

EMPLOYMENT DISCRIMINATION

Spring 2023

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This course considers employment discrimination and ways law prohibits its practice, with particular emphasis on discrimination on the basis of race, sex, sexual orientation, and disability and, to a lesser extent, age, religion, and national origin. The course will examine the basic legal frameworks for proving or disproving discrimination and then consider specific situations that may or may not fit into those frameworks, including the intersection between race and sex, gender and race performance, pregnancy in the workplace, work/family balance, sexual and racial harassment, affirmative action, and reasonable accommodation of individuals with disabilities.

Course Goals/Student Learning Outcomes

At the conclusion of this course, students who attend class, participate in all exercises, and complete all other assignments and requirements for the course may expect to have acquired the following knowledge and skills related to employment discrimination law:

Knowledge:

- Understand fundamentals of employment discrimination doctrine and theory
- Understand multiple critiques of employment discrimination doctrine and theory
- Understand why federal, state, and local governments prohibit certain forms of employment discrimination and why they permit other forms of employment discrimination
- Understand who benefits and who is harmed by existing employment discrimination doctrine
- Understand how governments could differently respond to employment discrimination

Skills:

- Develop critical thinking skills
- Improve listening skills
- Improve communication skills, both oral and written
- Learn to complete written work with a team
- Otherwise improve teamwork and collaborative skills
- Think more broadly and flexibly about discrimination, work, and society

Course Materials

Throughout the semester, students will be expected to read and discuss the materials listed in the “Assignments” section below. All of the assignments may be found either in the required casebook – the tenth edition of *Cases and Materials on Employment Discrimination*, co-authored by Charles Sullivan, Stephanie Bornstein, and Michael Zimmer, published in 2022 – referred to

as “CB” in the Assignments section below or in supplemental materials, to be made available through Canvas and indicated by the designation “Supp.” in the Assignments section below. I will notify students through Canvas with any changes to materials or deadlines.

Attendance and Class Participation

Attendance and class participation are key to the success of this class. You will in part be evaluated based on your contributions to class discussion (see the grading policy below). Although some exceptions for illness, family events, or religious holidays are understandable, students should make every effort to attend classes. Indeed, the ABA requires that all law schools ensure that students attend class and suggests that absences in excess of 15% should render a student ineligible to receive credit for the course. If you foresee missing more than two classes, please contact Kay Epstein at epstein@law.ufl.edu. She will schedule a one-on-one meeting at which we will discuss your situation.

Class participation will be measured based on attendance and regular assessment of the quality of contributions to class discussions. I define quality in multiple ways. For example, quality contributions may be those that reflect exceptional preparation, offer substantive ideas, build on preceding class discussions, move discussion forward to generate new insights, demonstrate the ability to persuade others or challenge conventional wisdom, relate a personal experience in a way that illuminates the ideas being discussed, or build upon the insights of other classmates. Please do not confuse high quantities of participation with quality participation. Good listening is vital for quality participation. I will evaluate negatively any comments that are disrespectful or dismissive of others.

From time to time, we will discuss sensitive topics that may trigger memories of past traumas. The syllabus serves as a warning of these discussions. I will ask students to discuss all aspects of these topics, and I will encourage students to explore perspectives that differ from those they brought into the course.

Laptop Policy

Because of the importance of class discussion and the tendency for laptops to encourage verbatim transcription or provide distractions, our classroom will be a laptop-free zone. Please *do not use laptops, tablets, or other electronic devices during class. Please do not check your email or phones during class, and please do not look at any phones or electronic devices under the table during class*, unless I ask you to use your phones to record attendance or participate in polls.

Out-of-Class Preparation and Exercises

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. This course has 3 “classroom hours” each week, requiring at least 6 hours of preparation outside of class. Accordingly, you will be assigned 40 to 60 pages of reading a week and be asked to complete out-of-class exercises, both individually and in teams. It is anticipated that you will spend, on average, at least 6 hours out of class each week reading, engaging in out-of-class exercises, and/or preparing for in-class discussion and exercises.

Grading and Written Work

Grades will be based on the following:

- Class attendance and participation (10% of grade)
- Individual and team assignments (20% of grade)
- Blindly graded individual final exam (70% of grade)

Other Information

Other information about Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations may be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

Office Hours

I will generally hold office hours on Mondays from 1-3 pm. I am also available for individual or group appointments outside of that window. Please contact Kay Epstein at epstein@law.ufl.edu if you would like to schedule an individual or group meeting.

Assignments

The reading assignments for the course, and dates for exercises, are as follows. Assignments may change from time to time, and all changes will be announced through Canvas.

1/17/23: I. Employers, Employees, and the State: An Introduction

A. Sources of the Law of Employment Discrimination

CB 1–2, 382-85, 515-16

B. What is Discrimination?

Meanings, CB 2

Slack v. Havens, CB 3–6

Note on Stereotyping and Implicit Bias, CB 6-10

Prevalence of Bias, CB 11

C. When Should the State Intervene?

Adverse Employment Actions, CB 67-68

Minor v. Centocor, CB 68-72

1/23/23: II. Paths to Proving Prohibited Discrimination

A. Individual Disparate Treatment Claims

Hazen Paper Co. v. Biggins, CB 12-16

McDonnell Douglas Corp. v. Green, CB 17–28

- 1/24/23:**
- Reeves v. Sanderson Plumbing, CB 28-38
 - Patterson v. McLean Credit Union, CB 53-54
 - Ash v. Tyson Foods, CB 55
 - Notes, CB 56-59

1/30/23: * NO CLASS *

1/31/23: Price Waterhouse v. Hopkins, CB 73-82
 Desert Palace v. Costa, CB 83-95
 Comcast Corp. v. Nat's Ass's of African American-Owned Media, CB
 103-11

2/3/23: * Submit INDIVIDUAL ASSIGNMENT via Canvas by 5 pm *

Please prepare a response of no more than 500 words to Problem 1.1, CB 117; organization and prioritization will be valued when grading

2/6/23: B. Systemic Disparate Treatment Claims
 Introduction and Formal Policies, CB 120-21
 Teamsters v. United States, CB 126-31
 Hazelwood v. United States, CB 131-40

2/7/23: Dukes v. Wal-Mart, CB 141-46
 EEOC v. Sears, CB 163-71
 Problem 2.1, CB 171

2/13/23: C. Disparate Impact Claims
 Griggs v. Duke Power, CB 189-95
 Wards Cove Packing Co. v. Antonio, CB 195-203
 Civil Rights Act of 1991, CB 204
 Watson v. Forth Worth Bank & Trust, CB 205-11

2/14/23: Employer Options, CB 224-25
 El v. Southeastern Pennsylvania Transportation Authority, CB 225-37
 Alternative Employment Practices, CB 238-40
 Jones v. City of Boston, CB 240-44

2/17/23: * Submit FIRST TEAM ASSIGNMENT via Canvas by 5 pm *

Please prepare a response of no more than 750 words to Problem 3.4, CB 237; organization and prioritization will be valued when grading.

2/20/23: D. Interrelation of the Three Claims Above
 Baylie v. Federal Reserve Bank of Chicago, CB 258-62
 Relationship of Individual Disparate Treatment & Impact, CB 262-63
 Relationship of Systemic Disparate Treatment & Impact, CB 263-65
 EEOC v. Dial Corporation, CB 266-70

2/21/23: Tensions Between Disparate Treatment and Impact, CB 273-74
 Ricci v. DeStefano, CB 274-93

Voluntary Affirmative Action, CB 182-86
Note on Affirmative Action & The Constitution, CB 186-88 & Supp.

2/27/23: E. Reasonable Accommodation Claims

The Duty of Reasonable Accommodation, CB 548-50
US Airways v. Barnett, CB 550-59
Vande Zande v. State of Wisconsin Dep't of Admin., CB 559-65

2/28/23: III. Determining What Constitutes Prohibited Discrimination

A. The Meaning of Disability, CB 516-17

Actual Disability and Notes, CB 517-27, including Problems 7.1 & 7.2
Record of Impairment, CB 527-28, including Problem 7.3
Regarded as Having an Impairment, CB 528-29
Alexander v. Wash. Metro. Area Transit Auth., CB 529-35

3/06/23: B. The Meaning of Sex

1. Gender Performance

Price Waterhouse v. Hopkins, CB 73-82 (review)
Jespersen v. Harrah's, CB 345-52
Supplemental Cases

3/07/23: 2. Sexual Orientation

Oncale v. Sundowner Offshore Servs., CB 308-11
Bostock v. Clayton County, CB 312-45

3/13/23: NO CLASS – SPRING BREAK

3/14/23: NO CLASS – SPRING BREAK

3/20/23: 3. Pregnancy and Childrearing

a. Pregnancy Discrimination Act, CB 352-54
Young v. UPS, p. 354-73
b. Childrearing and Family Responsibilities, CB 375
Back v. Hastings on Hudson Union Free School Dist., CB 375-82

3/21/23: 4. Bona Fide Occupational Qualifications, CB 171-73

International Union, UAW v. Johnson Controls, CB 173-82
Discriminatory Qualification Standards, CB 575-77
Chevron v. Echazabal, CB 577-84

3/27/23: C. The Meaning of Race

1. Racial Distinctions

McDonald v. Santa Fe, CB 40-49
Note on Critical Race Theory, CB 49-51

Note on “Reverse Discrimination,” CB 52-53
H.B. 7, Supp.

3/28/23:

2. Racial Performances

Rogers v. American Airlines, Supp.
Hollins v. Atlantic Co., Supp.
Note on Intersectionality, CB 51-52 & Supp.

3. Race versus National Origin

Overview, CB 469-72
Note on Language, CB 472-74
Application to Undocumented Workers, CB 474-75

4/3/23: D. The Meaning of Harassment

1. Hostile Work Environment Based on Sex

Sexual & Other Discriminatory Harassment, CB 385
Meritor Savings Bank v. Vinson, CB 386-75
Harris v. Forklift Systems, CB 392-400

2. Hostile Work Environment Based on Race, CB 391-92

Harris v. International Paper, Supp.
Stray Remark Doctrine, CB 111-12

4/4/23:

3. Employer Liability

a. Harassment by Supervisors

Burlington Industries v. Ellerth, CB 400-09
Vance v. Ball State, CB 409-18
EEOC v. Management Hospitality of Racine, CB 418-31

b. Harassment by Co-Workers, CB 431-32

4/7/23: * Submit SECOND TEAM ASSIGNMENT via Canvas by 5 pm *

Please prepare a response of no more than 1000 words to the problem posted on Canvas; organization and prioritization will be valued when grading

4/10/23: E. The Meaning of Religion

EEOC v. Abercrombie & Fitch Stores, CB 433-40
Reasonable Accommodation in the Context of Religion, CB 440
Problem 5.2, CB 443-44
Note on Religion and Sincerity, CB 444-46
Note on Religious Harassment, CB 446
Note on Defenses & Exceptions Allowing Religious Discrimination, CB 446-47

4/11/23:

Note on Religious Institutions’ Exemptions, CB 447-48
Note on BFOQ Defenses, CB 448-49
Note on the Establishment Clause, CB 449-51

Our Lady of Guadalupe School v. Morrissey-Berru, CB 451-66

4/17/23: G. The Meaning of Retaliation

General Background, CB 481-84

Clark County School District v. Breeden, CB 484-88

Burlington Northern & Santa Fe Railway v. White, CB 495-502

4/18/23: IV. Returning to Core Issues & Strategies

A. Causation

University of Texas Southwestern Medical Center v. Nassar, CB 503-13

Problem 6.1, CB 513-14

B. Remedies

Albemarle Paper Co v. Moody, CB 645-49

4/24/23: Equitable Relief, CB 649-50

Duty to Mitigate, CB 664-65

Sooroojbaillie v. Port Authority of NY & NJ, CB 667-71

Kolstad v. American Dental Ass'n, CB 671-80

Statutory Caps, CB 681

Personal Liability, CB 682