

Course Info.  
LAW 668-001  
EMPLOYMENT DISCRIMINATION

Professor: Susan Carle, American University Washington College of Law  
Class Hours: Mondays & Wednesdays, 1:00-2:20 p.m.  
Room: 601  
Professor's Office Hours: Friday 2:00 - 4:00 pm

## INTRODUCTION

This class covers the basics of federal employment discrimination law, with a strong emphasis on race and sex discrimination. We will look at the major theories for proving discrimination and for rebutting charges of discrimination. We will then look at a few selected topics or areas of application for these theories, including pregnancy discrimination, grooming codes, and sexual harassment. Employment discrimination law has come to be the keystone of contemporary approaches to employment law in the United States (though not in all parts of the world, it bears noting). It is therefore important that law students interested in any area of U.S. employment law achieve a firm grounding in the analytical bases of discrimination law. These bases relate to the structure of and distinctions among individual disparate treatment, systemic disparate treatment, and disparate impact cases. Many of the same general principles, such as proving and refuting disparate treatment claims, run through other areas of employment law as well. The tenuous and somewhat confused status of disparate impact theories captures our society's deep disagreements and ambivalences about the concept of discrimination in general. This course will accordingly focus on the analytical core of race and sex discrimination cases, leaving for other courses coverage of many topics that could be included here but also are covered in other courses WCL offers. Most significantly, this course omits coverage of disability discrimination law and national origin and religion discrimination, and only touches on briefly on age discrimination. It does not cover pension discrimination and discrimination against employees exercising rights protected by U.S. labor laws. Students interested in these fascinating topics are invited to pursue them in my or another upper level writing seminar, usually offered in the spring.

## ASSESSMENT AND EVALUATION

Your grade in this course will consist of three components, as follows:

Class participation: 10%

Mini Mid-term: 20%

Final Exam: 70%

### Class Participation:

You will be assigned to an "on call" group, as you will find posted on Blackboard, four times over the course of the semester. As long as you are present when you are called on, and are prepared for class and able to answer my questions with a basic degree of competence, you will receive full points for class participation. If you are not present or

not prepared when I call on you on your on-call days, you will receive proportionate point deductions.

#### Mini Mid-term:

There will be a 40 minute, open-book, open-notes, short- answer mini mid-term held during class on Monday, Oct. 18. The purpose of this mini mid-term is to ensure that you are up-to-date and on top of the course materials before we approach the final. I also use these short exams as a diagnostic tool to detect any areas of the course materials that need more coverage or analysis. I fully expect that all members of the class will pass the mini mid-term with flying colors.

#### Final Exam:

There will be two parts to the final exam. The first is a 1,000 word take-home essay, the question for which will be handed out and posted on Blackboard on the first day of class. You may work on this question throughout the semester, drawing on all the materials we have studied in class. We will devote class twenty-three to a general discussion of the question. This question is due when you hand in your in-class exam, as described below. It will be graded anonymously, separately from your in-class exam, so please put only your blind grading number on it.

The second part of the exam is a two-hour, in-class exam, to be held on the day scheduled by the registrar's office. It will consist of one "issue spotter" question, in which you will be presented with a factual narrative and asked to write a memo outlining the strengths and weakness of your client's case. The exam is open book and open notes. You may take it on your computer or by hand. It will not help you to copy material from your computer into your exam, but you are nevertheless bound by the honor code not to do so. You are also bound by the honor code not to discuss the exam, orally or in any other way, during the time you are taking it or afterwards (important because some of your classmates may have deferred the exam) until you get your graded exam back.

Each of the two exam questions will be weighted equally.

#### TEXTBOOKS

Michael Zimmer, Charles Sullivan, Rebecca, White, Cases and Materials on Employment Discrimination, Sixth Edition (Aspen Press, 2003) ("Casebook")

Zimmer, Sullivan & White, Employment Discrimination: Selected Statutes - supplement

Note: It is very important that you have the most recent versions of both of these texts - the main casebook is a new edition, please check that you are buying the Sixth edition.

#### ON CALL GROUPS

Group One = last names A - C

Group Two = last names D-G

Group Three = last names H-L

Group Four = last names M-Sm

Group Five = last names Sn - Z

Original Schedule of Assignments

### SCHEDULE OF READINGS

Please note – we are likely to vary somewhat from these readings as the semester goes on. You should check Blackboard at the end of each week to confirm the readings for the next week.

For all classes, you are responsible for looking up and reading all relevant statutory provisions in the statutory supplement.

8/23/04 - CLASS ONE - Introduction: Approaches to the Employment Relationship

Reading: Casebook, pp. 3-29 (26); Review table of contents of statutory supplement

Focus: Broad overview of employment law

On-call group: None

8/25/04 - CLASS TWO - Individual Disparate Treatment Discrimination

Reading: Casebook, pp. 77-97 (20)

Focus:

Slack v. Havens (S.D. Cal. 1973)

Hazen Paper Co. V. Biggins (US 1993)

On-call group: #1

8/30/04 - CLASS THREE - The Prima Facie Case

Reading: Casebook, pp. 97-122 (25)

Focus:

McDonnell Douglass v. Green (U.S. 1973)

McDonald v. Santa Fe Trail (US 1976)

On-call group: #2

9/1/04 - CLASS FOUR - Rebuttal and Proof of Pretext

Reading: Casebook, pp. 122-152 (30)

Focus:

Patterson v. McLean Credit Union (US 1989)

St. Mary's Honor Ctr. v. Hicks (US 1993)

Reeves v. Sanderson Plumbing (US 2000)

On-call group: #3

CLASS FIVE - Direct Evidence of Discrimination

Reading: Casebook, pp. 152-181 (29)

Focus:

Price Waterhouse (US 1989)

On-call group: #4

CLASS SIX - Present and Future of Individual Disparate Treatment Law

Reading: Casebook, pp. 181-98 (17)

Focus: Reading, plus Question and Review

On-call group: None

CLASS SEVEN - Systemic Disparate Treatment Discrimination

Reading: Casebook, pp. 199-210 (11)

Focus:

LA Dep't of Water and Power v. Manhart (US 1978)

Transworld Airlines v. Thurston (US 1985)

On-call group: #5

CLASS EIGHT - Pattern and Practice Cases

Reading: Casebook, pp. 210-236 (26)

Focus:

Teamsters v. US (US 1977)

Hazelwood Sch. Dist. V. US (US 1977)

On-call group: #1

CLASS NINE - Defenses to Disparate Treatment

Reading: Casebook, pp. 251-65 (14)

Focus:

Personnel Administrator v. Feeney (US 1979)

EEOC v. Sears Roebuck (7th Cir. 1988)

CLASS TEN - Bon Fide Occupational Qualifications

Reading: Casebook, pp. 265-282 (17)

Focus:

UAW v. Johnson Controls (US 1991)

On-call group: #2

CLASS ELEVEN - Voluntary Affirmative Action

Reading: Casebook, pp. 282-303 (20)

Focus:

Johnson v. Transp. Agency of Santa Clara County (US 1987)

On-call group: #3

CLASS TWELVE - More on Affirmative Action

Reading: Casebook, pp. 303-320 (17)

Focus:

Adarand Constr. v. Pena (US 1995)

On-call group: #4

CLASS THIRTEEN - Systematic Disparate Impact Discrimination

Reading: Casebook, pp. 321-341 (20)

Focus:

Griggs v. Duke Power (US 1971)

Wards Cove Packing v. Antonio (US 1989)

On-call group: #5

CLASS FOURTEEN - The 1991 Civil Rights Act

Reading: Casebook, pp. 341-373 (40) -PARE DOWN

Focus:

Watson v. Forth Worth Bank & Trust (US 1988)

Connecticut v. Teal (US 1982)

Problem 5.1

On-call group: #1

CLASS FIFTEEN - Defendant's Rebuttal

Reading: Casebook, pp. 373-400 (27) - PARE DOWN

Focus:

Lanning v. SEPTA

On-call group: #2

CLASS SIXTEEN - Section 703(h) Exceptions

Reading: Casebook, pp. 401-425 (25)

Focus:

On-call group: #3

CLASS SEVENTEEN - Pregnancy Discrimination

Reading: Casebook, pp. 470-486 (16)

Focus:

On-call group: #3

NOTE: LAST 40 MINUTES OF CLASS WILL BE DEVOTED TO MINI MID-TERM  
(pregnancy material will not be on the mid-term)

CLASS EIGHTEEN - Sexual Harassment

Reading: Casebook, pp. 486-516 (30)

On-call group: #4

CLASS NINETEEN - Vicarious Liability

Reading: Casebook, pp. 516-541 (25)

On-call group: #5

CLASS TWENTY - Grooming and Dress Codes

Reading: Casebook, pp. 541-549 (8)

On-call group: #s 1 & 2

CLASS TWENTY-ONE - Sexual Preference Discrimination

Reading: Casebook, pp. 550-573 (23)

On-call group: #s 2 & 3

CLASS TWENTY-TWO - Age Discrimination

Reading: Casebook, pp. 657-671 (14)

On-call group: #s 4 & 5

CLASS TWENTY-THREE - Back to the Beginning: The Policy Bases for Employment Law

Reading: Casebook, pp. 31-73

Focus: Exam question.

On-call group: None

NOTE: This important class will be held on Monday, Nov. 22. We will hold one make-up class early in the semester so that we can avoid having to meet on Wednesday, Nov. 24, the day before Thanksgiving.

CLASS TWENTY-FOUR

Reading: No new reading - review notes and readings; come to class with questions

Focus: Wrap up and review

On-call group: None