

**WESTERN STATE UNIVERSITY  
COLLEGE OF LAW**

**EMPLOYMENT LAW**

Neil Pedersen

Fall 2013

**Class Syllabus**

**Course Overview**

To provide the student with a basic survey of the vast and varied practice areas encompassed in the general classification “employment law.” The course will explore the fundamental bases that form the employment relationship, the rights and duties of both employees and employers, and the common statutory and case law systems related to the employee-employer relationship.

**Learning Objectives**

Objective One: The student should understand the various disciplines within this large field which should better enable them to make certain externship, clerking and preliminary career choices.

Objective Two: The student should understand his or her legal rights and duties as both employer and employee after law school.

Objective Three: Through classroom participation, the student should further develop oral advocacy basic competence.

Objective Four: The student should learn some practical approaches to advising both employer and employee clients on common employment-related topics.

**Required Materials**

Employment Law: Cases and Materials (5<sup>th</sup> ed.) by Willborn, Schwab, Burton and Lester published by LexisNexis.

The required text is to be brought to all classes. The student is expected to have read the material assigned for each week and to be ready to engage in a knowledgeable, in-depth, spirited discussion of the issues raised in the assignment.

Additional material, including handouts or library research, may be assigned during the semester at the professor’s discretion.

I intend to be fully prepared for each class and I expect nothing less from the student.

## **Examination and Grading**

Your grade will be based on a mid-term and a final examination.

The mid-term examination will be a multiple choice test. It will occur in week eight of the semester, and will cover the materials discussed in the first 7 weeks of class. The mid-term grade will represent one-third of your overall grade in the class.

The final examination will be a single essay worth two-thirds of the class grade. The final examination may cover any material covered during the course.

Applicable grading policies and procedures of the university will be implemented in producing the final grades.

## **Classroom Participation**

Although you are not going to be graded on classroom participation, I expect regular attendance and full participation of all class members in each class.

More important than a grade is your reputation, which you are formulating as a law student. I expect none of my students will want to create a reputation of laziness or unpreparedness with their classmates or their professor. That reputation will stay with you far longer than a single class grade.

## **Office Hours**

As an adjunct and a full-time practicing lawyer, I will not maintain regular office hours at the school. That said, I promise to make myself reasonably available to any student who wishes to meet with me or talk with me.

I can make myself available at the school in the evening before or after class, and I am also willing to allow students to come to my office for appointments to discuss the class. I would also encourage phone conversations.

To schedule an appointment for a meeting or telephone call, please send me an email at [npedersen@pedersenlaw.com](mailto:npedersen@pedersenlaw.com). While I will remain flexible, it would be best if you try to schedule an appointment at least two days prior to the meeting or phone conference you are requesting.

**Week 1: LEGAL BOUNDARIES OF THE EMPLOYER/EMPLOYEE RELATIONSHIP.**

Forms of Employer-Worker Relationships

Employee vs. Independent Contractor

Economic Reality Test

Employee vs. Partner/co-shareholder

“Covered Employee” issues

“Covered Employer” issues

Joint Employer Doctrine

Please read and be ready to discuss the content on pages 13-44 of the text.

Please read and be ready to discuss the web content located at [http://www.dir.ca.gov/dlse/FAQ\\_IndependentContractor.htm](http://www.dir.ca.gov/dlse/FAQ_IndependentContractor.htm)

**Week 2: FUNDAMENTAL TERMS AND CONDITIONS IN THE EMPLOYEE/EMPLOYER RELATIONSHIP.**

At will employment

Exceptions to at will employment

Agreements that expressly provide for termination for cause

Term agreements

Where no provision for termination, termination terms implied by law

Implied Contract not to terminate except for good cause

Defining Good Cause

Please read and be ready to discuss the content on pages 45-116 and 167-173 of the text

**Week 3: BASIC EMPLOYEE RIGHTS**

Political rights and free speech issues

Public employee vs. private employee

Employee privacy issues

In the workplace

Away from the workplace

Drug testing

Rights to thoughts and inventions

Reading assignment: pp. 193-274 and 377-392 of the text

**Week 4: DISCRIMINATION, RETALIATION AND HARASSMENT IN THE WORKPLACE**

Federal Laws

Title VII

ADEA

ADA and ADAAA

Section 1981

Others

Reading assignments:

The text of Title VII, Sections 2000e through 2000e-3 (can be found on web at <http://www.eeoc.gov/laws/statutes/titlevii.cfm>) [Note, no need to read beyond section 2000e-3 (Other Unlawful Employment Practices) but you may if you are interested]

The text of portions of the ADEA, found at 29 U.S.C 620 et seq., but only sections 621 & 623(a) through (f) and (k) through (l) (found on web at <http://www.eeoc.gov/laws/statutes/adea.cfm>)

The text of 42 U.S.C. section 1981, (the Civil Rights Act of 1866) (found on web at <http://codes.lp.findlaw.com/uscode/42/21/I/1981>)

Nothing from the text this week, but there will be a significant reading assignment for week 6 on related issues so you might want to use week 4 and 5 to work ahead.

**Week 5: DISCRIMINATION, RETALIATION AND HARASSMENT, CONTINUED**

Continued look at federal discrimination laws

FEHA

Differences between Title VII and FEHA

Reading assignment:

California Government Code §12940 (found on web at <http://law.onecle.com/california/government/12940.html>)

Nothing from the text this week, but there will be a significant reading assignment for week 6 on related issues so you might want to use this week to work ahead.

**Week 6: DISCRIMINATION, RETALIATION AND HARASSMENT, CONTINUED**

Finish discussion of FEHA

Laws prohibiting harassment and retaliation

Proving discrimination

Disparate Treatment

Disparate Effect

Failure to Accommodate

Proving Harassment

Reading assignment: pp. 395-467; 498-546 from the text

**Week 7: WAGE AND HOUR REGULATION OF THE EMPLOYMENT RELATIONSHIP**

FLSA

California Labor Code and regs

Reading assignment: pp. 593 (commencing at section B.) - 632 (up to end of section B.) from the text

Please also review IWC Wage Orders numbered 1, 2, 4, and 9 which can be reviewed on the following website:

[Http://www.dir.ca.gov/iwc/wageorderindustries.htm](http://www.dir.ca.gov/iwc/wageorderindustries.htm)

**Week 8: Mid-Term Examination – Multiple Choice Test**

**EMPLOYEE DUTIES TO THE EMPLOYER**

Duty of Loyalty

Confidentiality and Trade Secrets

Reading Assignment: pp. 333-353 from the text

**Week 9: WORKPLACE SAFETY AND INJURIES**

OSHA

Workers Compensation

Reading Assignment: pp. 849-853; 875-942 (ending before section 3); 1006-1007 (ending before section 4); 1011-1012 (sections 8 & 9); 1013 (section 12); 1015-1027 (section C.)

**Week 10: EMPLOYEE BENEFITS ISSUES**

Medical insurance issues

COBRA and CAL-COBRA

Various leave issues

Vacations

## FMLA/CFRA

### Other common leave provisions

Pension issues

Other benefits commonly found in the marketplace

ERISA

Unemployment Insurance

Social Security and SDI disability benefits

Reading assignment: pp. 697-719 from the text

Please read “FAQ’s for Employees About COBRA Continuation Health Coverage” which can be accessed on the internet at <http://www.dol.gov/ebsa/faqs/faq-consumer-cobra.html>

Please review the following web page maintained by the DLSE about employee vacation rights: [http://www.dir.ca.gov/dlse/FAQ\\_Vacation.htm](http://www.dir.ca.gov/dlse/FAQ_Vacation.htm)

Please download and read the Family and Medical Leave Act Employee Guide published by the U.S. Department of Labor which can be found at <http://www.dol.gov/whd/fmla/employeeguide.htm>.

Please familiarize yourself with the following web pages maintained by the EDD regarding Unemployment Insurance:

Eligibility: <http://www.edd.ca.gov/unemployment/eligibility.htm>

Tips: [http://www.edd.ca.gov/pdf\\_pub\\_ctr/de2320m.pdf](http://www.edd.ca.gov/pdf_pub_ctr/de2320m.pdf)

After you

Filed: [http://www.edd.ca.gov/unemployment/After\\_you\\_Filed.htm](http://www.edd.ca.gov/unemployment/After_you_Filed.htm)

Responding  
to UI Claim

Notices: [http://www.edd.ca.gov/unemployment/Responding\\_to\\_UI\\_Claim\\_Notices.htm](http://www.edd.ca.gov/unemployment/Responding_to_UI_Claim_Notices.htm)

Appeals: [http://www.edd.ca.gov/unemployment/FAQ\\_-\\_Appeals\\_-\\_for\\_Employers.htm](http://www.edd.ca.gov/unemployment/FAQ_-_Appeals_-_for_Employers.htm)

**Week 11: TERMINATION**

Reasons for termination – At will arrangement

Good Cause

Recommended procedures

Communicating termination decision

Exit interviews

Severance Agreements

Non-Compete Clauses

Reading assignment: pp. 355-375

Please also read *Edwards v. Arthur Anderson LLP* (2008) 44 Cal.4th 937

**Week 12: CLAIMS THAT ARISE OUT OF TERMINATION**

Wrongful Termination in Violation of Public Policy Claims

Whistleblower claims

Defamation

IISED

Reading assignment: 157 (starting at Bodewig case) -165 from the text

Please also read and prepared to discuss:

*Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654

*Moorpark v. Superior Court* (1998) 18 Cal.4th 1143

*Jensen v. Hewlett Packard Co* (1993) 14 Cal.App.4th 958

**Week 13: OTHER MISCELLANEOUS EMPLOYMENT STATUTORY COMPLIANCE ISSUES**

Posting, training and recordkeeping requirements

Inducement claims (Labor Code §970)

Immigration law requirements for employers

WARN and other reduction-in-force laws

Public employment issues

Reading Assignment: pp. 681-687

Please also read the information found at the following internet address:  
<http://www.dir.ca.gov/wpnodb.html>

**Week 14: ARBITRATION ISSUES IN EMPLOYMENT LAW; EMPLOYEE HANDBOOKS, HUMAN RESOURCES HANDBOOKS AND OTHER WAYS TO ESTABLISH, IMPLEMENT AND MONITOR EMPLOYMENT PRACTICES, POLICIES AND PROCEDURES**

Arbitration of employment disputes

Creating and maintaining updated handbooks

Creating internal policies and procedures to address all matters

Human Resources Department organization and structure

Reading assignment: Nothing from the text

Please read the following cases:

*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000)  
24 Cal.4th 83

*Metters v. Ralphs Grocery Company* (2008) 161 Cal.App.4th 696

**Week 15: READING WEEK – NO CLASS THIS WEEK**

**Week 16: FINAL EXAMINATION**