

**Employment Law** (CRN: 77077, Section # 365-001)

Tuesday and Thursday, 4:00-5:15 pm.

Room 332 Hazel Hall

Fall Term 2009

Final Exam scheduled for December 8, 2009 at Noon.

**Instructor: Hutchison**

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- **Required Text & Materials:** (A) Employment Law Cases and Materials (fourth edition) (2007)—Steven L. Willborn et al. and (B) Employment Law: Selected Federal and State Statutes (latest edition)—Steven L. Willborn et al.; (C) The Gail Heriot Law Review article; and (D) the Hutchison SSRN Article
- This course will critically consider Employment law outside of the parameters of discrimination law. First we will consider the Fair Labor Standards Act (FLSA), Unemployment and Unemployment Insurance, the legal boundaries of the Employment Relationship, employment-at-will, employee free speech and political protection, and employee duties of loyalty.
- Be prepared to consider critically statutory interventions in the market-place. We will explore whether a given policy intervention in the marketplace works to the benefit or the disadvantage of the putative beneficiaries. One major theme will involve whether Federal intervention in the marketplace and the consequent bureaucratization of work actually improves or worsens the economy. Another major theme concerns the erosion of the doctrine of employment-at-will.
- The Final exam will likely consist of 1 or 2 essay questions plus 20-35 multiple choice questions. However, this a *tentative* forecast.

**Reading Assignments.**

Following below is a *tentative* reading assignment. I reserve the right to change the reading assignments; variations, as appropriate, should be expected. I will cover between 35 and 50 pages per week. I may either provide a handout or citations to additional materials such as law review articles.

**Method of Instruction.**

Vigorous class participation will be encouraged. A Group will be on call each class period but volunteers are welcome. Read the assigned readings carefully and ensure that you are prepared to question the underlying premises connected to the conclusions reached by the courts and the commentators.

### Grading.

- Grading will primarily be a result of one's performance on the final exam. However, the professor reserves the right to supplement final exam grades with oral adjustments equal to a plus or minus one-third of a grade.
- Positive adjustments are a function of excellence. An excellent performance is one that adds substantial value to the course.
- Negative adjustments are a function of unsatisfactory oral performance during the course. Negative is defined as a failure to have read and understood the material or alternatively a failure to communicate one's knowledge satisfactorily. If a student is unprepared for the class that counts as an unsatisfactory class performance.
- ***I reserve the right to call on students randomly.*** I plan to group students **alphabetically** by placing them into four groups based on last names. Tentatively, the class will be broken down as follows: **Group 1: A-G; Group 2: H-L; Group 3: M-R and Group 4: S-Z. This process will commence on the first day of class.** When you are on call, if you know you will be either absent or unable to prepare, you should email me prior to the class and sign up to be prepared for two additional classes. If a student is absent or unprepared on a day he or she is scheduled but fails to notify me beforehand, his or her final grade will be lowered one step. (The **first** time this happens, a student can avoid a penalty by preparing a 4-page analysis of the following day's reading assignment. This analysis must be legible, clear and thoughtful. If a student is unprepared without notifying me beforehand a second time, the penalty **cannot** be avoided.) I also reserve the right to raise grades based on exceptional class participation.
- Absences: Pursuant to ABA guidelines, students are allowed to miss up to 20% of the class meetings. Absences in excess of 20% will result in exclusion from the final exam. Attendance sheets will be passed out so that you can sign in. If you have not be able to arrive at the classroom ***before*** the sign-in sheet has been collected that will count as an absence.

### Office Hours.

In general I will be available to answer questions after class. I will also generally but not always be available on Thursday's between 2:00-2:45 (please let me know in advance). Lastly, I will schedule appointments.

**Note: Reading assignments are tentative. Please ensure that you are prepared when your group is schedule irrespective of where we are in terms of the reading assignments.**

<b>Week</b>	<b>Reading assignment</b>	<b>Questions to consider</b>
Week 1—Introduction Date: August 20, 2009 Group 1	Read pages 557-573 (casebook) Skim the pertinent section of FLSA in the Statutory supplement (pages 129-169)	Was the Lochner case correctly decided? Why or Why not? Why did the federal government enact FLSA?
Week 2: August 25 & 27 Group 2 & 3	Read pages 574-603 in the casebook.	See above.
Week 3, Dates: September 1 & 3, Groups 4 & 1	Read pages 604-640 in the casebook. Read pages 191-195 in the statutory supplement.	Can unemployment insurance be justified? Why or why not? Are there alternatives to unemployment insurance?
Week 4 Dates: September 8 & 10 Groups 2 & 3	Read pages 640-663 in the casebook. Please skim pages 213-220 in the statutory supplement. Read pages 13-29 in the casebook.	Be prepared to discuss the pro's and con's of the WARN act.
Week 5 Dates: September 15 & 17 Groups 4 & 1	Read pages 30-73 in the case book. <ul style="list-style-type: none"> <li>• Gail Heriot's article The New Feudalism: The Unintended Destination of Contemporary Trends in Employment Law, 28 Ga. L. Rev. 167 (1993)</li> <li>• Harry G. Hutchison's article: What Workers Want or What Labor Experts Want Them to Want?—available from the SSRN-- <a href="http://ssrn.com/abstract=1010384">http://ssrn.com/abstract=1010384</a></li> </ul>	<ul style="list-style-type: none"> <li>• Be prepared to defend and critique the doctrine of employment-at will.</li> <li>• What do workers want? What do labor experts want workers to want?</li> </ul>
Week 6 Dates: Sept. 22 & 24 Group 2 & 3	Read pages 74-110 in the casebook. Read pages 1-12 in the statutory supplement.	
Week 7 Dates: Sept. 29 & Oct. 1 Group 4 & 1	Read pages 110-145 in the casebook.	Should Public policy serve to vitiate the doctrine of employment-at-will? Why or why not?
Week 8 Group 2 & 3 Dates: Oct. 6 & 8 Group 2 & 3	Read pages 145-186 in the casebook.	See above.

Week 9 Dates: Oct. 15 (Tuesday observe Monday schedule. Class on Thursday) Group 4	Read pages 187-212 in the casebook.	
Week 10 Dates: Oct. 20 & 22 Group 1 & 2	Read pages 213-224 Catch-up	
Week 11 Dates: 27 & 29 Group 3 & 4	Read pages 224-257 in the casebook.	
Week 12 Dates: Nov. 3 & 5 Group 1 & 2	Read pages 257-283	
Week 13 Dates: Nov. 10 & 12 Groups 3 & 4	Read pages 283-326.	
Week 14 Dates: Nov. 17 & 19 Groups 1 & 2	Read pages 326-345 Catch-up	
Week 15 Date Nov. 24 (no class on Nov. 26) Group 3	345-365	
Week 16 Date: Dec. 1 (end of Class) Group 4	Catch-up	