

THE LAW AT WORK

EMPLOYMENT LAW FOR MANAGERS

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

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Wednesday: 3:00 P.M. – 6:00 P.M.

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COURSE SYLLABUS

Session #1 Jan. 10 The New American Workplace

READING: *Lyle v. Warner Brothers TV Prods.*, 38 Cal. 4th 264 (California Supreme Court 2006) (“Friends” sitcom writers and Warner Brothers sued for sex harassment); “Tsunami Jokers Fired,” New York Times, Feb. 3, 2005; *Woodland v. AMF Leisureland Ctrs., Inc.*, 842 F.2d 699 (3d Cir. 1988) (bartender fired for refusing to serve visibly intoxicated patron); “How Law Affects the Workplace,” *ABA Guide to Workplace Law*, pp. 3-13.

Session #2 Jan. 17 So, Sex Sells...That Doesn't Make it Legal

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) (Love Airlines); *Wexler v. White's Fine Furniture*, 317 F. 3d 564 (6th Cir. 2003) (business judgment defense).

Session #3 Jan. 24 The Wired World at Work

Employee Privacy, Employer Security, Surveillance and Monitoring (email, blogging, telephone, IMing, videos, photos and Internet use).

READING: *Intel Corp. v. Kourosh Kenneth Hamidi*, 30 Cal.4th 1342 (2004) (former employee's mass email is not unlawful trespass); *Fraser v. Nationwide Mutual Ins.*

Co., 352 F.3d 107 (3d Cir. 2004) (employee's stored email not "electronic transmission"); "Now That HP Is A Verb," David Micah Kaufman, *HR Insight*, Nov. 2006.

Session #4 Jan. 31

Help Wanted : Filling that Job

Recruiting, Interviews, Job Applications, Job References, Background Checks, Medical Exams, I-9s, and Applying on the Internet.

READING: *EEOC v. Consolidated Service Systems*, 989 F.2d 233 (7th Cir. 1993) (recruiting by word-of-mouth); Section 704(b) of Title VII (nondiscrimination protections for applicants); EEOC Notice of Proposed Rulemaking: ADEA Coverage (favoring older workers); OFCCP Internet Applicant Rule; Interviewing Do's and Don'ts; I-9 Employment Eligibility Verification Form; *McKennon v. Nashville Banner Publishing Co.*, 513 U.S. 352 (1995) (effects of lying on job application); PA Employer Immunity from Liability for Disclosure of Employee Information, 42 Pa.C.S. § 8340.1 (2006); NY Law "Unfair Discrimination Against Persons Previously Convicted," N.Y. CLS Correc § 752 (2006); Section 102(d)(2) of the ADA (post-offer medical exams).

Session #5 Feb. 7

Civil Rights in Employment

Introduction to EEO and Disparate Treatment Analysis: Proving and Defending Against Claims of Employment Discrimination.

READING: "Equal Employment Opportunity," *Business Law*, pp. 801-12; "White Men Can't Help It," *Business Week*, May 15, 2006; "Casting Calls May Violate Federal Law," *Los Angeles Times*, Nov. 30, 2006; Unlawful Discrimination in Employment – Legal Analysis Handout; *Fuentes v. Perskie*, 32 F.3d 759 (3d Cir. 1994) (national origin); *Ezold v. Wolf Block*, 983 F.2d 509 (3d Cir. 1992) (failure to promote female attorney to partner).

Session #6 Feb. 14

Macro-discrimination : Class Actions

The Burdens of Plaintiff and Defendant in Disparate Impact Analysis, Class Actions and the Bona Fide Occupational Qualification Exception

READING: *UAW v. Johnson Controls*, 499 U.S. 187 (1991); *General Dynamics v. Cline*, 540 U.S. 581 (2004); *Lyle v. Warner Brothers TV Prods.*, 38 Cal. 4th 264 (2006)

Session #7 Feb. 21

Other Discrimination

READING: *Bergen Commercial Bank v. Sisler*, 723 A.2d 944 (N.J. 1999) (protection from discrimination because of young age); "Got Religion? Accommodating

Religion in the Workplace," Deborah Weinstein, Philadelphia Lawyer Magazine, Fall 2003; *Sutton v. United Air Lines*, 527 U.S. 471 (1999); *Toyota Motor Mfg v. Williams*, 543 U.S. 184 (2002); *Chevron v. Echazabal*, 122 S.Ct. 2045 (2002); "Summary of Concepts" Handout; Business Law, pp. 814-19. *Burlington Northern & Santa Fe Railway Co. v. White*, 126 S. Ct. 2405 (2006); Section 2000e-3 of Title VII, Retaliation, Participation and Opposition

Midterm Examination Handed Out in Class.

Session #8 Feb. 28 ***Being a Jerk is Not Unlawful Harassment:
What Is?***

READING: *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986); *Harris v. Fork Lift Systems*, 510 U.S. 17 (1993); "Accused of Sex Harassment: Navigating the Waters of 'He Said/She Said' Can Be Tricky," Deborah Weinstein, Philadelphia Lawyer Magazine, Fall 2002; *Farragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998) (employer defenses to harassment claims); *Gaines v. Bellino*, 801 A.2d 322 (N.J. 2002); "Communication is Critical to Avoiding Sexual Harassment," Deborah Weinstein, Philadelphia Business Journal, April 22, 2005.

Midterm Examination Due in Class.

March 7 No Class [vacation].

Session #9 March 14 ***Beyond Equality : Affirmative Action***

READING: *Iadimarco v. Runyon*, 190 F. 3d 151 (3d Cir. 1999); *Taxman v. Board of Ed. of Tnshp of Piscataway*, 91 F.3d 1547 (3d Cir. 1996); Business Law, pp. 820-821; "Desperately Seeking Diversity," Deborah Weinstein, Philadelphia Lawyer Magazine, Summer 2003; Executive Order 11246.

Session #10 March 21 ***Who is Working Here?***

Employee? Independent Contractor? Consultant? Does It Matter?

READING: "Independent Contractor or Employee?" (IRS Rev. 1-2005); Determination of Worker Status for Purpose of Federal Employment Taxes, Form

SS-8; “Are Truckers Employees or Contractors?” *Universal Am-Can Ltd. v. WCAB*, 563 Pa. 480 (2000); *Vizcaino v. Microsoft Corp.*, 120 F.3d 1006 (1997); *U.S. Equal Employment Opportunity Commission v. Sidley Austin*, 315 F.3d 696 (7th Cir. 2002) (challenge to mandatory retirement age for law partners).

Session #11 March 28 To Be Announced

Session #12 April 4 What Sarbanes-Oxley Means to the Worker

READING: Excerpts from the Act; “Citigroup Code of Conduct;” U.S. Sentencing Guidelines Manual Section 8B2.1, Effective Compliance and Ethics Programs; “Steal Little, Steal Big,” Patrick J. Kiger, Workforce Management Online, Dec. 5, 2005.

Session #13 April 11 Laws Protecting Workers

Part I: Fair Labor Standards Act.

READING: Department (DOL) FLSA Summary; DOL FairPay Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer and Outside Sales Employees; DOL FairPay Fact Sheet #17M: Financial Services Industry Employees and the Part 541 Exemptions; *IBP, Inc. v. Alvarez*, 126 S. Ct. 514 (2005).

Part II: Family and Medical Leave Act.

READING: DOL Fact Sheet #28: The Family and Medical Leave Act of 1993; DOL Opinion Letter, FMLA 2004-1-A, April 5, 2004; *Ragsdale v. Wolverine World Wide*, 543 U.S. 1053 (2001).

Session #14 April 18 The Organized Workforce : Unions in America

Overview of Collective Bargaining and Unionized Employees.

READING: *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70 (1998).

Final Take-Home Exam Handed Out