

HUMAN RESOURCE LAW

Fall 2021

Professor Paula Colby-Clements

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Tu/Th

Day Section: 11:00 AM to 12:20 PM

Evening Section: 7:30 PM to 8:50 PM

Course Overview

This course examines the multitude of state and federal regulation of the workplace. Because employment regulation is so vast, no three-credit course can hope to fully prepare you to practice in the field of employment law. However, this course will provide you with the basic concepts and vocabulary you will need to work in a field in which employment law issues periodically arise – such as HR, in-house counsel positions, and corporate/business law. This course will teach you issue-spotting to accurately identify when to call an employment law specialist and help you speak to him/her intelligently.

Please note that this course does not cover any topics relating to labor law. The laws governing unionization and collective bargaining are distinct and complex, and for that reason, labor law is a separate course. Coverage of employee benefits law is also limited.

Learning Goals

By the end of this class, you should be able to:

- Identify potential employment law issues in workplace fact patterns.
- Understand and apply the elements of causes of action for the most common employment law claims, such as discrimination, retaliation, harassment, breach of contract, privacy, workplace safety and employment tort claims.
- Assess the strength of potential claims within a particular fact pattern based upon whether they meet the elements of the cause of action, and the defenses available to the employer.
- Understand and apply the basic provisions of the ADA.
- Identify the multiple potential claims available to a plaintiff in a particular workplace fact pattern.
- Assess whether an individual is an independent contractor, employee or joint employee under applicable tests.
- Understand the basics of state and federal wage and hour law and how to research specific questions.
- Understand and apply claims relating to an employee's duties to an employer, including common law, contractual and statutory duties.
- Understand how employment law statutes and common law rights interact with the principle of at-will employment.

- Recognize the importance of researching applicable state law before providing advice.

Required Course Materials

Cases and Materials on Employment on Employment Law the Field as Practiced, Samuel Estreicher, Michael Harper, Elizabeth Tippet (5th Ed. West).

Course Grade

Your grade will be based upon the following criteria:

Assignment	Due Date	Percentage of grade
Attendance & participation		20%
Mid-term	As scheduled	20%
Final exam	As scheduled	60%

Grades will be standardized to reflect the relative difficulty of the assignment/exam, and your performance relative to your peers.

Attendance & Participation

Attendance & Participation will include required assignments on the google classroom portal. Assignments will be required to be submitted prior to class in anticipation of class discussions. Content along with questions will be posted, at a minimum, on a weekly basis.

Class Preparation. For each week, the Syllabus outlines the reading and concepts for the week as well as any worksheets or exercises that need to be completed. For this course I will use TWEN as a repository for items as well as Google classroom. Once you are registered, I will send an invite for my google classroom which is where questions will be posted to address each week along with PowerPoints and audio. (The powerpoint will be covered in class as well so they are there for your reference). The worksheets/exercises are intended to help you analyze and integrate the case law, and/or apply the case law to a fact pattern. Under the concepts for each week, in this syllabi, you will see the required readings and a reference to worksheets or websites you will need to review. Google classroom will direct you to where to find each piece of information each week.

During class, we will cover concepts, discuss cases, hypotheticals and application of concepts and cases to real world problems. Students should be prepared to deeply analyze issues during class discussion.

Week of August 23rd

Classification of Independent Contractors

1. Text: pp. 9-23
2. Massachusetts Law on Independent Contractors: <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/independent.html>.
3. M.G.L.A chapter 149 s. 148B
4. *Carey v. Gatehouse Media*, 92 Mass.App.Ct. 80 (2018).
5. *NLRB v. Hearst*, 64 S.Ct. 851 (1944).
6. *Collegiate Basketball Officials v. NLRB*, 836 F.2d 143 (1987)
7. *Pennsylvania Interscholastic Athletic v. Office of Professional Employees Union*, 365 NLRB o. 107 (2017)

Objectives:

What are the common law and statutory definitions of an employee and independent contractor? The point isn't to memorize each of them, but rather to identify common themes that might guide an employer's decision making. You should also consider carefully which way an element of the test cuts (Does bringing your own tools make you more likely to be a contractor or employee?) Why do governments and individual employees care about classification status?

Week of August 30th

Joint Employer Status/Employment at Will & Implied-in-Fact Contracts

1. Textbook pp. 23-63.
2. Read the Complaint *Ryan v. BuckleySandler* and consider whether Ryan was a joint employee of the law firm. (focus on pp. 1-5 of complaint and skim the rest).
3. *Boston Housing v. National Conference of Fireman*, 458 Mass. 155 (2010).
4. *Adams v. City of Boston*, 963 N.E.2d 694 (2012).

Objectives:

Joint Employer status occurs when a court or government agency determines that an individual has more than one employer. Joint Employer status involves fewer tests, but the tests are much murkier; or at least poorly elaborated by the courts. On the other hand, the concept of "at will" employment is pretty simple. But the concept becomes more complicated when it interacts with contract law. What does it mean for courts to apply a "presumption" at-will status? Under what circumstances can oral assurances overcome an at-will presumption? It depends on the terms of the contract, and on the sequence of events.

Week of September 6th

No Class on Monday due to Federal Holiday

Employee Handbooks & Covenant of Good Faith/ Title VII - Disparate Treatment

1. Textbook pp. 63-75; 97-143 (will continue into next week)
2. Review Model Jury Instructions on Contract Damages
3. Complete Implied-in-Fact Worksheet
4. Complete McDonnell Douglas Worksheet

Objectives:

To understand and identify when the at-will status is impacted by employee handbooks and policies and to be able to identify to what circumstances may lead to an implied covenant of good faith between the employer and employee. In addition, this week we begin to delve into the protected categories of Title VII and the elements needed to make out a prima facie case. You will work through how the, all important, McDonnell Douglas shifting burden framework works and how it is used by a plaintiff to prove discrimination based on inclusion in a protected category.

Week of September 13th

Disparate Treatment & Disparate Impact

1. Textbook pp. 97-143; 145-159
2. Review Disparate Treatment and Impact Model Jury Instructions

Objectives:

To understand the difference between “sole cause” and “mixed motive” discrimination. Obtain a working understanding of how to make out an individual claim (disparate treatment) versus how to prove a claim when a policy has a negative impact on a class of workers.

Week of September 20th

Discrimination a Massachusetts Perspective

1. Age Discrimination: Read 29 U.S.C. § 621
2. *Trans World Airlines v. Thurston*, 469 U.S. 111 (1985).
3. *Blare v. Husky Injection Molding*, 646 N.E.2d 11 (1995).
4. *Sullivan v. Liberty Mutual*, 825 N.E.2d 522 (2005).
5. *Salvi v. Suffolk County Sheriff's Department*, 67 Mass.App.Ct. 596 (2006).

6. Haddad v. Walmart, 914 N.E.2d 59 (2009).
7. Wheelock College v. MCAD, 355 N.E.2d 309 (1976).
8. Dohoney v. Director of Division of Employment, 386 N.E.2d 10 (1979).
9. Matthews v. Ocean Spray, 426 Mass. 122 (1997).

Objectives:

To further develop an understanding of how discrimination claims proceed and are resolved under Mass and Federal law. To understand the distinctions, if any, in bringing claims under Massachusetts Law or dual claims under Massachusetts Law and Federal Law.

Week of September 27th

Retaliation — Whistleblowers (Assertion of Statutory Rights)

1. Textbook pp. 193-266

Objective:

Whistleblowing represents a subset of protected activity, but courts and statutes tend to narrowly define the scope of protected whistleblowing. From the cases we will consider how the courts define wrongful termination in terms of protected activity and public policy in the whistleblower context.

Week of October 4th

1st Amendment Protections/Tortious Conduct in the Workplace

1. Textbook pp. 267-316
2. Mass Practice Fraud and Deceit
3. Mass Practice Tortious Interference with Advantageous Business Relations

Objectives:

To determine what rights you have in the workplace and what policies your employer/boss can put in place even though it may restrict an individual's personal, political, or social causes. To understand tortious conduct that is actionable, in the workplace, even though that conduct does not result in physical harm.

Week of October 11th

MID-TERM EXAMINATION

Week of October 18th

Workplace Injuries

1. Textbook pp. 321-344.
2. Workplace Waterboarding
3. Sea World Case

Objectives:

To understand a worker's rights to be free from hazards in the workplace that may cause harm and to determine the rights a worker has if they are injured in the workplace.

Week of October 25th

Americans With Disabilities Act (ADA)

1. Cox v. New England Telephone, 414 Mass. 375 (1993).
2. City of New Bedford v. MCAD, 440 Mass. 450 (2003).
3. Griffin v. Steeltek, 160 F. 3d 591 (1998).
4. School Board of Nassau County v. Arline, 107 S.Ct. 1123 (1987).
5. Ocean Spray Cranberries, Inc. v. MCAD, 441 Mass. 632 (2004).
6. Turner v. Hershey Chocolate USA, 440 F.3d 604 (2006).
7. Littleton v. Wal-Mart Stores, Inc., 231 Fed.Appx. 874 (2007).

Objectives:

To understand how ADA is applied in the workplace and to explore the difference in rights employees have under both Federal and Massachusetts Law.

Week of November 1st

Privacy in the Workplace

1. Textbook pp. 345-374
2. Federal Wiretapping Statute
3. Privacy Worksheet

Objectives:

To understand the rights and limitations of employee privacy in the workplace. To understand how and when an employer may reach employee activities outside the workplace.

Week of November 8th

Employee Duties

1. Textbook pp. 377-412
2. Massachusetts Non-Compete Law
3. Marine Contractors v. Hurley, 365 Mass. 280 (1974).
4. Boulanger v. Dunkin Donuts, Inc., 442 Mass. 635 (2004).

Objectives:

To understand the duties the employee owes to their employer and the claims an employer may bring, against the employee, for violating those duties. To explore the enforceability of non-compete agreements.

Week of November 15th

Wage & Hour Law

1. Textbook pp. 413-453
2. White Collar Exemptions
3. Federal Regulations

Objectives:

To understand the requirements of the wage and hour laws and to identify exemptions to those laws and regulations.

Week of November 22nd

Thursday, November 25th: NO CLASS THANKSGIVING HOLIDAY

Torts

1. Textbook pp. 491-521 (this will continue into next week since this week is Thanksgiving).
2. Tort Jury Instructions

Week of November 29th

**Torts Continued
MPT Prep**

Objectives:

To understand the elements of Tort Claims that can be brought in the workplace and be able to recognize these torts in a real world context.