Employment Law
Fall 2005

SYLLABUS & ASSIGNMENT SHEET

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Office hours: Please feel free to visit during my posted office hours, or to make an appointment for a different time. You’re also welcome to drop in, call or email at any time.

Course Description

Employment law is a survey of federal and state law protections for individual workers. The theme that unites this survey course is “Work and Wal-Mart.” We will survey basic topics of the law of work, including common law and statutory regulation of employment termination, employee privacy, and the federal, state, and local regulation of wages, benefits, and working conditions, including living wage initiatives. The course will focus especially on the challenges of regulating work in the global economy. Among the practical and policy issues we will cover are: How can and should minimum labor standards be defined and enforced in a world in which many jobs can be moved to lower-wage markets? How has immigration affected the regulation of work in the U.S.?

This course has a practical as well as a policy orientation. To develop the skills you may need as lawyers, we will discuss problems that might arise in practice. I will assign problems in advance, and will expect you to come to class prepared to argue on behalf of various parties to the dispute.

Requirements

Reasonably regular class attendance and participation are required. The substance of class discussion will be considered part of the course subject matter and, therefore, fair game for the final examination.

At several points throughout the semester, we will do problems as a group exercise. These problems are useful as illustrations of the practical aspects of employment law practice and as reviews of material covered. They also give you an idea of what kinds of questions I am likely to ask on the final exam. I expect everyone to participate in the presentation and discussion of the problems.

There will be a take-home final examination composed entirely of essay questions. Your grade will be based largely on the final exam, but I will add or subtract points to/from your final grade to acknowledge outstanding class participation (or lack thereof). Exams from years past are at the end of the photocopied materials, but you should bear in mind that the course coverage (thus the subjects tested on the exam) varies significantly from year to year.
Course Materials

The required texts are:

2. Photocopied materials (“PM”) (Pick up in room 3011.)

Other required reading (but it’s up to you whether to buy the book):


Other books you may wish to consult for clarification of basic concepts are available on reserve in the Library. The best of these is the hornbook, Rothstein, Craver, Schroeder & Shoben, *Employment Law* (3d ed. West 2005). A smaller book is the Nutshell: Covington & Decker, *Employment Law in a Nutshell* (2d ed. West 2002). Neither of these is required or recommended for student purchase (the casebook and supplement are expensive enough as it is).

Assignments

The assignments are listed below in the order in which we will cover them. I will keep you posted as we proceed about how far ahead you should read. For your convenience, I have noted the principal cases and statutes in addition to the pages in the texts.

I periodically add to or delete from the materials indicated on the syllabus in order to provide the most up-to-date coverage and to cover topics that may be of particular interest to the class. Be sure to come to class to receive these additional materials, which will be distributed as handouts in class.

I. WORKING AT WAL-MART: EMPLOYMENT IN THE GLOBAL ECONOMY

1. Perspectives on Working at Wal-Mart and on Wal-Mart in the Global Economy

You should try to read some of the praise and criticism of Wal-Mart; choose among

Featherstone, *Selling Women Short* (the Wal-Mart critic)
Walton, *Made in America* (Sam Walton)
The recent selections on Wal-Mart and the global economy at PM Tab 1

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*I hate to ask you to buy books that we’ll read at the beginning of the semester and refer back to at various points but that won’t be the text we’ll consult on a weekly basis throughout. So I’ve put a couple of copies on reserve in the Library. If you want to buy them and money is not a constraint, great. If you’re pinching pennies, feel free to check them out of the library. The Library is also a good option if you’re philosophically opposed to spending your hard-earned (or hard-borrowed) money on books with which you might strenuously disagree.*
II. CONTRACT AND THE EMPLOYMENT RELATIONSHIP

2. Old and New Views on the Nature and Terms of Employment Contracts

Problem # 1: What are the terms of your employment agreement? Bring a written contract to class, if you have one, or think about the terms of any unwritten contract you may have now or have had in the past. Do the terms of your written contract accurately reflect what you think the “real” agreement between you and your employer? How does the at-will presumption affect your contract?

   a. The Old Employment At-Will

   CKS 1-15  Payne v. Western & Atl. RR. Co.

   b. At-Will Employment in the New Labor Market

   CKS 51-79  Hoffman Plastic v. NLRB
   PM Tab 2  Roberson v. Wal-Mart

3. Special Problems in Formation and Interpretation of Employment Contracts

   CKS 104-139  Guiliano v. Cleo Inc.
   CKS 146-154  Woolley v. Hoffman-La Roche
   CKS 247-259  Anderson v. Douglas & Lomanson
                Asmus v. Pacific Bell
                Pugh v. See’s Candies

III. TORTS, STATUTES, PUBLIC POLICY, AND EMPLOYMENT

4. Tort and Public Policy Limits on Employment At Will

   CKS 177-212  Sheets v. Teddy’s Frosted Foods
                Hayes v. Eateries, Inc.
                Gantt v. Sentry Insurance
                Kirk v. Mercy Hospital

5. Duties to Disclose and Statutory Protections for Whistleblowers

   CKS 212-219; 227-231  Amos v. Oakdale Knitting Co.

6. Civil Liberties at Work I: Abuse and Emotional Distress

   CKS 351-365  Wornick v. Casas
                Bodewig v. K-Mart
                Hollomon v. Keadle
7. Civil Liberties at Work II: Privacy
   
   a. Privacy at Work

   CKS 366-400
   O'Connor v. Ortega
   K-Mart v. Trotti
   Borquez v. Robert C. Ozer, PC
   Smyth v. Pillsbury
   Luck v. Southern Pacific
   Jennings v. Minco Technology

   b. Privacy Away from Work

   CKS 405-414
   McCavitt v. Swiss Reinsurance
   State of New York v. Wal-Mart
   Standeford v. Wal-Mart
   Wal-Mart v. Lee

8. Civil Liberties at Work III: Testing, Screening & Monitoring

   CKS 415-436
   Soroka v. Dayton Hudson

IV. DISCRIMINATION

9. Individual Disparate Treatment

   CKS 535-556
   McDonnell Douglas v. Green
   Kersting v. Wal-Mart

10. Mixed Motives

   CKS 556-564
   Desert Palace v. Costa

11. Intentional Discrimination Class Claims and the Limits of Equality Theory

   CKS 564-577
   Dukes v. Wal-Mart
   Dukes v. Wal-Mart
   Jespersen v. Harrah’s
   Lyle v. Warner Brothers

12. Disparate Impact

   CKS 577-598
   Griggs v. Duke Power
   EEOC v. Joe’s Stone Crab
13. Harassment

CKS 598-625
PM Tab 9
PM Tab 10

*Meritor Savings Bank v. Vinson*

*Lack v. Wal-Mart*

*Bales v. Wal-Mart*

14. Disability Discrimination and the Duty to Accommodate

CKS 625-653
PM Tab 11
PM Tab 12

*Sutton v. United Air Lines*

*Sieberns v. Wal-Mart*

*Fiscus v. Wal-Mart*

V. STATUTORY REGULATION OF WAGES, HOURS, & LEAVES

15. Background, Policy & Coverage of the Fair Labor Standards Act

CKS 699-729
WSB 656; 660-668
PM Tab 13

*West Coast Hotel v. Parrish*

*Heath v. Perdue Farms*

16. Compensable Time

CKS 729-743

*Davis v. Food Lion*

*Dinge v. Sacred Heart*

17. FLSA Enforcement

CKS 744-763

18. Living Wage Laws

CKS 763-772

*RUI One Corp. v. City of Berkeley*

20. Overtime

CKS 772-794
PM Tab 14

*Archuleta v. Wal-Mart*

21. Family and Medical Leave

CKS 669-681
PM Tab 15

*Cline v. Wal-Mart*
VI. RESOLVING EMPLOYMENT DISPUTES

22. Arbitration Agreements and Enforcement of Employment Rights

CKS 949-1009

Alexander v. Gardner-Denver
Gilmer v. Interstate
Cole v. Burns International Security
Hooters v. Phillips

23. Employer Initiatives

CKS 1011-1033