

Employment Discrimination Syllabus

Spring 2022

Contact Information:

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Class Information:

Mondays
4:00 p.m. to 6:00 p.m.

Casebook:

Cases and Materials on Employment Discrimination by Sullivan, Bornstein, and Zimmer (10th ed. 2021)

- Supplement of additional cases in PDF format will be provided
- Statutory and Regulatory Supplement in PDF format will be provided

Recommended Secondary Sources:

There are many excellent secondary sources of information on employment discrimination and civil rights in the workplace. However, because the case law in this area constantly changes (best estimates indicate that over half the federal court civil docket is employment law related), sources quickly become dated. The best thing you can do to familiarize yourself with this exciting and complex area of the law is to thoroughly review the relevant statutes and their annotations.

- **Within the first couple classes, I will make an unannotated statutory and regulatory supplement available for students.**

Learning Outcomes:

By the end of the course, students should:

- Have an understanding of the basic principles of employment discrimination law;
- Be familiar with the causes of action, schemes of proof, *prima facie* elements, and defenses used in employment discrimination law; and
- Be able to analyze the complex factual situations inherent in employment discrimination cases and identify and understand the legal issues that are involved.

Attendance:

Each class I will send a sign-in sheet around the class. Please sign in or you will be marked absent. If you arrive late, please let me know either during a break in the class or at the end of class. If you will miss a class, please contact me via email before class begins.

Grading:

The take-home final exam will be the basis for a student's grade. I reserve the right to bump a grade up or down as a result of a student's class participation during the semester.

Class participation is a crucial element to learning this subject. Discrimination is a polarizing topic, and it seems almost everyone has a different idea about what kind of discrimination meets the definition of unlawful discrimination. I find this area of the law both fun and frustrating, and hope each of you will leave my class with a love for this subject.

Special Note on Class Participation

Beginning on our third class, I will be assigning students to be the discussion leaders each week. These students, to whom advance notice will be given, should expect to volunteer to participate in class, so please prepare accordingly. Also, this participation is based on the actual class day, not the reading assignments in the syllabus, so please prepare for the actual class to the best of your ability. Of course, I encourage and *expect* every student to be prepared to participate in class discussions as well—do not come to class unprepared or leave the discussion just to the day's leaders.

Note About Offensive Language and Material:

We will be reading cases where offensive language is used, including racial and ethnic slurs, sexual stereotypes, acts of violence, and extremely crude and vulgar language. I may occasionally use offensive language in class in an effort to explore this subject properly (such as in hypothetical problems). Students must be willing to both read and listen to this material and discuss the offensive language in an academic and respectful setting.

Reading Assignments:

On the following pages is a proposed reading assignment schedule. As the class progresses, I may modify the assignments as needed.

Please keep in mind that each student will be responsible for reading **any statute or regulation** mentioned in your casebook or case readings, as well as those listed in the assignments below.

Academic Policies & Honor Code

Unless students have been otherwise specifically informed in class, this course follows the standard policies adopted by the law school, as they are amended from time to time. You can find more information about those policies here:

<http://www.law.gmu.edu/academics/regulations>

http://www.law.gmu.edu/academics/honor_code

	<u>General Subject of Class</u>	<u>Assignment</u>
Class 1 24 Jan	DEFINITIONS OF DISCRIMINATION; STATUTES (Title VII, ADEA, ADA, § 1981) Overview of Three Basic Proof Schemes Individual Disparate Treatment Systemic Disparate Treatment Systemic Disparate Impact INDIVIDUAL DISPARATE TREATMENT Prima Facie Case <i>McDonnell Douglas; Hazen Paper</i>	p. xxv-xxviii; 1-23 n5 29 U.S.C. § 623 42 U.S.C. §§ 1981, 2000e-2 & 12112
Class 2 31 Jan	INDIVIDUAL DISPARATE TREATMENT (cont.) Evidence of Discriminatory Intent <i>Reeves, Patterson; Ash</i> 42 USC § 1981 & Reverse Discrimination <i>Santa Fe Trail</i> Employer Liability: Staub	p. 28-35 n2, 37 n6- 48 n5; 53-56 n2; 60-65n2 42 U.S.C. §§ 1981 & 2000e-2(a) Case Supplement p 1-5
Class 3 07 Feb	INDIVIDUAL DISPARATE TREATMENT (cont.) Causation & Mixed Motives <i>Price Waterhouse; Desert Palace; Gross</i>	p. 67-71 n4; 73-87 n4; 93 n13-95; 97-101 42 U.S.C. § 2000e(m) & 2000e-2(m)
Class 4 14 Feb	INDIVIDUAL DISPARATE TREATMENT (cont.) Causation & Mixed Motives (cont.) <i>Comcast</i> SYSTEMIC DISPARATE TREATMENT Formal Policies: Manhart Patterns & Practices <i>Teamsters & Hazelwood</i> <i>Wal-Mart v. Dukes</i>	p. 103-108 n3; 119-125 n4; 126-137, 141-45 n2 FRCP 23
Class 5 21 Feb	SYSTEMIC DISPARATE TREATMENT (cont.) Defenses & BFOQ <i>Feeney; Johnson Controls</i> Voluntary Affirmative Action	p. 160-169 n3; 171-173; 180 n2-188 42 U.S.C. § 2000e-2(e) & (j) Case Supplement p. 6-12

(cont.)	General Subject of Class	Assignment
Class 6 28 Feb	SYSTEMIC DISPARATE IMPACT Basic Concepts <i>Griggs; Wards Cove</i> Modern Structure—Plaintiff' Prima Facie Case <i>Watson; Teal; Dothard</i>	p. 189-202 n3; 204-207 n2; 211-214 n2; 217-22; 225-232 n1
Class 7 07 Mar	SYSTEMIC DISPARATE IMPACT (cont.) Modern Structure—Rebuttal & Business Necessity and Job Relatedness <i>Albemarle Paper</i> Tension Between Disparate Treatment and Impact <i>Ricci v. DeSefano</i> SPECIFIC TYPES OF DISCRIMINATION Because of Sex <i>Oncale</i>	p. 247-50; 264-65; 273-89 n3; 307-12
Class 8 21 Mar	SPECIFIC TYPES OF DISCRIMINATION (cont.) Because of Sex <i>Bostock</i> Sex Stereotyping & Grooming Pregnancy: <i>Young v. UPS</i>	p. 340-41 n1; 342 n3-43 n4; 345-66 42 U.S.C. § 2000e(k) Case Supplement p. 13-20
Class 9 28 Mar	SPECIFIC TYPES OF DISCRIMINATION (cont.) Because of Sex (cont.) Harassment: <i>Meritor, Harris</i> Vicarious Liability: <i>Ellerth/Faragher</i> Vicarious Liability: <i>Vance</i>	p. 366-70 n4; 382-413
Class 10 04 Apr	Because of Religion <i>Abercrombie & Fitch</i> Lecture on <i>Hosanna-Tabor, Our Lady of Guadalupe</i> Because of National Origin Retaliation <i>Breedon</i>	p. 432-43; 444-46; 451-59; 465 n7-66; 469-72; 481-93 42 U.S.C. §§ 2000e(j) & 2000e-3

(cont.)	General Subject of Class	Assignment
Class 11	SPECIFIC TYPES OF DISCRIMINATION (cont.)	p. 495-510; 515-26
11 Apr	Retaliation (cont.) <i>Burlington Northern; Nassar</i> Disability ADA Amendments Act of 2008 Definition of Disability	42 U.S.C. §§ 12102, 12111, & 12112 29 C.F.R. § 1630.2, especially (g) through (l) Case Supplement p. 20-31
Class 12	SPECIFIC TYPES OF DISCRIMINATION (cont.)	p. 535-45 n1; 546 n4-547 n5; 548-58 n3; 570-81
18 Apr	Disability (cont.) “Regarded As” Qualified Individual with a Disability Reasonable Accommodations <i>Barnett; Albertson’s</i> Drug and Alcohol Abuse Qualification Standards & Defenses Direct Threat— <i>Chevron</i>	42 U.S.C. §§ 12113 & 12114 29 C.F.R. § 1630.2(m) through (r)
Class 13	SPECIFIC TYPES OF DISCRIMINATION (cont.)	p. 605-06; 645-63
25 Apr	Disability (cont.) Qualification Standards & Defenses Business Necessity LECTURE ON ADMINISTRATIVE PROCEDURES, DAMAGES, & RELIEF Filing and Time Limits Equitable and Legal Relief <i>Ford Motor</i> Caps on Damages QUESTIONS & ANSWERS (time permitting)	42 U.S.C. § 1981a 42 U.S.C. § 2000e-5(e), (g), & (k) Case Supplement p. 31 - 39