

# EMPLOYMENT LAW

Fall 2007, University of Colorado Law School  
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## **I. READ THIS SYLLABUS – I MEAN IT**

In my experience, a lot of students don't actually read the syllabus and then look inattentive by asking questions the syllabus clearly covered. *E.g.*: "uhhh, by when do we have to sign up on TWEN?" (*see infra* Section III); "what will the final exam be like?" (*see infra* section IV(A)). Reading the syllabus is especially important because this syllabus supersedes any prior or other information you may have heard or read about this course. Also, this syllabus 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. The wide range of topics includes: 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 under various statutes, such as whistleblower and discrimination laws; minimum/overtime wage claims; public employees' constitutional First Amendment, Fourth Amendment, and Due Process rights; the enforceability as of employment handbooks, letters, and oral communications; employees' rights to family/medical leave; and various employee/employer rights and obligations – for example, privacy rights, 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**

I will generally be in my office most weekdays. You can just stop by, or you can call or email in advance to make sure I am available at a certain time. Email probably is the most reliable way to reach me at any time.

## **IV. TWEN – MANDATORY TO SIGN UP**

By September 6th, you must sign up for the course's TWEN (Westlaw) web page, which will be used for posting course assignments and readings (other than those in the course book) and for other purposes. The TWEN page will be up by the end of 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 from you in class 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 probably is in your interest to let me know in advance by email, so that (1) I don't call on you if you're unprepared and (2) I know there is a reason other than disinterest.

## **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 (in class, open-book; probably one hour); and (2) One traditional "issue-spotter" essay question (take-home, 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 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**

- Richard Carlson, Employment Law (2005)
- various handouts I will distribute throughout the semester

## **VIII. READING ASSIGNMENTS**

- Read, do not skip, the numbered notes on the assigned pages – except notes the assignment says to skip
  - For the first class, read pages 650-669.
  - Class-by-class reading assignments will be posted on TWEN. If you want to get ahead on the reading, you usually can guess the next assignment from the average of 15-20 pages per class.
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### **I Job Security: Employment at Will & Employee Termination Claims**

A	The Employment-at-Will Doctrine	650-54
B	Employee Contract Rights	
1	What Constitutes a “Contract” Providing Employees Job Security Rights?	654-78,224-28
2	What Constitutes “Good Cause” or “Just Cause” for Termination?	678-81
C	Employer Countermeasures Against Employee Claims of Job Security	
1	The Effect of Employer Disclaimers of Job Security Rights	682-88
2	The Employer’s Modification or Revocation of Job Security Provisions	688-95
D	The Life-Cycle Theory of Employment	697-703
E	Legal Doctrines Against Various Terminations	
1	“Good Cause” Statutes & Implied Covenants of Good Faith	703-06
2	Promissory Estoppel	707-11(skip n.5)
3	Tortious Interference with Contract Rights	711-15(skip n.2)
4	Discrimination Statutes	715-20(thru n.2), 120-21(just n.6-7)
5	Anti-Retaliation Statutes & Common-Law Rules	721-33, 740-45
6	Public Employees’ Free Speech Rights	503-04(just n.6-8)
F	Employee Claims Other Than for Termination	
1	Claiming Wrongful Actions Short of Termination	745-52
2	Infliction of Emotional Distress	752-53, 509-516(thru n.7)
3	Harassment – Sexual, Discriminatory, or Retaliatory	518-20(skip last 5 lines on 520)
G	Government Employees’ Civil Service & Due Process Protections	753-59(thru n.4)
H	Union Collective Bargaining Protections & Arbitrator Decisions	760-66(thru n.3)

### **II Employee Rights That Mitigate the Impact of Termination**

A	Employee Claims of Defamation & Unconstitutional Stigmatization	767-82
B	Unemployment Compensation	782-87(thru n.3),790-94
C	Mass Layoffs & Plant Shutdowns	794-804(skip n.2-3 on 796 & n.3 on 804)

### **III Workplace Safety & Health: Alternatives to Tort Litigation**

A	The Workers’ Compensation System	
1	Why It Replaced Tort Lawsuits & How It Works	389-92, 396-97(just n.1), 398-400(skip n.1)
2	Injuries ‘Arising Out Of’ & ‘In The Course Of’ Job	401-08, 419-20(just n.3,5)
3	Disqualification	424(just n.1-2)
4	Employer Interference with Workers’ Comp Benefits	427-28
5	Exception for Intentional Torts	434-39(thru n.2)
B	Occupational Safety & Health Regulation	
1	The Evolution of a Government Regulatory Scheme	440-45(skip n.4-6)

2	Employer Duties & the “General Duty” Clause	445-50(thru n.1)
3	Employee Rights	466-67, 473-75(n.3-5)
4	Employer Rights	481-87
<b>IV</b>	<b><u>Employee Wages &amp; Benefits</u></b>	
A	The Minimum Wage, Overtime Wages, & Wage Deductions	
1	The Required Rates	244-50
2	Exempt vs Nonexempt Employees	250-61
3	What Compensation Counts?	261-67
4	What Hours Count?	267-74
5	Employers Charging Employees for Expenses & Losses	274-83, 295-96
6	State Wage Payment & Deduction Laws	283-84, 287-88 (just n.1-2)
7	Enforcement & Remedies	289-91
B	Deferred & Contingent Compensation	
1	At Common Law	298-304
2	ERISA & Other Federal Statutes	305-19 (thru paragr starting on bottom of 318), 320-21, 351-53, 377-78
C	Family and Medical Leave	
1	Personal Needs	605-15(thru n.7)
2	Family Obligations	618-29(skip notes on 624)
3	Rights to Restoration, Noninterference, & Nondiscrimination	629-635(thru n.2)
<b>V</b>	<b><u>Who Are “Employees” or “Employers” Covered by the Employment Laws?</u></b>	
A	Employees vs Independent Contractors, Owners, & Volunteers	23-34(thru n.5), 40-42
B	Immigrant Workers	
1	The Rule Against Hiring Unauthorized Aliens	54-60(skip n.2-4), 297-98
2	Limitations on Damages for Unauthorized Aliens	60-71(thru n.8)
C	Who Are “Employers” Covered?	72-88
<b>VI</b>	<b><u>Protected Employer Interests, &amp; Related Employee Obligations/Restrictions</u></b>	
A	Implied Rights & the Employee Duty of Loyalty	805-813
B	Express Contractual Restrictions on Employees	
1	Express Limits on Resignation	828-32 (thru n.3)
2	Express Limits on Competition	834-47, 850-51(n.1-3), 854-55(n.1-3)
<b>VII</b>	<b><u>Employer Investigations, Searches, &amp; Interrogations of Employees &amp; Applicants</u></b>	
A	Intrusive Investigation of Applicants: Medical & Drug Tests	158-60
1	Medical Tests and Privacy Law	170-75(skip parts III-V), 177-80
2	Drug Tests	192-200(skip n.2)
B	Intrusive Investigation of Employees	
1	Searches	562-73(thru n.9)
2	Drug Tests	574-78
3	Surveillance and Electronic Communications	578-85(thru n.2), 587-94(skip n.3-4 on 594)
C	Investigations & Background Checks of Applicants	181-190
D	Polygraph & Other Honesty/Character Tests	203-208(thru n.2), 209 (just the last paragr before the case), 215(just n.6), 554-58, 559(just n.6)
E	Interrogations of Employees	539-547(thru end of paragr w/ block quote)
<b>VIII</b>	<b><u>Alternative Dispute Resolution of Employment Claims</u></b>	
A	Arbitration	890-905 (thru n.6) (skip paragr starting on bottom of 893 & ending on top of 894)
B	Mediation	912-917