I. **Read This Syllabus – I Mean It**

In my experience, a lot of students don’t read the syllabus and then look inattentive by asking questions the syllabus covered. E.g.: “uhhh, by when do we have to sign up on TWEN?” (see Section IV); “what will the final exam be like?” (see section IV(A)). This syllabus supersedes any prior or other information you may have about the course, and it covers all course policies in just this first page, so there’s no “I didn’t have the time” excuse.

II. **Course Description & Scope**

The course examines the rights and obligations of employers and employees. It is a far broader course than Employment Discrimination but covers discrimination only minimally, instead ranging among the following and other topics: the status and decline of the employer’s traditional right to terminate employees “at will”; employees’ rights to sue for termination against public policy or whistleblower, discrimination, and other statutes and common-law doctrines; minimum/overtime wage claims; public employees’ constitutional First Amendment, Fourth Amendment, and other rights; the enforceability of employment handbooks, letters, and oral promises; employees’ rights to family/medical leave; and various employee/employer rights and obligations, such as employee privacy, defamation, and non-competition/non-solicitation agreements; employers’ mandatory arbitration policies for employee claims; unemployment insurance; and workplace health and safety regulation.

III. **Contacting Me**

Email is the most reliable way to reach me at any time. I generally am in my office most weekdays. You can stop by anytime, but if you call or email in advance, I can make sure I am present and available when you need to speak with me. My office room number, phone number, and email are at the top of this syllabus.

IV. **TWEN – Mandatory to Sign Up**

By Monday, August 30, 2010, you must sign up for the course’s TWEN (Westlaw) web page, which I will use to post course assignments and readings (other than those in the course book) and for other purposes. The TWEN page will be posted during the first week of classes.

V. **Class Participation**

Because doing the reading and participating in class matter, I like to mix cold-calling (especially if I haven’t heard you speak in a while) with calling on volunteers. If you are unprepared when called on, (1) just say you are not prepared, don’t make something up, and (2) expect to be called on in one of the next few classes – a policy I like because it gives you a chance to “recover.” If you have a reasonable excuse for being unprepared or absent, it is in your interest to let me know before class so that I (1) won’t call on you if you’re unprepared and (2) will know there is a reason you are unprepared other than ongoing lack of interest in doing the reading.

VI. **Grading**

A. **Final Exam, But No Midterm**

There will not be a midterm, just a final exam. Your final exam grade is your presumptive course grade, subject to the plus/minus factor detailed below. The final exam most likely will have the following two-part format (though I reserve the right to announce a change as the semester progresses): (1) A multiple choice test of roughly 20-25 questions (open-book, scan-tron; probably one hour); and (2) One traditional “issue-spotter” essay question (open-book, typing mandatory; probably two to three hours).

B. **Participation Plus/Minus Factor**

I run a discussion-based class, because I see that as the best way to learn this material. Discussions only work if people discuss, so I consider class participation in grading. Specifically, your grade may rise or fall one notch based on your class participation: if your final exam grade is B, your course grade probably will be B, but (1) you might drop to B- for weakness in your participation (which includes attendance, because you cannot participate if you are not there), and (2) you might rise to B+ if your participation is especially strong. Application of the plus/minus factor is the exception, not the rule. Frequent participation does not guarantee a grade boost, so the vast majority of you who receive no boost should not think I had some problem with your participation.
VII. **COURSE MATERIALS**

- various handouts I will distribute throughout the semester

VIII. **READING ASSIGNMENTS**

- Carefully follow the below notations of not only which pages, but which portions of each page, and which numbered notes, you should and shouldn’t read.
  - For the first class, read pages 683-703.
  - Class-by-class reading assignments will be posted on TWEN or emailed (also through TWEN). If you want to get ahead on the reading, you can guess the next assignment from the average of 18 pages for each class session.

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I **Job Security: Employment at Will & Employee Termination Claims (142 pg)**

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<th>A</th>
<th>The Employment-at-Will Doctrine</th>
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<td>B</td>
<td>Employee Contract Rights</td>
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<td>1 What Constitutes a “Contract” Providing Employees Job Security Rights?</td>
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<td>2 What Constitutes “Good Cause” or “Just Cause” for Termination?</td>
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<td>1 The Effect of Employer Disclaimers of Job Security Rights</td>
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<td>Doctrines and Theories Against Various Terminations</td>
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<td>1 Good Cause Statutes, Implied Covenant of Good Faith, &amp; the Life-Cycle Theory of Employment</td>
<td>731-741 (thru n.3 on 740-71, but skip n.1-3 on 737) (9.5pg)</td>
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<td>2 Promissory Estoppel</td>
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<td>3 Tortious Interference with Contract Rights</td>
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<td>4 Discrimination Statutes</td>
<td>115-125 (thru n.4); 749-755 (thru end of Problems) 133-134; 136 n.1; 138-144 (23.5pg)</td>
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<td>5 Anti-Retaliation, Whistleblowing, &amp; Free Speech Rights</td>
<td>755-787 (skip n.2-3 on 785-86); 531-533 (just n.8-12) (22pg)</td>
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<td>Employee Claims Other Than for Termination</td>
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<td>1 Claiming Wrongful Actions Short of Termination</td>
<td>787-795 (thru n.2) (8pg)</td>
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<td>2 Infliction of Emotional Distress; Abusive Supervision</td>
<td>540-545 (thru end of GTE); 546-547 (n.5-7) (5.5pg)</td>
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<td>3 Harassment: Sexual, Discriminatory, or Retaliatory</td>
<td>549-551; 562-567 (skip numbered notes on 567); 558-561 (n.2,3,6,9,10) (8pg)</td>
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<td>F</td>
<td>Government Employees’ Civil Service &amp; Due Process Protections</td>
<td>797-803 (thru n.4) (6.5pg)</td>
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II **Employee Rights That Mitigate the Impact of Termination (35.5 pg)**

| A | Employee Claims of Defamation & Unconstitutional Stigmatization | 811-820 (thru n.8); 822-826 (thru n.4) (13pg) |
| B | Unemployment Compensation | 826-833 (thru n.1); 834-838 (11.5pg) |
| C | Mass Layoffs & Plant Shutdowns | 839-849 (11pg) |

III **Workplace Safety & Health: Alternatives to Tort Litigation (38 pg)**

| A | The Workers’ Compensation System |               |
|   | 1 How It Works in Place of Tort Suits | 415-418; 422-423 (just n.1); 424-426 (thru n.2, but skip n.1) (5pg) |
|   | 2 Injury ‘Arising Out Of’ & ‘In The Course Of’ Job | 428-437 (skip n.1-2 on 431-432) (9pg) |
|   | 3 Disqualification | 448-450 (skip the numbered notes); 451-453 (4pg) |
|   | 4 Employer Interference with Workers’ Comp Benefits | 453-454 (1pg) |
|   | 5 Exception for Intentional Torts | 460-464 (thru n.1) (4pg) |
B Occupational Safety & Health Regulation
   1 The Evolution of a Government Regulatory Scheme 466-471 (skip n.2-4,6) (4pg)
   2 Employer Duty: General Duty Clause & Regulatory Standards 471-477 (thru n.4, but skip n.2-3); 479-480 (6pg)
   3 Employee Rights 493-494 (thru 1st paragr of Whirlpool); 500-501 (n.4-5) (3pg)
   4 Employer Rights 508 (just the paragr before the case); 513-514(n.1-6) (2pg)

IV Employee Wages & Benefits (88.5 pg)
A The Minimum Wage, Overtime Wages, & Wage Deductions
   1 The Required Rates 263-270 (6.5pg)
   2 Exempt vs Nonexempt Employees 270-273; 280-281 (n.3-4) (4.5pg)
   3 What Compensation Counts? 281-286 (5.5pg)
   4 What Hours Count? 286-293 (skip n.7-8 on 292) (6.5pg)
   5 Employers Charging Employees for Expenses & Losses 294-304; 321-322 (11.5pg)
   6 Enforcement & Remedies, Federal & State 308-311 (thru n.2) (3pg)
B Deferred & Contingent Compensation
   1 At Common Law 324-329 (thru n.3) (5pg)
   2 ERISA & Other Statutes 330-347 (thru 1st 6 lines on 347); 357-358 (n.7-8); 376-378 (21pg)
C Family and Medical Leave
   1 Personal Needs 638-647 (thru n.1) (8.5pg)
   2 Family Obligations 651-662 (thru n.3 on 662, but skip the notes & problems on 654-655 & 656-657) (10.5pg)
   3 Rights to Restoration, Noninterference, & Nondiscrimination 662-669 (skip n.2-5 & n.8) (6pg)

V Who Are “Employees” or “Employers” Covered by the Employment Laws? (41 pg)
A Employees vs Independent Contractors, Owners, & Volunteers 25-37 (thru n.5); 43-45 (15pg)
B Immigrant Workers
   1 The Rule Against Hiring Unauthorized Aliens 57-65(thru n.5, but skip n.2-4) (6pg)
   2 Limitations on Damages for Unauthorized Aliens 65-71 (thru end of p.71); 73-74 (n.3,4,6) (8.5pg)
C Who Are “Employers” Covered? 77-83 (thru n.3); 85-90 (11.5pg)

VI Protected Employer Interests, & Related Employee Obligations/Restrictions (26 pg)
A Implied Rights & the Employee Duty of Loyalty 851-859 (through n.10, but skip n.7-9) (7.5pg)
B Express Contractual Restrictions on Employees
   1 Limits on Resignation 875-879 (thru n.9) (5pg)
   2 Limits on Competition 880-892 (thru end of subpart (b), just not the Lester article; & skip the Problem on 891-92); 896 (n.1-3); 900 (n.2) (13.5pg)

VII Investigation of Applicants, Interrogations, & Searches of Employees or Applicants (81.5 pg)
A Investigation of Applicants
   1 Drug Tests 169-171 (1.5pg)
   2 Medical Tests and Privacy Law 171-179 (thru n.1); 202-212 (thru n.5) (18pg)
   3 Background Checks & Investigations 180-185 (skip parts III-V); 187-191 (9pg)
   4 Interrogations of Employees 191-201 (thru n.3) (10.5pg)
B Investigation of Employees
   1 Searches 593-604 (thru n.9, but skip Part IV of the case on 600-601) (11pg)
   2 Drug Tests 605-609 (4pg)
   3 Surveillance 609-616 (thru n.3) (9.5pg)
   4 Interrogations of Employees 569-576 (skip n.1-2 on 573-574) (7pg)
C Polygraph, Honesty, Character Tests 214-219 (thru n.2); 220 (just the last paragr before the case) 226 (n.5); 585-589; 590-591 (n.5-7) (11pg)

VIII Arbitration of Employment Claims (10 pg) 939 (just the 1st full paragr); 941-951 (thru n.7) (skip n.4) (10pg)