

HUMAN RESOURCE LAW

Fall 2023

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 regulations 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 Law the Field as Practiced, Samuel Estreicher, Michael Harper, Elizabeth Tippet (6th 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 posted on TWEN. Assignments will be required to be submitted prior to class in anticipation of class discussions.

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. Some cases will be in the reading assigned in the required text and/or the syllabus will list cases that you are responsible to pull from Westlaw. For this course I will use TWEN as a repository for items. The worksheets/exercises I use 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.

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 21st

Classification of Independent Contractors

1. Text: pp. 1-49
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 28th

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

1. Textbook Review pp. 26-38
2. *Boston Housing v. National Conference of Fireman*, 458 Mass. 155 (2010).
3. *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 4th

No Class on Monday due to Federal Holiday

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

1. Textbook pp. 49-96
2. Complete Implied-In-Fact-Worksheet (In Class)
3. McDonnell Douglas v. Green, 411 U.S. 792 (1973).
4. Texas Department of Community Affairs, 450 U.S. 248 (1981).
5. Begin Completing 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 11th

Disparate Treatment & Disparate Impact

1. Reeves v. Sanderson, 530 U.S. 133 (2000).
2. Desert Palace, Inc. v. Costa, 539 U.S. 90 (2003).
3. McKennon v. Nashville, 513 U.S. 352 (1995).
4. Staub v. Proctor Hospital, 562 U.S. 411 (2011).
5. Review Disparate Treatment and Impact Model Jury Instructions
6. Griggs v. Duke Power, 401 U.S. 424 (1970).
7. Connecticut v. Teal, 457 U.S. 440 (1982).
8. Dothard v. Rawlinson, 433 U.S. 321 (1977).

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 (Disparate Impact).

Week of September 18th

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 25th

Sex Discrimination

1. Price Waterhouse v. Hopkins, 490 U.S. 228, (1989).
2. Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993).
3. Desert Palace, Inc. v. Costa, 539 U.S. 90 (2003).

Retaliation — Whistleblowers (Assertion of Statutory Rights)

1. Textbook pp. 107-140

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 2nd

Public Policy Causes of Action – Whistleblowers

1. Textbook pp. 143 – 186

1st Amendment Protections/Tortious Conduct in the Workplace

1. Textbook pp. 191-220
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 9th

MID-TERM EXAMINATION

Week of October 16th

Workplace Injuries

1. Textbook pp. 249-279
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 23rd

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 October 30th

Privacy in the Workplace

1. Textbook pp. 281-311
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 6th

Employee Duties

1. Textbook pp. 315-347
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 13th

Wage & Hour Law

1. Textbook pp. 351-389
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 20th

Thursday, November 23rd : NO CLASS THANKSGIVING HOLIDAY

Torts

1. Textbook pp. 225-244
2. Tort Jury Instructions

Week of November 27th

Remedies

Text: 395-428

MPT Prep

Objectives:

To reinforce the elements of Tort Claims that can be brought in the workplace and remedies that can flow from them.