

EMPLOYMENT LAW
Law 6545 - 27671 (in person) / 28639 (online)
UF Levin College of Law
Spring 2021
Syllabus – PART I

Professor Stephanie Bornstein [she/her]

Holland Hall, Office 310

bornstein@law.ufl.edu

(352) 273-0957

Office Hours: Thursdays 3:00-5:00pm “drop in” hours at my Zoom Personal Meeting Room (link on our Canvas course site) and by appointment at other times (email me to arrange)

Class Meetings: Tuesdays & Wednesdays, 10:30am to 11:55am

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 Crain, Kim, Selmi & Rogers, *Work Law: Cases and Materials* (4th ed., 2020).

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 Canvas site, 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 at least 6 hours outside of class reading and preparing for our class meetings each week.

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.

Please know that I will take into account the challenges posed by our hybrid classroom situation, and I will do my best to ensure each student’s ability to participate regardless of whether you are in the classroom or online. Together in class, we will also discuss expectations for creating a respectful and inclusive space that allows for robust exchange of ideas.

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 set by our class Teaching Assistant, which will be explained in class. In addition, for students taking class 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 illness other than COVID-19, medical appointments, job interviews, school activities, work tasks, 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. The one exception to this policy is for observance of a University-recognized religious holiday, which does not count toward your 5 absences, so please do notify me in advance 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 or logged in to Zoom 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

All office hours will be conducted virtually in my Zoom Personal Meeting Room, to which you will find a link on our Canvas course site. Office hours are “drop in” (to Zoom) on Thursdays from 3:00-5:00pm (no appointment necessary) and at other times by appointment. If you are unable to meet during the scheduled hours, please do not hesitate to email me to set up an appointment to meet at another time.

Syllabus

The syllabus will be distributed in two parts to allow us to adapt our course pace given our hybrid class format. The first part of the syllabus contains reading assignments for weeks 1-4 of class, followed by a list of topics planned for coverage in the remainder of the course. The syllabus will be updated with specific reading assignments for weeks 5-13 and posted on the class Canvas site during week 4. In addition, listed reading assignments may be subject to change.

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.

Additional COVID-19 Related Policies

In response to COVID-19, the following additional policies and requirements have been instituted to enhance the safety of our in-classroom interactions. Students who do not comply risk losing their ability to remain in the course:

- You are required to wear approved face coverings properly at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to you being asked to leave the classroom and no longer permitted on the UF Law campus. Noncompliance will also be reported to the Office of Student Conduct and Conflict Resolution and to the relevant state board of bar examiners.

- Our course has been assigned a physical classroom with enough capacity to maintain physical distancing requirements of 6 feet between individuals. Please utilize designated seats and maintain appropriate spacing from all others in the classroom. Please do not move desks or workstations.
- Be mindful of how to properly enter and exit the classroom. Please practice physical distancing to the extent possible when entering and exiting the classroom.
- Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.
- 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 use the UF Health screening system and follow the instructions about when you are able to return to campus (see <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if>). Any related absences will be accommodated (see “Attendance” above).
- Because of our hybrid class format, all classes will be recorded and available for all enrolled students to review for their own personal completion of the course. You may not share access to these recordings with others, nor may you take, circulate, or post your own or any other photos or videos of class meetings. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

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/>. 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 <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>. 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/>.

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>.

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. Tuesday, January 19, 2021

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, January 20, 2021

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. Tuesday, January 26, 2021

The at-will presumption; Alternative models

CB pp. 107-127 (up to B.)

4. Wednesday, January 27, 2021

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

CB pp. 127(B.)-149 (up to *Asmus* case)

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

Week 3

5. Tuesday, February 2, 2021

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

The public policy exception

CB pp. 149 (from *Asmus* case)-165 (through n.4); 169-180 (up to B.)

6. Wednesday, February 3, 2021

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

CB pp. 180(B.)-188 (through n.3); 190 (from *Gantt* case)-197 (through n.3); 203(C.)-211 (up to E.)

Class 6 Handout: Florida state law on the public policy exception [posted on Canvas]

Week 4

7. Tuesday, February 9, 2021

The at-will presumption revisited

CB pp. 216(E.)-226

Class 7 Handout: Montana Wrongful Discharge from Employment Act (Mont. Stat. § 39-2-901 et. seq.) [posted on Canvas]

Review your notes and outline material from weeks 1-3, to prepare for an in-class group exercise.

8. Wednesday, February 10, 2021

Collective job security: The WARN Act; Unemployment insurance

CB pp. 265(C.)-286

Possible topics to be covered in Weeks 5-13

Employee mobility (covenants not to compete, nondisclosure agreements, trade secrets)

Employer torts

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)

Arbitration of employment disputes