

Workplace Law: Transactional Skills and Drafting

(Spring 2023)

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Class Meetings

W 3:30-5:30pm
Rm. HH-285A

Office Hours

W 5:30-6:30 (HOL 377)
Mondays by appt (Zoom)

General Comments

Welcome to Workplace Law: Transactional Skills & Drafting. This course is designed to introduce you to the basics of transactional drafting and related skills as they are applied in the formation and negotiation of workplace relationships.

We will focus on the full range of transactional skills used in workplace law practice and the various contexts in which they arise. As you might imagine, workplace law attorneys draft employment contracts. But comprehensive, heavily negotiated agreements of the type you see in other business deals are rare in the workplace. They are found almost exclusively in unionized work environments or with very high level, professional workers (such as CEOs). Most rank-and-file employees work without formal contracts. Their relationships with their employers are governed by a combination of policies, form documents, informal assurances, and background law. For this reason, we will focus not only on drafting contracts, but on drafting employer policies of varying degrees of formality.

As we undertake this work, we will consider relevant doctrine. All contracts are drafted with the law in mind: The drafting attorney must understand how a court is likely to interpret the relevant documents in the event the parties disagree and end up in litigation. In workplace law practice, the drafting attorney must also be mindful of constraints imposed by lawmakers on private ordering. For a variety of policy reasons, certain contract terms will not be enforced regardless of party agreement. Others may be interpreted in unexpected or idiosyncratic ways. And because workplace policy deeply affects personal autonomy and economic freedom, there is always the chance of new legislation or changes in existing law. We will try to understand the choices that sophisticated lawyers make in light of the existing legal regime and in the face of uncertainty -- that is, we will be operating "in the shadow of the law."

Finally, we will consider the practical, often personal, context in which drafting occurs and how that affects the attorney's role. In theory, transactional lawyers succeed by effectuating the client's will, using drafting and other skills to ensure that the opposing party (and if necessary, a court) will view the agreed-upon terms exactly as the client intends. But

real life makes this goal nearly impossible. As just noted, relevant law may be unclear or in flux. In addition, the client may have conflicting non-legal goals (financial, relational, etc.), and there is always another party to the deal -- as well as interested third parties -- whose concerns must be accounted for. Navigating these dynamics requires a skill set different from what a lawyer brings to bear in an adversarial situation. Rather than advocate to the limits of the law, transactional lawyers make strategic decisions, taking account of their client's multiple -- often competing -- interests, while weighing the risk of unfavorable legal, business, or personal consequences.

For all of these reasons, transactional drafting is never simply a matter of scribing or wordsmithing, but a complex process that draws on a range of legal skills, including knowledge of the law, communication and client management, negotiation and persuasion, and ethics and professionalism. Putting all of those things together is what comprises the lawyer's expertise and what makes transactional lawyering so challenging and rewarding.

Learning Outcomes

The overarching objectives of the course are for you to learn/obtain the following:

- (1) An understanding of how substantive workplace law and contract interpretation principles influence how lawyers draft employment contracts and policies;
- (2) The opportunity to develop and practice the craft of contract and policy drafting and to hone other practical writing skills;
- (3) The ability to review contract and policy documents from a compliance and risk management perspective;
- (4) An awareness of the non-legal considerations that motivate clients in planning workplace relationships and resolving workplace disputes, including how those interests may be in tension with legal goals.
- (5) An exposure to the "soft" skills required in representing corporate and individual clients in transactional workplace law matters, including client counseling, communication, relationship management, and problem-solving;
- (6) A preliminary understanding of the role and professional obligations of the workplace law attorney, including how to navigate entity client relationships, resolve ethical questions, and maintain personal and professional values while representing client interests.

Course Materials

There is no casebook. The primary materials will be documents related to specific problems and exercises and practice-oriented readings, found primarily in these sources:

1. Arnow-Richman & Ruan, [*Developing Professional Skills: Workplace Law*](#) (West 2017)
2. Stark, [*Drafting Contracts: How and Why Lawyers Do What They Do*](#) (Aspen 2014)
3. Neumann, [*Transactional Lawyering Skills*](#) (Aspen 2013)

The first source, Arnow-Richman & Ruan, is available as a West Academic “eProduct” and is free with your student west academic subscription (sign in on top right when you link above). The second, Stark, is not free, but it is the required textbook for the required upper-level transactional drafting course at UF law, which means that you have either already bought the book or will in the future. The third, Nuemann, is neither free nor required for any other course that I am aware of, but it is inexpensive and useful. You should buy this book, which is widely [available on Amazon](#) and elsewhere.

The substantive reading assignments will come from a range of sources. Those that are publically available, such as cases and articles, I will usually request that you to obtain on your own for copyright reasons. If you have already taken the general Employment Law course and still have your casebook, you can read many of the assigned cases there. I will post those readings that are more difficult to acquire (or for which I have prepared an edited version) to the relevant module (and assignments page) of the course CANVAS site.

Consider the assigned readings the minimum or “baseline” reading requirement for each class. Self-directed additional research and reading is strongly encouraged. Throughout this course, you will be expected to act as you would in real life. That may mean looking things up to familiarize yourself with what you need to know to advise your client or produce the work assigned, consistent with your professional obligations as an attorney. Conducting appropriate research includes being conscious of the amount of time spent relative to the demands of the situation and what the client is willing to pay. One of the many practice norms we will endeavor to learn together is how that balance should be struck.

Course Requirements & Assessment

Your grade for the course will be based primarily on the final deliverables you submit in fulfillment of four core written assignments. You will also be evaluated on minor or “practice” exercises (some of which will be conducted in class), your class participation (in various forms), and your timely completion of drafts/interim work in the course of completing the four core assignments. There is no midterm or final exam.

Core Written Assignments

You will produce the following final written deliverables:

- Module 1 - Revised discipline/termination policy and advice letter to client
- Module 2 - Revised noncompete and letter to opposing party
- Module 3 - Revised compensation provision and cover memo to opposing party
- Final reflection paper (essay style)

As you can see, the final deliverable for each module will include both a written contract/policy provision and a supporting letter or memo to the client or opposing party. You will be graded

on these deliverables. In the process of completing them, you will generally produce one or more drafts and interim documents, which will be evaluated primarily for timeliness and effort. We will also conduct period in-class exercises that may include short ungraded assignments that will count toward the participation component of the course.

For both practical and pedagogical reasons, most of the deliverables for the course will be completed in groups. Transactional work of any sophistication is almost always a joint process, incorporating input from colleagues, opposing counsel, and, of course, the client. To mitigate the logistical challenges group work poses and to avoid potential inequities, I will endeavor to keep groups small (usually only two students per group for core assignments), vary group composition over the course of the semester, and permit adjustments where necessary to accommodate idiosyncratic schedules. Where feasible I will also give students class time to complete group work, as well as the opportunity to confidentially evaluate the contributions of their teammates.

Unless otherwise specified, all written work must be turned in by the time and date indicated using the CANVAS submission tool for the appropriate assignment. Please note that due dates listed are tentative, and some are yet to be determined. Like real life, these dates will be confirmed pending how each problem unfolds in real time -- in other words, how you, as lawyers, handle the transaction and we, as a law office, manage our time. For planning purposes, however, you should expect to be handing in some form of written work (such as a draft or other interim work product) every week with final work products due every three weeks, depending on the components of the problem. All written products will be short. The policy or contract itself will be 1-2 pages and the supporting document 1-5 pages. The final reflection paper will be a maximum of five pages. All will involve only modest amounts of research, if any. You will not be writing any briefs or traditional research memos.

Participation

Given the structure and content of the course, class participation is a crucial part of your learning experience and that of your classmates. Please come to class as you would come to a job – with the expectation that you will be doing legal work. Have your “baseline reading” prepared, and be ready to discuss, question, and apply it in the context of the problem or exercise in which we are engaged. Most weeks I will aspire to run class like a law firm strategy meeting and only rarely engage in traditional case recital or Socratic questioning. Consider my role to be that of a supervising attorney to whom you will report your understanding of the law and the transaction and who will guide you in decision-making and execution.

In addition to the usual forms of in-class participation, over the course of the semester you will engage in several simulated interactions, including a client meeting, a client counseling session, and a negotiation with opposing counsel, some of which will be conducted outside of class. To the extent practical, I will consider your level of effort and the quality of your engagement in these simulated exercises as a component of your participation.

You may obtain further participation credit by contributing to the general discussion board on the course website. This forum may be used for any course-related purpose or to discuss any relevant workplace law topic. Especially welcome (and rewarded) are posts that share news stories, personal experiences, or other information about employment contracts or other workplace issues that you encounter outside of the class. Participating on the forum is optional, but encouraged. You should consider posting to the discussion board during weeks when, for any reason, you have not had an opportunity to meaningfully contribute in class.

Attendance

Given the nature of this course, regular attendance is critical. A portion of your grade will depend on your participation in classroom exercises and in class contributions, and your presence and contributions will affect the experience of your classmates. Should circumstances prevent you from attending any portion of class, I ask you to provide as much advance notice as possible. Be aware that do not distinguish between “excused” and “unexcused” absences. I treat students as law firm associates who manage their schedules and exercise judgment about how to balance competing commitments. All absences will count against the ABA requirement of 80% attendance with two exceptions: COVID-related absences and absences for religious holiday observances. Regardless of the reason, please handle your absence professionally. This means taking ownership of your choices, being circumspect in the amount of personal information you share, and making appropriate accommodations for what you miss in a way that is respectful of and minimally burdensome to your supervisor (professor) and colleagues (classmates). For more information, see the UF Law [attendance policy](#).

Assessment

Final grades for the course will be based on the following approximate percentages: Class participation (25%), interim assignments and in-class exercises (15%), final written deliverables (60%), reflection paper (10%). Grade distribution will follow UF’s [grading policy](#). All assessments are subject to UF’s student [Honor Code](#).

Assessment is your responsibility as well as mine. Students are expected to provide feedback on the quality of instruction in this course by completing [online evaluations](#). You will receive instructions about when and how to complete course evaluations during the last two or three weeks of the semester. [Summary results](#) of past assessments of the instructor are available for your review.

Accommodations & Assistance

Most students require or can benefit from assistance with or adjustments to their learning experience at some point in their careers, and I am happy to work with you to discuss pathways to success that suit your learning style. If you believe you require a more formal accommodation due to a physical or mental disability, please register with the [Disability Resource Center](#) as a first step. Once registered, students will receive an accommodation letter

that must be presented to the Assistant Dean for Student Affairs when requesting accommodation. If this applies to you, please initiate this procedure as early as possible in the semester and prior to reaching out to me.

Office Hours and Access

I will hold in-person office hours on Wednesdays after class and virtual office hours on Mondays by appointment. You are also welcome to drop in any time I am in my office or schedule an appointment with me by email.

Class Preparation, Schedule & Assignments

Out-of-Class Expectation

It is anticipated that you will spend approximately two out-of-class prep hours for each one hour of class time. Because of the nature of this course, that time will consist of writing, meeting in teams, participating in simulations and doing self-directed reading, although I will also assign “baseline” reading for each module.

First Assignment

A tentative schedule of topics and reading assignments for each module will be posted serially on the syllabus page of Canvas. (See the “Assignment Schedule 1” document for the first installment.) For the first class meeting on Wed. 1/18, your assignment is to read the following background materials:

1. Glynn, etal. Employment Law, Intro, pp. xxv-xxxix (posted)
2. Neumann, Transactional Lawyering, Ch. 1
3. Arnow-Richman, *Employment as Transaction*, 39 Seton Hall L. Rev. 447 (2009) (posted excerpt)

In addition, please SKIM the following documents:

1. UF-GAU [Collective Bargaining Agreement, 2021-23](#)
2. NFIB [Model Employee Handbook](#)