

THE LAW AT WORK

EMPLOYMENT LAW FOR MANAGERS

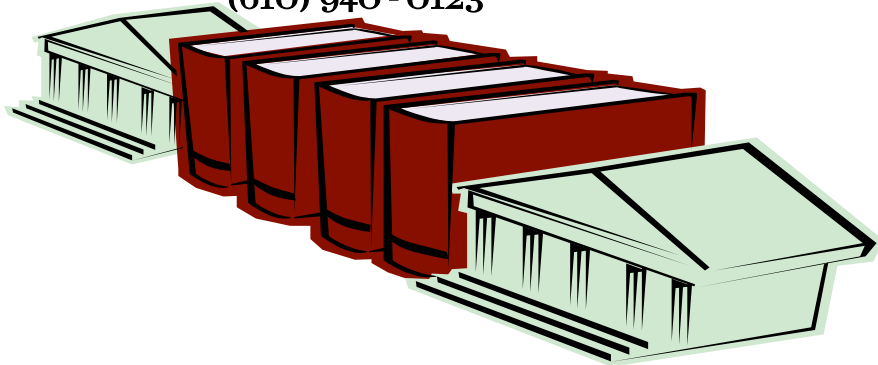


UNIVERSITY OF PENNSYLVANIA
THE WHARTON SCHOOL
EMPLOYMENT LAW
LGST 208-401/MGMT 247-401

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Course Description

The 21st century workplace is highly regulated, the laws regulating it are largely counterintuitive and, increasingly, these laws constrain what business may do to pursue its goals. Business is held in check by government agencies affirmatively monitoring compliance and an increasingly litigious workforce.

This seminar is based on the principles that knowledge and understanding of employment law facilitates (1) promotion of a workforce with a high degree of commitment to reaching business goals, (2) development of practical business solutions to problems arising in the workplace, (3) effective workforce policy and procedures that comply with applicable laws. This course provides an introduction to the law of the workplace to future business owners, entrepreneurs, executives and managers.

It examines the various laws concerning work with which businesses must comply and the legal rights and responsibilities of professional, managerial, line and support staff whether they be employees or independent contractors; laws concerning equal employment opportunity including discrimination and harassment; workplace security and privacy including workplace violence, safety, drug testing and electronic communications; the regulatory environment including occupational health and safety and minimum wage laws; employment and severance agreements, non-competition and confidentiality agreements and the law of trade secrets; and labor/management relations.

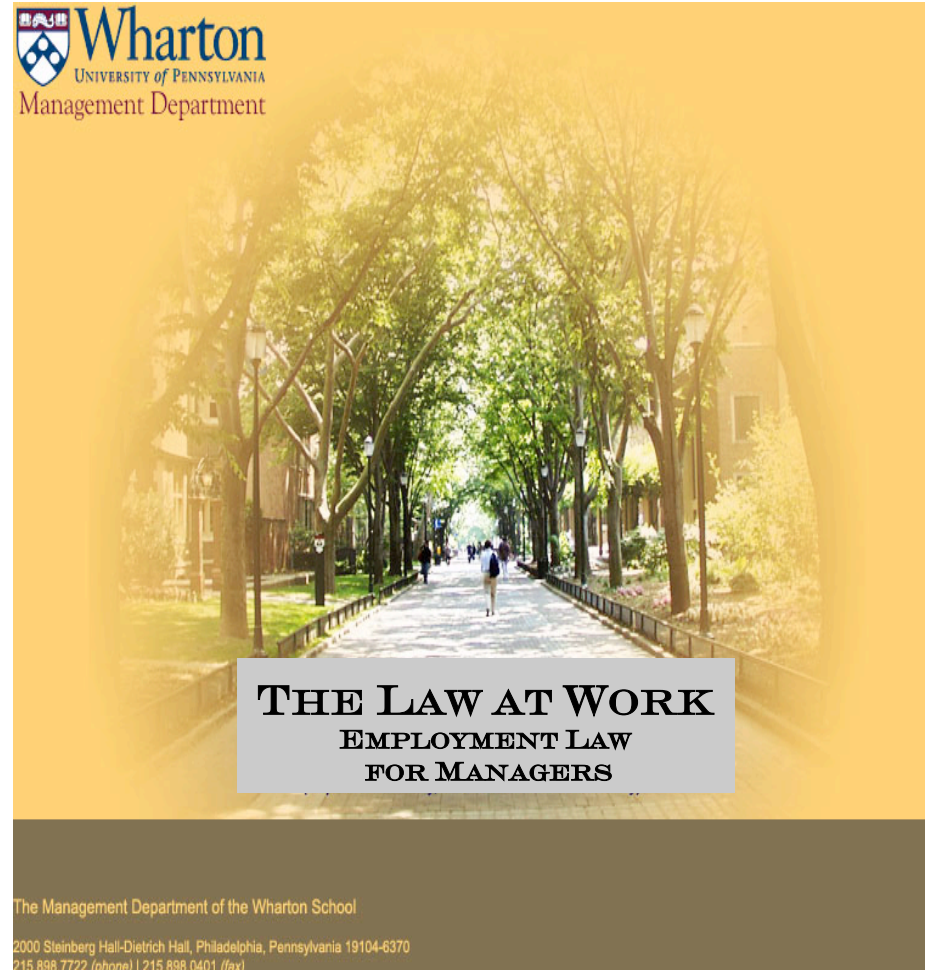


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Role in Curriculum

- This is an ELECTIVE course with NO prerequisites.
- LGST 101 is RECOMMENDED prior to taking course; however, students do not need a legal background to effectively undertake this course.
- This course can be used as a BUSINESS BREADTH or BUSINESS DEPTH course.
- The course is very appropriated for Human Resource/Organization Management Concentrations.
- This is NOT a duplicate or replacement for MGMT 244 - Human Resources Management.



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Assigned Reading

Assignments will be from a course pack and additional materials to be distributed in class throughout the semester. Readings are court opinions, articles from the media and outlines of particular topics in employment law.



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Guest Speakers: Business Leaders on The Law at Work

- Starr Restaurant Organization CFO
- Public Financial Management Comptroller
- Morgan Lewis, HR V.P.
- Sun Oil Company Employment Law Counsel
- Comcast Corporation, HR V.P.
- Hay Company General Counsel
- Unisys Corporation Employment Law Counsel

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Guest Speakers: Risks and Resolutions; Litigation, Compliance Violations and ADR

- Nancy Ezold [Ezold v. Wolf Block]
- Marti Harrison, Esquire
[SueYourBoss.com]
- George Ference U.S. Dept. of Labor,
Wage and Hour Division
- Joan Parker, AAA Arbitrator



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Exams and Grading

Class participation counts for 15% of your grade. There will be one midterm examination counting 30% and a final examination counting 30% of your grade. In addition, you will be responsible for a presentation to the class concerning a court opinion that addresses an employment law issue or an analysis of a hypothetical scenario about a workplace dispute the resolution of which requires application of assigned court opinions (counting 25% of your grade). A list of opinions and hypothetical scenarios from which you may choose will be distributed in class.

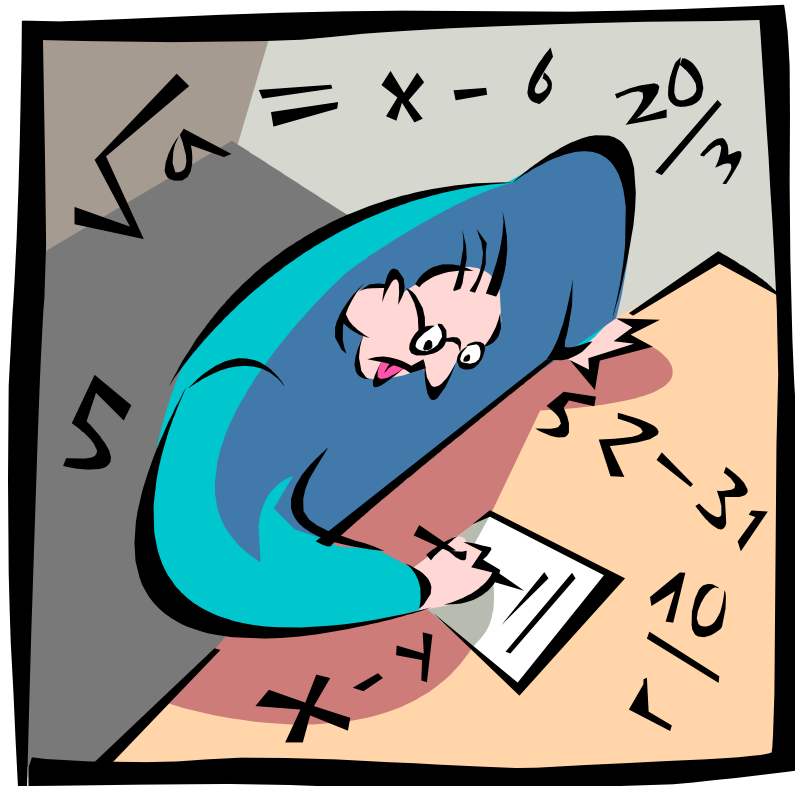


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Class Preparation

The readings listed on the syllabus are subject to change. Occasionally, various of the court opinions or readings listed on the syllabus will *not* be assigned. Final assignments will be announced prior to the class for which they are assigned. Final reading assignments for each class are mandatory. Any handout provided before class must be read before class because the discussion will focus on this material. Class preparation is crucial to meaningful class participation.

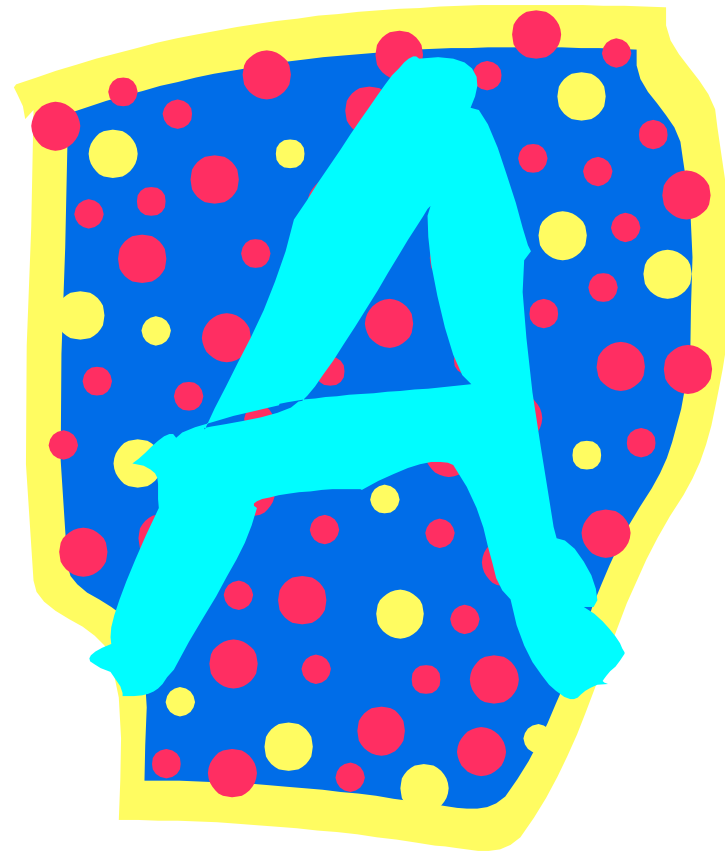


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Examination Schedule

All examinations are take-home. A midterm examination will be handed out in class on a Wednesday for return during the next scheduled class following a weekend. The final examination is to be handed out on the last day of class and must be returned to the Office of the Department of Legal Studies on or before the date of the regularly scheduled final examination time.

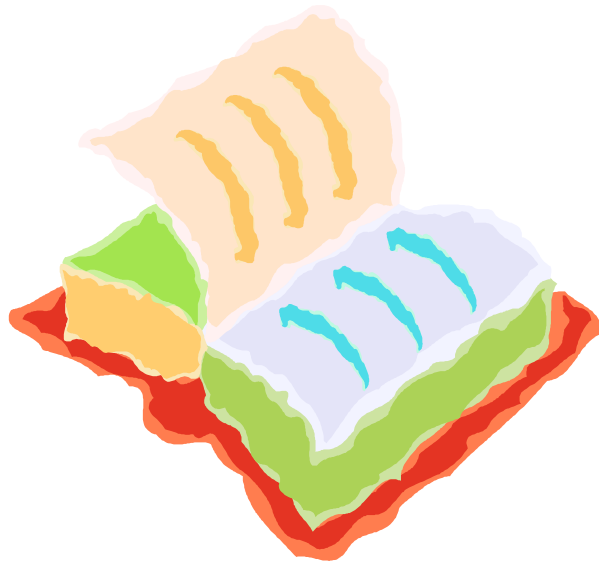


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Session #1

Introduction & Course Overview



READING: “Television Without Pity,” New York Times, Oct. 17, 2004 (“Friends” sitcom writers and Warner Brothers sued for sex harassment), *Lyle v. Warner Brothers* (on appeal to California Supreme Court)

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The “world of work” has changed dramatically in the past decades. Dramatic economic, demographic, and technological changes have rocked the employment landscape. The courts and our legislators have attempted to keep up with these changes by promulgating new and increasingly complicated rules for the modern American workplace. Managers need to understand the “The Law at Work” and use this understanding to guide their decision-making process. By understanding the legal guidelines affecting the workforce, you will enhance your ability to design and execute management strategies that comport with the law. This course is NOT a substitute for the legal advice that you will eventually receive from your employment or corporate counsel. It will, however, enable you to “ask the right questions” and be an informed “consumer” of these important legal services.



Session #2

The Employment-At-Will Doctrine: The General Rule

What rights do employees have? Most employees are simply “employees-at-will.” However, the concept of employment-at-will has changed dramatically in recent times and employees have far more legal rights than implied by the appellation.

READING: “How Law Affects the Workplace: From Government Regulation to Private Agreements,” *The American Bar Association Guide to Workplace Law*, pp.3-13; “Tsunami Jokers Fired,” *New York Times*, Feb. 3, 2005

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Session #3

The Exceptions and Exclusions: Have They Swallowed the Rule?

Our discussion of the employment-at-will rule continues with a review of the many exclusions and exceptions to the rule that will be addressed in depth in later sessions. After decades of chipping away at the rule by judges and legislatures, what's left of it? This session focuses on exceptions made as a matter of "public policy." What is "public policy?" When do courts use this exception to alter the regulatory environment?

READING: *Borse v. Piece Goods Shop, Inc.*, 963 F.2d 611 (3d Cir. 1992)(drug testing and employee privacy); *Shick v. Shirey*, 552 Pa. 590(1998(workers' comp); *McGonagle v. Union Fidelity Corp.*, 383 Pa. Super. 223 (1989)

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Session #4

Who is an Employee? Independent Contractor? Consultant? Why Does It Matter?



Most of us think of the workplace as populated by employees. However, the American workplace is filled with people who may not be “employees” of the organization for which they direct their efforts or even for the entity in whose facilities they actually toil. What is an employee? What is an independent contractor? What are the rules, rights, and responsibilities either of these groups must follow or enjoy? What are the advantages for an employer of utilizing the talents of either group?

READING: “Employee or Independent Contractor? IRS Guidelines,” IRS Rev. Rule 87-41, “Are Truckers Employees or Contractors?”; *Universal Am-Can Ltd. V. WCAB*, 563 Pa. 480 (2000).

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Session #5

Who is an Employee? Part B.



We continue the review of the law surrounding identifying workers as “employees” or “contractors.” In this session, we will go into greater detail in reviewing the use of employee status in organizational structure and the dilemmas managers face in dealing with “consultants”

READING: “Are Firm Owners Employees?” Deborah Weinstein, *The Philadelphia Lawyer Magazine*; *Clackamas Gastroenterology Ass.v. Wells*, 123 S. Ct. 1623 (2003)

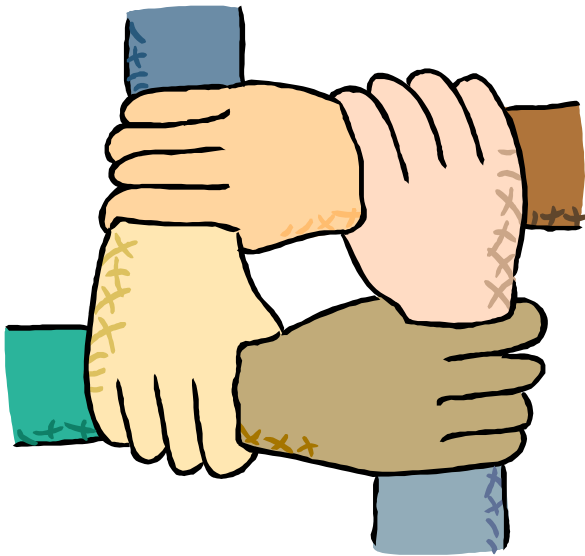
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Session #6

Equal Employment Opportunity ➡➡➡

Introduction



The American workforce is an increasingly diverse collection of races, religions, ethnic backgrounds, sexual orientations, ages and physical abilities. In addition, women and men are just as likely to be competing for the same positions. The principle of “equal opportunity” is that every member of the workforce has the same opportunity to achieve success based upon their abilities. Each employee’s success depends on the quality of their efforts. Federal and state law “protect” certain groups from discrimination at work.

READING: “Equal Employment Opportunity,” *Business Law*, H. Cheeseman, pp. 73-95; “Unlawful Discrimination in Employment”; Historical Perspectives and Discussion of Discrimination.

Session #7

Disparate Treatment: Proving and Defending Against Claims of Discrimination: The Burdens of Persuasion and Proof



The development of a firm's workforce is a complicated process. Without managerial effort, bias, intentional and unintentional, can skew the composition of a company's staff away from various protected classes of workers. We will look at real employment cases and examine how the law defines discrimination, how judges interpret these definitions and how an employee does not need "smoking gun" evidence to prove a case of unlawful discrimination.

READING: *Fuentes v. Perskie*, 32 F.3d 759 (3d Cir. 1994) (national origin); *Bergen Commercial Bank v. Sisler*, 723 A.2d 944 (N.J.1999) (young age); Section 2000e-3 of Title VII, Retaliation, Participation and Opposition.

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Session #8

Discussion of Age Discrimination



The nation's attitudes toward older workers has changed dramatically in the last few decades. Only a decade ago, colleges could force tenured faculty to retire when they reached the age of 70. Older workers now have significant legal rights and managers have an obligation to respect those rights as they keep older workers as involved members of their firm's work communities.

READING: *General Dynamics v. Cline*, 540 U.S. 581 (2004)(favoring old over young); *U.S. Equal Employment Opportunity Commission v. Sidley Austin*, Complaint(challenge to mandatory retirement age for law partners)

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Session #9

Sex Discrimination in the Workplace



Sex discrimination has serious implications for the American workforce. The law and the courts view women and men as equal; however, many organizations and managers do not treat the sexes equally. Managers need to understand that if they do not comply with antidiscrimination and equal pay laws, there may be significant ramifications.

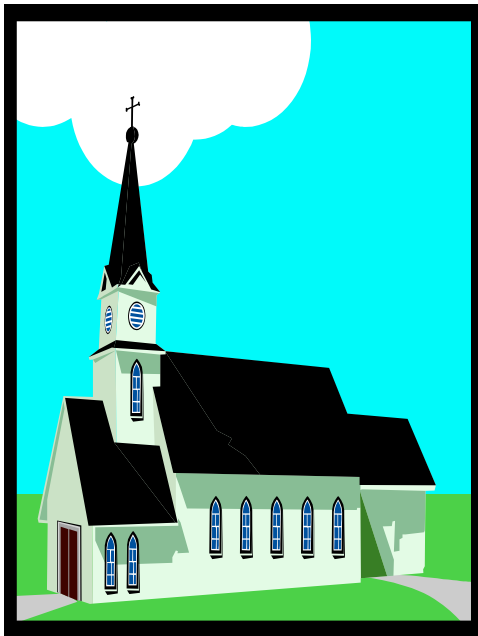
READING: *Ezold v. Wolf Block*, Complaint
Ezold v. Wolf Block, 751 F. Supp. 1175 (E.D. Pa. 1990)
Ezold v. Wolf Block, 983 F.2d 509 (3d Cir. 1992) *Desert Palace, Inc. v. Costa*, 123 S. Ct. 2148 (2003) (direct evidence of discrimination not required to shift burden of causation); “Sex Discrimination” Handout

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Session #10

Religious and National Origin Discrimination in the Workplace



The Bill of Rights provides for separation of “church and state.” Employment laws also protect workers from discrimination based on their religion and require employers to accommodate workers’ religious practices. Where does exercising your religious freedom conflict with organization’s desire to keep religion out of the workplace? We also will discuss discrimination based on a worker’s national origin. Both these issues are critical for managers working in today’s diverse work environment.

READING: “Religious Discrimination,” *Employment Law*, J.J. Moran, pp. 367-84. “Got Religion? Accommodating Religion in the Workplace,” Deborah Weinstein, *Philadelphia Lawyer Magazine*, Fall 2003. EEOC Compliance Manual Sec. 13: National Origin Discrimination, Dec. 2, 2002; *Abramson v. Wm. Patterson College*, 260 F.3d 265 (3d. Cir. 2001)

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Session #11

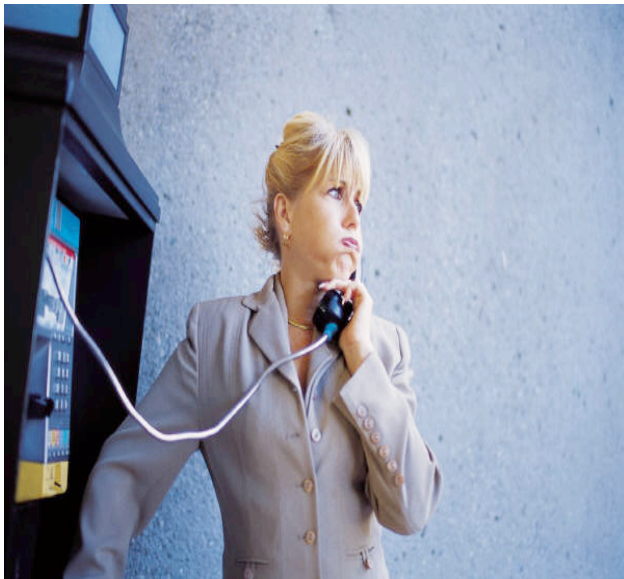
Disparate Impact Claims of Discrimination and Class Actions



The overall demographic composition of an organization can be called into question. The derivation of this composition can be analyzed from several avenues. Managers may find themselves in executive positions of organizations with questionable compositions. These organizations may face legal challenges as a result of these structural configurations.

Session #12

Sexual and Other Types of Workplace Harassment



Sexual harassment = discrimination based upon sex. Supervisors who use sex to affect an employee's employment status are violating the law and are opening their firms up to liability. Where is the line between acceptable conduct and unlawful harassment?

READING: "Sexual Harassment," Handout
"Accused of Sex Harassment: Navigating the Waters of 'He Said/She Said' Can Be Tricky," Deborah Weinstein, Philadelphia Lawyer Magazine, Fall, 2002.
Meritor Sav. Bank v. Vinson, 477 U.S. 57 (1986)
Harris v. Fork Lift Systems, 510 U.S. 17 (1993)

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Session #13

Employer Defenses to Harassment Claims



Harassment because of a worker's age, religion, race, disability or national origin also can exist in an organization and employers may be liable for the actions of their workers. How can firms minimize this risk and their liability through policy development and training? What defenses have the courts established for firms to shield themselves from liability for a supervisor's bad conduct?

READING: *Farragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998)

Gaines v. Bellino, 801 A.2d 322(N.J. 2002)

"Single Incident of Forced Breast Fondling Insufficient for Hostile

Environment Claim," *Brooks v. San Mateo*, 214 F.2d 1082(9th Cir. 2000);

"Rumors and 'Gawking' At Female Employee Who Had Nude Photograph of

Her Circulated At Work, After Employer Promptly Took Corrective Action,

Is Insufficient To Support Claim," *Rheineck v. Hutchinson Technology*, 261

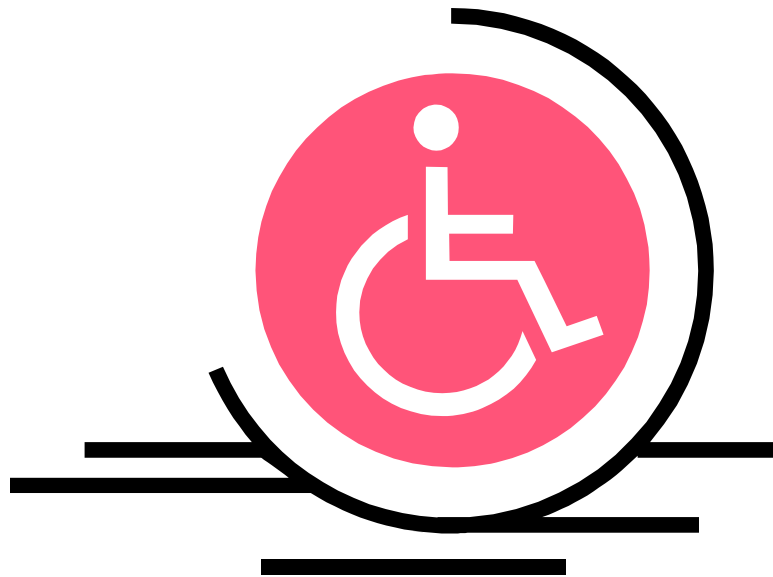
F.3d 751 (2001)

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Session #14

Americans with Disabilities Act



The Americans with Disabilities Act was designed, to open the doors of employment to disabled workers. Since its enactment over a decade ago, the courts have attempted to refine the meaning of this statute in today's work environments. Implementing the Act in real-life work settings has created more questions than answers. Managers need to understand the Act when designing worksites, contemplating hiring for positions and responding to the requests of disabled workers for assistance in performing their jobs.

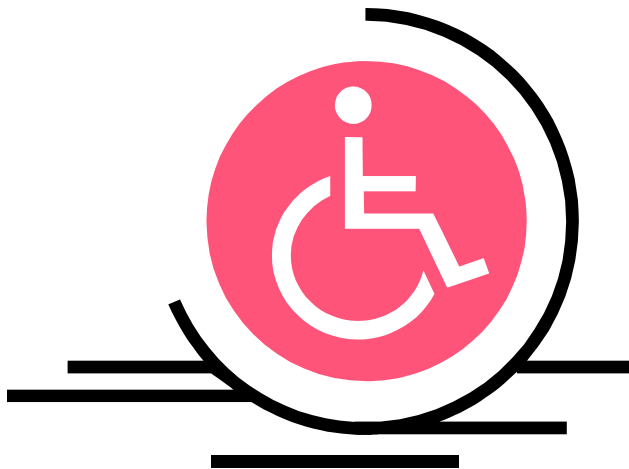
READING: *Sutton v. United Air Lines*, 527 U.S. 471(1999)
Toyota Motor Mfg v. Williams, 543 U.S. 184 (2002);
“Summary of Concepts Handout.”

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Session #15

Americans with Disabilities Act. Part B.



We continue our discussion of the Americans with Disabilities Act. We consider the reasonable limits of the Act. Companies are required by the Act to provide disabled workers with “reasonable accommodations” to enable them to perform their jobs unless it is an “undue hardship” for the company. What do these legal terms mean? In addition, the courts have identified practical solutions for managers to accommodate disabled workers and not create economic hardships as contemplated in the Act.

READING: *Chevron v. Echazabal*, 122 S.Ct. 2045 (2002)
“The Interactive Process”

Session #16

Business Marketing Initiatives, Economic Factors, and Employment Law



What are you selling? How far can you craft the complexion of your workforce to match your marketing initiatives or the “image” of your product or service? Companies that have crossed the line have paid a price; how can you as a manager avoid their fate?

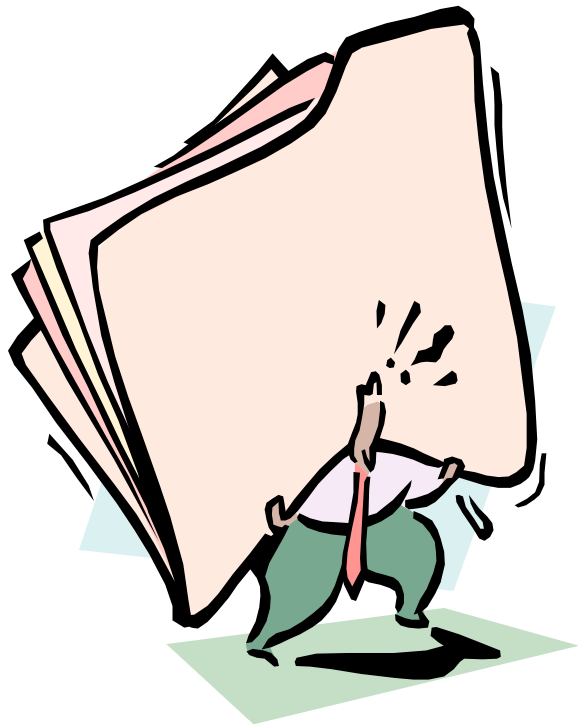
READING: *Playboy Bunny* and *Hooters* cases
“The Look of Abercrombie & Fitch,” CBSNEWS.com
Wilson v. Southwest Airlines, 517 F. Supp. 292 (N.D. Tex.1981)
Kelley v. Airborne Freight Corp., 140 F.3d 335 (1st Cir. 1998)

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Session #17

Employment Law in Practice: Challenges for Today's Managers



Hear from actual effective managers and attorneys how they have synthesized knowledge of the relevant employment laws into actual practice. When does employment law help or hinder practical business solutions to problems arising in the workplace? In ways does employment law affect how a company pursues its business goals?

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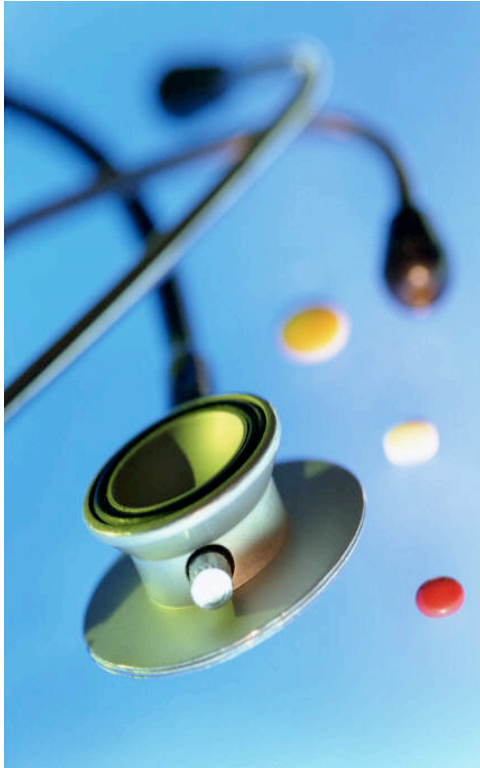
Session #18

Diversity in the Workplace: Affirmative Action and Beyond



How do you achieve your desired “diverse” workforce without discriminating against another demographic group? Diversity planning is a delicate topic that must be handled deftly. What “affirmative action” is allowed and what is prohibited by employment laws and judge-made law?

READING: “Desperately Seeking Diversity: What Law Firms and Legal Recruiters May Not Do to Create a Diverse Workplace,” Deborah Weinstein, *Philadelphia Lawyer Magazine*, Summer 2003, *Iadimarco v. Runyon*, 190 F.3d 151 (3d Cir. 1999); *Taxman v. Board of Ed. of Township of Piscataway*, 91 F.3d 1547 (3d Cir. 1996)



Session #19

Family Friendly Initiatives: Family and Medical Leave Act and Other Programs

Many factors, beyond his or her control, can pull a worker away from the job. Recent legislative changes to employment laws and courts interpretations of these laws are “family friendly.” These laws protect a worker’s position when family or medical issues require their absence or extended leave from work. These laws and circumstances can present challenges to managers attempting to maintain company performance in the light of possible reduced staff.

READING: Compliance Guide to the Family and Medical Leave Act, U.S. Dept. of Labor, & Pregnancy Discrimination Act
“Pregnant Workers Filing More Complaints of Bias,” New York Times, Sept. 14, 2003

Ragsdale v. Wolverine World Wide, 543 U.S. 1053(2001)
UAW v. Johnson Controls, Inc. 499 U.S. 187 (1991)

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Session #20

Workplace Violence



What happens when bad things happen in good places? How do you keep violence from entering your workplace and if it does, protect your employees from harm? Employment laws require companies to provide their workers with a safe work environment or face legal liability for work-related violence.

READING: “Employers Face Potential Liability When Violence Invades the Workplace,” Deborah Weinstein, *Employment Law Strategist*, 2000. *Carroll v. Shoney’s*, 775 So. 2d 753 (Ala. 2000); *Hutchinson v. Father Luddy*, 560 Pa. 51 (1999) (priest sexual assault)

Session #21

Monitoring and Testing: Employee Privacy Rights



Employers have a right to learn about workers before hiring them and to monitor their performance on the job. However, workers have certain rights that protect their privacy. These varied rights clash in the workplace. Managers need to know how far the law allows them to probe and what mechanisms they may employ.

READING: “Employee Monitoring,” Chief Security Officer Magazine, Feb. 2003

“Warning: This is a Rights-Free Workplace” Barbara Ehrenreich, New York Times *Magazine*

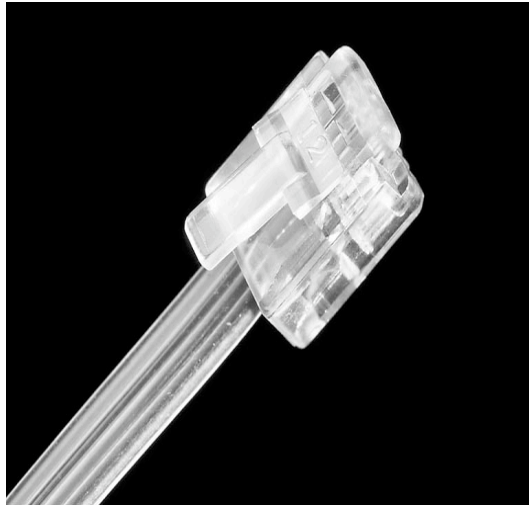
Fraser v. Nationwide Mutual Ins. Co., 334 F.Supp. 2d 755 (3d Cir. 2004) (employee’s stored email not “electronic transmission”)

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Session #22

Monitoring and Testing: Employer Security, Electronic Communications and Drug and Alcohol Testing



What is really going on in your office? Managers are responsible for so much that happens – it's not surprising that they desire to monitor employee activity. Some techniques managers would like to use have been found to violate employees' privacy rights. In general though, employment laws allow companies to monitor Internet use and test workers for drugs or alcohol. What if a fired worker attacks the company with cyber-stings or hack-attacks?

READING: Privacy, Theft and Whistle-Blowing," *Employment Law*, pp. 95-126.

Workplace Privacy Chart (Summary of Federal and State Statutes)

Electronic Communications in the Workplace - Sample Policy

Drug-Free Workplace Act, Sample Company Drug Policy

Intel Corp. v. Kourosh Kenneth Hamidi, 30 Cal. 4th 1342, 71 P.3d 296, 1

Cal.Rptr. 3d 32 (2003)(former employee's mass email not trespass).

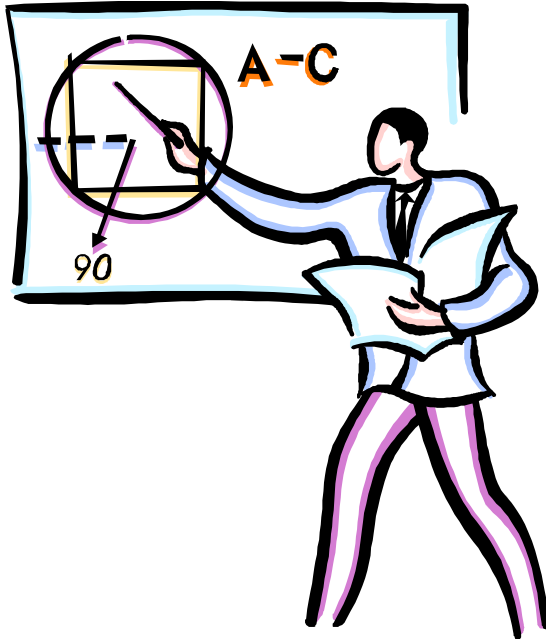
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Session #23

Business Protection Law: Agreements to Not Compete, Trade Secrets, and Protecting Intellectual Property

Some of a firm's most valuable property is information. Trade secrets may not be just "secret formulas" - like the the recipe for Coke®. These secrets are also customer lists, methodologies, and other work formulas. Companies are relying on agreements to restrict transmission of these trade secrets and prevent former employees from working for competitors. These agreements must be drafted in accordance with the law to be enforceable.



READING: "Second Circuit Rules on Non-Compete Agreements"; "Pennsylvania Court Says Non-Compete Not Enforceable by Injunction; " *Insulation Corp. of America v. Brobston*, 667 A.2d 729 (Pa. Super. 1995); *Merrill Lynch v. Napolitano*, 85 F. Supp. 2d 491(E.D. Pa. 2000)

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Session #24

Compensation

Fair Labor Standards Act



Workers must be paid for the time that they work. How this time is calculated and their pay tabulated is governed by statutes. These calculations rely to some extent on how the worker or the work they do is classified by managers. Congress recently enacted new legislation in this area making it more challenging for managers to figure out how to comply with the law.

READING: The Fair Labor Standards Act, U.S. Dept. of Labor, Regulations, 29 CFR part 541 (2004), Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Final Rule

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Session #25

Employment Agreements and Equity Compensation



Employment agreements are becoming an increasingly important tool in attracting and retaining an executive and managerial workforce. Equity compensation, including options and direct vestments of stock, is also becoming a valuable tool in motivating the workforce in several industries. There are critical legal issues involved in the use of each of these tools. Mistakes in structuring these arrangements can have significant financial consequences.

READING: “Sample Employment Agreement” Handout

Session #26

The Organized Workforce: Overview of Collective Bargaining and Unionized Employees



While the unionized workforce shrinks almost every year, still almost 15.8 million workers or 12.9% of the workforce is unionized. The laws and negotiated “collective bargaining” agreements that control these employee relationships add an additional layer of complexity onto workforce management issues. Managers in the unionized environment must be aware of these additional provisions. Managers in a non-union environment must be aware of the potential for organizing and unionization and understand their legal duties under these circumstances.

READING: “Unions and Collective Bargaining Agreements,” J.J. Moran, *Employment Law*, pp. 457-466. Court opinions to be announced.