

Employment Law

Spring 2025

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Class Meetings

W 8:30-9:55 am
F 10:00am-11:25am
HOL 355A

Office Hours

W 10:00 am-11:00 am (HOL 377)
Mon 2:00-3:00 pm ([Zoom](#))

Course Description

This course is about one of the most important legal relationships in modern society. Given the centrality of work in our culture – the fact, for instance, that many people spend more hours per week at their jobs than they do with their families – workplace relationships, and the laws that govern them, play a crucial role in shaping our lives. For many people, personal happiness, financial security, sense of purpose, and sense of success all depend significantly on their experiences in their jobs. From the perspective of companies and policy-makers, workplace relationships are equally important. In our high-tech, service-oriented economy, a company’s success is heavily dependent on the quality of its workforce. From a broader perspective, the health of our country’s economy as a whole is inextricably linked to developments in the labor market – the cost and availability of skilled workers in times of economic growth and the problem of systemic unemployment in times of recession.

Considering the stakes, it is not surprising that the allocation of rights between companies and their workers is highly contested. In its earliest incarnation, employment was a status relationship in which the roles and obligations of the parties were prescribed by law much as they were in feudal times. In contrast, throughout modern history, employment law has been grounded in private contract under which the parties may, in theory, define for themselves their rights and mutual obligations. Despite this, the last half of the twentieth century witnessed what some considered to be a “return to status” – the development of common law contract and tort doctrines aimed at providing greater job security for workers, as well as a watershed in federal legislation regulating discrete aspects of employment in which workers are deemed particularly vulnerable (for instance, workplace safety, retirement security, and antidiscrimination laws).

More recent accounts suggest yet another pendulum swing. Twenty-first century courts appear to be showing significant deference to employer-drafted documents that impose obligations on employees, seek waivers of employee rights, and disclaim employer liabilities (for instance, arbitration policies, non-compete, and independent contractor agreements). One of the challenges of this course will be to understand the inter-relationship between the

two impulses reflected in this history – the desire to preserve private ordering and the conception of workers as autonomous actors, while at the same time protecting workers’ physical and financial well-being in situations where they often lack bargaining power.

In other respects, this is a practical course in the craft of lawyering on behalf of differing interests. The patchwork of statutes and common law principles governing the workplace must account for both the human aspects of what is often a long-term, personal relationship and the transactional elements of what is essentially a business deal between worker and company. As a result, one of the goals of the course is to train you to assess how parties should act preventatively and argue strategically in the context of an ambiguous legal regime. We will consider the ways in which companies might structure their relationships with their workers, through hiring practices and personnel policies, to avoid the risk of legal liability, as well as how aggrieved workers can marshal an array of legal theories to succeed in redressing particular wrongs, whether through litigation or private resolution.

To that end, we will often take a problem-solving rather than case-oriented approach to the material during class, beginning with a hypothetical and working “backwards” into the cases. This process will require you not only to fully comprehend the legal doctrine, but also to identify and account for clients’ non-legal interests, render advice, plan next steps, and recognize potential conflicts and ethical issues. In the end, the goal is for you to emerge not only with a command of substantive employment law, but with a useful set of practical thinking skills and a better understanding of your role as a lawyer.

We will begin by studying the stakes of employment – what makes a person an employee and why it matters. We will then turn to the doctrine that will comprise the bulk of the course – the common law rules (and some statutes) that govern the hiring, termination, and terms and conditions of employment for non-unionized domestic workers. In so doing, we will examine both limitations on the conduct of employers and legal duties imposed on employees. Finally, we will touch on a subset of employment issues that have been removed from the realm of private ordering and are governed primarily by federal and state legislation – worker health and safety, family/medical leave, law regarding plant closings and unemployment, and minimum wage and hour requirements. Throughout the course you should keep two considerations in mind, one normative and the other pragmatic – given the interests and stakes of employment, *what should the law be?* And given the law, *what should parties do*, both in the face of a particular dispute and in their future workplace relationships?

Learning Outcomes

This course has multiple goals, some related to acquiring knowledge of doctrinal law and some to acquiring professional competencies. The over-arching objectives are for you to learn/obtain the following:

- (1) An understanding of the nature of employment, its contours and implications as a legal status, and how it differs from other business relationships (independent contractor arrangements, partnerships, etc.);
- (2) A solid foundation in the common law of employment, comprised of the employment at-will doctrine and related contract and tort principles, and the interaction between common law principles and state and federal statutes;
- (3) An initial exposure to the various regulatory schemes that govern discrete aspects of employment, including the Fair Labor Standards Act, the Family Medical Leave Act, the Occupational Safety and Health Act, and the unemployment and worker compensation insurance systems;
- (4) An awareness of the managerial, financial, personal, and other non-legal considerations that motivate clients in employment disputes, including how those interests both create conflicts and influence how they are resolved.
- (5) An initial exposure to the professional skills needed to represent corporate clients, including client counseling, problem solving, compliance and risk management;
- (6) A preliminary understanding of the role and professional obligations of the employment lawyer, including how to navigate relationships with individual versus entity clients, how to obtain necessary information for building a case, and how to maintain personal and professional values while representing client interests.

Administrative Matters

Materials

The primary source of reading assignments for the course is Glynn, Sullivan, Alexander & Arnow-Richman, Employment Law: Private Ordering and its Limitations (5th ed. 2023). All page references in the list of reading assignments below refer to this edition of the text. (A digital version of the book is available free with your purchase through Case Connect.)

I request that you obtain other separately listed articles or cases in the reading assignments on your own for copyright reasons. However, I will post those readings that are more difficult to find to the relevant Canvas module. From time to time, I will also post materials additional to those on the syllabus. You are responsible for checking Canvas for announcements and preparing any new materials.

Given the wide availability of statutory material from online sources, I do not require students to purchase a statutory supplement. Where the text or the syllabus directs you to a particular statute, please obtain the relevant material and bring a useable version to class on

the appropriate days. To assist you, I will post links to some of the more user-friendly and reliable on-line statutory resources on the course website.

Attendance

The ABA requires that students attend eighty percent of all class meetings. I therefore record attendance daily and consider it a component of class participation. Invariably there will come a time when you have a legitimate conflict that will prevent you from attending class. Rather than vet reasons for different conflicts, I prefer to treat students as lawyers who manage their own schedules and exercise judgment about how to balance competing personal and professional commitments. Therefore I ordinarily do not distinguish between “excused” and “unexcused” absences. The two exceptions are absences related to COVID and religious holiday observances. Such absences will be noted and not count toward your ABA attendance requirements.

Class recordings

I have arranged for video recording of all classes, which will be made available to all enrolled students through Canvas. You do not need special permission to access them.

Professionalism

Students should conduct themselves professionally at all times. In the classroom, this means arriving on time, turning off sound on computers, cell phones and other devices, and avoiding distracting behavior (texting, web surfing, entering and leaving the room unnecessarily), etc. Outside the classroom, try to approach email and other forms of electronic communication as you would other forms of professional interaction. Always be respectful in addressing the recipient, concise in presenting your message, and circumspect about including personal information. Try to consolidate communication to reduce email traffic.

The choices you make in and out of class today, and throughout your J.D. program, are an expression of your development as a professional. Treat class as you would a meeting with law firm colleagues and consider interactions with faculty the equivalent of dealing with a supervising partner or judge. This is an important part of what you are learning in law school.

Requirements & Assessment

Participation

Participating in class is a means of clarifying and reinforcing your understanding of the substantive material, as well an opportunity to develop speaking, listening and problem-solving skills. Because this is a small, upper-level, elective course, I expect that significant in-class participation will occur on a voluntary basis by all students every day. However, I will also

consistently, but gently, “cold call” students in order to facilitate meaningful contributions and engage all students in class discussion.

If you did not have the chance to participate on a particular day, or if you have more to say, you may obtain additional participation credit by contributing to one or more discussion threads that I will periodically initiate on the relevant Canvas module. Especially welcome in response to these prompts are posts that share news links, personal experiences, or other information about employment law and workplace trends that you encounter outside of the class. As an additional incentive to contribute to discussion threads, note that I often base final exam questions on scenarios or news stories posted by students, so sharing your thoughts on these items can also serve as useful review and exam practice.

Be assured that, whatever form it takes, your participation is evaluated on quality and consistency. I cap participation credit so that especially zealous communicators do not receive an outsized advantage over more regulated, but equally insightful, contributors.

Problem Solving & Written Work

Developing good legal skills and good legal judgment requires execution and practice. While there is no substitute for on-the-job training, problems and written analysis are an opportunity to hone your skills, test your understanding of the law, and apply both skills and knowledge in a realistic context.

We will create opportunities for this type of skills acquisition and mastery in two ways. First, we will use a problem-based learning approach throughout the course. Each assignment includes a framing problem (either in the casebook or posted to CANVAS) that places you in the role of attorney for a hypothetical client. Some of these problems resemble a typical law school exam question, but they generally involve a more challenging set of facts and more complex call-to-question than can typically be presented in a testing environment. These problems will require you to think beyond the assigned material and imagine how you would go about obtaining additional knowledge and expertise, both legal and factual in order to serve your client.

Second, we will use some of the problems to practice written legal analysis. At the outset of the semester, you will select two problems, from those identified in the syllabus, for which you will draft a brief written answer. Your answer should follow the typical IRAC format you would provide on a final exam (and by extension, the bar exam); it will not require legal research. You will receive a completion grade and formative feedback on each.

Final Exam

There will be a final exam in the form of a remote, open book, essay-style exam consisting of 2-3 fact-pattern and/or practice-oriented questions. There will be no multiple choice or other “objective” component to the exam. There will be no mid-term. More

information about exam preparation, review, and exam content will be provided in class and over the course of the semester. Final grades for the course will be based on the following approximate percentages: Participation (15%), written work (10%), and final (75%).

Additional Policies & Information

Other relevant information about UF Levin College of Law policies, including compliance with the UF Law honor code, grading, accommodations, and course evaluations can be found at this [link](#).

Reading Assignments & Class Preparation

A schedule of reading and problem assignments is provided for you below. This schedule is *tentative*, and I am likely to adjust or add to these materials over the course of the semester. Note that the ABA requires students to devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. For our three-hour course, that means six hours of preparation per week.

Keep in mind will not always “recite” the assigned cases. When we do, I will expect you to do so in a self-directed, concise manner. Come to class having read and digested the case material, prepared to use that knowledge to engage in rule application and problem solving – that is, to do the work that lawyers do every day. I recommend that you read any assigned problems or questions once before you begin reading the assigned cases and then again after you have read the case material. I also encourage you to draft an outline of how you would approach any assigned problem for use during class discussion.

Workplace law is a dynamic area. I will therefore periodically post news links and other timely materials to Canvas. You should regularly consult the site to stay aware of these materials and any schedule changes. You should also make it a practice to read and stay abreast of workplace law issues in the news, particularly if you envision a career in this field. A good resource is the Law360 Employment Law Newsletter, which is a daily digest sent by email and available through your LEXIS subscription. Additionally, I recommend reading the Wall Street Journal (regardless of your ideological perspective), as it regularly includes features about business management and human resource strategies. (If you would like a labor-leaning resource, I refer you to [The Weekly Shift](#) by Politico.)

All page references are to the text book. Highlighted problems are those you may select for completing your written work requirement. Remember that you are responsible for looking at the text of any statute or regulation mentioned in the reading even if it is not separately listed on the syllabus.

Introduction: The Stakes of Employment (3 classes)

1. **W 1/15** - Issues & Interests in Workplace Disputes
pp. xxv-xxxiii

[Long Hours, Low Pay, Loneliness and a Booming Industry](#), New York Times, Sept. 27, 2021.

[McDonald's Settles Lawsuit With Former CEO Steve Easterbrook](#), Wall Street Journal Dec. 16, 2021.

2. **F 1/17, W 1/22 - Problem 1-1 (p.35)**: Employment vs. independent contractor status
pp. 1-31 (thru n.7)

FedEx Home Delivery v. NLRB

Dynamex v. Superior Court

Natkin v. Winfrey

DOL's Final Rule on Employee Status - Canvas

[Uber and Lyft Drivers in California Will Remain Contractors](#), New York Times, Nov. 4, 2020.

3. **W 1/22 (cont'd)**: Who is an employer?
pp. 33-50

Ansoumana v. Gristede's

Two NLRB Joint Employer Rules - Canvas

[Sidley Austin Settles Age Bias Suit](#), Nat'l L.J., Oct. 8, 2007.

Part I: Employment At-Will and Employee Contract Rights (5 classes)

4. **F 1/24 - Problem 2-2 (p.90)**: Employment at will and expectations of job security
pp. 55-59, 66-82

Hanson v. Central Show Printing Co., Inc.

Goff-Hamel v. OBGYN

Cocchiara v. Lithia Motors

Pugh v. See's Candies, Inc

5. **W 1/29, F 1/31 - Problem 2-4 (p.98)**: Personnel policies and handbooks
pp. 82-90, 91-104*

Guz v. Bechtel

Conner v. City of Forest Acres

Demasse v. ITT Corporation

Muller v. Stromberg Carlson Corp, 427 So.2d 266 (Fl. App. 1983) (edited version posted)
S.C. Stat. § 41-1-110

*Pay close attention to summary of *Woolley v. Hoffmann-La Roche* in text 91-93.

6. **W 2/5 - Problems 3-1 (p.122) & 3-3 (p.137)**: Written contracts and the meaning of “cause”
pp. 122, 123-37

Benson v. JFR, Inc.
UBMC v. Hardy

[*Finding Balance, Finding Balance, Forging a Legacy*](#), 54 U.S.F.L. Rev. 1 (2020).

*Part II, pp. 17-22 only.

7. **F 2/7 - Problems 3-4 (p.153)**: Contractual compensation terms
pp. 137-40, 144-47 (disregard notes on *Weiss v. DHL*), 147-53

Hess v. Kanoski & Assocs.
Geysen v. Securitas Sec. Servs. USA, Inc.

Part II: Protecting Public Policy, Worker Autonomy and Personal Dignity (7 classes)

8. **W 2/12 - Problem 4-1 & 4-2 (p.176-77)**: The public policy tort
pp. 15-66, 167-77

Fitzgerald v. Salsbury Chemical, Inc.
Ho v. Tulsa Spine

[*Bruley v. Village Green Management Co.*](#), 592 F. Supp. 2d 1381 (M.D. Fla. 2008)

9. **F 2/14 - Posted Problem (Canvas)**: Statutory whistleblower protection
pp. 189-205

Genberg v. Porter
Dept. of Homeland Security v. Maclean

Sarbanes-Oxley, 18 U.S.C. §1514A
Prohibited Personnel Practices, 5 U.S.C. § 2302(b)(8)
Florida Whistle-blower’s Act, Fla. Stat. § 112.3187
Florida Private Sector Whistleblower Act., Fla. Stat. § 448.102
Speak Out Act, 42 U.S.C. § 19403(a)

Skim: 5 U.S.C. §§ 2301, 2302

10. **W 2/19, F 2/21 - Problem 6-1 (p. 307)**: Employee privacy
pp. 245-68 275-86, 307

City of Ontario v. Quon,
Borse v. Piece Goods Shop, Inc.
[*Garrett v. Clarke*]
[Bridges v. Houston Methodist Hosp.](#), 543 F. Supp. 3d 525 (S.D. Tex. 2021)

11. **W 2/26 - Posted Problem (Canvas)**: Freedom of speech in the public sector
pp. 308-30, 333-45 (thru n.7)

Connick v. Myers
Garcetti v. Ceballos
Dible v. Chandler

[Univ. Of Fla. Can't Bar Profs From Testifying Against State](#), Law360, January 24, 2022.
[Judge Blocks Fla. Law Restricting Professor Speech On Race](#), Law360, Nov 17, 2022.

12. **F 2/28- Posted Problem (Canvas)**: Freedom of speech in the private sector
pp. 348-56

McVey v. AtlantiCare

Timekeeping Systems, Inc., 323 NLRB 244 (1997)
National Labor Relations Act, Section 7, 29 U.S.C.A. § 157
[Advisory Memorandum in Google, Inc.](#), Case #32-CA-205351 (Jan. 16, 2018).
[Whole Foods Wins Case About Black Lives Matter Apparel](#), New York Times, Dec. 21, 2023

****W 3/5 – Catch up day****

Part III: Obligations of Departing Employees (3 classes)

13. **F 3/7 - Problem 7-1 (p. 366-67)**: Statutory & tort duties of departing employees
pp. 359-67

Scanwell Freight Express STL, Inc. v. Chan
Freedom Medical, Inc. v. Sewpersaud, 469 F. Supp. 3d 1269 (M.D. Fla. 2020).
[CTI v. Software Artisans, Inc.](#), 3 F.3d 730 (4th Cir. 1993).

****For *Freedom Medical* and *CTI*, focus on court's treatment of non-contractual claims only for this assignment.**

14. **W 3/12, F 3/14 (Zoom) - Problems 7-2 (p. 388):** Contractual limitations on competition
pp. 367-68 (thru RST text), 370-77, 381-84 (begin w/ n.2), 392-99

REM Metals Corp. v. Logan
Hopper v. All Pet Animal Clinic, Inc.

**Prepare noncompete portions of *Freedom Medical* and *CTI* from prior assignment)

Fla. Stat. § 542.335

[Uniform Restrictive Agreement Act](#) § 8

[The New Enforcement Regime](#), 50 Seton Hall L. Rev. 1223 (2020) - Part II.B, pp. 1231-41
only.

--Spring Break--

Part IV: Minimum Labor Standards & Workplace Safety (5 classes)

15. **W 3/26 - Posted Problem (Canvas):** Family and medical leave
pp. 596-98 (through n.5), 602-12

Zicarelli v. Dart

Family Medical Leave Act, 29 U.S.C.A. §§ 2611(4), 2611(11), 2612, 2614(a), 2615
29 C.F.R. § 825.114

[Additional reading on PWFA – TBD]

16. **F 3/28, W 4/2- Problem 10-1 (p. 338-39) & 10-2 (p. 647-48):** Minimum wage and
overtime pay
pp. 615-17 (up to “scope of coverage”), 619-48

Costello v. Home Depot
Pabst v. Oklahoma Gas & Electric Co.

29 U.S.C.A. §§ 206(a)(1), 207(a), 213(a)(1) (skim rest of § 213)
29 C.F.R. §§ 541.100, 541.200, 541.201, 541.300, 541.301, 541.302, 541.400, 541.700

[Amazon Emerges as Wage and Benefits Setter](#), Wall Street Journal, Dec. 7, 2021.
[You’re Now a ‘Manager.’ Forget About Overtime Pay](#), New York Times, March 6, 2023.

17. **F 4/4 - Posted Problem (Canvas):** The workers’ compensation system
pp. 659-79

Kindel v. Ferco Rental
Clodgo v. Rentavision
Odessey v. Worden
Intercontinental v. Uthal Labor Comm'n

18. **W 4/9** - Regulation of workplace safety
pp. 681-98

Public Citizen Research Health v. Chao
NFIB v. OSHA
[*Seaworld of Florida v. Perez*](#), 748 F.3d 1202 (D.C. Cir. 2014)
[*Whirlpool v. Marshall*](#), 100 S.Ct. 883 (1980)

[Additional OSHA materials – TBD]

Conclusion: Planning for the End of Employment (**3 classes**)

19. **F 4/11 (Zoom)** Layoffs, closings and unemployment
pp. 727-36

Williams v. Phillips Petroleum Co.
[*Roquet v. Arthur Andersen*](#), 398 F.3d 585 (7th Cir. 2005)

29 U.S.C.A. §§ 2101, 2102

[Additional UI materials – TBD]

20. **W 4/16** - Arbitration of employment disputes
pp. 739-51 (thru n.5), 764-67 (n.4 - 10)

ATT Mobility v. Concepcion

[Additional arbitration materials – TBD]

****F 4/18 – Catch up/review day****