

**School of Management and Labor Relations**

**DEPARTMENT OF LABOR STUDIES & EMPLOYMENT RELATIONS**

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**EMPLOYMENT LAW**

**Professor Vikrant Kishin Advani**

**Course Number: 37:575:315**

**FALL 2020 – Wednesdays 6:10 - 9 PM**

**Synchronous Remote Instruction**

**Email: vkadvani@smlr.rutgers.edu**

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**COURSE OBJECTIVES**

* To familiarize students with the structure of the federal and state court systems, and judicial legal process and reasoning;
* To study, in depth, the various state and federal laws and constitutions that protect workers from discrimination based on protected categories including race, color, sex, religion, national origin, age, disability, and sexual orientation;
* To introduce students to various forums and procedures for litigating employment discrimination claims.
* To introduce students to alternative dispute resolution mechanisms that were often utilized to resolve employment discrimination claims.

**SCHOOL AND DEPARTMENT LEARNING OBJECTIVES**

***Labor Studies and Employment Relations Department: The student will be able to:***

* Demonstrate an understanding of discrimination law as it intersects with the perspectives, theories and concepts in the field of labor and employment relations. (Goal 1).
* Apply those concepts, and substantive institutional knowledge, to understanding contemporary developments related to work. (Goal II).

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* Demonstrate an understanding of how to apply knowledge necessary for effective work performance. (Goal VI)

**COURSE REQUIREMENTS**

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**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**

**Textbook**:

*Principles of Employment Law*, Smith, Hodges, Stabile, and Gely, ***Second Edition,*** Concise Hornbooks, ISBN: 978-1-68328-359-1. This textbook can be purchased online by searching for the ISBN#. Please buy this textbook as soon as possible so that we can hit the ground running. It is not expensive and there are download links – please do not procrastinate in getting this textbook. Here is an amazon link: [https://www.amazon.com/Principles-Employment-Law-Concise-Hornbook/dp/031416877X/ref=sr\_1\_fkmr0\_1?dchild=1&keywords=Principles+of+Employment+Law%2C+Smith%2C+Hodges%2C+Stabile%2C+and+Gely%2C+Second+Edition%2C+Concise+Hornbooks%2C+ISBN%3A+978-1-68328-359-1.&qid=1598892155&sr=8-1-fkmr0](https://www.amazon.com/Principles-Employment-Law-Concise-Hornbook/dp/031416877X/ref%3Dsr_1_fkmr0_1?dchild=1&keywords=Principles+of+Employment+Law%2C+Smith%2C+Hodges%2C+Stabile%2C+and+Gely%2C+Second+Edition%2C+Concise+Hornbooks%2C+ISBN%3A+978-1-68328-359-1.&qid=1598892155&sr=8-1-fkmr0)

No, you cannot purchase the first edition. Please buy the second edition. This is not negotiable.

In addition, course reading materials are found in the Canvas Resources section. I reserve the right to supplement, substitute, and/or modify the listed reading selections as I see fit.

**WRITTEN ASSIGNMENTS**

Your written assignments are to be submitted online. There are 3 assignments in total, and they total 25% of your overall grade.  All three are “case briefs” where you are going to read a case, answer specific questions, and submit your answers on Canvas. The first and second are worth 7% and 8 % respectively of your overall grade. The third assignment will be 10% of your overall grade.

While I will not be penalizing minute citation errors, I will check for typographical errors and copying/plagiarism and I expect you know the Rutgers policy against copying and plagiarism.

The written assignment due dates are in your syllabus.  Each assignment will be due at 6:00 PM on the assigned day.

There are no exceptions or alternatives to completing these written assignments on timely basis. If you fail to submit these assignments in a timely manner, you will be subject to grade reduction and/or a failing grade in any missed or late assignment.

**CLASS SCHEDULE:**

**CLASS 1: 9/2/20**

 Course Overview

 The U.S. Court System

Anatomy of a case

READINGS

How to Brief a Case: Writing a Student Brief

[*https://www.lib.jjay.cuny.edu/how-to/brief-a-case*](https://www.lib.jjay.cuny.edu/how-to/brief-a-case)

Handout: *U.S. Court System (Diagram)*

[*http://www.columbia.edu/~mckeever/court\_system.jpg*](http://www.columbia.edu/~mckeever/court_system.jpg)

Handout: *New Jersey Court Structure (Diagram)*

[*https://staterecords.org/court/court\_structure*](https://staterecords.org/court/court_structure)

Handout: *Supreme Court of New Jersey (Photo)*

[*https://www.njcourts.gov/courts/supreme/vm/scvirtual.html*](https://www.njcourts.gov/courts/supreme/vm/scvirtual.html)

Handout: *Current U.S. Supreme Court Justices*

[*https://www.supremecourt.gov/about/biographies.aspx*](https://www.supremecourt.gov/about/biographies.aspx)

Handout: *Sources of Employment Law*

*<http://www.omwlaw.com/wp-content/uploads/2013/01/Origins-of-Employment-Law_-United-States-State-and-Local-Jurisdictions.pdf>*

**CLASS 2: 9/9/20**

Employment at Will, Just Cause & the Contract Exception

READINGS:

Pages 23-38 (Read up to § 2.4.3)

Handout: *What is Just Cause?*

*<https://www.lexology.com/library/detail.aspx?g=1c2e14f1-4066-4755-a0be-884445198105>*

Handout: *Contracts, generally.*

 [*https://www.nolo.com/legal-encyclopedia/contracts-basics-33367.html*](https://www.nolo.com/legal-encyclopedia/contracts-basics-33367.html)

**CLASS 3: 9/16/20**

 Employment at Will, Just Cause & the Contract Exception, cont’d

 Promissory Estoppel

 Covenant of Good Faith & Fair Dealing

**READINGS**

Handout: *Woolley v. Hoffman-LaRoche, Inc.,* 99 N.J. 284 (1985)

[*https://law.justia.com/cases/new-jersey/supreme-court/1985/99-n-j-284-0.html*](https://law.justia.com/cases/new-jersey/supreme-court/1985/99-n-j-284-0.html)

Handout: *Savarese v. Pyrene,* 9 N.J. 595 (1952) (6 pages)

*<https://www.courtlistener.com/opinion/1443595/savarese-v-pyrene-manufacturing-co/>*

 Pages 38-42 (Read from § 2.4.3 up to § 2.5)

**CLASS 4: 9/23/20**

Employment at Will & the Tort Exception

READINGS:

 Pages 42-54 (Read from § 2.5 to § § 2.5.1.5)

Handout: *Pierce v. Ortho,* 84 N.J. 58 (1990) (18 pages)

[*https://law.justia.com/cases/new-jersey/supreme-court/1980/84-n-j-58-0.html*](https://law.justia.com/cases/new-jersey/supreme-court/1980/84-n-j-58-0.html)

**CLASS 5: 9/30/20**

 **WRITTEN ASSIGNMENT# 1 DUE at 6:00 PM:**

 **Brief *Pierce v. Ortho***

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

 **E**mployment at Will & the Tort Exception, cont’d

 The Whistleblower Statutory Exception

 Legislative Efforts to Erode the At-Will doctrine: Montana

READINGS:

 Pages 42-54 (Read from § 2.5 to § § 2.5.1.5)

Pages 67-70 (Read from § 2.6.1 to 2.6.3)

Handout: *CEPA Law*

[*https://law.justia.com/codes/new-jersey/2009/title-34/34-19/34-19-3/*](https://law.justia.com/codes/new-jersey/2009/title-34/34-19/34-19-3/)

[*https://law.justia.com/codes/new-jersey/2009/title-34/34-19/34-19-5/*](https://law.justia.com/codes/new-jersey/2009/title-34/34-19/34-19-5/)

*CEPA Rights for those Employees Who Exercise Their Rights under the*

*COVID Executive Order*

[*https://www.njlawblog.com/2020/03/articles/employment/employers-beware-retaliating-against-employees-covid-19/*](https://www.njlawblog.com/2020/03/articles/employment/employers-beware-retaliating-against-employees-covid-19/)

**CLASS 6: 10/7/20**

 Intentional Infliction of Emotional Distress

 Intentional Interference with Contractual Relations

 Brief Review for Exam 1.

READINGS:

Pages 60-67 (Read from § 2.5.2 to § § 2.6)

**CLASS 7: 10/14/20**

 **IN CLASS EXAM 1 – CLOSED BOOK/NOTES, COVERING CLASSES 1-6**

**CLASS 8: 10/21/20**

 The New Jersey Law Against Discrimination

 Title VII of the Civil Rights Act of 1964, ADA, ADEA

READINGS:

 Handout: *Discrimination Laws & Disparate Treatment (4 pages).*

 *Federal Discrimination Laws*

[*https://www.eeoc.gov/statutes/laws-enforced-eeoc*](https://www.eeoc.gov/statutes/laws-enforced-eeoc)

 *EEOC: How to File a Charge/Time Limitations*

[*https://www.eeoc.gov/time-limits-filing-charge*](https://www.eeoc.gov/time-limits-filing-charge)[*https://www.eeoc.gov/filing-charge-discrimination*](https://www.eeoc.gov/filing-charge-discrimination)

*McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973)

[*https://supreme.justia.com/cases/federal/us/411/792/*](https://supreme.justia.com/cases/federal/us/411/792/)

**CLASS 9: 10/28/20**

 **WRITTEN ASSIGNMENT# 2 DUE at 6 PM:**

 **Brief *Bostock v. Clayton County***

[*https://www.law.cornell.edu/supremecourt/text/17-1618#writing-17-1618\_OPINION\_3*](https://www.law.cornell.edu/supremecourt/text/17-1618#writing-17-1618_OPINION_3)

 Equal Employment Opportunity Commission (“EEOC”)

 The New Jersey Division on CivilRights (“NJDCR”)

National Origin Discrimination

English only” cases

READINGS:

Handout: *Equal Employment Opportunity Commission & The New Jersey Division On Civil Rights – Procedures & Filing Issues (2 pages)*

[*https://www.nj.gov/lps/dcr/filing.html*](https://www.nj.gov/lps/dcr/filing.html)

 *Garcia v. Spun Steak Company,* 998 F.2d 1480 (1993)

[*https://www.leagle.com/decision/199330913f3d2961248*](https://www.leagle.com/decision/199330913f3d2961248)

 *EEOC v. Premier*, 113 F.Supp. 1066 (N.D.Texas 2000)

[*https://law.justia.com/cases/federal/district-courts/FSupp2/113/1066/2577121/*](https://law.justia.com/cases/federal/district-courts/FSupp2/113/1066/2577121/)

**CLASS 10: 11/4/20**

 Sex Discrimination and Harassment

 READINGS:

 Handout: *Sexual Harassment (2 pages)*

 *Lehmann v. Toys ‘R’ Us, Inc.*, 132 N.J. 587 (1993)

*<https://law.justia.com/cases/new-jersey/supreme-court/1993/132-n-j-587.html>*

**CLASS 11: 11/11/20**

 Family Medical Leave Act (“FMLA”)

 NJ Family Leave Act (“FLA”)

READINGS:

 Handout: *Leave Options under FMLA and NJFLA*

[*https://www.njea.org/your-leave-options-under-njfla-and-fmla/*](https://www.njea.org/your-leave-options-under-njfla-and-fmla/)

Handout: *The Family & Medical Leave Act (*

[*https://www.dol.gov/agencies/whd/fmla*](https://www.dol.gov/agencies/whd/fmla)

Pages 210 – 220 (§ 5.2 to § 5.2.3)

**CLASS 12: 11/18/20**

 Fair Labor Standards Act/Equal Pay Act

 Rights of Undocumented Workers

READINGS:

 Pages 181 - 210 (§ 5.1.2 to § 5.2)

Handout: *Undocumented Workers May Sue for Overtime Under Fair Labor Standards Act, Federal Court Rules*

*<https://www.jacksonlewis.com/resources-publication/undocumented-workers-may-sue-overtime-under-fair-labor-standards-act-federal-court-rules>*

Handout: *Undocumented Foreign Workers May Recover Unpaid Wages under FLSA Despite Hoffman: Eleventh Circuit*

[*https://content.next.westlaw.com/Document/Ibb0a875aef0511e28578f7ccc38dcbee/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true*](https://content.next.westlaw.com/Document/Ibb0a875aef0511e28578f7ccc38dcbee/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true)

Handout: *Do Undocumented Workers have Rights to Sue for Unpaid*

*Wages*

*<https://hkm.com/employment-blog/undocumented-workers-right-to-sue-unpaid-wages/>*

**CLASS 13: 12/2/20**

 **WRITTEN ASSIGNMENT# 3 DUE at 6 PM:**

 **Brief *Aguas v. State of New Jersey***

[*https://caselaw.findlaw.com/nj-supreme-court/1692580.html*](https://caselaw.findlaw.com/nj-supreme-court/1692580.html)

 Unemployment Compensation

 Workers Compensation

 OSHA

READINGS:

 Pages 257 - 273 (§ 5.4 to § 5.5)

 Pages 282 - 305 (§ 6.1 to § 6.2)

 Handout: *New Jersey Unemployment Law*

[*https://nj.gov/labor/handbook/content/QandABenefits.html*](https://nj.gov/labor/handbook/content/QandABenefits.html)

Handout: *NJ Unemployment Law & COVID*

[*https://www.nolo.com/legal-encyclopedia/collecting-unemployment-benefits-new-jersey.html*](https://www.nolo.com/legal-encyclopedia/collecting-unemployment-benefits-new-jersey.html)

[*https://www.northjersey.com/story/news/new-jersey/2020/08/27/300-unemployment-nj-everything-you-need-know/5643356002/*](https://www.northjersey.com/story/news/new-jersey/2020/08/27/300-unemployment-nj-everything-you-need-know/5643356002/)

Pages 305 - 323 (§ 6.2 to end of chapter)

**CLASS 14: 12/9/20**

 **IN CLASS EXAM 2 – CLOSED BOOK/NOTES, COVERING CLASSES 8-13**

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**EMPLOYMENT DISCRIMINATION LAW**

**Professor Vikrant Kishin Advani**

**Course Number: 37:575:316**

**FALL 2020 – Wednesdays 6:10-9:00 PM**

**Synchronous Remote Instruction**

**Email: vkadvani@smlr.rutgers.edu**

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**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**

**Textbook**: *Understanding Employment Discrimination*, Thomas Haggard, 2nd Edition, ISBN # 978-1-4224-7358-0. This textbook can be purchased online by searching for the ISBN#. Please buy this textbook as soon as possible so that we can hit the ground running. It is not expensive and there are download links – please do not procrastinate in getting this textbook. Here is an amazon link: <https://www.amazon.com/Understanding-Employment-Discrimination-Thomas-Haggard/dp/1422473589>

No, you cannot purchase the first edition. Please buy the second edition. This is not negotiable.

In addition, course reading materials are found in the Canvas Resources section. I reserve the right to supplement, substitute, and/or modify the listed reading selections as I see fit.

**WRITTEN ASSIGNMENT**

Your written assignment is to write a paper of 10-12 pages maximum (double-spaced) analyzing the recent developments in legal protections offered for employees’ sexual orientation under Title VII.  Your analysis will be based on research that should include a minimum of three scholarly and/or law review articles.  Be sure to use proper citations.  While I will not be penalizing minute citation errors, I will check for plagiarism and I expect you know the Rutgers policy against plagiarism.

The Final Paper is due on 11:00 AM on December 2, 2020 and is worth 25% of your overall final grade.  There are no exceptions or alternatives to completing this written assignment on timely basis. If you fail to submit this assignment in a timely manner, you will be subject to grade reduction and/or a failing grade in this assignment.

**CLASS SCHEDULE:**

**GRADE CRITERION**

Class Attendance and Participation (15%)

In Class First Exam (40%)

In Class Second Exam (45%)

# NO ELECTRONIC DEVICE CRITERION

* **There are no electronic devices allowed in class. This includes computers, cell phones, laptops, tablets or tape-recording devices.**
* **Yes, this means that you will have to take notes by pen/pencil on paper in class and pay attention. All of your electronic devices must be turned off and/or removed from the lecture room.**
* **Textbooks will need to be purchased; If electronic copies of textbooks are purchased or rented, they will need to be printed out for class. No exceptions.**
* **Failure to comply with this requirement will result in your immediate removal from class; repeated failure will result in your expulsion from the clas with a failing grade.**
* **This policy is not negotiable: If you find this to be onerous, feel free to choose another class that better fits your lifestyle.**

# ATTENDANCE CRITERION

* **Attendance is a must**, and failure to attend class will result in a poor “Class Attendance & Participation” grade (15% of overall course grade) and potentially a failing or incomplete overall course grade.

**To be clear**, if you have more than 2 unexcused absences you will receive a full grade deduction (or a B); If you have more than 3 unexcused absences you will receive a full 2 grade deduction (or a C);

**VERY IMPORTANT:** If you have more than 4 unexcused absences you will receive a full 3 grade deduction (or a D), **and I will most likely assess you an incomplete grade in my class regardless of performance on exams.**

* **Coming Late and Leaving Class Early:** I have noticed that students like to arrive late and leave class early just to sign and generally establish that they were in class – This is unacceptable. If you leave class early and you have not been cleared to do so, you will be subject to the above deduction rules. If you come to class late, you must approach the TA after class and advise when you entered class and I will decide whether you will credit for attendance on said date.
* **Attendance Policy is Not Negotiable:** While I am generally lenient with students facing family or work related concerns and emergencies, I am no longer going to negotiate the attendance policy with students on an individual basis. Every student must be held accountable to the same standard. If my attendance policy is too onerous to your lifestyle, feel free to choose another class that better fits same.

**ACADEMIC INTEGRITY 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:

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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:

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