



RUTGERS

**SCHOOL OF MANAGEMENT AND LABOR RELATIONS
DEPARTMENT OF LABOR STUDIES & EMPLOYMENT RELATIONS**

EMPLOYMENT LAW

**PROFESSOR VIKRANT KISHIN ADVANI
COURSE NUMBER: 38:533:566**

SPRING 2023 – WEDNESDAYS 7:20-10:00 P.M.

**JANICE LEVIN BUILDING ROOM: 004
EMAIL: VKADVANI@SMLR.RUTGERS.EDU**

COURSE OBJECTIVES

- To acquaint students with the state and Federal framework of employment relations regulation (with the exception of collective bargaining);
- To familiarize students with the legal process, both judicial and administrative;
- To familiarize students with legal reasoning and methods of statutory interpretation;
- To instill in students an approach to employment relations which emphasizes good professional practice and preventive law;
- To provide students with the tools for further study of employment regulation.

SYNCHRONOUS LIVE IN- PERSON CLASS DESCRIPTION

Our class will be conducted live and in person. In the event that we are required to go back to virtual instruction, I will pivot back to live “virtual” Webex sessions.

I reserve the right to end class early or late depending on our workload.

MASKING

If desired, student may wear masks on campus and in buildings in non-private enclosed settings (e.g., common workspaces, workstations, meeting rooms, classrooms, etc.). Masks may be worn during class meetings and CDC guidelines suggest that said masks should completely cover the nose and mouth: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>

COURSE REQUIREMENTS

This is an introductory graduate course in employment law, and it heavily emphasizes student participation and group discussion. Students will be held responsible for reading and understanding all assigned materials, as well as participating fully in all class discussions.

GRADE CRITERION

Course grading is based on two examinations and class participation. The breakdown is as follows:

- | | |
|-------------------------|---------------------------------|
| 1. Midterm: | 40% of your overall final grade |
| 2. Final: | 45% of your overall final grade |
| 3. Class Participation: | 15% of your overall final grade |

The specific format of the examinations will be discussed at the appropriate time but I generally give a take home Fact Pattern and Definitions-styled Midterm and Final.

ATTENDANCE CRITERION

Vigorous Attendance & Class Participation Policy: I am requiring each student to **vigorously** participate in every in-person class, Zoom or otherwise.

First, this means that you must attend every class in a timely manner.

Absences are not encouraged. If you have two (2) unexcused absences, you will be docked a full grade (ex. B instead of an A). If you have three (3) unexcused absences, you will receive a failing grade for Class Participation. If you have four (4) or more unexcused absences, you will receive a failing grade for the class.

Second, you will not only be required to timely attend every class but you will be required to participate at least once in every class by engaging in substantive discussion about the discussed topic. It need not be scholarly and/or profound – However, it will require you to know your assigned materials.

Although I will be actively monitoring class attendance and participation, I will not be prompting you to participate – This is a graduate level class and your class participation

grade, which accounts for 15% of your overall grade, should be motivation enough. Also, just to be clear, “I don’t understand Concept X” does not qualify as substantive discussion.

Leniency Policy: Finally, the COVID pandemic and resulting health concerns are causing havoc in our personal and professional lives. If you have any personal/health-related reasons for skipping class, kindly advise me immediately so I can excuse your absence and arrange for you to view recorded lectures and/or request a student to provide you with notes. You will find me sympathetic and reasonable. However, if you fail to or refuse to communicate with me in a timely manner regarding your health/personal issues, I will not be as accommodating after the fact. The key is communication. Kindly communicate so I can be reasonable in accommodating you.

ELECTRONIC DEVICE CRITERION

There are no electronic devices allowed in class other than to facilitate your learning. This includes computers, cell phones, laptops, or tablets. You are not to check social media, email and/or text during our class. Although I prefer you take notes by pen/pencil, electronic note taking is allowed.

- I reserve the right to penalize any student (including removal, expulsion with a failing grade) who refuses to comply with this simple request for mutual respect.
- Textbooks will need to be purchased; If electronic copies of textbooks are purchased or rented, they can be viewed on your electronic device.
- You are NOT authorized to record the lectures on your own end – I ask that you respect my privacy as I respect yours – Willful Failure to comply with this policy will be heavily penalized. To restate – you do not have permission to record me and/or my images and/or my lectures, and I reserve **all** rights permitted under law to prosecute any such violations.

STUDENT CONDUCT POLICY

The conduct of all students is governed by the Rutgers University Academic Integrity Policy: http://academicintegrity.rutgers.edu/files/documents/AI_Policy_9_01_2011.pdf

Please be so advised.

STUDENT ACCOMMODATION POLICY

Rutgers University welcomes students with disabilities into all of the University's educational programs. In order to receive consideration for reasonable accommodations, a student with a disability must contact the appropriate disability services office at the campus where you are officially enrolled, participate in an intake interview, and provide documentation:

<https://ods.rutgers.edu/students/documentation-guidelines>

If the documentation supports your request for reasonable accommodations, your campus's disability services office will provide you with a Letter of Accommodations. Please share this letter with your instructors and discuss the accommodations with them as early in your courses as possible. To begin this process, please complete the Registration form on the ODS web site at:

<https://ods.rutgers.edu/students/registration-form>

COURSE MATERIALS

The required text is the 6th Edition of the Wilborn, Schwab, Burton & Lester's *Employment Law: Cases & Materials*. Please do not get the 5th edition – there are new cases and it will just annoy you and me. Yes, it is expensive – No, there are no alternatives. Rent it if you must.

Also, we will be using *Canvas* for handouts. If you do not know what *Canvas* is, please contact the appropriate staff at the Department or speak with a classmate.

Class 1: (1/18/23)

General Introductions/Opening Remarks

Introduction to the Legal System

Introduction to Regulation of Employment Relations

The Employment At Will Doctrine - A General Introduction & Discussion

HANDOUTS/VIDEO MATERIALS

The U.S. Legal System: Helpful YouTube Link

<https://www.youtube.com/watch?v=-JNVnyNgndY>

The Federal Court System: Helpful YouTube link

https://www.youtube.com/watch?v=i_mbkOYhLa0

The State Court System: YouTube link

<https://www.youtube.com/watch?v=Oq3n8hf8EoU>

Appealing to the U.S. Supreme Court: Helpful YouTube link

<https://www.youtube.com/watch?v=Y1bXI9Uu1SE>

Appealing to the NJ Supreme Court: Helpful Web Link

<https://www.bnmwlaw.com/additional-practice-areas/new-jersey-appeals-lawyer/filing-an-appeal-with-the-nj-supreme-court/>

How a Federal Law is Passed: Helpful YouTube Link

<https://www.youtube.com/watch?v=jYJOBBrgZ6U>

How a Law is Passed in NJ: Helpful YouTube Link

<https://www.youtube.com/watch?v=UkxX5O22enY>

Sources of Employment Law: Helpful YouTube link

<https://www.youtube.com/watch?v=msrMas7fZow>

Handout: How to Brief a Case: Writing a Student Brief

<https://www.lib.jjay.cuny.edu/how-to/brief-a-case>

Handout: U.S. Court System (Diagram)

https://www.columbia.edu/~mckeever/court_system.jpg

Handout: U.S. Circuit Court Map (Diagram)

<https://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links>

Handout: New Jersey Court Structure (Diagram)

[Scroll Down until you see New Jersey!]

https://staterrecords.org/court/court_structure

Handout: New Jersey Vicinages (Diagram)

<https://ballotpedia.org/Vicinage>

Handout: Supreme Court of New Jersey (Photo)

<https://www.njcourts.gov/courts/supreme/about>

Handout: Current U.S. Supreme Court Justices (Photos & Bios)

<https://www.supremecourt.gov/about/biographies.aspx>

Handout: Sources of Employment Law

[Virginia lawyer website, but very helpful]

<https://martinwrenlaw.com/blog/2012/sources-of-employment-law/>

Class 2 – (1/25/23)

The Contract Exception to the At Will Doctrine

Pages 74-133

Skagerberg v. Blandin
Chiodo v. General
Hetes v. Schiffman
Grouse v. Group
Veno v. Meredith
Pugh v. Sees Candies
Woolley v. Hoffman-La Roche
Demasse v. ITT

Class 3 - (2/1/23)

The Tort Exception to the At Will Doctrine

Pages 135-151; 161-167; 174-201

Nees v. Hocks
Wright v. Shriners
Johnston v. Del Mar
Agis v. Howard Johnson
Bodewig v. KMART
Fortune v. NCR
Murphy v. AHP

Handouts:

Pierce v. Ortho:

<https://law.justia.com/cases/new-jersey/supreme-court/1980/84-n-j-58-0.html>

New Jersey Conscientious Employee Protection Act (CEPA) – Relevant Portions

<https://law.justia.com/codes/new-jersey/2009/title-34/34-19/34-19-3/>

<https://law.justia.com/codes/new-jersey/2009/title-34/34-19/34-19-13/>

<https://law.justia.com/codes/new-jersey/2009/title-34/34-19/34-19-5/>

ADVANCED ISSUES IN NEW JERSEY RETALIATION LAW, by Alan H. Schorr,

<https://www.schorrlaw.com/articles/Advanced%20Issues%20In%20New%20Jersey%20Retaliation%20Law%20-%20March%202006.pdf>

Class 4 – 2/8/23)

Employee Privacy & Speech Rights in the Workplace

Pages 205-298 (read only upto “B. Statutory Claims” only); 308-313.

Enquist v. Oregon DOA
Rutan v. Republican Party
Garcetti v. Ceballos
Novosel v. Nationwide
Timekeeping Systems Inc.
3D LLC v. NLRB
Ontario v. Quon
KMART v. Trotti
Ehling v. Monmouth Ocean Hosp. Svc. Co.
Brunner v. Al Attar
Baughman v. Walmart
Soroka v. Dayton Hudson
Thatcher v. Brennan

Handout:

Hennessey v. Coastal Eagle
<https://law.justia.com/cases/new-jersey/supreme-court/1992/129-n-j-81-1.html>

Safety-Sensitive Positions and Random Drug Testing by Private Employers in New Jersey,
by Cory A. Rand, August 29, 2014
<https://www.njlawblog.com/2014/08/articles/employment/safety-sensitive-positions-and-random-drug-testing-by-private-employers-in-new-jersey/>

Class 5 - (2/15/23)

Defamation, Trade Secrets, Covenants Not to Compete & Employee Inventions

Pages 315-397

Elbeshbeshy v. Franklin
Zinda v. Louisiana Pacific
Sigal v. Stansbury
Jet v. Mulei
Dicks v. Jensen
PepsiCo v. Redmund
REM Metals v. Logan
Karpinski v. Ingrasci
BDO v. Hirschberg
Francklyn v. Guilford
Ingersoll-Rand v. Ciavatta

Class 6 - (3/1/23)

Status Discrimination - Disparate Treatment, BFOQ, Disparate Impact, Reasonable Accommodation;
NOTE: REVIEW OF MATERIAL TESTED IN MIDTERM TO BE DONE AT THIS CLASS

Pages 401- 456

McDonnell Douglas v Green
Price Waterhouse v. Hopkins
Desert Place v. Costa
Gross v. FBL Financial
Jespersion v. Harrah
Hazelwood v. U.S.
Griggs v. Duke
Meacham v. Knolls

Handout:

Civil Rights Law Protects Gay and Transgender Workers, Supreme Court Rules
<https://www.nytimes.com/2020/06/15/us/gay-transgender-workers-supreme-court.html>

NJLAD Protected Classes: <https://www.nj.gov/oag/dcr/employ.html>

CLASS WILL RECEIVE A TAKE HOME CLASS EXAMINATION, WHICH STUDENTS WILL HAVE TO TURN IN THE NEXT CLASS (3/2/22) BEFORE 7:20 PM. FAILURE TO DO SO WILL RESULT IN GRADE REDUCTIONS. THE MIDTERM WILL COVER CLASSES 2 THROUGH 5.

Class 7 - (3/8/23)

STUDENTS WILL HAVE TO TURN IN TAKE HOME EXAM BEFORE 7:00 PM. FAILURE TO DO SO WILL RESULT IN GRADE REDUCTIONS.

Sexual Harassment, Disability Discrimination; Affirmative Action

Pages 456 - 569

Harris v. Forklift Systems
Oncale v. Sundowner
Lyle v. Warner Brothers
Faragher v. City of Boca Raton
Jespersion v. Harah
Hively v. Ivy
Morris v. BNSF

US Airways v. Barnett
EEOC v. Picture People
Hoffman v. Carefirst
Johnson v. Transportation Agency
Taxman v. Board of Education

Handouts:

Lehman v. Toys R'Us
<https://law.justia.com/cases/new-jersey/supreme-court/1993/132-n-j-587.html>

NJ Supreme Court Rules on Supervisor Liability in Hostile Work Environment Sexual Harassment Cases, Pepper Hamilton LLP

https://casetext.com/analysis/nj-supreme-court-rules-on-supervisor-liability-in-hostile-work-environment-sexual-harassment-cases?resultsNav=false&PHONE_NUMBER_GROUP=C&sort=relevance&q=

New Jersey Sexual Harassment Law: Revisiting Lehmann v. Toys 'R' Us
<https://www.newjerseyemploymentlawyersblog.com/new-jersey-sexual-harassment-law-revisiting-lehmann-v-toys-r-us/>

SPRING BREAK 3/15/22

Class 9 - (3/22/23)

FLSA; Regulation of Compensation & Unemployment Compensation, WARN, FMLA

Pages 577-671; 688-720

Allen v. Chicago
Marshall v. Sam Dell's
Salinas v. Starjem
Flomo v. Firestone
Morgan v. Family Dollar
Robertson v. Opequon Motors
In re: Marriage of Suzanne Gulla
Brinker v. Superior Court
Whitaker v. Bosch
Byrne v. Avon
Serricchio v. Wachovia Securities
Knox v. Unemployment Compensation Board of Review
Wimberly v. Commission
MacGregor v. Appeals Board
Jones v. Review Board
McCourtney v. Imprimis
Roquet v. Arthur Andersen

Class 10 - (3/29/23)

Workers Compensation

Pages 891-958
NY Central RR Co. v. White
Millison v. Du Pont
Prows v. Industrial Commission
Santa Rosa College v. Appeals Board
Donahue v. Maryland
Katz v. Kadans
Hanson v. Reichelt
Nippert v. Shinn Farm

Class 11 - (4/5/23)

Occupational Safety & Health Act; General Duty Clause; Enforcement; State Legislation and Federal OSHA Standards; Criminal Prosecutions of Employers under OSHA

Pages 991 – 1000; 1032 - 1082

National v. OSHRC
Marshall v. Barlow's Inc.
Gade v. National
People v. Chicago Magnet

Class 12 - (4/12/23)

Employee Benefits – ERISA; Employer Provided Health Insurance/ ACA;

Pages 731-804; 809 -

Nemeth v. Clark
Donovan v. Bierwirth
LaRue v. Dewolff
Lorenzen v. Retirement Plan
Beach v. Commonwealth
Metropolitan v. Glenn
Pension Benefit v. LTV
Metlife v. Massachusetts
Golden Gate Restaurant v. San Francisco
Corcoran v. United Healthcare
M & G Polymers v. Tackett
EEOC v. Orion Energy

Class 13 - (4/19/23)

- **REVIEW FOR FINAL EXAMINATION/CATCH-UP**

Class 14 - (4/26/23)

- **REVIEW FOR FINAL EXAMINATION/CATCH-UP. TAKE HOME FINAL EXAMINATION – DUE 4/26/22 before 7:20 P.M. FAILURE TO DO SO WILL RESULT IN GRADE REDUCATION**