THE LAW AT WORK
EMPLOYMENT LAW FOR MANAGERS

UNIVERSITY OF PENNSYLVANIA
THE WHARTON SCHOOL
LGST 208-401/MGMT 247-401 FALL 2017
Location: F65 JMHH
Wednesday: 3:00 P.M. – 6:00 P.M.

Professor: Deborah Weinstein, Esquire
Jon M. Huntsman Hall, Legal Studies and Business Ethics Department
Office hours: Wednesday, 2:00-3:00 P.M., after class or by appointment,
JMHH, 6th Floor, Room 618, or at
The Weinstein Firm, 1515 Market Street, Suite 1200, Philadelphia, PA 19102
dweinstein@weinsteinfirm.com [students, please use this email address]
Telephone: 215-636-0616 (office); 215-498-6338 (mobile)

Description
This course 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 and (3) effective human resources policies 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. Balancing employer legal compliance and equal employment opportunity imperatives and other governmental regulation with dynamics conducive to a successful enterprise is a significant theme throughout the course. Emphasis is on laws concerning equal employment opportunity with respect to discrimination and harassment because of sex, race, national origin, religion, sexual orientation, gender identity, age, disability, pregnancy, veterans’ status and other characteristics protected by laws; work-related security, safety and privacy, employment-at-will, drug testing, social media and electronic communications; worker misclassification; hiring; politics and work; affirmative action; and the legal and regulatory environment regarding immigration, wage and hour, leaves of absence, hiring, the non-employee workforce, labor/management relations and collective bargaining.
Assigned Readings

Course materials will be posted on Canvas throughout the semester. Readings are court opinions, laws and regulations, articles from various media and outlines of particular topics in employment law for managers. Many of the readings listed on the Syllabus will not be assigned. There is no textbook for the course.

Exams and Grading

Class participation (including attendance) 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, either individually or as a group assignment, 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.

Class Preparation

The readings listed on the syllabus are subject to change. MANY of the readings listed 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 and successful completion of the course.

Topical Assignments

The assignments listed for each date are also subject to change as a result of course pacing, schedule changes or developments in the law. Some topics may not be covered and others may be added due to ongoing developments in the law.
COURSE SYLLABUS

Session #1  Aug. 30  Introduction: The New American Workplace


Session #2  Sept. 6  Who is Working Here?


---

1 Readings for each session will be selected from the materials listed herein.

2 For Session #1, the only court opinion reading assignment is Woodson v. AMF Leisureland Ctrs., Inc., http://scholar.google.com/scholar_case?case=5345229437303352235&q=%22woodson+v.+amf+leisureland%22&hl=en&as_sdt=2003.
Session #3  Sept. 13

Help Wanted: Filling that Job
Recruiting, Advertising, Interview Questions Applications, References, Credit and Criminal Background Checks, Discriminatory Hiring, Use of Social Media, Salary History, Medical Exams and Drug Testing.


Session #4  Sept. 20  Civil Rights in Employment


3 http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2813507&GUID=938399E5-6608-42F5-9C83-9D2665D9496F&Options=ID%7cText%7c&Search=1253-A

4 http://www.eeoc.gov/employers/upload/eeoc_self_print_poster.pdf

Session #5  Sept. 27  Civil Rights in Employment (Continued)

Session #6  Oct. 4  Other Discrimination & Duty to Accommodate

Session #7  Oct. 11
Being a Jerk is Not Unlawful Harassment: What Is?
READING: Gretchen Carlson v. Roger Ailes, Complaint, July 6, 2016 (sexual harassment case against then Chair and CEO of Fox News); Faragher v. City of Boca Raton, 524 U.S. 775 (1998)(employer defenses to harassment claims); “Communication is Critical to Avoiding Sexual Harassment,” Deborah Weinstein, Philadelphia Business Journal, April 22, 2005; Sample anti- harassment policy; Investigation into harassment complaints; EEOC Guidance “Vicarious Employer Liability For Unlawful Harassment


**Midterm Take-Home Examination Handed Out During October 11 Class**

Session #8  Oct. 18

**Part I: Beyond Equality: Affirmative Action and Reverse Discrimination**

Substantial differences between affirmative action in education and in employment laws, myths and misconceptions about what the law requires, unintended consequences.

**READING:** \textit{Taxman v. Board of Ed. of Tnshp of Piscataway}, 91 F.3d 1547 (3d Cir. 1996)(diversity is not required by any employment law); “Desperately Seeking Diversity,” Deborah Weinstein, Philadelphia Lawyer Magazine, Summer 2003; Executive Order 11246; \textit{Ricci v. DeStefano}, 120 S. Ct. 2658 (2009) (prohibiting New Haven from setting aside firefighters’ test results where all earning promotions were Caucasian); “In Focus: Employee Memo Questioning Google Diversity Efforts Sparks Furor,” SHRM, Aug. 7, 2017; “Google’s Ideological Echo Chamber,” by James Damore (memo written by now fired Google employee).\textsuperscript{8}

**Part II: Equal Pay for Equal Work, Gender and Gender Identity Related Issues**


\textsuperscript{7} \url{http://www.eeoc.gov/policy/docs/harassment.html}

\textsuperscript{8} \url{https://assets.documentcloud.org/documents/3914586/Googles-Ideological-Echo-Chamber.pdf}

\textsuperscript{9} \url{https://www.eeoc.gov/eeoc/newsroom/wysk/proposal_pay_data.cfm}

**Midterm Examination Due During October 19 Class**

Session #9  Oct. 25  **Immigration Laws and Employment: The Times, Are They A Changin?**  
Stepped-up Enforcement, Unauthorized Workers, Non-immigrant Status, Temporary Visas, Green Cards, Citizenship, I-9s, E-Verify and Social Security No Match Letters, EB-5.  
**Guest Lecturer:** Shaun Staller, Esquire, Immigration Attorney, Greenberg Trauig  
Readings to be announced.

Session #10  Nov. 1  **What If Following Management and Customer Preferences Would Cause a Disparate Impact on a Protected Class?**  

Session #11  Nov. 8  **The Wired World at Work**  
Employee Privacy, Employer Security, Surveillance and Monitoring (phone, email and Internet Use), Facebook, Blogging, Texting; Employer’s Social Media Policies


Guest Lecturer: Margaret DiBianca, Esquire, Labor and Employment Law Attorney, Young, Conway, Stargatt & Taylor LLP

Session #12 Nov. 15 The Organized Workforce: Unions in America
Overview of Collective Bargaining and Unionized Employees

Guest Lecturer: Robert J. Haurin, Esquire, Labor and Employment Law Attorney, Nachmias Morris & Alt, PC

Wednesday, November 22—NO CLASS—THANKSGIVING HOLIDAY!

Session #13 Nov. 29 More Laws Regulating Employers/Protecting Workers
Part I Fair Labor Standards Act (FLSA) and Pay Issues
READING: Department of Labor (DOL) FLSA Summary; DOL Fair Pay Fact Sheet #17A: Exemptions for Executive, Administrative, Professional, Computer and Outside Sales Employees; DOL Fair Pay Fact Sheet #17M: Financial Services Industry Employees and Part 541 Exemptions; IBP, Inc. v. Alvarez, 126 S. Ct. 514 (2005)(when does work begin and end?); “Is Wage Theft the New Civil Rights Issue for Workers?” The Legal Intelligencer, Sept. 26, 2014; Final Rule-Overtime: Defining and Delimiting
the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees under the Fair Labor Standards Act, May 18, 2016:13

Session #14  Dec. 6 Even More Laws Regulating Employers/Protecting Workers: Being Human While Working
Part II  Time-Off, Leaves of Absence, Pregnancy Discrimination and Accommodation


---

13 https://www.dol.gov/whd/overtime/final2016/

14 https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm