

**WESTERN STATE
COLLEGE OF LAW**

EMPLOYMENT LAW

Neil Pedersen
Summer 2017

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 basic 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.

In addition to these class-specific goals, through the exercises, interactive discussions and group activities required by this class, you will should continue to develop the following institutional learning outcomes:

1. Analytical Reasoning. Analyzing issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems.
2. Effective Communication. Identification of audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation.
3. Information Competency. The ability to gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action.

4. Interpersonal Effectiveness. Development of individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals.
5. Personal and Professional Integrity and Ethical Behavior. Demonstration of a multi-dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.
6. Professional Competence. Application of skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession.

Required Materials

Employment Law: Cases and Materials (5th 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 the final examination.

The final examination will be 50% multiple choice and 50% short answer examination. 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.

Expectations Regarding Preparation Time for the Course

This course involves substantial work outside of the classroom. You have readings from the texts and from other sources provided through the Syllabus. You should expect to spend no less than two hours outside the classroom for every hour in the classroom. Many successful students have spent far more that.

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. 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.

Disability Services Statement

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Second Floor Students Services Suite. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu.

When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation.

If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Associate Dean of Students Charles Sheppard at csheppard@wsulaw.edu or (714) 459-1152. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

Western State College of Law - Programmatic Learning Outcomes

Western State College of Law's curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

Doctrinal Knowledge: Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

Practice Skills: Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

Legal Analysis: Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

Legal Research: Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

Communication: Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the

conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

Advocacy of Legal Argument: Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

Client Sensitivity and Cultural Competency: Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

Legal Ethics Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

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

Forms of Employer-Worker Relationships

Employee vs. Independent Contractor

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 the California Supreme Court case of *Dynamex Operations West, Inc. v. Superior Court* (2018) found at <http://www.courts.ca.gov/opinions/documents/S222732.PDF>.

[Note to students: I acknowledge that this is a long case to ask you to read, but the content is really good. It is recent. It summarizes the prior

California law (that still applies in many other situations) and it pronounced a new, seminal test to be used. Please be sure to spend the time reading it carefully as we will spend a great deal of time in class discussing many parts of this case.]

Please read and be ready to discuss the web content located at http://www.dir.ca.gov/dlse/FAQ_IndependentContractor.htm

Class 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

Class 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

Class 4: DISCRIMINATION, RETALIATION AND HARASSMENT IN THE WORKPLACE

Federal Laws

Title VII

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]

Nothing from the text this week, but there will be a significant reading assignment for week 7 on related issues so you might want to use week 4, 5 and 6 to work ahead.

Class 5: DISCRIMINATION, RETALIATION AND HARASSMENT, CONTINUED

Continued look at federal discrimination laws

ADEA

ADA and ADAAA

Section 1981

Others

Reading assignments:

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 7 on related issues so you might want to use week 5 and 6 to work ahead.

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

Fair Employment and Housing Act (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.

**Class 7: DISCRIMINATION, RETALIATION AND HARASSMENT,
CONTINUED**

Other 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

Class 8: FINISH DISCRIMINATION, HARASSMENT AND RETALIATION

Class 9: 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>

Class 10: EMPLOYEE BENEFITS ISSUES

Medical insurance issues

COBRA and CAL-COBRA

Various leave issues

Vacations

FMLA/CFRA

California Healthy Families Act

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: https://www.dir.ca.gov/dlse/FAQ_Vacation.htm

Class 11: EMPLOYEE DUTIES TO THE EMPLOYER

Duty of Loyalty

Confidentiality and Trade Secrets

Reading Assignment: pp. 333-353 from the text

WORKPLACE SAFETY AND INJURIES

OSHA

Workers Compensation

Reading Assignments:

OSHA:

<https://www.osha.gov/workers/index.html> (including each of the hyperlinks for the Frequently Asked Questions)

WC - Employee info: <http://www.dir.ca.gov/dwc/InjuredWorker.htm> including each of the 6 tabs along top of first page (hyperlinks only if you are curious)

WC - Employer info: <http://www.dir.ca.gov/dwc/Employer.htm> (hyperlinks only if you are curious)

WC - Additional info: <http://www.dir.ca.gov/dwc/faqs.html> (hyperlinks only if you are curious)

Ways around WC exclusivity: <http://www.bermanlawyers.com/how-to-avoid-workers-compensation-limits-in-construction-site-and-workplace-accidents/>

Class 12: 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

Can be found on the web at:

<http://law.justia.com/cases/california/supreme-court/2008/s147190/>

Class 13: 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 **be 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

Class 14: 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>

Class 15: READING WEEK – NO CLASS THIS WEEK

Class 16: FINAL EXAMINATION