

EMPLOYMENT LAW
Law 6545 - 28202
UF Levin College of Law
Fall 2022
Syllabus

Professor Stephanie Bornstein [she/her]

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Office Hours: Monday 3-5pm & by appointment—see Canvas site for details/locations

Class Meetings: Monday & Wednesday, 1:15-2:40pm, Room HH 285C

OVERVIEW

This course provides an introduction to and survey of the principal statutes and common-law doctrines governing the workplace and the relationship between employers and employees. Among the topics we will cover are: the nature of the employment contract, the at-will rule and its exceptions, employee mobility issues (e.g., covenants not to compete), employee dignitary interests (e.g., privacy), employee speech, layoffs and unemployment insurance, workplace health and safety, and wage and hour law. The course will cover doctrine as well as policy and practical considerations.

Course Objectives & Student Learning Outcomes

After completing this course, students should be able to:

1. Describe the historical context and strains of work law that led to today's "individual rights model" of employment law;
2. Demonstrate an understanding of the at-will rule, exceptions to it, and the policy arguments involved in choosing an "at will" as opposed to "for cause" default rule for employment law;
3. Explain the various common law doctrines of employment law covered in this course and apply them to new factual situations;
4. Explain the major provisions of the federal employment statutes covered in this course and apply them to new factual situations; and
5. Provide basic advice to future clients on the employment laws covered in this course: to employees on their rights under the laws and to employers on how to comply with the laws.

Required Course Materials & Workload

Students are required to register on and keep up with the course Canvas site. Students are also responsible for downloading course-related materials posted there when listed in an assignment or announced in class.

The required casebook for this course (denoted as "CB" below) is *Work Law: Cases and Materials* (4th ed., 2020), by Crain, Kim, Selmi & Rogers. For several classes, I also assign short, required readings to complement or update the casebook, denoted as "Posted" below. All "Posted" materials will be available on the course Canvas site by Thursday of the week preceding the relevant class.

You are expected to read and be prepared to discuss all of the assigned reading each class, including all of the “Posted” material and all of the casebook “Notes” assigned; doctrinal information and questions we will discuss in class often appear in the “Notes” section of the casebook.

In accordance with Standard 310 of the American Bar Association’s (ABA) standards for law schools, students are expected to devote 2 hours of out-of-class preparation for every 1 credit hour of in-class instruction. Because this course has 3 credit hours of in-class instruction each week, you should expect to spend at least 6 hours outside of class reading and preparing for our class meetings each week.

Syllabus

The syllabus will be distributed in two parts to allow us to adapt our course pace. The first part of the syllabus contains reading assignments for weeks 1-6 of class, followed by a list of class dates and topics planned for coverage in the remainder of the course. The syllabus will be updated with specific topics and reading assignments for weeks 7-14 and posted on the class Canvas site during week 6. In addition, listed reading assignments may be subject to change. Please check the syllabus posted on the Canvas site for updates.

Please keep up with the reading as assigned; if we do not get through everything in a given class, we will pick up where we left off the next day, with the goal of completing each week’s material by the end of the week. You are responsible for both reviewing anything we did not get to in the prior class and completing the material as listed on the syllabus for each class.

Please note that, as listed on the class schedule, 2 class meetings will occur online via Zoom: our classes on Wednesday, September 7 and Monday, November 21. Links to join those class meetings via Zoom will be provided on the course Canvas site.

Grades & Class Participation

Regular attendance, preparation, and active participation in classroom discussion are required. Your course in the grade will be based on a final exam and class participation.

Participation will be factored into your grade, with excellent participation raising your final course grade by one-third of a letter grade where possible (e.g., from an A- to an A or a B to a B+). Excellent participation means offering a few thoughtful comments or questions in more than half of all classes, listening to and engaging with points raised by other students, and exercising judgment to foster others’ participation, too. Because the course must adhere to a mandatory mean grade, participation may also be used to differentiate among the course grades of students with equal final exam grades.

The final exam will be timed, during the regular exam period. More information on the exam will be provided in class.

Attendance

Attendance is required and an essential part of the course. All students must follow the attendance tracking procedures, which will be explained in class, and are responsible for making sure they have properly recorded their attendance. In addition, for any classes held online, your camera must be on during class for your attendance to count; please notify me if this poses a problem for you.

In accordance with ABA guidance on acceptable rates of classroom absences, you are generally allowed 5 absences from class total, for any reason, including for job interviews,

school activities, work tasks, and illness or medical appointments other than those related to COVID-19. For ease of administration and to respect your privacy, I do not make any differentiation between “excused” or “unexcused” absences, with two exceptions listed below. This means that there is no need to tell me why you will be or were absent from class, so long as you have 5 or fewer absences total.

The two exceptions to this policy are (1) absences for observance of a University-recognized religious holiday and (2) absences due to COVID-19, both of which do not count toward your 5 total absences, so please do notify me of such absences. In addition, please notify me should you have a family or medical situation or an emergency that will require missing more than 5 classes, and we will discuss how to accommodate your situation.

More than 5 absences may negatively affect your final course grade. Students who miss more than 30% of scheduled classes may be prohibited from sitting for the final examination and unable to pass the course.

As a matter of professionalism, you are expected to be on time for class—meaning seated and ready to begin when class starts. Arriving late is disruptive not only to me, but to your fellow students. After 2 late arrivals, each additional late arrival will be counted as a class absence.

Use of Laptops

Students are permitted to use laptops to take notes and participate in class activities during class, however any non-class use of laptops during class is prohibited. Impermissible uses include, but are not limited to, using email or instant messaging programs, visiting social media sites, or any use of the Web. Misuse of laptops during class may result in you losing the privilege of using a laptop in the classroom and may negatively affect the class participation portion of your grade.

Students are strongly encouraged to listen, participate in the discussion, process the material, and take notes accordingly, rather than to try to transcribe everything that is said in class.

Office Hours

Office hours are “drop in” with no appointment needed on Mondays from 3-5pm, either virtually in my Zoom personal meeting room or in my office. Office hours are by appointment at other times. Please don’t hesitate to email me to set up an appointment if needed. Office hour information, including location and links, will be posted on the course Canvas site.

COVID-19 Information

Unfortunately, COVID-19 is still with us. If you are experiencing COVID-19 symptoms—see <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>—please do not come to campus or, if you are already on campus, please leave campus immediately. Please visit the UF Health page to get information about testing and medical care: <https://coronavirus.ufhealth.org/campus-testing/>.

If you are exposed to or test positive for COVID-19, please follow CDC guidance on when it is safe to return to class—see https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html#anchor_1642600273484. Any suspected or positive COVID-19 related absences will be accommodated (see “Attendance” above), and the Office of Student

Affairs may provide access to class recordings for medical absences. Please email the Office of Student Affairs and me as soon as possible to let us know of any such absences.

Other General Information

Compliance with UF Honor Code

Academic honesty and integrity are fundamental values of the UF Law School community. Students are expected to understand and comply with the UF Student Honor Code and the Law School's application of it, available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

Policy related to make-up exams or other work

The law school policy on delay in taking exams is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

Statement related to accommodations for students with disabilities

Students requesting accommodation for disabilities must first register with the UF Disability Resources Center, <https://disability.ufl.edu>. Once registered, students will receive an accommodation letter, which the student must then present to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting an accommodation. Students with disabilities should follow this procedure as early as possible in the semester to ensure that you can be accommodated promptly.

Information on UF Law grading policies

The law school grading policy is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>. Students receive grade points according to the following scale:

<u>Grade</u>	<u>Points</u>	<u>Grade</u>	<u>Point</u>	<u>Grade</u>	<u>Point</u>
A (Excellent)	4.00	B-	2.67	D+	1.33
A-	3.67	C+	2.33	D (Poor)	1.00
B+	3.33	C (Satisfactory)	2.00	D-	0.67
B (Good)	3.00	C-	1.67	E (Failure)	0.00

Student course evaluations

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>.

Students will be notified when the evaluation period opens and can complete evaluations through the email you receive from GatorEvals in your Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results>.

Health and Wellness Resources

- U Matter, We Care: If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit <https://umatter.ufl.edu> to refer or report a concern and a team member will reach out to the student in distress.
- Counseling and Wellness Center: For information on crisis and non-crisis services, please call 352-392-1575 or visit <https://counseling.ufl.edu>.
- Student Health Care Center: For information to help you find medical care, please call 352-392-1161 or visit <https://shcc.ufl.edu>.
- Office of Victim Services: A victim advocate is available 24 hours a day, 7 days a week to provide support for victims of actual or threatened violence. All services are free and confidential. Please call 352-392-5648 or visit <https://police.ufl.edu/about/divisions/office-of-victim-services>.
- Office for Accessibility and Gender Equity (Title IX): For issues related to sexual misconduct or gender-based harassment, visit <https://titleix.ufl.edu> for resources and additional contact information.

SCHEDULE OF CLASS TOPICS AND ASSIGNMENTS

Week 1

1. Monday, August 22, 2022

The meaning of work; Historical contexts

CB pp. xix-xxi; 5-9 (through n.4 first paragraph only); 10 n.5 only; 12-21 (through n.2); 23 n.5; 24(C.)-26 (up to *NLRB v. Jones* case); 32-35 (through n.2)

2. Wednesday, August 24, 2022

20th-Century legal developments; Individual rights model

Who is an “employee”?; Who is an “employer”?

CB pp. 37(3.)-38; 42-45; 47-51 (up to “The Reasons for Change”); 54 n.1-57 (up to 1.); 67(2.)-82 (up to C.)

Week 2

3. Monday, August 29, 2022

The at-will presumption; Alternative models

CB pp. 103-127 (up to B.)

4. Wednesday, August 31, 2022

Exceptions to the at-will rule: Express agreements; Implied agreements

CB pp. 127(B.)-146 (through n.4)

Posted: Florida state law on employment contracts [posted on Canvas]

Week 3

Monday, September 5, 2022 – LABOR DAY HOLIDAY NO CLASS

5. Wednesday, September 7, 2022 – *CLASS MEETS ONLINE*

Exceptions to the at-will rule: Implied agreements (cont’d); Defining “cause”; Promissory Estoppel

CB pp. 146(n.5)-166 (through n.7)

****NOTE: This class meeting will be online. All students must join via Zoom from the link provided on our Canvas page.**

Week 4

6. Monday, September 12, 2022

The public policy exception (cont’d); What constitutes public policy?

CB 169-194 (up to Notes)

7. Wednesday, September 14, 2022

The public policy exception (cont’d); Constructive discharge; Statutory vs. common law remedies

CB 194(n.1)-197 (through n.3); 203(C.)-211 (up to E.)

Posted: Florida state law on the public policy exception

Week 5

8. Monday, September 19, 2022

The at-will presumption revisited

CB pp. 216(E.)-226

Posted: Montana Wrongful Discharge from Employment Act (Mont. Stat. § 39-2-901 et. seq.)

Review your notes and outline material from weeks 1-4, to prepare for an in-class group exercise.

9. Wednesday, September 21, 2022

Collective job security: The WARN Act; Unemployment insurance

CB pp. 265(C.)-286

Week 6

10. Monday, September 26, 2022

Employee mobility: Covenants not to compete; Nonsolicitation agreements

CB pp. 287-308 (up to C.)

Posted: Florida state law on covenants not to compete

11. Wednesday, September 28, 2022

Employee mobility: Trade secrets; The duty of loyalty

CB pp. 308(C.)-329 (through n.6)

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*For Weeks 7-14, specific topics and assignments are TBA to allow for course pace flexibility.
An updated syllabus will be provided by Week 6.*

Week 7

12. Monday, October 3, 2022

Dignitary interests: Employer torts, Privacy, Reputation

Assignment TBA

13. Wednesday, October 5, 2022

Dignitary interests

Assignment TBA

Week 8

14. Monday, October 10, 2022

Dignitary interests

Assignment TBA

15. Wednesday, October 12, 2022

Dignitary interests; Employee voice and speech
Assignment TBA

Week 9

16. Monday, October 17, 2022

Review of course material from Weeks 1-8

Posted: Review Problem 1

Read, issue spot, and outline in detail an answer for Review Problem 1, which we will discuss in class.

17. Wednesday, October 19, 2022

Employee voice & speech

Assignment TBA

Week 10

18. Monday, October 24, 2022

Employee voice & speech

Assignment TBA

19. Wednesday, October 26, 2022

The Family & Medical Leave Act (FMLA)

Assignment TBA

Week 11

20. Monday, October 31, 2022

Wage & hour law

Assignment TBA

21. Wednesday, November 2, 2022

Wage & hour law

Assignment TBA

Week 12

22. Monday, November 7, 2022

Wage & hour law

Assignment TBA

23. Wednesday, November 9, 2022

Health & safety: Workers' compensation; OSHA

Assignment TBA

Week 13

24. Monday, November 14, 2022

Health & safety

Assignment TBA

25. Wednesday, November 16, 2022

Topic TBA

Assignment TBA

Week 14

26. Monday, November 21, 2022 – CLASS MEETS ONLINE

Review

Posted: Review Problem 2

Read, issue spot, and outline in detail an answer for Review Problem 2, which we will discuss in class.

****NOTE: This class meeting will be online. All students must join via Zoom from the link provided on our Canvas page.**