

# EMPLOYMENT DISCRIMINATION

Law 6549-27365

UF Levin College of Law

Fall 2021

Syllabus – PART I

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Office Hours: Wed., 5:00-7:00pm & by appointment at other times (email me to arrange)

Class Meetings: Tues. & Wed., 3:30-4:55pm, Room HH 285C

## OVERVIEW

This course examines the major federal statutes that prohibit employment discrimination—Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act, the Equal Pay Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act—and the various entities and mechanisms involved in their enforcement. We will cover the legal theories available for litigating federal employment discrimination claims and consider judicial, administrative, and legislative interpretations of the law. We will also examine the meanings of “equality” and the policy considerations behind antidiscrimination protections.

## Course Objectives & Student Learning Outcomes

After completing this course, students should be able to:

1. Explain the protected classifications and provisions of Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act (Title VII);
2. Explain the major provisions of the Equal Pay Act (EPA), the Age Discrimination in Employment Act (ADEA), and the Americans with Disabilities Act (ADA);
3. Apply the main theories used to allege employment discrimination under these statutes: disparate treatment, disparate impact, retaliation, and harassment;
4. Describe the federal enforcement agencies, administrative exhaustion procedures, and remedies available under Title VII, the EPA, the ADEA, and the ADA;
5. Demonstrate an understanding of various theories of equality and how such theories relate to judicial, administrative, and legislative interpretations of antidiscrimination law; and
6. Provide basic advice to future clients on the federal employment discrimination laws covered: to employees on their rights under the laws and to employers on how to prevent discrimination and comply with the laws.

## Required Course Materials & Workload

Students are required to register on and keep up with the course Canvas site. Students are also responsible for downloading course-related materials posted there when listed in an assignment or announced in class.

The required casebook for this course (denoted as “CB” in assignments below) is Ontiveros, Corrada, Selmi & Hart, *Employment Discrimination Law: Cases and Materials on Equality in the Workplace* (9th ed. 2016). (Note, this is not the latest edition, the 10th, which

was released in 2021. Instead we are using the 9th edition from 2016, and I will provide you with class handouts as needed for any updates.)

Students must also download the free Statutory Supplement (denoted as “SS” below), posted at the “Statutory Supplement” link on the course Canvas site. Only selected statutory sections from this supplement will be assigned, as indicated in the relevant class reading assignments.

For certain classes, I assign additional short readings to complement or update the casebook (denoted as “Class Handout” below). All Class Handouts will be available on the course Canvas site, posted by Friday of the week preceding the relevant class.

You are expected to read and be prepared to discuss all of the assigned reading each class, including all of the “Notes” assigned; doctrinal information and questions we will discuss in class often appear in the “Notes” section of the casebook. In accordance with Standard 310 of the American Bar Association’s (ABA) standards for law schools, students are expected to devote 2 hours of out-of-class preparation for every 1 credit hour of in-class instruction. Because this course has 3 credit hours of in-class instruction each week, you should expect to spend at least 6 hours outside of class reading and preparing for our class meetings each week.

### **Grades & Class Participation**

Regular attendance, preparation, and active participation in classroom discussion are required. Your course in the grade will be based on a final exam and class participation.

Participation will be factored into your grade, with excellent participation raising your final course grade by one-third of a letter grade where possible (e.g., from an A- to an A or a B to a B+). Excellent participation means offering a few thoughtful comments or questions in more than half of all classes, listening to and engaging with points raised by other students, and exercising judgment to foster others’ participation, too. Because the course must adhere to a mandatory mean grade, participation may also be used to differentiate among the course grades of students with equal final exam grades.

The final exam will be timed, during the regular exam period. More information on the exam will be provided in class.

### **Attendance**

Attendance is required and an essential part of the course. All students must follow the attendance tracking procedures, which will be explained in class, and are responsible for making sure they have properly recorded their attendance.

In accordance with ABA guidance on acceptable rates of classroom absences, you are generally allowed 5 absences from class total, for any reason (including for illness or medical appointments other than those related to COVID-19, job interviews, school activities, work tasks, and the like). For ease of administration and to respect your privacy, I do not make any differentiation between “excused” or “unexcused” absences, with two exceptions listed below. This means that there is no need to tell me why you will be or were absent from class, so long as you have 5 or fewer absences total.

The two exceptions to this policy are (1) absences for observance of a University-recognized religious holiday and (2) absences due to COVID-19, both of which do not count toward your 5 total absences, so please do notify me in advance of such absences. In addition, please notify me should you have a family or medical situation or an emergency that will require missing more than 5 classes, and we will discuss how to accommodate your situation.

More than 5 absences may negatively affect your final course grade. Students who miss more than 30% of scheduled classes may be prohibited from sitting for the final examination and unable to pass the course.

As a matter of professionalism, you are expected to be on time for class—meaning seated and ready to begin when class starts. Arriving late is disruptive not only to me, but to your fellow students. After 2 late arrivals, each additional late arrival will be counted as a class absence.

### **COVID-19 Information**

If you are experiencing COVID-19 symptoms (see <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus or, if you are already on campus, please leave campus immediately. Please use the UF Health screening system and follow the instructions about when you may return to campus (see <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if>). Any related absences will be accommodated (see “Attendance” above).

### **Use of Laptops**

Students are permitted to use laptops to take notes and participate in class activities during class, however any non-class use of laptops during class is prohibited. Impermissible uses include, but are not limited to, using email or instant messaging programs, visiting social media sites, or any use of the Web. Misuse of laptops during class may result in you losing the privilege of using a laptop in the classroom and may negatively affect the class participation portion of your grade.

Students are strongly encouraged to listen, participate in the discussion, process the material, and take notes accordingly, rather than to try to transcribe everything that is said in class.

### **Office Hours**

Office hours are “drop in” with no appointment needed on Wednesdays from 5:00pm-7:00pm and by appointment. If you are unable to meet during these hours, please do not hesitate to email me to set up an appointment. I am happy to meet as needed at other times. My office is HOL 310, on the third floor of Holland Hall.

### **Syllabus**

The syllabus will be distributed in two parts to allow us to adapt our course pace. The first part of the syllabus contains reading assignments for weeks 1-5 of class, followed by a list of topics planned for coverage in the remainder of the course. The syllabus will be updated with specific reading assignments for weeks 6-13 and posted on the class Canvas site during week 5. In addition, listed reading assignments may be subject to change.

Please keep up with the reading as assigned; if we do not get through everything in a given class, we will pick up where we left off the next day, with the goal of completing each week’s material by the end of the week. You are responsible for both reviewing anything we did not get to in the prior class and completing the material as listed on the syllabus for each class.

## Other General Information

### Policy related to make-up exams or other work

The law school policy on delay in taking exams is available at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#12>.

### Statement related to accommodations for students with disabilities

Students requesting accommodation for disabilities must first register with the UF Disability Resources Center, <https://drc.dso.ufl.edu/>. Once registered, students will receive an accommodation letter, which the student must then present to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting an accommodation. Students with disabilities should follow this procedure as early as possible in the semester to ensure that you can be accommodated promptly.

### Information on UF Law grading policies

The law school grading policy is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>. following scale: Students receive grade points according to the

<u>Grade</u>	<u>Points</u>	<u>Grade</u>	<u>Point</u>	<u>Grade</u>	<u>Point</u>
A (Excellent)	4.00	B-	2.67	D+	1.33
A-	3.67	C+	2.33	D (Poor)	1.00
B+	3.33	C (Satisfactory)	2.00	D-	0.67
B (Good)	3.00	C-	1.67	E (Failure)	0.00

### Student course evaluations

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete evaluations through the email you receive from GatorEvals in your Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

### Compliance with UF Honor Code

Academic honesty and integrity are fundamental values of the UF Law School community. Students are expected to understand and comply with the UF Student Honor Code, available at <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>, and the Law School's application of it, information available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

### Health and Wellness Resources

- U Matter, We Care: If you or someone you know is in distress, please contact [umatter@ufl.edu](mailto:umatter@ufl.edu), 352-392-1575, or visit <https://umatter.ufl.edu> to refer or report a concern and a team member will reach out to the student in distress.

- Counseling and Wellness Center: For information on crisis and non-crisis services, please call 352-392-1575 or visit <https://counseling.ufl.edu>.
- Student Health Care Center: For information to help you find medical care, please call 352-392-1161 or visit <https://shcc.ufl.edu>.
- Office of Victim Services: A victim advocate is available 24 hours a day, 7 days a week to provide support for victims of actual or threatened violence. All services are free and confidential. Please call 352-392-5648 or visit <https://police.ufl.edu/about/divisions/office-of-victim-services>.
- Office for Accessibility and Gender Equity (Title IX): For issues related to sexual misconduct or gender-based harassment, visit <https://titleix.ufl.edu> for resources and additional contact information.

## SCHEDULE OF CLASS TOPICS AND ASSIGNMENTS

### Week 1

#### **1. Tuesday, August 24, 2021**

*Overview of laws; Theories of equality; Administrative exhaustion; Enforcement*  
CB 3-9, 11-16 (up to “Note”); 19(“Notes”)-27 (up to *Ledbetter*); 37(n.4)-39

#### **2. Wednesday, August 25, 2021**

*Enforcement (cont’d); Coverage; Remedies*  
CB 40-42 (up to D.); 57(3.)-60 (up to “Note”); 68(E.)-87  
SS: Title VII § 2000e (b), (f); § 2000e-2 (a); § 2000e-4 (g); § 2000e-5 (g)(1), (k); 42 U.S.C. § 1981a (a)(1), (b) [link on Canvas]

### Week 2

#### **3. Tuesday, August 31, 2021**

*The meaning of “race” and “color”; Disparate treatment: Introduction*  
CB 42(D.)-52 (up to 2.); 128 (“Note” [last paragraph])-133 (up to 2.); 95-99 (up to 1.)  
Class Handout: Materials on the meaning of “race” [link on Canvas]  
SS: Title VII § 2000e-2 (a)(1)

#### **4. Wednesday, September 1, 2021**

*Disparate treatment: Disparate treatment claims*  
CB 99(1.)-124; 126(“Note”)-128

### Week 3

#### **5. Tuesday, September 7, 2021**

*Disparate treatment: Mixed motives*  
CB 133(2.)-154 (through n.6)  
SS: Title VII § 2000e-2 (m); § 2000e-5 (g)(2)(B); § 2000e (m)  
Class Handout: Materials on mixed motives under Title VII [link on Canvas]

#### **6. Wednesday, September 8, 2021**

*Disparate treatment: Retaliation*  
CB 161(C.)-163 (up to b.); 186(4.)-200 (up to 5.); 169-179 (up to notes)  
SS: Title VII § 2000e-3 (a)

## Week 4

### **7. Tuesday, September 14, 2021**

*Disparate treatment: Retaliation (cont'd)*

CB Review 169-179; Read 179(n.1)-186 (up to 4.); 200(5.)-207 (up to D.)

Class Handout: Materials on retaliation and causation [link on Canvas]

### **8. Wednesday, September 15, 2021**

*Disparate treatment: Statistical evidence and pattern-or-practice cases*

CB 207(D.)-228 (up to Wal-Mart)

SS: Title VII § 2000e-6 (a), (c), (e)

## Week 5

### **9. Tuesday, September 21, 2021**

*Disparate treatment: Class certification; implicit bias*

CB 228(Wal-Mart)-244; 434(F.)-439

Class Handout: Materials on implicit bias [link on Canvas]

### **10. Wednesday, September 22, 2021**

*Disparate impact: Introduction; Theory of disparate impact*

CB 245-270 (up to C.)

SS: Title VII § 2000e-2 (a)(2), (h), (k); § 2000e (m)

## **Possible topics to be covered in Weeks 6-13**

*Disparate impact (cont'd)*

*Discrimination because of sex, pregnancy, and family responsibilities*

*Sex-based wage discrimination*

*Discrimination because of sexual orientation and gender identity*

*Harassment*

*Discrimination because of religion*

*Discrimination because of national origin*

*Discrimination because of age*

*Discrimination because of disability*