

**WESTERN STATE COLLEGE OF LAW
at Westcliff University**

EMPLOYMENT LAW

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Summer 2022

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 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 (6th ed.) by Willborn, Schwab, Burton Jr. and Lester published by Carolina Academic Press.

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.

There is no mid-term exam. 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. It is estimated that, on average, the assigned reading and other classroom preparation should require six or more hours outside the classroom for each class session.

Office Hours

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

I can make myself available at the school in the evening before or after class, or virtually via Zoom. I also encourage phone conversations.

To schedule an appointment for a meeting or telephone call, please send me an email at **jjasantillan@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 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 Dean Allen Easley at aeasley@wsulaw.com or (714) 459-1168. 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:

(1) **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.

(2) **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.

(3) **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.

(4) **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.

(5) 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).

(6) 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.

(7) 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.

(8) Legal Ethics

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

Class Schedule and Reading Assignments

CLASS 1: LEGAL BOUNDARIES OF THE EMPLOYEE / EMPLOYER RELATIONSHIP

Subjects To Be Covered:

- Form of Employer-Worker Relationship
- Employee v. Independent Contractor
- Covered Employees and Employers
- Joint Employer Doctrine

Reading Assignments:

- Pages 13-61 of the text.
 - California Supreme Court case of *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903
 - **NOTE:** We will be spending a great deal of time in class discussing many parts of this case as it summarizes prior California law (which still applies in many other situations) and pronounces a new, seminal test to be used for determining independent contractor classification. Please be sure to take the time to read it carefully.
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CLASS 2: FUNDAMENTAL TERMS AND CONDITIONS IN THE EMPLOYEE / EMPLOYER RELATIONSHIP

Subjects To Be Covered:

- 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

Reading Assignments:

- Pages 65-133 and 187-194 from the text.
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CLASS 3: BASIC EMPLOYEE RIGHTS

Subjects To Be Covered:

- Political Rights and Free Speech Issues
- Public Employee vs. Private Employee
- Employee Privacy Issues
 - In the Workplace
 - Away from the Workplace
- Drug Testing

Reading Assignments:

- Pages 203-291 from the text.
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CLASS 4: DISCRIMINATION, HARASSMENT, AND RETALIATION IN THE WORKPLACE

Subjects To Be Covered:

- Introduction to Federal Anti-Discrimination Laws
 - Title VII

Reading Assignments:

- Title VII, Sections 2000e through 2000e-3
 - Found at: <https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>
- Please also read and be ready to discuss *Bostock v. Clayton County, Georgia* (2020) 140 S. Ct. 1731.

**** NOTE:** There are no reading assignments from the text this week, but there will be a significant reading assignment for week 7 on related issues. It would behoove you to use weeks 4, 5, and 6 to read ahead. **

CLASS 5: DISCRIMINATION, HARASSMENT, AND RETALIATION (CONTINUED)

Subjects To Be Covered:

- Continued Discussion of Federal Anti-Discrimination Laws
 - ADEA
 - ADA and ADAAA
 - Section 1981
 - Others

Reading Assignment:

- ADEA (29 U.S.C § 620 *et seq.*); Sections 621 and 623(a)-(f), (k)-(l)
 - Found at: <https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967>
- Please read and be ready to discuss the text of The Civil Rights Act of 1866 (42 U.S.C. § 1981)
 - Found at: <https://www.law.cornell.edu/uscode/text/42/1981>

**** NOTE:** There are no reading assignments from the text this week, but there will be a significant reading assignment for week 7 on related issues. It would behoove you to use weeks 5 and 6 to read ahead. **

CLASS 6: DISCRIMINATION, HARASSMENT, AND RETALIATION (CONTINUED)

Subjects To Be Covered:

- Introduction to State Anti-Discrimination, Harassment, Retaliation Laws:
 - Fair Employment and Housing Act (FEHA)
 - Differences between Title VII and FEHA

Reading Assignment:

- Please read and be ready to discuss California Government Code §12940
 - https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=12940

**** NOTE:** There are no reading assignments from the text this week, but there will be a significant reading assignment for week 7 on related issues. It would behoove you to use this week to read ahead. **

CLASS 7: DISCRIMINATION, HARASSMENT, AND RETALIATION (CONTINUED)

Subjects To Be Covered:

- Other Laws Prohibiting Harassment and Retaliation:
 - Proving Discrimination
 - Disparate Treatment
 - Disparate Effect
 - Failure to Accommodate
 - Proving Harassment

Reading Assignment:

- Pages 401-494 and 512-542 from the text.
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CLASS 8: FINISH DISCRIMINATION, HARASSMENT AND RETALIATION

*** Continuing Discussion from Last Week's Class ***

CLASS 9: WAGE AND HOUR REGULATION OF THE EMPLOYMENT RELATIONSHIP

Subjects To Be Covered:

- FLSA
- California Labor Code and Regulations

Reading Assignment:

- Pages 573-620 and 634 (Section C) - 646 from the text.
 - Please also review IWC Wage Orders numbered 1, 2, 4, and 9.
 - Found at: <http://www.dir.ca.gov/iwc/wageorderindustries.htm/>.
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CLASS 10: EMPLOYEE BENEFITS ISSUES

Subjects To Be Covered:

- 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:

- Pages 647-671 and 673-679 from the text.
 - Please read the “FAQs on COBRA Continuation Health Coverage for Workers”
 - <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/cobra-continuation-health-coverage-consumer.pdf>
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CLASS 11: EMPLOYEE DUTIES TO THE EMPLOYER

Subjects To Be Covered:

- Duty of Loyalty
- Confidentiality and Trade Secrets

Reading Assignment:

- Pages 337-358 from the text.

WORKPLACE SAFETY AND INJURIES

Subjects To Be Covered:

- OSHA
- Workers Compensation

Reading Assignment:

Please read the information contained on the following websites:

- OSHA: <https://www.osha.gov/workers> (including each of the hyperlinks for the Frequently Asked Questions)
- WC – Employee Info: <https://dir.ca.gov/dwc/injuredworker.htm> (including each of the 6 tabs along the top of the page)
- WC – Employer Info: <https://www.dir.ca.gov/dwc/employer.htm>
- Ways around WC Exclusivity: <https://www.bermanlawyers.com/how-to-avoid-workers-compensation-limits-in-construction-site-and-workplace-accidents/>

CLASS 12: TERMINATION

Subjects To Be Covered:

- Reasons for Termination
 - At-Will Arrangement
- Good Cause
- Recommended Procedures:
 - Communicating Termination Decision
 - Exit Interviews
 - Severance Agreements
- Non-Compete Clauses

Reading Assignment:

- Pages 359-380 from the text.
- *Edwards v. Arthur Anderson LLP* (2008) 44 Cal.4th 937

CLASS 13: CLAIMS THAT ARISE OUT OF TERMINATION

Subjects To Be Covered:

- Wrongful Termination in Violation of Public Policy Claims
- Whistleblower claims
- Defamation
- IISED

Reading Assignment:

- Pages 178 (starting at *Bodewig* case) - 185 from the text.
- Please also read and be prepared to discuss the following cases:
 - *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
/ FINAL EXAM REVIEW

Subjects To Be Covered:

- 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:

- Pages 712-720 from the text.
- Please read the information contained on the following website regarding Workplace Posting Obligations: <http://www.dir.ca.gov/wpnodb.html>

FINAL EXAMINATION:

Thursday, July 28, 2022
6:45 PM – 9:45 PM
Room L811
