

## **HUMAN RESOURCE LAW**

Fall 2025

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

#### American Casebook Series (West Publishing)

Fashman, Samuel Estreicher, Michael C. Harper, Zachary D. *Estreicher, Harper, and Fasman's **Cases and Materials on Employment Discrimination and Employment Law, the Field as Practiced***. Available from : VitalSource Bookshelf, (6th Edition). West Academic Publishing, 2022.

**ISBN: 9781647082192**

### 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 for pulling 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 18<sup>th</sup>**

#### **Chapter 1: Defining Employee and Employer Status**

1. Text: pp. 1-47
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. *Patel, et al. v. 7-Eleven, Inc., et al.*, 494 Mass. 562 (2024).
7. *Weiss v. Loomis, Sayles & Co., Inc.*, 104 Mass. App. Ct. 1 (2024).
8. *Somers v. Converged Access, Inc.*, 454 Mass. 582 (2009).
9. *Schwann et al. vs. Fedex Ground Package System*, U.S. Dist. Ct. Mass. (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 25th**

#### **Chapter 2: Employment-At-Will and its Contractual Exceptions**

1. Textbook Review pp. 48-105
2. *Boston Housing v. National Conference of Fireman*, 458 Mass. 155 (2010).
3. *Adams v. City of Boston*, 963 N.E.2d 694 (2012).
4. *Meehan v. Medical Information Technology Inc.*, 488 Mass. 730 (2021).
  5. *Jinks v. Credico (USA) LLC.*, 488 Mass. 691 (2021).
  6. *Weiss v. Loomis, Sales & Co., Inc.*, 104 Mass.App.Ct 1 (2024).

**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 1<sup>st</sup>****Chapter 3: Employment Discrimination Law Disparate Treatment**

1. Textbook pp. 105-196
2. Complete Implied-In-Fact-Worksheet (In Class)
3. Begin Completing McDonnell Douglas Worksheet
4. Review of Mass.Gen.Laws ch. 151B.
5. Blare v. Husky Injection Molding Systems, 419 Mass. 437 (1995).
6. Abramian v. President & Fellows of Harvard College, 432 Mass. 107 (2000).
7. Sullivan v. Liberty Mutual Ins. Co., 444 Mass. 34 (2005).

**Objectives:**

To Understand the protected categories of Title VII and the elements needed to make out a prima facie case for a discrimination claim. 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 8th****Chapter 4: Employment Discrimination Law Disparate Impact**

1. Textbook pp. 197-268

**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 15th**

#### **Chapter 5: Affirmative Action and Chapter 6: Sex Discrimination**

1. Text pp: 269-328 (Affirmative Action)
2. Text pp: 329-440 (Sex Discrimination)

### **Week of September 22<sup>nd</sup>**

#### **Chapter 7: Sexual Orientation and Gender Identity Discrimination**

1. Text pp: 441-464
2. Mass Executive Order 592
3. President Trump DEI Executive Order

#### **Chapter 8: Age Discrimination**

1. Text pp: 465-526

**Objectives:** To further develop additional protections in the workplace based on these protected classifications.

### **Week of September 29<sup>th</sup>**

#### **Chapter 9: Disability Discrimination**

1. Text pp: 527-588
2. Cox v. New England Telephone, 414 Mass. 375 (1993).
3. Flagg v. Ali Med, 466 Mass. 23 (2013).
4. Gannon v. City of Boston, 476 Mass. 786 (2017).
5. Barbuto v. Advantage Sales & Marketing, LLC, 477 Mass. 456 (2017).

### **Week of October 6<sup>th</sup>**

## **MID-TERM EXAMINATION**

### **Week of October 13<sup>th</sup>**

## **Chapter 10: Religious Discrimination**

1. Text pp: 589 - 624

### **Week of October 20<sup>th</sup>**

## **Chapter 11: Retaliation**

1. Text pp: 625-662
2. Massachusetts Anti-Retaliation law: Mass.Gen.Law Ch. 151B §4.
3. Rae v. Woburn Public Schools, 113 F.4th 86(2024).

### **Week of October 27<sup>th</sup>**

## **Chapter 12: Public Policy Causes of Action – Whistleblowers**

1. Textbook pp. 663-709

### **Objectives:**

Whistleblowing, along with protecting the assertion of a protected right, 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.

## **Chapter 13: 1st Amendment Protections**

1. Textbook pp. 711-742

### **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 November 3<sup>rd</sup>**

#### **Chapter 14: Torts: Misrepresentation, Wrongful Interference, Defamation**

#### **Chapter 15: Workplace Injuries**

1. Textbook pp. 743-768 (Torts)
2. Textbook pp. 769-800 (Injuries)
3. Workplace Waterboarding
4. 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. And, to reinforce the elements of Tort Claims that can be brought in the workplace and remedies that can flow from them.

### **Week of November 10<sup>th</sup>**

#### **Chapter 16: Privacy in the Workplace**

1. Textbook pp. 801-835
2. Federal Wiretapping Statute
3. Privacy Worksheet
4. Mass Wire Tap Statute: Mass.Gen.Laws ch. 272 § 99.

#### **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.

## **Chapter 17: Employee Duties**

1. Textbook pp. 833-866
2. Massachusetts Non-Compete Law: Mass.Gen.Laws ch. 149 § 24L.
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 17th**

## **Chapter 18: Compensation (Wage & Hour Law)**

1. Textbook pp. 867-911
2. Mass Wage and Hour Law

## **Chapter 19: Remedies**

1. Textbook pp. 913-948
2. Tort Jury Instructions

### **Objectives:**

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

### **Week of November 24th**

## **Chapter 20: Procedural Issues**

1. Text pp: 949-996

## **Chapter 21: Problems of Coordination**

1. Text pp: 997-1044.

**Thursday, November 27<sup>th</sup>: NO CLASS THANKSGIVING HOLIDAY**



**FINAL EXAM TO BE ADMINISTERED ACCORDING TO THE SCHOOL'S EXAM SCHEDULE**