

THE FUTURE OF WORK POST-COVID

Syllabus

Compressed Course – Fall 2023

Course Description and Student Learning Objectives

Even before the global COVID-19 pandemic, legal regimes governing work in the United States struggled to keep up with a changing world. The increase in gig work chipped away at traditional employment concepts. Globalization and shifts in worker bargaining power confounded efforts to protect worker rights. Advances in technology allow for remote work but also greater worker surveillance, raising workplace discrimination and worker privacy issues. The global pandemic accelerated these trends and the urgency of addressing the legal issues they pose in the workplace.

This week-long, 1-credit course will prepare you to grapple with current legal issues at the edge of American laws governing work. You will be introduced to black letter law – particularly as pertains to Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA) and tests governing worker classification as employees or independent contractors – but this alone is not the goal. Instead, the course will emphasize exposing future practitioners to important concepts and challenging them to apply these to current problems. There are no prerequisites.

After completing this course, you should be able to:

- apply concepts from the American Disabilities Act, including reasonable accommodation, to workplace problems related to the global COVID-19 pandemic
- apply concepts from Title VII's prohibition of discrimination in employment to workplace problems related to the pandemic
- apply worker classification tests to workplace problems and understand associated employment policy related to the pandemic
- demonstrate an understanding for the limits of workplace privacy protections in the face of workplace monitoring
- identify choice of law/jurisdictional problems posed by remote work
- articulate the challenges and opportunities to worker equity posed by the pandemic
- articulate how changes in the economy and in technology complicate the ability to apply many federal employment laws

Instructor and Office Hours

Instructor: Jose Javier Rodriguez
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* One-hour in-person office hours will be held in the classroom immediately after the last classroom session on both Tuesday 8/15 and on Thursday 8/17.

Class Meeting Times

We will meet during fourteen 50-minute sessions at the following times:

MON. <u>8/14</u>	TUES. <u>8/15</u>	WED. <u>8/16</u>	THURS. <u>8/17</u>	FRI. <u>8/18</u>
				9:00-9:50a 10:00-10:50a 11:30a-12:20p
	1:00-1:50p 2:00-2:50p 3:30-4:20p *	1:00-1:50p 2:00-2:50p 3:30-4:20p	1:00-1:50p 2:00-2:50p 3:30-4:20p *	
3:00-3:50p 4:00-4:50p				

Assigned Reading and Material Covered

What follow are three areas that will be covered, with assigned reading for each. The assigned reading will generally be taken up in the order that it appears below. Instructions will be provided on which material students must read prior to each session.

There is no assigned textbook for this class. Materials will be made available on Canvas, as will handouts and slides used in class. Where excerpts are assigned, the portions highlighted in **light grey** in the version made available through Canvas are the portions you are **not** required to read; the material that is **unhighlighted is required**.

Part I. Discrimination, accommodation, telework and technology

- excerpts from Mulloy v Acushnet Co., 460 F.3d 141 (1st Cir. 2006)
- excerpts from E.E.O.C. v. Ford Motor Co., 782 F.3d 753 (6th Cir. 2015)
- excerpts from Nicole Buonocore Porter, “Working While Mothering During the Pandemic and Beyond,” 78 Wash. & Lee L. Rev. Online 1 (2021)
- excerpts from Isaac Mamaysky, “The Future of Work: Exploring the Post-Pandemic Workplace,” 21 U.C. Davis Bus. L.J. 257 (2021)
- Peeples v. Clinical Support Options, Inc., 487 F. Supp. 3d 56 (D. Mass. 2020)
- Brown v. Roanoke Rehabilitation & Healthcare Center et al, 2022 WL 532936 (M.D. Ala. 2022)
- Williams v. Carolinas Healthcare Sys., 2011 WL 1131087 (W.D.N.C. 2011)
- excerpts from Gordwin v. Amazon.com Inc., WL 5396086 (D. Ariz. 2021)
- Pranshu Verma, “These robots were trained on AI. They became racist and sexist.” THE WASHINGTON POST, July 16, 2022
- excerpts from UNESCO, OECD, IDB, “The Effects of AI on the Working Lives of Women” (2022) (material not required is in blue)
- excerpts from Jenny R. Yang, “Adapting Our Anti-Discrimination Laws” 35 ABA J. Lab. & Emp. L. 207 (2021)
- excerpts from Stephanie Bornstein, “Antidiscriminatory Algorithms,” 70 Ala. L. Rev. 519 (2018)

Part II. Challenges in applying workplace protections

- excerpts from Alabsi v. Savoya, LLC, 2019 WL 1332191 (N.D. Cal. 2019)
- excerpts from Cunningham v. Lyft, Inc., 2020 WL 2616302 (D. Mass. 2020)
- excerpts from Sportsman v. A Place for Rover, Inc., 537 F. Supp. 3d 1081 (N.D. Cal. 2021)
- Orly Lobel, “We Are All Gig Workers Now,” 57 San Diego L. Rev. 919 (2020)
- J.F. v. Rev. Bd. of Indiana Dep't of Workforce Dev., 2021 WL 5625804 (Ind. Ct. App. 2021)

- Cahoo v FAST Enterprises LLC, 508 F.Supp.3d 162 (E.D. Mich. 2020)
- excerpt from David J. Rodwin, “Independent Contractor Misclassification Is Making Everything Worse,” 14 St. Louis U.J. Health L. & Pol’y 47 (2020)
- excerpts from Henry Moreno, “The Statutory Death of the Gig Economy,” 75 U. Miami L. Rev. 945 (2021)
- excerpts from Cynthia Estlund, “What Should We Do After Work? Automation and Employment Law,” 128 Yale L.J. 254 (2018)
- excerpt from Shiber v. Centerview Partners LLC, 2022 WL 1173433 (S.D.N.Y. 2022)
- excerpts from Mwangi v. Passbase, Inc., 2022 WL 2133734 (S.D.N.Y. 2022)

Part III. Privacy and worker monitoring

- excerpts from Friedman v. S. Cal. Permanente Med. Grp., 102 Cal. App. 4th 39 (2002)
- excerpts from Chenzira v. Cincinnati Children's Hosp. Med. Ctr., 2012 WL 6721098 (S.D. Ohio 2012)
- excerpts from Barrington v. United Airlines, Inc., 2021 WL 4840855 (D. Colo. 2021)
- excerpts from Elizabeth A. Brown, “A Healthy Mistrust: Curbing Biometric Data Misuse in the Workplace,” 23 Stan. Tech. L. Rev. 252 (2020)
- 42 U.S.C. §§ 2000ff & 2000ff-1 (sections from Genetic Information Nondiscrimination Act)
- Ortiz v. City of San Antonio Fire Dep't, 806 F.3d 822 (5th Cir. 2015)
- 740 ILCS 14/1, 14/5, 14/10 & 14/15 (sections from Illinois’ Biometric Information Privacy Act)
- excerpts from Karling v Samsara Inc, 610 F.Supp.3d 1094 (N.D. Ill. 2022)
- Naughton v. Amazon.com, Inc., 2022 WL 19324 (N.D. Ill. 2022)
- Local Law No. 144 (2021) of City of New York (Automated Employment Decision Tools)
- New York City Department of Consumer and Worker Protection, Notice of Adoption of Final Rule (2023)

Grading

There are two components that make up the final grade for the course. A three-hour open book essay-style exam consisting of fact-patterns and/or practice-oriented questions will make up 85% of your grade. This final exam will cover topics covered in class and in the required reading. The College of Law's policy on exam delays and accommodations can be found here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

Preparation and classroom participation will make up the remaining 15% of your grade. Class participation grades will be based on demonstrating that you have come to class adequately prepared. You are expected to spend, on average, two (2) hours preparing for every 50-minute session of scheduled class time.

When called on, students will be asked to address facts, points of law, and concepts in the assigned reading or to address problems and hypotheticals flowing from them. All students should expect to be called on in class. However, coverage of the material will begin with a group of students who will be told ahead of time that they will be the class's "expert panel" for that assigned material.

When called on, a student who demonstrates familiarity with the material will earn 2 points. Demonstrating limited familiarity with the material will earn only 1 point. A student who, when called on, demonstrates that they came to class unprepared will earn 0 points. Over the course of the fourteen sessions, students will be given equal opportunities to earn points. Voluntary participation is welcomed as are appropriate questions. However, neither will result in formally earning points toward class participation.

Attendance at each 50-minute session of this compressed course is mandatory. Any missed session will result in a reduction in a student's final grade for each missed 50-minute session unless you e-mail in advance with an excuse that is recognized under the College of Law's policies. The College of Law's attendance policies are available here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

Per the College of Law's policy, this class will be graded on a curve. Information on current College of Law grading policies for assigning grade points can be found at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

Information on how to request an accommodation can be found here <https://disability.ufl.edu/>.

Expectations of Students in the Classroom

Please do not arrive late to class, leave early, or leave to take a break during class absent extenuating circumstances. Please turn off your cell phone during class and silence your laptops, if any. Please be respectful of classmates in all oral and written communication. A student who engages in behavior, after a warning, that disrupts the learning environment or violates College of Law policies can see their grade lowered as a result.

Academic honesty and integrity are fundamental values of the College of Law. You can find more information here: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.