

THE LAW AT WORK

EMPLOYMENT LAW FOR MANAGERS

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

Location: TBD
Wednesday: 3:00 P.M. – 6:00 P.M.

Professor Deborah Weinstein
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Description

This seminar is based on the principle that knowledge and understanding of employment law facilitate (1) promotion of a workforce with a high degree of commitment to reaching business goals, (2) the development of practical business solutions to problems arising in the workplace, (3) effective human resources policy and procedures that comply with applicable laws. This course provides future business owners, entrepreneurs, executives, managers and students interested in going to law school or intending to enter the workforce with an introduction to the law of the workplace. The course examines the various employment laws with which businesses must comply and the legal rights and responsibilities of employees and employers. The emphasis is on laws concerning equal employment opportunity with respect to discrimination and harassment because of sex, race, national origin, religion, sexual orientation, age, disability and other characteristics protected by workplace laws; workplace security and privacy including workplace violence, safety, drug testing and electronic communications; the regulatory environment including workers compensation, unemployment compensation, occupational health and safety and minimum wage laws; and labor/management relations.

Assigned Readings

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.

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 (counting 25% of your grade). A list of opinions from which you may choose will be distributed in class. Extra class participation credits will be provided to students who bring employment-related news items to share with the class (except not from *The Financial Times*).

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.

Topical Assignments

The assignments listed for each date are subject to change as a result of course pacing and/or schedule changes.

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. 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.

COURSE SYLLABUS

Session #1 Jan. 16 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; *Woodson 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. 23 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. 30 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 Feb. 6 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. 13 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. 20 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. 27 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 March 5 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 12 No Class [vacation].

Session #9 March 19 ***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 26 ***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 April 2 ***To Be Announced***

Session #12 April 9 ***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 16 ***Laws Protecting Workers***

Part I: Fair Labor Standards Act.

READING: Department (DOL) FLSA Summary; DOL Fair Pay Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer and Outside Sales Employees; DOL Fair Pay 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 23 *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

Note: Class details may change prior to the commencement of classes.