)