

EMPLOYMENT LAW 365-002

FALL 2023

Room TBD

Professor Neal Mollen (nmollen@gmu.edu)

Class schedule: We will meet every Thursday from 6:05 until 8:05, with a ten-minute break roughly half way through. **I have no set “office hours,” but I am available for (and encourage) your questions by email or, with a prior appointment, by phone.** I will usually answer substantive questions received by email in class for the benefit of all.

Course content and learning outcomes: Our plan for the semester will be to examine the ways in which the employment relationship is regulated by federal and state law, as expressed in statutes, regulations, and case law. The course is designed to survey the breadth of the topic rather than to delve deeply into any one aspect. Among other subjects, we will explore the distinction between “employment” and independent contractor relationships; the concepts of “at-will” employment and “just cause” for discipline; wrongful discharge in violation of public policy; limitations on employee mobility; employee compensation; and unlawful retaliation and whistleblower claims. Although our text does not cover the subject, we will also spend time with laws prohibiting discrimination against individuals in various protected categories as defined by federal and state law, and, to a lesser degree, by local ordinances.

By the end of the course, students interested in employment law can expect to have a conceptual framework from which to pursue further, more in-depth study. Students with no plans for further study will have an adequate basis to spot issues as they arise in their future practices.

Required reading: The assigned text for this class is Estreicher, Harper, and Tippet, *Cases and Materials on Employment Law: the Field as Practiced* (6th Ed. American Casebook Series), ISBN-13-978-1647083724 (referred to below as “Estreicher”). Please ensure you have the newly available **6th ed. of the book**, and not the dated 5th ed.

We will also cover topics not addressed in our book, so I have identified cases you will need to read prior to designated classes. Any adjustments will be announced in class and by email.

With those caveats, the required reading for each class will be as follows:

Class 1, August 24: The Employment Relationship

Estreicher 11-45; *Coppage v. State of Kansas*, 236 U.S. 1 (1915).

Class 2, August 31: At-Will Employment and Contractual Exceptions

Estreicher 47-85; *Yuan v. Johns Hopkins Univ.*, 452 Md. 436, 157 A.3d 254 (2017) (you may skim or omit the conversion discussion in the opinion); *Strass v. Kaiser Found. Health Plan of Mid-Atl.*, 744 A.2d 1000 (D.C. 2000).

Class 3, September 7: **“Just Cause” and the Public Policy Cause of Action**

Estreicher 85-92, 143-163; *Lawrence Chrysler Plymouth Corp. v. Brooks*, 251 Va. 94, 465 S.E.2d 806 (1996); *Towson Univ. v. Conte*, 384 Md. 68, 862 A.2d 941 (2004).

Class 4, September 14: **Whistleblowers and Government Employee Protections**

Estreicher 163-218.

Class 5, September 21: **Restrictions on Mobility and Competition in Employment**

Estreicher 225-237, 315-337; *Omniplex World Servs. Corp. v. U.S. Investigations Servs., Inc.*, 270 Va. 246, 618 S.E.2d 340 (2005); *Ixchel Pharma, LLC v. Biogen, Inc.*, 9 Cal. 5th 1130 (2020).

Class 6, September 28: **Fundamentals of Discrimination (Disparate Treatment)**

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); *O’Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308 (1996); *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133 (2000); *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003); *Williams v. Vitro Servs. Corp.*, 144 F.3d 1438, 1443 (11th Cir. 1998).

Class 7, October 5: **Fundamentals of Discrimination (Disparate Impact)**

Griggs v. Duke Power, 401 US 424 (1971); *Connecticut v. Teal*, 457 U.S. 440 (1982); *Dothard v. Rawlinson*, 433 U.S. 321 (1977); *Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977 (1988); *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299 (1977); 42 U.S.C. § 2000e-2(k).

Class 8, October 12: **Fundamentals of Discrimination (Sex Discrimination and Harassment)**

Washington Cnty. v. Gunther, 452 U.S. 161 (1981); *UAW v. Johnson Controls, Inc.*, 499 U.S. 187 (1991); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17 (1993); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998); *Bostock v. Clayton Cty., Georgia*, 140 S.Ct. 1731 (2020).

Class 9, October 19: **The Duty to Accommodate**

US Airways, Inc. v. Barnett, 535 U.S. 391 (2002); *Rohr v. Salt River Project Agric. Imp. & Power Dist.*, 555 F.3d 850 (9th Cir. 2009); *Huber v. Wal-Mart Stores, Inc.*, 486 F.3d 480 (8th Cir. 2007); *Davis v. Fort Bend Cty.*, 765 F.3d 480 (5th Cir. 2014); *Groff v. DeJoy*, 143 S. Ct. 646 (2023).

Class 10, October 26: **Retaliation**

Estreicher 107-141; *Gogel v. Kia Motors Mfg. of Georgia, Inc.*, 967 F.3d 1121 (11th Cir. 2020) (*en banc*).

Class 11, November 2: **Compensation**

Estreicher 351-367; 373-392; *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012).

Class 12, November 9: **Timing and Procedural Issues**

Estreicher 439-477; 488-507.

Class 13, November 16: **Remedies and Review**

Estreicher 395-420; *McKenna v. Pac. Rail Serv.*, 32 F.3d 820 (3d Cir. 1994) (damages issues); *McKennon v. Nashville Banner Pub. Co.*, 513 U.S. 352 (1995).

Grades and expectations: Student grades will be based on a final exam. Note, however, that grades may be adjusted *either direction* based on class participation, typically by a single increment. That is, what would otherwise earn a B can be raised to a B+ or lowered to a B- depending on the level and quality of class contributions.

I cannot overemphasize the importance of, and my expectation for, active, thoughtful participation by class members in our discussions. In order for the class to be a success, it is essential that *every* student arrive at *every* class having read and carefully considered the assigned material. Although members of the class are always encouraged to participate in the discussion voluntarily, *you should expect to be called on without prior warning*. In order to get out of the class all that it can offer (and in order to get a top grade), meaningful participation in the discussion will be essential.

Nonetheless, I understand that unavoidable circumstances might prevent you from participating in our discussion on rare occasions. If you cannot prepare for a given class, you can advise me of that fact by email in advance of class so that I do not embarrass you or waste everyone's class time.

Nothing would make me happier than for every student in the class to earn, and receive, an A for their work this semester. As you know, however, grades in this class are subject to a mandatory curve. **Once the grades are distributed, I would be happy to discuss the grading process with anyone who has questions.**

The Law School has strict and specific rules about attendance, which I do not have the authority (or the inclination) to waive. Attendance will be taken before we begin each class. If you have questions or concerns about these rules, please contact the director of student academic affairs.

Exam conflicts: In accordance with Academic Regulation 4-4.1, if, for some reason you cannot to sit for the exam on the date and time for which it is scheduled, you must present your request for alternate arrangements, with appropriate documentation, to the Assistant Dean, Student

Academic Affairs. Except in emergencies, such requests should be presented no later than two weeks before the date of the examination. I am powerless to address these issues.

Additional rules and regulations: Students are prohibited by Academic Regulation 4-2.2 from recording any of our classes. I expect students to comply with this regulation. If extraordinary circumstances arise suggesting an exception to this rule might be appropriate, please let me know and we will discuss the subject.

It is expected that students will adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. For example, a student obligation may never represent the work of another as his or her own, nor provide or accept unauthorized assistance on any school-related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

Learning accommodations: Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <https://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at ods@gmu.edu, or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

University Life: University Life provides student support resources such as Counseling and Psychological Services (<https://caps.gmu.edu/>), Student Health Services (<https://shs.gmu.edu/>), and the Student Support and Advocacy Center (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>