

Employment Discrimination

Spring 2025

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Class Meetings

W/Th 4:30-5:55 pm
HOL 355A

Office Hours

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

Course Description

All human beings discriminate consciously and unconsciously, and it is not inherently a bad thing. Discrimination, in the neutral sense of the word, simply means to distinguish, usually between good and bad (e.g., “She has discriminating taste.”). Unlawful discrimination – the kind we are concerned with in this course – distinguishes based on immutable human characteristics, such as race, sex, religion, disability, age, and ethnicity, which, for complex social and historical reasons have been misused in both explicit and subtle ways as proxies for who is worthy, capable and deserving. Our focus this semester will be the canon of watershed federal laws that emerged out of the 1960s Civil Rights movement to outlaw and remedy this type of invidious discrimination in the workplace. It includes Title VII of the 1964 Civil Rights Act (and its various amendments), the Age Discrimination and Employment Act, and Americans with Disabilities Act, among other statutes, and the expansive federal “common law” that has developed around them.

Over the course of the semester, you will encounter at least three overarching themes. The first is an ideological tension between two theories of equality. One theory is equal treatment or “formal equality.” It extols blind decision-making (e.g., “color-blind,” “sex-blind,” etc.). Under this view, an employee’s protected characteristics should not be a factor in any way in an employment decision regardless of whether the employee is a member of a “majority” or “minority” group. A second, competing theory is equal opportunity or “substantive equality.” Under this view, equality on paper is insufficient so long as *de facto* inequality is a social reality. The difference between these conceptions of equality informs the development of the doctrine we will study and underlies many contemporary political and social debates over the role of antidiscrimination law in today’s workplace.

A second theme is the desire for appropriate institutional accountability as it relates to the competing models of equality above. While most people agree that employers should be liable for blatant, animus-based discrimination that occurs in their workplaces, there is less consensus as to whether and how to hold employers responsible for more subtle forms of discrimination (such as cognitive, or so-called “subconscious,” bias) or the residual effects of historical discrimination. One way to engage this theme is to consider whether we are able to

identify the operation of these types of bias, whether and how these phenomena might be displaced, and whether the potential for employer liability is an effective way to incentivize and achieve those ends.

A final, pervading theme in the course is challenges of proof. In today's workplace, "smoking gun" evidence of discrimination is relatively rare (though more common than you might think). How does a lawyer prove discrimination in court, and when is there sufficient evidence of for a case to reach a jury? Such practical questions underlie the development of the many judge-made "frameworks" for establishing discrimination that you will encounter and their sometimes byzantine contours. They also inform how lawyers make strategic choices in their professional capacity, such as whether to take a case and how to build it (on the employee-side) and how to respond to allegations of discrimination both internally and externally (on the management-side).

We will begin our study with the baseline law and historical context that gave rise to antidiscrimination legislation and the specific classifications and characteristics that these laws seek to protect. We will then turn to the various analytical structures that have evolved to establish and prove discrimination, including disparate treatment, disparate impact, harassment, retaliation, and failure to accommodate. Along the way we will consider various "challenges" and "defenses" to antidiscrimination law, such as the problem of "reverse" discrimination, conflicts with "religious freedom," and the limits of the law generally in addressing societal inequity. We will conclude with a discussion of remedies and procedure.

As we move through the material, we will try to focus not only on learning the intricacies of the law, but also on developing analytical and professional skills through the use of problems. Throughout this process, try to keep two considerations in mind, one normative and the other pragmatic – given the persistence of substantive inequality in the workplace *what should the law be?* And given the law, *what should lawyers (and clients) do?*

Learning Outcomes

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

- (1) A solid understanding of the theoretical bases and practical application of the primary frameworks for establishing unlawful discrimination – disparate treatment, disparate impact, harassment, retaliation, and failure to accommodate.
- (2) The ability to identify discrimination law issues from a hypothetical fact pattern, develop and articulate credible arguments for both parties, and predict how a court is likely to resolve those issues.

- (3) An appreciation for the historical and legal context that gave rise to federal antidiscrimination law, how that history informed the development of the law, and how it affects the application of the law today, including an awareness of any gaps or limitations in the existing regime.
- (4) An awareness of the personal, emotional and other non-legal dimensions of employment discrimination and accusations of discrimination that motivate or constrain clients, including the ability to sensitively and professionally navigate those aspects of a dispute with clients and other interested parties.
- (5) An initial exposure to the professional skills needed to represent corporate clients in a preventative posture, including client counseling, problem solving, compliance and risk management;
- (6) A preliminary understanding of the role and professional obligations of the employment discrimination lawyer, including how to obtain necessary information for building a case, how to interact with coworkers and other third parties, how to identify conflicts of interest, and how to maintain personal and professional values while representing client interests.

A Word about Triggers

Given the nature of this course, you should expect to encounter language and situations in the reading material that are highly offensive or disturbing, including bigoted language, foul words, and sexually explicit descriptions. We will not shy away from these realities in class, but we will seek to develop sensitivity and care in discussing them. Please exercise common sense in substituting euphemisms where using a specific word is likely to be triggering. At the same time, recognize that lawyers must sometimes repeat offensive language or describe inappropriate conduct in the service of advocating for a client. Striking this balance is something that we will try to learn to do together in the class, and I ask you to please hold space for one another in the process. If you have any questions or concerns, or if you have a unique sensitivity, please feel free to reach out to me.

Administrative Matters

Materials

The primary source of reading assignments for the course is Sperino & Gonzalez, *Employment Discrimination: A Context and Practice Casebook* (4th edition 2023). All page references in the list of reading assignments below refer to this edition of the text.

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 Canvas site.

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

Recordings and Missed classes

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. Note that we will hold two classes by Zoom this semester: Th 3/13 and Th 4/10.

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.

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 (20 %) and final (80%).

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 assignments for the initial weeks of the semester is provided for you below. This schedule is *tentative*. I may adjust these assignments and will add readings materials for the remainder of the semester, which I will post to Canvas. I will also periodically post news links and other timely materials, so please consult the site regularly.

You should also make it a practice to read and stay abreast of these issues yourself, particularly if you envision a career in any area of workplace law. Good resources are the Law360 Employment Law Newsletter and Bloomberg Law's the Daily Labor Report. These are a daily services sent by email and available through your LEXIS and Bloomberg subscriptions, respectively.

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 that we will not always fully "recite" the assigned cases. To the extent we do, I will expect you to be able 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.

All page references are to the text book. Remember that you are responsible for looking at the text of the statutes (and/or regulations) mentioned in the reading even if they are not separately listed on the syllabus.

Part I: Introduction

1. W 1/15 – The legal and historical predicates for antidiscrimination legislation

pp.3-9, 11-18, 61-66

Howard v. Wolff Broadcasting

Slack v. Havens, 1973 WL 339 (S.D. Cal.) - excerpted version on CANVAS

[What Researchers Discovered When They Sent 80,000 Fake Résumés to U.S. Jobs](#), New York Times, April 8, 2024.

Schlei, Foreword to the 2d ed., Lindemann & Grossman, *Employment Discrimination Law*, ABA, Section of Labor & Employment Law (1982) - CANVAS

2. Th 1/16– Protected characteristics and classifications

pp. 19-25, 30-47

McDonald v. Santa Fe Trail Transportation Co.

Espinoza v. Farah Mfg.

City of Los Angeles Dep't of Water & Power v. Manhart

Hazen Paper Co. v. Biggins

Part II: Disparate Treatment

3. W 1/22 – The *McDonnell Douglas* framework

pp. 67-91

McDonnell Douglas Corp. v. Green

Reeves v. Sanderson Plumbing Products, Inc.

O'Connor v. Consolidated Coin Caterers Corp

4. **T 1/23, W 1/29 – Mixed motive analysis**

pp. 91-117, 119-20

Price Waterhouse v. Hopkins

Desert Palace, Inc. v. Costa

Gross v. FBL Financial Services, Inc.

5. **Th 1/30 - Defenses to disparate treatment: BFOQ**

pp. 140-168

Western Airlines, Inc. v. Criswell

Dothard v. Rawlinson

UAW v. Johnson Controls, Inc

6. **W 2/5- Defenses to disparate treatment: Religious freedom & Affirmative action**

pp. 403-421, 499-515

Hosanna-Tabor Evang. Lutheran Church and School v. EEOC

Johnson v. Transportation Agency

****Th 2/6 -Tentative Guest Speaker**

Part III: Disparate Impact

7. **The disparate impact framework**

pp. 185-223

Griggs v. Duke Power Co.

Wards Cove v. Atonio

Dothard v. Rawlinson

Smith v. City of Jackson, Miss

8. **Disparate impact litigation & compliance**

pp. 224-256

Ricci v. DeStefano

Wal-Mart Stores v. Duke

Part IV: Harassment & Retaliation

9. **Harassment “because of” sex**

pp. 257-276

Meritor Savings Bank v. Vinson

Harris v. Forklift Systems, Inc

Oncale v. Sundowner Offshore Services

10. **Severe or pervasive conduct**

pp. 277-83
Tademy v. Union Pacific Corporation

[additional reading TBD]

11. Hostile work environment liability & employer risk management

pp. 283-84, 285-312
Faragher v. City of Boca Raton
Vance v. Ball State University
Lauderdale v. Texas Dep't of Criminal Justice

**** Tentative Guest Speaker**

12. Retaliation

pp. 319-22, 327-52
Clark County Sch. Dist. v. Breeden (I and II)
Burlington Northern & Santa Fe Railway Co. v. White
University of Texas Southwestern Medical Center v. Nassar

Part V: Reasonable Accommodation

13. Religious accommodation

pp. 368-88, 390-91, 403
Chalmers v. Tulon Company of Richmond
EEOC v. Abercrombie & Fitch, Inc.
Groff v. DeJoy

14. Disability discrimination: threshold issues

pp. 423-28, 434- 45, 449-54
Mazzeo v. Color Resolutions International, LLC
Hennagir v. Utah Dep't of Corrections

15. Disability accommodation

pp. 454-71, 473-75, 489-97
Billups v. Emerald Coast Utilities Authority
Dewitt v. Southwestern Bell Telephone Co.
U.S. Airways v. Barnett

Part VI: Special Issues (and Intersections) in Employment Discrimination

[Tentative. Assigned reading TBD.]

16. Pregnancy and family responsibilities discrimination

17. Appearance discrimination and grooming codes

18. Gender identity discrimination and religious objections

Part VII: Remedial & Procedural Issues in Discrimination Litigation

[Tentative. Assigned reading TBD.]

19. Discrimination remedies

20. Administrative exhaustion

21. Arbitration and dispute resolution

**** Tentative Guest Speaker(s) for one or more of the topics in Part VII**