

# THE LAW AT WORK

## EMPLOYMENT LAW FOR MANAGERS

UNIVERSITY OF PENNSYLVANIA

THE WHARTON SCHOOL

LGST 208-401/MGMT 247-401

Location: SHDH 1206

Wednesday: 3:00 P.M. – 6:00 P.M.

webCafé: <https://webcafe.wharton.upenn.edu/eRoom/lgst/208-sp09-1><sup>1</sup>

Professor Deborah Weinstein

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### Description

This seminar is based on the principle that knowledge and understanding of employment law facilitate (1) promotion of a workforce with a high degree of commitment to reaching business goals, (2) the development of practical business solutions to problems arising in the workplace, (3) effective human resources policy and procedures that comply with applicable laws. This course provides future business owners, entrepreneurs, executives, managers and students interested in going to law school or intending to enter the workforce with an introduction to the law of the workplace. The course examines the various employment laws with which businesses must comply and the legal rights and responsibilities of employees and employers. The emphasis is on laws concerning equal employment opportunity with respect to discrimination and harassment because of sex, race, national origin, religion, sexual orientation, age, disability and other characteristics protected by workplace laws; workplace security and privacy including workplace drug testing and electronic communications; affirmative action, the regulatory environment including wage and

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<sup>1</sup> Students who are from other schools at Penn [non-Wharton students] or who are new to the University may not initially have the Wharton computing account necessary to use webCafé. Students who are enrolled in the class but who do not yet have a Wharton computing account may create one using this site: <http://accounts.wharton.upenn.edu>.

hour laws, leave of absence laws, hiring regulations, the non-employee workforce, workers compensation, Sarbanes Oxley; and labor/management relations.

### **Assigned Readings**

Course materials will be posted on the webCafé throughout the semester. Readings are court opinions, laws and regulations, articles from the media and outlines of particular topics in employment law for managers. Some readings will be taken from *Employment Law: New Challenges in the Business Environment*, 4<sup>th</sup> Edition, John Jude Moran, 2008.

### **Exams and Grading**

Class participation counts for 15% of your grade. There will be one midterm examination counting 30% and a final examination counting 30% of your grade. In addition, you will be responsible for a presentation to the class, either individually or as a group assignment, concerning a court opinion that addresses an employment law issue (counting 25% of your grade). A list of opinions from which you may choose will be distributed in class.

### **Class Preparation**

**The readings listed on the syllabus are subject to change. MANY of the readings listed will NOT be assigned.** Final assignments will be announced prior to the class for which they are assigned. Final reading assignments for each class are mandatory. Any handout provided before class must be read before class because the discussion will focus on this material. Class preparation is crucial to meaningful class participation.

### **Topical Assignments**

The assignments listed for each date are also subject to change as a result of course pacing and/or schedule changes.

### **Examination Schedule**

All examinations are take-home. A midterm examination will be handed out in class on a Wednesday for return during the next scheduled class. The final examination is to be handed out on the last day of class and must be returned to the Office of the Department of Legal Studies and Business Ethics on or before the date of the regularly scheduled final examination time.

## COURSE SYLLABUS

### *Session #1 Jan. 14      The New American Workplace*

*Course Introduction and Expectations, Employment at Will Rule and Sources of Employment Law. Increased Congressional and U.S. Supreme Court Activity and Controversies over Employment Laws; Current (Un)Employment; The Changing Landscape in 2008-9.*

**READING<sup>2</sup>:** *Quon v. Arch Wireless Operating Co.*, 529 F.3d 892 (9<sup>th</sup> Cir. 2008)(employer may not monitor employee's text messages without consent); *Lyle v. Warner Brothers TV Prods.*, 38 Cal. 4<sup>th</sup> 264 (Cal. Supreme Court 2006) ("Friends" sitcom writers and Warner Brothers sued for sex harassment); Moran, pp. xvii-xviii; *Woodson v. AMF Leisureland Ctrs., Inc.*, 842 F.2d 699 (3d Cir. 1988) (bartender fired for refusing to serve visibly intoxicated patron); "U.S. Loses Another 524,000 Jobs," Philadelphia Business Journal, January 9, 2009.

### *Session #2 Jan. 21      Who is Working Here?*

*Employee? Independent Contractor? Consultant? Temp? Joint Employer? Does It Matter?*

**READING:** "Temps, In Name Alone," HR Magazine, November 2008 (Legal Trends); "Independent Contractor or Employee?" (IRS Publication 1779, IRS Rev. 1-2005); Determination of Worker Status for Purpose of Federal Employment Taxes, Form SS-8; Moran, pp. 1-3 & 5; "Are Truckers Employees or Contractors?," *Universal Am-Can Ltd. v. WCAB*, 563 Pa. 480 (2000); "27.5 Million Consent Degree Resolves EEOC Age Bias Suit," Oct. 5, 2007; "IRS Orders FedEx to Pay 319 Million," Dec. 23, 2007; "Will They Still Need Me, Will They Still Feed Me, Will I Still Be a Law Firm Partner. . . After I'm 64," Deborah Weinstein, Philadelphia Lawyer Magazine, Spring 2006; "Uncollected Social Security and Medicare Tax on Wages" (IRS Form 8919); "Hospital Found To Be Joint Employer of Temp," HR Magazine, November 2008 (Court Report).

### *Session #3 Jan. 28      Help Wanted: Filling that Job*

*Recruiting, Interviews, Job Applications, Job References, Background Checks, Medical Exams, I-9s, Applying on the Internet, Drug Testing and Polygraph Tests.*

**READING:** *EEOC v. Consolidated Service Systems*, 989 F.2d 233 (7<sup>th</sup> Cir. 1993) (recruiting by word-of-mouth); Section 704(b) of Title VII (nondiscrimination protections for applicants); EEOC hiring regulations; OFCCP Internet Applicant Rule; Interviewing Dos and Don'ts; I-9 Employment Eligibility Verification Form; PA Statute - Employer Immunity from Liability for Disclosure of Employee Information (job references), 42 Pa.C.S. § 8340.1 (2006); NY Law "Unfair Discrimination Against Persons Previously Convicted," N.Y. CLS Correc § 752 (2006); Section 102(d)(2) of ADA (post-offer medical

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<sup>2</sup> Session #1 "Reading" is listed merely because the lecture and discussion during the first class will include these topics. These are assigned for student reading later in the semester.

exams); "Employment Tests and Selection Procedures," EEOC Fact Sheet, Dec. 3, 2007, Moran, pp. 37 [Discrimination in Selection], 38 [Selection Process], 39[Questioning], 41-42 [Uniform Guidelines on Employee Selection Procedures], 112[Credit Checks], 42[Investigation and Record Keeping]; 58[References]; 64-5 [Background Checks]; 82 [Polygraph Tests], 87-9 [Drug Testing].

#### **Session #4 Feb. 4      *Civil Rights in Employment***

*Introduction to EEO and Disparate Treatment Analysis: Proving and Defending Against Claims of Employment Discrimination.*

**READING:** Moran, pp. 170-80, 233[Summary]; "White Men Can't Help It," Business Week, May 15, 2006; *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1972); *Atkinson v. Lafayette College*, 460 F.3d 447 (3d Cir. 2006)(question is not whether employer made best business decision but if it is discrimination); *Brian Reid v. Google, Inc.*, Cal 6<sup>th</sup> Dist. Ct. of Appeals (Oct. 15, 2007)(summary judgment in disparate treatment case); *Reeves v. Sanderson*, 530 U.S. 133 (2000)(burdens of proof); *Ash v. Tyson Foods*, 546 U.S. 454 (2006)(calling Black employee "boy" as evidence of discrimination).

#### **Session #5 Feb. 11      *Macro-Discrimination: Disparate Impact & Class Actions***

*The Burdens of Plaintiff and Defendant in Disparate Impact Analysis, Class Actions and the Bona Fide Occupational Qualification and other Exceptions*

**READING;** *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *UAW v. Johnson Controls*, 499 U.S. 187 (1991); *Smith v. City of Jackson*, 544 U.S. 228 (2005); *Lyle v. Warner Brothers TV Prods.*, 38 Cal. 4<sup>th</sup> 264 (2006); Moran, 180-85, 189 [Summary], 245[BFOQ]; "Among Friends," Wall Street Journal, April 22, 2006.

#### **Session #6 Feb. 18      *Other Discrimination and Duty to Accommodate***

**READING:** *Bergen Commercial Bank v. Sisler*, 723 A.2d 944 (N.J. 1999)(discrimination because of young age); "Got Religion? Accommodating Religion in the Workplace," Deborah Weinstein, Philadelphia Lawyer Magazine, Fall 2003; *TWA v. Hardison*, 432 U.S. 63 (1977)(religion); *Sutton v. United Air Lines*, 527 U.S. 471 (1999)(ADA); *Burlington Northern & Santa Fe Railway Co. v. White*, 126 S.Ct. 2405 (2006)(retaliation); Section 2000e-3 of Title VII, Retaliation, Participation and Opposition; 2008 Amendments to the Americans With Disabilities Act; Moran pp. 323-24[sexual orientation discrimination].

#### **Session #7 Feb. 25      *Being a Jerk is Not Unlawful Harassment: What Is?***

**READING:** *Farragher v. City of Boca Raton*, 524 U.S. 775 (1998) (employer defenses to harassment claims); "Communication is Critical to Avoiding Sexual Harassment," Deborah Weinstein, Philadelphia Business Journal, April 22, 2005; *Oncale v. Sundowner*

*Offshore Services*, 523 U.S. 75 (1998)(same sex harassment); *Riser v. Target Corporation*; 458 F.3d 817 (8<sup>th</sup> Cir. 2006); *First Federal Savings Bank v. Unemployment Comp Bd. Of Review*, Pa Commw., No. 427 C.D. 2008 (Oct. 2, 2008)(constructive discharge).

## **Midterm Examination Handed Out in Class.**

*Session #8 March 4*

### ***Part I: Beyond Equality: Affirmative Action***

**READING:** *Kohlbeck, City of Omaha, Nebraska*, 447 F.3d 552 (8<sup>th</sup> Circuit); *Taxman v. Board of Ed. of Tnshp of Piscataway*, 91 F.3d 1547 (3d Cir. 1996); Business Law, pp. 820-821; “Desperately Seeking Diversity,” Deborah Weinstein, Philadelphia Lawyer Magazine, Summer 2003; Executive Order 11246, Moran, pp. 193-2000, 216[Summary].

### ***Part II: Equal Pay for Equal Work***

**READING:** *Ledbetter v. Goodyear Tire & Rubber*, 127 S.Ct. 2162 (2007); Proposed Lilly Ledbetter Act; Moran, pp. 248[Equal Pay Act], 252[Comparable Worth].

## **Midterm Examination Due in Class.**

*March 11* No Class [vacation].

*Session #9 March 18* **To be announced.**

### ***Session #10 March 25 So, Sex Sells...That Doesn't Make It Legal***

**READING:** *Playboy Bunny & Hooters*; “Man sues ‘The Apprentice’ and Trump over alleged age discrimination,” UPI, Jan. 1, 2007; “The Look of Abercrombie & Fitch,” cbsnews.com; “Abercrombie & Fitch Employees Allege Promotions Based on Looks,” Dallas Morning News, Aug. 27, 1008; *Wilson v. Southwest Airlines*, 517 F. Supp. 292 (N.D. Tex. 1981) (Love Airlines); *Ezold v. Wolf Block*, 983 F.2d 509 (3d Cir. 1992); “Youth, good looks a gold mine on LV Strip,” Las Vegas Sun, May 19, 2006; “Casting Calls May Violate Federal Law,” Los Angeles Times, Nov. 30, 2006. *Jespersion v. Harrah's Operating Co.*, 444 F.3d 1104 (9<sup>th</sup> Cir. 2006)(requiring female employees to wear makeup); Moran, pp.253[Grooming], 254[Customer Preference].

### ***Session #11 April 1 The Wired World at Work***

*Employee Privacy, Employer Security, Surveillance and Monitoring (phone, email, blogging, telephone, IMing, videos, photos and other Internet use)*

**READING:** *Smyth v. The Pillsbury Company*, 914 F. Supp.3d 97 (E.D. Pa. 1996) (no expectation of privacy in contents of employee's email sent over company email system); *Quon v. Arch Wireless Operating Co.*, 529 F.3d 892 (9<sup>th</sup> Cir. 2008)[employer may not monitor employee's text messages without consent]; *Doe v. Cahill*, 884 A.2d 451 (Del. 2005) (discoverability from ISP of identify of anonymous blogger of allegedly defamatory post); "Acquisitive Craigslist Post Reddens Faces All Around," New York Times, Oct. 8, 2007; Moran, pp.108-10, 119-20[privacy at work].

*Session #12 April 8      The Organized Workforce: Unions in America*

*Overview of Collective Bargaining and Unionized Employees.*

*Guest Lecturer: Robert J. Haurin, Esquire*

**READING:** Employee Free Choice Act. Other readings to be announced.

*Session #13 April 15      Laws Protecting Workers*

**Part I:      Fair Labor Standards Act and Pay Issues.**

**READING:** Department (DOL) FLSA Summary; DOL Fair Pay Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer and Outside Sales Employees; DOL Fair Pay Fact Sheet #17M: Financial Services Industry Employees and the Part 541 Exemptions; *IBP, Inc. v. Alvarez*, 126 S. Ct. 514 (2005); "Wage Wars," Business Week, Oct. 1, 2007, pp. 50-58;

**Part II:      Leaves of Absence, Pregnancy Discrimination and Employees with Caregiving Responsibilities.**

**READING:** DOL Fact Sheet #28: The Family and Medical Leave Act of 1993; *Ragsdale v. Wolverine World Wide*, 543 U.S. 1053 (2001); *Sarnowski v. Air Brooke Limousine, Inc.*, No.06-2144 (Dec. 12, 2007, 3d Cir.)(interference with FMLA rights); "Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities," EEOC Notice No. 915.002, May 23, 2007; Moran, pp. 307, 312[Pregnancy], 308-9[*Johnson Controls* analysis]

*Session #22 April 22      What Sarbanes-Oxley Means to the Worker*

**READING:** Excerpts from the Act; "Citigroup Code of Conduct;" U.S. Sentencing Guidelines Manual Section 8B2.1, Effective Compliance and Ethics Programs; "Steal Little, Steal Big," Patrick J. Kiger, Workforce Management Online, Dec. 5, 2005; Moran, p. 127.

## **Final Take-Home Exam Handed Out**

## **Final Exam Due Date [Tentative] – May 6, 2009**