

# EMPLOYMENT LAW – PRACTICAL CONSIDERATIONS FOR MANAGERS

Lecturer: Paula M. Castaldo, Esq.

Location: Room # 1201, Steinberg Hall-Dietrich Hall

Monday, 3:30 p.m. – 6:30 p.m.

Office Hours: Monday, 2:00-3:00 p.m., JMHH, Room #619, or by appointment

## **Description**

Employment laws govern all aspects of the employer-employee relationship, from recruitment and hiring through separation from employment. This course will focus on US laws governing a private employment setting, including: anti-discrimination, -harassment, and -retaliation laws; laws governing affirmative action and diversity initiatives; pay equity laws; workplace leave and accommodation laws; and wage and hour laws. We will not be focusing on immigration laws or labor laws (which apply where the workforce is unionized).

Companies with a presence in multiple US jurisdictions must navigate and ensure compliance with all relevant laws enacted at the federal, state, and local levels. These laws are not always consistent with each other, which can create compliance challenges. This course will provide future managers with an overview of these laws and their practical application in the workplace. Through interactive discussions, you will learn to work through common scenarios that arise in the workplace to achieve practical, business-focused solutions that are legally compliant and fair to employees.

## **Assigned Readings**

There is no required text book for this course. Many of the readings relating to specific federal employment laws will come from one of two websites (respectively, the Equal Employment Opportunity Commission's website, and the Department of Labor's website):

<http://www.eeoc.gov/laws/statutes/index.cfm> or <https://www.dol.gov/general/aboutdol/majorlaws>

All readings listed in this syllabus are mandatory (and should be completed before class), unless otherwise specified. Other readings may be added throughout the semester.

## **Exams and Grading**

One third of your grade will be based on class participation (including attendance), one third will be based on a take-home midterm exam, and one third will be based on a take-home final exam.

The midterm exam will include material covered through that point in the course; the final exam will be cumulative, and will include material covered before and after the midterm.

## ***A note on ChatGPT:***

You are not permitted to use ChatGPT (or other generative AI) to generate your work product. Doing so will be considered a violation of the University's policies relating to Academic Integrity.

## **Class Participation**

During four classes (dates noted below), we will break out into groups for an interactive exercise. Fact patterns describing real-world workplace scenarios will be handed out to each group (during class). The groups will be given time to huddle and discuss what issues they spot, and how they (in the role of management) would handle the situation. Each group will present their thoughts (regarding their own fact pattern) to the rest of the class, and the other groups will have an opportunity to weigh in with their comments. We likely will have guest speakers during one or more of these classes. They will help oversee the interactive exercises, and also will address the class about their career paths and answer any questions you may have. Their bios will be posted in Canvas.

## **SESSION 1 (January 22)**

### **Overview**

- At-Will Employment
- Sources of employment law
- Compliance considerations for companies with a multi-jurisdictional presence, including remote workers
- Repercussions of non-compliance
- Do employees (or juries) understand the difference between unlawful and unfair?
- Importance of truthful and accurate communications to employees

### **Pre-Class Reading:**

- One-page overview (posted on Canvas)
- Juggling Remote, Hybrid and/or Multistate Workforce: What Employers Should Know (Rumberger Kirk, 3/21/22):  
<https://www.rumberger.com/insights/juggling-a-remote-hybrid-and-or-multistate-workforce-what-employers-should-know/>

### **Optional:**

- Executive Order 11246:  
<https://www.dol.gov/agencies/ofccp/executive-order-11246/as-amended>
- “Which State Laws Apply to Remote Employees,” Kaylyn McKenna, Business Management Daily, July 4, 2022 (to be posted)
- *Wimbish and Onken v. IBM* Complaint (posted on Canvas)

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## **SESSION 2 (January 29)**

### **Title VII of the Civil Rights Act of 1964**

- Whom/what does it protect?
- What is required, what is prohibited?
  - Disparate Treatment, Disparate Impact, Harassment, Retaliation

- Employer Liability and the Duty to Investigate

**Pre-Class Reading:**

- EEOC History: The Law:

<https://www.eeoc.gov/history/eeoc-history-law#:~:text=Title%20VII%20of%20the%20Civil%20Rights%20Act%20of%201964%20also,to%20eliminate%20unlawful%20employment%20discrimination.>

- “Workplace Investigations – Federal: The importance of investigating employee complaints” (hrsimple.com):

<https://www.hrsimple.com/employment-laws/federal-human-resources-manual/statutes/workplace-investigations-federal#:~:text=Indeed%2C%20various%20civil%20rights%20and,and%20take%20appropriate%20remedial%20action.>

**Optional:**

- Title VII (text of statute):  
<https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>

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## **SESSION 3 (February 5)**

**Title VII (cont.)**

- Do customer preferences override Title VII?
- Affirmative Action in the Employment Setting
- Preference Programs
- DEI Initiatives

**Pre-Class Reading:**

- EEOC Informal Discussion Letter regarding customer preference (3/9/09):  
<https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-210>
- Statement from EEOC Chair Charlotte A. Burrows on Supreme Court Ruling on College Affirmative Action Programs (6/29/23):  
<https://www.eeoc.gov/newsroom/statement-eeoc-chair-charlotte-burrows-supreme-court-ruling-college-affirmative-action>
- July 13, 2023 Letter from 13 Attorneys General to Fortune 100 CEOs regarding DEI (posted on Canvas)

- July 19, 2023 Letter from 21 Attorneys General to Fortune 100 CEOs regarding DEI (posted on Canvas)
- “The Legal Assault on Corporate Diversity Efforts Has Begun,” Theo Francis and Lauren Weber, *The Wall Street Journal*, Aug 8, 2023:  
[https://www.wsj.com/articles/diversity-equity-dei-companies-blum-2040b173?mod=article\\_inline](https://www.wsj.com/articles/diversity-equity-dei-companies-blum-2040b173?mod=article_inline)

Optional:

- *United Steel Workers v. Weber*, 443 U.S. 193 (1979)
- *Johnson v. Transportation Agency*, 480 U.S. 616 (1987)
- *Duffy v. Wolle*, 123 F.3d 1026 (8<sup>th</sup> Cir. 1997)
- *Students for Fair Admissions, Inc. v. University of North Carolina, et al.*, 143 S. Ct. 2141 (2023)
- [Lawsuit Against Morrison Foerster Dropped After Diversity Program Change \(bnn.network\)](#)

## [SESSION 4 \(February 12\)](#)

**Review; Case study discussions (fact patterns to be distributed in class)**

## [SESSION 5 \(February 19\)](#)

### **Americans With Disabilities Act (ADA)**

- Whom/what does it protect?
- What is required, what is prohibited?
- Can employers give preference to disabled candidates/employees?
- Workplace Accommodations – what is a “reasonable” accommodation? What constitutes an “undue hardship?”
- Medical testing; drug testing

### **Pre-Class Reading:**

- EEOC -- The ADA: Your Responsibilities as an Employer:  
<https://www.eeoc.gov/publications/ada-your-responsibilities-employer#:~:text=Anyone%20who%20is%20currently%20using,decisions%20based%20on%20verifiable%20results.>

- EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA (October 17, 2002):  
<https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>

Optional:

- EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA:  
<https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees>

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## **SESSION 6 (February 26)**

***ADA (cont. if needed);***

**Religious Accommodations under Title VII;**

**Pregnant Workers Fairness Act;**

**Family and Medical Leave Act;**

**Paid Sick Leave laws**

**Pre-Class Reading:**

- EEOC: Religious Discrimination:  
<https://www.eeoc.gov/religious-discrimination#:~:text=The%20law%20requires%20an%20employer,including%20the%20particular%20accommodation%20at>
- DOL Fact Sheet #28: The Family and Medical Leave Act:  
<https://www.dol.gov/agencies/whd/fact-sheets/28-fmla>
- Executive Order 13706 (posted on Canvas)

Optional:

- *Groff v. DeJoy*, 600 U.S. 447 (2023)

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**Spring break – March 2 - 10**

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## **SESSION 7 (March 11)**

**Review; Case study discussions (fact patterns to be distributed in class)**

***\*\*Midterm Exam Released on Canvas after class***

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## SESSION 8 (March 18)

### **Age Discrimination in Employment Act (ADEA) and state laws prohibiting age discrimination**

- Whom/what do these laws protect?
- What is required, what is prohibited?
- “Reasonable Factors Other Than Age”

#### **Pre-Class Reading:**

- EEOC – Age Discrimination:  
<https://www.eeoc.gov/age-discrimination#:~:text=The%20Age%20Discrimination%20in%20Employment,younger%20workers%20from%20age%20discrimination.>
- NJ Office of the Attorney General Civil Rights Fact Sheet (Age Discrimination) (posted on Canvas)

#### **Optional:**

- *Hazen Paper Co. v. Biggins*, 507 U.S. 604 (1993)
- *Barnes v. Hershey* (N.D. Cal. 2016) (No. 3:12-cv-01334-CRB)
- *Thiessen v. General Electric* (10<sup>th</sup> Cir. 2001) (No. 98-3208)

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## SESSION 9 (March 25)

### **Workplace Harassment**

- What type of conduct does/does not constitute unlawful harassment under Title VII, the ADA, and the ADEA?

#### **Pre-Class Reading:**

- EEOC Proposed Enforcement Guidance on Workplace Harassment:  
<https://www.eeoc.gov/proposed-enforcement-guidance-harassment-workplace>

#### **Optional:**

- “Tesla is Accused of Racial Harassment at California Factory,” Rebecca Elliot, *The Wall Street Journal*, Sept. 28, 2023:  
[https://www.wsj.com/business/tesla-is-accused-of-tolerating-racial-harassment-in-eeoc-suit-ef72f336?mod=Searchresults\\_pos9&page=1](https://www.wsj.com/business/tesla-is-accused-of-tolerating-racial-harassment-in-eeoc-suit-ef72f336?mod=Searchresults_pos9&page=1)

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## **SESSION 10 (April 1)**

**Review; Case study discussions (fact patterns to be distributed in class)**

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## **SESSION 11 (April 8)**

### **Uniform Services Employment and Reemployment Act (USERRA) and other laws protecting Veterans**

- Whom/what do these laws protect?
- What is required, what is prohibited?
- Can employers give preference to candidates/employees who are Veterans?

### **Relevance of the National Labor Relations Act to Private Employers**

- Protected employee communications
- Workplace solicitation

### **Pre-Class Reading:**

- Protections Against Employment Discrimination for Service Members and Veterans:  
<https://www.eeoc.gov/protections-against-employment-discrimination-service-members-and-veterans>
  - EEOC Policy Guidance on Veterans' Preference under Title VII (8/10/90):  
<https://www.eeoc.gov/laws/guidance/policy-guidance-veterans-preference-under-title-vii>
  - The NLRB and Social Media:  
<https://www.nlr.gov/about-nlr/b-rights-we-protect/your-rights/the-nlr-and-social-media#:~:text=In%20the%20second%20decision%2C%20issued,management%20about%20their%20work%20performance.>
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## **SESSION 12 (April 15) (last class for any MBA students)**

### **Fair Labor Standards Act;**

### **Pay Equity Laws**

### **Pre-Class Reading:**

- One-page guide (posted on Canvas)
- EEOC: Section 10 Compensation Discrimination:  
<https://www.eeoc.gov/laws/guidance/section-10-compensation-discrimination>
- Executive Order 13665 (posted on Canvas)

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## SESSION 13 (April 22)

### **Special Considerations Relating to Hiring**

- Background Checks and the Fair Credit Reporting Act
- Drug Testing
- Use of AI

### **Special Considerations Relating to Layoffs**

- How are positions/employees selected?
- Releases (ADEA/OWBPA considerations; confidentiality; non-disparagement)
- WARN considerations

### **Pre-Class Reading:**

- Sample ADEA schedule (posted on Canvas)
- EEOC Enforcement Guidance (Consideration of Arrest and Conviction Records):  
<https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>
- EEOC Q&A – Understanding Waivers of Discrimination Claims in Employee Severance Agreements:  
<https://www.eeoc.gov/laws/guidance/qa-understanding-waivers-discrimination-claims-employee-severance-agreements>
- EEOC Press Release – iTutorGroup to Pay \$365,000 to Settle EEOC Discriminatory Hiring Suit:  
<https://www.eeoc.gov/newsroom/itutorgroup-pay-365000-settle-eeoc-discriminatory-hiring-suit>
- <https://www.shrm.org/resourcesandtools/tools-and-samples/how-to-guides/pages/conductlayoffforrif.aspx>

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## SESSION 14 (April 29)

**Review; Case study discussions (fact patterns to be distributed in class)**

***\*\* Final Exam Released on Canvas after class (MBA students will be provided with an earlier release date, and will be tested only on material covered through April 15)***