

**EMPLOYMENT LAW**  
**Law 6545-21814**  
**UF Levin College of Law**  
**Spring 2019**  
**Syllabus – Part I**

**Professor Stephanie Bornstein**

Holland Hall, Office 310

bornstein@law.ufl.edu

(352) 273-0957

Office Hours: Wednesdays, 4:00-6:00pm  
& by appointment (email me to arrange)

**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 sign up for the course TWEN page and are 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 Crain, Kim & Selmi, *Work Law: Cases and Materials* (3rd ed., 2015). Students must also download the free 2018 Supplement that updates the casebook (denoted as "CB Supp" below), posted under the link

“2018 Casebook Supplement” on the course TWEN page. Only selected pages from this supplement will be assigned, as indicated in the relevant class reading assignments below.

Please note that, if you plan to take the final exam on ExamSoft, you should get a hard copy rather than an electronic version of the casebook. Because you may bring your casebook into the final exam (see “Grades & Class Participation,” below), if you only have an electronic version of the casebook, you will be unable to access it on your computer while using ExamSoft.

For certain classes, I assign additional short readings to complement the casebook, denoted as “Class Handout” below. All Class Handouts will be available on the course TWEN page, posted by Friday 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 “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 approximately 6 hours outside of class reading and preparing for our 2 classes each week (3 hours of out-of-class preparation for each class meeting).

### **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.

The final exam will be timed, during the regular exam period, and will be limited open book, for which you may use only: (1) your copy of the Casebook, 2018 Casebook Supplement, and Class Handout readings assigned, and (2) a class outline prepared in whole or substantial part by you. No other materials will be allowed. More information on the exam will be provided in class.

Participation will be factored into your grade, with outstanding participation potentially raising your final course grade by a third of a letter grade (e.g., from an A- to an A or a B to a B+). Outstanding participation means offering a few thoughtful comments or questions in more than half of all classes (at least 15 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.

### **Attendance**

Attendance is required and an essential part of the course. In accordance with ABA guidance on acceptable rates of classroom absences, you are allowed 5 absences from class total, for any reason (including for illness, medical appointments, job interviews, school activities, work tasks, family issues, and the like). For ease of administration and to respect your privacy, I do not make any differentiation between “excused” or “unexcused” absences; 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.

Only observance of a University-recognized religious holiday does not count toward your 5 absences, so please do notify me in advance of such absences. Please also notify me should you have an emergency or a family or medical situation that will require missing more than 5 classes. More than 5 absences may negatively affect your final course grade.

## Use of Laptops

Students are permitted to use laptops to take notes in class, however any other 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, even if you believe it pertains to class. 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 Wednesdays from 4:00-6:00pm and by appointment. My office is HOL 310, on the third floor of Holland Hall. If you are unable to meet during these hours, please do not hesitate to email me to set up an appointment. I am happy to meet as needed at other times.

## Syllabus

The syllabus will be distributed in two parts to allow for flexibility in course pace and coverage. The first part contains reading assignments for weeks 1-6 of class, followed by a list of topics for possible coverage in the remainder of the course. The second part of the syllabus covering weeks 7-14 will be posted on the class TWEN page and distributed in class during week 6. In addition, reading assignments may be subject to change.

## Other General Information

### Policy related to make-up exams or other work

The law school policy on delay in taking exams is available at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#12>.

### Statement related to accommodations for students with disabilities

Students requesting accommodation for disabilities must first register with the UF Disability Resources Center, <https://drc.dso.ufl.edu/>. The Center will provide documentation to the student, who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation.

### Information on UF Law grading policies

The complete law school grading policy is available at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>. Students receive grade points on 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 can provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are usually open during the last 3 weeks of the semester, but students will receive notice of the specific times when they are open. Summary results of these assessments are available at <https://evaluations.ufl.edu/results/>.

### 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, available at <https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>, and the Law School's application of it, information available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

## SCHEDULE OF CLASS TOPICS AND ASSIGNMENTS

### Week 1

#### **1. Tuesday, January 8, 2019**

*The meaning of work; Historical contexts*

CB pp. 3-6 (through n.4 first paragraph); 8 n.5 only; 9(B.)-17; 19-20 n.5 only; 21(C.)-22; 28(2.)-30 (through n.2)

#### **2. Wednesday, January 9, 2019**

*20th-Century legal developments; Individual rights model*

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

CB pp. 33; 38(D.)-41; 49(B.)-52; 58-59 n.2-4; 74(2.)-89

### Week 2

#### **3. Tuesday, January 15, 2019**

*The at-will presumption; Alternative models*

CB pp. 101-121 (through n.3)

#### **4. Wednesday, January 16, 2019**

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

CB pp. 122(3.)-144 (up to *Asmus* case)

Class 4 Handout: Florida state law on employment contracts [posted on TWEN page]

### Week 3

#### **5. Tuesday, January 22, 2019**

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

CB pp. 144 (from *Asmus* case)-150 (through n.1); 151(C.)-167 (through n.4)

#### **6. Wednesday, January 23, 2019**

*The public policy exception; What constitutes public policy?*

CB pp. 179-197; 199 (from *Gantt* case)-206 (through n.3)

### Week 4

#### **7. Tuesday, January 29, 2019**

*Public policy protections: Statutory vs. common law remedies; The special case of attorneys  
Constructive discharge*

CB pp. 212(C.)-229

Class 7 Handout: Florida state law on the public policy exception [posted on TWEN page]

**8. Wednesday, January 30, 2019**

*The at-will presumption revisited*

CB pp. 230-239

Class 8 Handout: Montana Wrongful Discharge from Employment Act (Mont. Stat. § 39-2-901 et. seq.) [posted on TWEN page]

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

Week 5

**9. Tuesday, February 5, 2019**

*Collective job security: The WARN Act; Unemployment insurance*

CB pp. 261(B.)-279 (through n.3); 281 n.5 only; 294(D.)-299 (through n.5)

**10. Wednesday, February 6, 2019**

*Employee mobility: Covenants not to compete; Nondisclosure agreements*

CB pp. 303-320 (up to B.)

CB Supp pp. 10-12 n.11(cont'd)-12

Class 10 Handout: Florida state law on covenants not to compete [posted on TWEN page]

Week 6

**11. Tuesday, February 12, 2019**

*Employee mobility: Trade secrets; The duty of loyalty*

CB pp. 320(B.)-334 (through n.3); 336(C.)-341 (through n.4)

**12. Wednesday, February 13, 2019**

*Dignitary interests: Employer torts*

CB pp. 353-368 (up to B.)

Possible topics to be covered in Weeks 7-14

*Employee privacy and reputation*

*Employee voice and speech*

*Employment leave law (the Family and Medical Leave Act)*

*Wage and hour law (the Fair Labor Standards Act)*

*Health and safety law (the Occupational Safety and Health Act; workers compensation)*

*Overview of arbitration of employment disputes*