Employment Relationships
Spring 2008
Professor Carolyn Shapiro

COURSE INFORMATION

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Office hours: Wednesdays 10:30-11:30 am and by appointment. In addition, please feel free to stop by, call or e-mail, or to speak with me after class. I encourage you to ask questions about things that you did not understand in class or in the reading and to pursue ideas or topics that interest you.

This course focuses on the legal relationship between employer and individual employee. It is a survey course, covering topics including the common law understanding of the employment relationship, judicial modifications of that understanding, and statutes that govern employment. Because it is a survey course, some topics will be addressed only briefly or not at all. For example, the course does not address labor law or public sector employment, both of which are the subjects of other courses, and it provides only a general overview of employment discrimination law, rather than the detailed consideration of the subject provided in that class.

As the course will demonstrate, employment law is a mixture of state and federal law. The course cannot provide comprehensive information about state regulation of employment in all 50 states, or even in one. There will, however, be a special emphasis on Illinois law.

Your grade will be based primarily on a final examination. In addition, class participation can help you. It can also hurt you, if you regularly don’t come to class, can’t or won’t participate, or are consistently unprepared. Regular attendance is required. I will expect that you have done the assigned reading and are prepared for class. Finally, during the semester, I may give two or three small written assignments. These assignments will not be graded. They will, however, count towards your class participation. Failure to complete an assignment or to make a good faith effort on an assignment will be noted.

The final exam will be open book and in class. For the final exam, you will be responsible for all assigned reading, whether or not we discussed it in class, and for all material covered in class discussion and lectures, even if it was not covered in the assigned reading. However, the exam will emphasize the material that I view as important, and you will be able to tell what I think is important by coming to class.

For course announcements and for other useful information please consult the course website accessible through http://www.kentlaw.edu/faculty/classes.html/.
SYLLABUS

The syllabus is divided by assignment, not by class. Some assignments will likely take more than one class period to cover; some will likely take less. I will announce assignments for each class either in class or by e-mail.

The texts for the class are: Rothstein & Liebman, Employment Law: Cases and Materials (6th ed. 2007), and its Statutory Supplement. There will also be assigned readings of some additional material available on my website or, occasionally, distributed as photocopied hand-outs. Not all of these additional readings are listed on the syllabus.

In the syllabus, R&L refers to the casebook and Stat.Supp refers to the statutory supplement. Where page numbers are followed by note numbers in parentheses – e.g., 489-492 (notes 4, 5-8) – read only notes 4, 5, 6, 7, and 8, all of which appear on pages 489-92. Where a page number is followed by a note number not in parentheses – e.g., 531-38 note 4 – read all the pages listed up to and including that note (or beginning with that note, e.g. 531 note 4 - 538).

I. Introduction & Who Is An Employee?
   Assignment 1:
   R&L 2-4, 62-64, 19-24
   Handout: Daughtrey v. Honeywell, Inc., 3 F.3d 1488 (11th Cir. 1993)
   Handout: Illinois Employee Classification Act, Public Act 95-0026

II. Employment at Will and Some Modifications
   A. The Baseline
      Assignment 2:
      R&L 29-33, 57-59, 69-71, 878-84, 974-87
   B. Public Policy Exception and Whistleblowing
      Assignment 3:
      R&L 12-15, 867-70, 935-41 note 2, 942-44 note 2, 947 notes 1&2, 948 note 5 - 954
      Handout: Illinois Whistleblower Act, 740 ILCS 174/1 et seq.
      Handout: Different views of public policy in the Illinois courts
      Handout: Callahan v. Edgewater Care & Rehabilitation Center, Inc., 374 Ill.App.3d, 872 N.E.2d 551 (1st Dist. 2007)
C. **Written Contracts**  
Assignment 4:  
R&L 884-91

D. **Employee Handbooks and Manuals**  
Assignment 5:  
R&L 898-910  

E. **Implied Contracts**  
Assignment 6:  
R&L 29-31 (review), 892-96 note 2, 897 (notes 5-6)

F. **Good Faith and Fair Dealing**  
Assignment 7:  
R&L 915 (notes 1-2), 916-18, 927 note 1-935  
Handout: *Rao v. Rao*, 718 F.2d 219 (7th Cir. 1983)

G. **Intentional Infliction of Emotional Distress**  
Assignment 8:  
R&L 965-73

H. **Employee Breaches**  
Assignment 9:  
R&L 988-1004

I. **Arbitration**  
Assignment 10:  
R&L 61-65
III. Hiring

A. References & Defamation
   Assignment 11:
   R&L 129-35

B. Negligent Hiring
   Assignment 12:
   R&L 205-09 note 1-5, 211 note 11 - 217 note 3
   Handout: Illinois Disclosure of Offenses Against Children Act, 820 ILCS 210/1; Illinois Criminal Identification Act, 20 ILCS 2630/5, 2630/12

C. Testing and Screening

1. Polygraph tests
   Assignment 13:
   R&L 144-49

2. Psychological and “honesty” testing
   Assignment 14:
   R&L 149-55, 159-60

3. Medical screening and exams
   Assignment 15:
   R&L 162-75, 192-97, 198-200 (notes 3, 5-7)
   Handout: Right to Privacy in the Workplace Act, 820 ILCS 55/5, 55/20; Medical Examination of Employees Act, 820 ILCS 235/1-4
   Handout: Carter v. Tennant Co., 383 F.3d 673 (7th Cir. 2004)
IV. Discrimination

A. Overview and Remedies
Assignment 16:
R&L 220-25, 297-98, 301 note 1 - 306
Stat.Supp. as follows (all sections are from Title VII):
   Section 701 pp. 38-39
   Section 703(j) p. 43
   Section 704(a) p. 46
   Section 706(e) p. 49
   Section 706(g) p. 51

B. Disparate Treatment
Assignment 17:
R&L 226-32, 244-56
Stat.Supp. as follows (from Title VII):
   Section 703(m) p. 45
   Section 706(g)(2)(B) p. 51
Handout: Article on cognitive bias

Assignment 18:
R&L 86-91, 121 note 2 - 128, 313-18 note 1
Handout: Law Review/Book excerpts

C. Disparate Impact and Statistics
Assignment 19:
R&L 256-60, 263-67, 277-78
Stat.Supp. Section 703(k) p. 44

D. BFOQ Defense
Assignment 20:
R&L 278-85, 286-87 (notes 5-6), 296-97 (notes 1-3)
Stat.Supp. Section 703(e), pp. 41-42

E. Equal Pay Act
Assignment 21:
R&L 454-55, 461 n.2 - 465, 469-70, 475-78, 484-86 n.6, 488 (notes 11-12)
F. **Age**
   Assignment 22:
   R&L 347-54
   Stat.Supp. as follows (all sections from the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq.):
   - Sections 621 & 623 pp. 62-65
   - Section 626(b)-(d) pp. 66-67
   - Section 630(b) & (f) pp. 68, 69-70
   - Sections 631 & 633 pp. 70-71

G. **Disability**
   Assignment 23:
   R&L 354-76
   Stat.Supp.77-89 as follows: (all sections from the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq.)
   - Sections 3, 101-102(b) pp.77-80
   - Sections 103(a)-(b) & (d), 104 pp. 82-86
   - Section 501 p. 87
   - Section 503 p. 88
   - Section 511 p. 89

H. **Religion, National Origin, and Immigration**
   Assignment 24:
   R&L 334 note 3 - 337 note 15, 345 note 5 - 347 (through note on IRCA), 95-109
   Handout: Illinois Human Rights Act, 775 ILCS 5/2-102
   Handout: Current issues

I. **Other Protected Groups**
   Assignment 25:
   R&L 611-16
   Handout: Chicago Human Rights Ordinance §§ 010, 020, 030, 050

V. **Terms and Conditions of Employment**

A. **Harassment**
   Assignment 26:
   R&L 594-96, 602 n.3 - 611
   Handout: Harassment scenarios (*Please be aware that these scenarios contain excerpts from real cases and include extremely offensive language.*)
   Handout: *EEOC v. V&J Foods, Inc.*, 507 F.3d 575 (7th Cir. 2007)
B. **Privacy, Autonomy, and Personnel Records**

Assignment 27:
R&L 621-22 (notes 4-6), 627 note 2- 634, 642 note 3 - 657, 667-68 (notes 3-6), 676 (note 1), 685-86 (notes 5-6)
Handout: Illinois Personnel Record Review Act, 820 ILCS 40/0.01, et seq.
Handout: Privacy scenarios
Handout: *Muick v. Glenayre Electronics*, 280 F.3d 741 (7th Cir. 2002)

C. **Collective Action**

Assignment 28:
R&L 657-62
For much of the remainder of the course, we will be studying fairly lengthy and complicated statutes. In each case, I will list the statute in whole (or as it appears in the Statutory Supplement) on the syllabus. Please look the statute over well enough to understand its basic structure and purpose. In addition, as you read the other assigned material, refer back to the particular sections of the statute that are discussed and read them more carefully.

VI. Work, Family, and Other Obligations

Assignment 29:
R&L 544-46, 553 n.3 - 554 n.8
Handout: Illinois Nursing Mothers in the Workplace Act, 820 ILCS 260, et seq.;
Illinois School Visitation Rights Act, 820 ILCS 147/1, et seq.;
Illinois Election Code, 10 ILCS 5/17-15;
Illinois Jury Act, 705 ILCS 305/4.1;
Illinois Service Member’s Employment Tenure Act, 330 ILCS 60/1, et seq.;
Illinois Family Military Leave Act, 820 ILCS 151/1, et seq.
Handouts: California and Washington law on family leave (focus in particular on eligibility and benefit amount):
http://www.paidfamilyleave.org/law.html
http://www.paidfamilyleave.org/
http://www.lni.wa.gov/WorkplaceRights/LeaveBenefits/FamilyCare/Maternity/default.asp

VII. Wages & Hours


A. Overview: History, Economic Policy, Some FLSA Basics
Assignment 30:
R&L pp. 393 (bottom)- 401, 441-47
Handouts on minimum wage:
http://www.dol.gov/esa/minwage/coverage.htm
http://www.dol.gov/esa/minwage/america.htm (don’t print, just look at it)
B. **Covered Employees**
Assignment 31:
R&L 401, 409-10 (through par. b), 417-20 (notes 1-4)
Handouts on FLSA regulations
Handout: Illinois Minimum Wage Law: 820 ILCS 105/1, *et seq.* (especially sections 105/4(a) and 105/4a), available at http://www.state.il.us/agency/idol/laws/Law105.htm (click on link to the law)
Handout: Worksheet on FLSA regulations

C. **Counting Wages and Hours**
Assignment 32:
R&L 420-30
Handout: Select FLSA provisions
Review: Illinois Minimum Wage Law: 820 ILCS 105/1, *et seq.* (especially sections 105/4-4a)

D. **Child Labor**
Assignment 33:
R&L 430 (par f), 435-36 (notes 1-6)

E. **Enforcement**
Assignment 34:
R&L 436-41

F. **Other Federal and State Laws**
Assignment 35
R&L 393 n.4, 447-49
Handout: Illinois Wage Payment and Collection Act, 820 ILCS 115/1, *et seq.*
Handout: Illinois One Day Rest in Seven Act, 820 ILCS 140/1, *et seq.*

VIII. **Health Benefits and ERISA**


A. **Introduction**
Assignment 36:
R&L 492-99
B. **ERISA Preemption**
   Assignment 37:
   R&L 527 (intro paragraph), 532-44
   Handout: *Retail Industry Leaders Ass’n v. Fielder*, 470 F.3d 180 (4th Cir. 2007)

C. **Substantive Provisions**
   Assignment 38:
   R&L 501-21

D. **COBRA and HIPAA**
   Assignment 39:
   R&L 499-500, 521-26

E. **Nondiscrimination in Benefits**
   Assignment 40:
   R&L 555-67, 571-77

F. **Retiree Health Benefits**
   Assignment 41:
   1168-73, 1239-53
   Handout: *Cherry v. Auburn Gear, Inc.*, 441 F.3d 476 (7th Cir. 2006)

IX. **Health and Safety**
   A. **Introduction, Preemption, and Regulatory Regime**
      Assignment 42:
      R&L 687-700, 704-05, 709-13, 718 n.1 - 731
B. **Employer Duties, Employee Rights, and Enforcement**
   
   Assignment 43:
   R&L 738-54, 754-61, 769-70, 779-80

C. **OSHA Enforcement**
   
   Assignment 44:
   761 note, 766 n.6-769

D. **Workers’ Compensation**
   
   Assignment 45:
   R&L 787-88, 793-98, 799-807, 823-24, 827-37

X. **Post-Employment and Plant Closings**

   A. **Noncompete Agreements, Trade Secrets, and Intellectual Property**
      
      Assignment 46:
      R&L 1005-14, 1017-20 (notes 2, 6, 12), 1020-30

   B. **Plant Closings**
      

      Assignment 47:
      R&L 1051-61 n.5, 1069-73 n.5

   C. **Unemployment**
      
      Assignment 48:
      R&L 1081-93, 1097-1114 n.4, 1127-35