

Professor Sumi Cho  
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Office #716, x2-8082  
Hours: MW 11:45a-12:45p & by appt.

*Employment Discrimination*  
SYLLABUS  
Fall 2007

I. COURSE DESCRIPTION: This course will examine the major federal statutes prohibiting employment discrimination based upon race, color, sex, religion, disability, citizenship status, national origin, and age. In addition to covering the substantive law, the course will critically examine its assumptions about the nature of the employment relationship, the definition of discrimination, and the role of the government in regulating employment.

II. REQUIREMENTS:

A. *Attendance and Participation.* As a class that meets only once a week, the quality of each discussion is critical to the educational process. Accordingly, you will be evaluated on your contributions to the joint learning venture. You are expected to be a prepared, active, and thoughtful participant in shaping the class discussion and will be graded accordingly. Your grade will be based on both your quantitative attendance and your qualitative participation. (15 pts.)

B. *Case Brief Coop.* Each student will select two cases in the First Half of the course on the sign-up sheet. One case will be briefed from an Employer's perspective, the other from the Employee's. The brief should succinctly convey the Facts, Issue, Holding, and Analysis in one page ideally. Be sure the Issue is framed in the form of a question that can be answered by the "Holding" by a "Yes" or "No" and one sentence. The Analysis should contain the *court's* reasoning for its decision (majority opinion and any significant concurrence/dissent), not your own. The remaining Critique paragraph should be written from *your* assigned perspective (Employer or Employee, not necessarily your personal opinion or analysis). Be sure to post your brief *at least 24 hours prior to the start of class* so that your classmates and I will have time to print out and review all briefs. **All briefs and documents posted onto Blackboard should be in MS Word, not WordPerfect.** Late posting of your scheduled brief as well as underprepared or missed in-class brief presentations, will result in significant point deductions for this assignment. (5 pts. each brief, 10 pts. total)

C. *Midterm*. There will be an in-class, closed-book/open note midterm testing your knowledge of basics in employment discrimination covered through the eighth week, emphasizing disparate treatment and disparate impact analysis under Title VII. You may bring in any notes you have generated yourself (NO Commercial Outlines), any of the casebriefs from the casebrief coop, and any handouts distributed in class. You may not use your textbook or supplement. (30 pts.)

D. *Panels of Experts*. You will sign up to participate as a “panel of experts” during the Second part of the course following the midterm. After my introduction to the topic and review of assigned cases, you and one to two other students will take responsibility for leading a 45-60 minute discussion on cutting-edge issues (either theoretical or doctrinal) on an assigned topic, such as sexual harassment.

You should do outside reading for this assignment. A good place to start is with the notes following the assigned cases identifying research and scholarship. The group must decide upon a particular focus for your discussion and the division of labor for each member. You are required to meet with me in advance of your session. You should use this exercise to explore new, emerging areas of law and theories of discrimination. The purpose of the assignment is to engage a more conceptual and/or applied understanding of the material. For example, one group assigned to the topic of sexual harassment produced excellent presentations on same-sex harassment and “intersectionality” of race and gender in sexual harassment. In order to evaluate this assignment, the following written materials are required:

1) No later than one week prior to your presentation, the group will prepare and distribute the following:

- a) your teaching objective for the session (one paragraph description);
- b) substantive topics, issues, and cases you will cover in outline form;
- c) a set of case briefs for the assigned cases in your segment;
- d) copies provided to all members of the class of any *brief (less than 20 pages unless approved by instructor)* supplementary reading assignment (not required, but permitted).

2) No later than one week after your presentation\*, each group member will post to Blackboard under the “Individual Reports 1-page report with one paragraph summarizing one’s individual contribution to the group effort as well as a bibliography reflecting one’s individual research/work undertaken.

This project will be graded on preparation, conceptualization and achievement of your teaching objective, analysis of material, and on effectiveness in triggering lively and relevant discussion and thought-provoking analysis. You must consult with me prior to your presentation. This exercise emphasizes creativity, preparation and successful collaboration. At the end of each presentation, the class will provide feedback on your effectiveness in covering the material and generating discussion. You will be graded as a group, with each member of the group receiving the same grade, unless the individual reports reflect grossly uneven work distribution or if a majority of group members request individual grading. (15 pts.)

E. *Final*. The take-home essay final exam will be comprehensive, but weighted toward the second-half materials. You will address and analyze topics and issues presented in the second half of the course. The final exam will be distributed in class on the last day of class, December 3<sup>rd</sup>. If you are absent on this day, it is your responsibility to pick up a copy from my faculty clerk, Lawrence Arendt ([larendt@depaul.edu](mailto:larendt@depaul.edu); 2-8450). Exam questions will not be e-mailed or faxed. Your double-spaced, typed final must be turned in no later than 4:30pm on Monday, December 10th using the standard procedures for submitting take-home exams. No late papers will be accepted. (30 pts.)

### III. MATERIALS/TEXTS:

A. REQUIRED (available in DePaul bookstore): Belton, Avery, Ontiveros & Corrada, *Employment Discrimination Law: Cases and Materials on Equality in the Workplace* (Thomson-West, 7th Ed. 2004). Please note that this is a **new edition** this fall and a completely different casebook from what I've used in the past.

B. There may be supplementary photocopied materials.

### IV. TENTATIVE WEEKLY SCHEDULE:

#### **Week 1**

(8/27): Introduction to the Course

Handouts<sup>1</sup>: Richard Epstein, *Forbidden Grounds* excerpt  
 Alan Freeman, Legitimizing Anti-Discrimination Law excerpt  
 Video excerpt: in class

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<sup>1</sup> These will be available beginning August 13<sup>th</sup> and thereafter with my faculty clerk, Lawrence Arendt on the 7<sup>th</sup> floor ([larendt@depaul.edu](mailto:larendt@depaul.edu) or 2-8450).

Handouts

- (8/29): Ch 1. The Problem of Discrimination in Employment: A Brief Overview  
Ch. 2. Laws Prohibiting Discrimination in Employment: An Overview  
A. Introduction  
B. Survey of Major Federal Laws  
C. Enforcement Schemes  
1. Administrative Exhaustion  
*National Railroad Passenger Corp. v. Morgan*  
2. Judicial Enforcement

TEXT: pp. 2-41

**Week 2**

- (9/3): No Class  
(Labor Day: University Closed)

- (9/5): Notes on Intersectionality  
Ch. 3. Disparate Treatment  
A. Introduction  
B. Disparate Treatment Claims  
1. Pretext or Single-Motive Claims  
*McDonnell Douglas Corp. v. Green*  
*Furnco Construction Corp. v. Waters*

TEXT: 47-50, 66-83

**Week 3**

- (9/10): *TX Dept. of Comm'ty Affairs v. Burdine*  
*St. Mary's Honor Center v. Hicks*

TEXT: 83-115

- (9/12): *Reeves v. Sanderson Plumbing*  
2. Proving Discriminatory Intent by Circumstantial or Direct Evidence  
3. Mixed-Motive Cases  
*Desert Palace, Inc. v. Costa*

TEXT: 115-27; 137-63

(Rosh Hashana begins)

**Week 4**

(9/17):

5. Pattern-or-Practice or Systemic Discrimination Cases  
*King v. General Electric Company*

Ch. 4. Disparate Impact

- A. Introduction  
B. The Theory of Disparate Impact  
    1. Objective Criteria  
        *Griggs v. Duke Power Co.*  
    2. Subjective Criteria  
        *Watson v. Fort Worth Bank & Trust*

TEXT: 170-78; 188-211

(9/19):

- C. Statistical Evidence  
*Teamsters v. United States*  
*Hazelwood School District v. United States*  
*Dothard v. Rawlinson*

TEXT: 211-33

**Week 5**

(9/24):

- D. The Business Necessity Defense  
*Contreras v. City of Los Angeles*  
E. The Bottom-Line Defense  
*Connecticut v. Teal*  
F. Griggs Revisited  
*Watson v. Fort Worth Bank & Trust*

TEXT: 233-55

(9/26):

- Wards Cove Packing Co. v. Atonio*  
*Lanning v. Southeastern PA Transportation Authority*

TEXT: 255-72; 308-18

**Week 6**

(10/1): Review/Mock Midterm

(10/3): Questions, Answers, and More Questions

**Week 7**

(10/8): In-class Midterm

(10/10): Practitioner's Perspective

**Week 8:**

(10/15): Pregnancy

Pt. III: Specific Categories of Discrimination

Ch. 6. Discrimination Because of Sex

A. Introduction

B. Theoretical and Analytical Approaches to Sex Discrimination

C. Discrimination on the Basis of Pregnancy

1. The Pregnancy Discrimination Act of 1978

*Newport News Shipbuilding & Dry Dock Co. v. EEOC*

2. Fringe Benefits & the PDA

*Erickson v. Bartell Drug Co.*

TEXT: 308-39

(10/17): BFOQ and "Sex-Plus"

E. Bona Fide Occupational Qualification

*International Union, UAW v. Johnson Controls*

TEXT: 354-380

**Week 9**

(10/22): FMLA & Grooming/Dress Codes/Appearance/"Performative Identity"

D. The Family and Medical Leave Act as Antidiscrimination Law

*Nevada Department of Human Resources v. Hibbs*

F. Dress, Grooming, and Appearance Requirements

TEXT: 339-54; 380-94

(10/24): Ch. 7. Sex-Based Compensation Schemes

- A. Introduction
- B. The Equal Pay Act of 1963  
*Corning Glass Works v. Brennan*
- C. The Bennett Amendment to Title VII
- D. Comparable Worth

TEXT: 395-433

**Week 10**

- (10/29): Ch. 8. Harassment
- A. Introduction
  - B. Sexual Harassment
    - 1. Quid Pro Quo
    - 2. Hostile Work Environment  
*Meritor Savings Bank v. Vinson*  
*Harris v. Forklift Systems*

TEXT: 440-474

- (10/31): C. Employer Liability for Discriminatory Harassment
- 1. Vicarious Liability  
*Burlington Industries v. Ellerth*  
*Faragher v. City of Boca Raton*
  - 2. Liability for Negligence: Harassment by Co-Workers and Nonemployees

TEXT: 487-26

**Week 11**

- (11/5): Ch. 9. Discrimination Because of Sexual Orientation
- A. Introduction
  - B. Sexual Orientation Claims Under Title VII
    - 1. Sexual Orientation Discrimination as “Sex” Discrimination  
*DeSantis v. Pacific Telephone & Telegraph*
    - 2. Sexual Harassment Because of Sexual Orientation
  - C. Protection of Homosexual Conduct and Status Under the Constitution
- Ch. 8. Harassment
- B. Sexual Harassment
    - 3. Same-Sex Sexual Harassment: The Meaning of “Because of Sex”  
*Oncale v. Sundowner Offshore Services*

TEXT: 541-71; 475-87

- (11/7): Ch. 10. Discrimination Because of Religion

- A. Introduction
- B. The Meaning of “Religion”
- D. Establishing a Prima Facie Case  
*Heller v. Ebb Auto Co.*
- E. Reasonable Accommodation and Undue Hardship  
*TWA v. Hardison*  
*Ansonia Board of Education v. Philbrook*

TEXT: 578-84; 590-617

**Week 12**

- (11/12): Ch. 11. Discrimination Because of National Origin
- A. Introduction
  - B. The Meaning of “National Origin”  
*Dawavendewa v. Salt River Project Agricultural Improvement & Power District*
  - C. National Origin and Citizenship  
*Anderson v. Zubieta*
  - D. National Origin Discrimination Based on Language and Accent
    1. English Proficiency as a Job Requirement
    2. English-Only Requirement for Bilingual Employees  
*Garcia v. Spun Steak Co.*
    3. Accent Discrimination as National Origin Discrimination  
*Hasham v. California State Board of Equalization*

TEXT: 628-667

- (11/14): Ch. 12. Discrimination Because of Age
- A. Introduction
  - B. Disparate Treatment  
*Hazen Paper Co. v. Biggins*  
*Sperling v. Hoffmann-LaRouche*
  - C. Disparate Impact  
*Ellis v. United Airlines*

TEXT: 668-705

**Week 13**

- (11/19): Defining Disability
- Ch. 13 Discrimination Because of Disability
- A. Introduction
  - B. The Meaning of “Discrimination” Under the ADA  
*Raytheon v. Hernandez*  
*US Airways v. Barnett*

C. The Meaning of “Disability”  
*Sutton v. United Airlines*

TEXT: 717-56

(11/21): Midterm Reviews and Individual Appts.  
Safe Travels for the Break!

**Week 14**

(11/26): Accommodating Disability

D. Qualifications, Direct Threat, and Undue Hardship

1. Qualification Standards
2. Qualification Standards and the Direct Threat Defense  
*Chevron USA v. Echazabal*

3. Reasonable Accommodation and Undue Hardship  
*VandeZande v. Wisconsin Department of Administration*

E. Medical Inquiries, Medical Examinations, and Medical Benefits

1. Medical Inquiries and Examinations

TEXT: 767-91

(11/28): Retaliation as Discrimination

Ch. 15. Retaliation

A. Introduction

1. Statutory Provisions
2. Analytical Framework for Retaliation Claims  
*Love v. Re/Max of America*

B. Scope of Protected Activity

1. The Participation Clause
2. The Opposition Clause  
*Payne v. McLemore’s Wholesale & Retail Stores*
3. Individuals Protected from Retaliation

TEXT: 813-41

**Labor Day Makeup**

(12/3): Wrap-Up Lecture  
Individual Appts.