

DISCRIMINATION IN EMPLOYMENT—210

FALL 2024

Professor Neal Mollen (nmollen@gmu.edu)

Class schedule: We will meet every Thursday between 6:05 and 8:05 PM, beginning on Thursday, August 22. I have no set “office hours,” and no office, but within reason, I am available for, and encourage, your questions by email or, with a prior appointment, by phone.

Course content and learning outcomes: Our plan for the semester will be to examine federal (and to a limited degree, state and local) statutory schemes that prohibit discrimination in employment decisionmaking. By semester’s end, students should be able to:

- Identify the different theories of recovery commonly used in discrimination cases (e.g., disparate impact, disparate treatment, hostile environment), understand the normative standards applicable to each, and determine which is most likely to be applicable in varying factual scenarios;
- Assess a set of facts and separate those that are relevant from those that are not, making it possible to judge the likelihood a plaintiff or defendant might have of succeeding in ensuing litigation;
- Gauge the range of relief to which a prevailing plaintiff might be entitled; and
- Evaluate possible harm-avoidance or harm-mitigation steps an employer that might employ to prevent litigation altogether or to minimize the exposure if litigation proves unavoidable.

Required reading: The assigned text for this class is Estreicher, Harper, and Fasman, *Cases and Materials on Employment Discrimination and Employment Law, The Field As Practiced*, 6th ed (ISBN: 978-1-64708-219-2). ***Please note that this Sixth Edition is new;*** although there is substantial overlap between this and the previous edition, the assignments given below are all keyed to the Sixth Edition. Also, ***please be aware that there are several other employment related casebooks by the same authors, with slightly different titles.*** This one combines both employment law *and* discrimination law in the title. Please make certain that your book is the correct one.

Unless I specifically indicate otherwise during class, all material in the assigned reading will be considered “fair game” for exam purposes, even if we do not discuss it in class. If you have questions about this assigned material that are not otherwise answered during our class discussions, ***please ask me about it***, either during the relevant class, by email, or during our semester-ending review session. I welcome and in fact encourage your questions, before, during or after class.

In addition to this assigned text, I have identified a few additional cases and other materials you will need to read prior to designated classes. Any adjustments to this schedule will be

announced in class and by email. Finally, in this field, one must anticipate the possibility of “breaking news” from the courts, agencies, or (occasionally) Congress; we will discuss these events as time allows.

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

Class 1: Disparate Treatment

Estreicher 107-116; 122-137; 496-499; *Muldrow v. St. Louis*, 144 S. Ct. 967 (2024).

Class 2: Disparate Treatment *cont'd*; Systemic Disparate Treatment

Estreicher 145-182.

Class 3: Disparate Impact

Estreicher 197-232; 42 U.S.C. § 2000e-2(k).

Class 4: Disparate Impact *cont'd*

Estreicher 232-243, 251-267; *U.S. Equal Emp. Opportunity Comm'n v. Stan Koch & Sons Trucking, Inc.*, 557 F. Supp. 3d 884 (D. Minn. 2021).

Class 5: Affirmative Action

Estreicher 269-293; 296-322.

Class 6: Sex Discrimination

Estreicher 329-370.

Class 7: Harassment

Estreicher 370-403; *Strickland v. City of Detroit*, 995 F.3d 495 (6th Cir. 2021); *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004).

Class 8: Sexual Orientation and Gender Identity; Sex Bias and Compensation

Estreicher 374-380, 441-458; 411-428.

Class 9: Age Discrimination

Estreicher 465-487, 500-524; *Karlo v. Pittsburgh Glass Works, LLC*, 849 F.3d 61 (3d Cir. 2017).

Class 10: **Discrimination and the Duty to Accommodate**

Estreicher 531-577, 601-606; *Groff v. DeJoy*, 600 U.S. 447 (2023).

Class 11: **Retaliation**

Estreicher 627-656; *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170 (2011); *Gogel v. Kia Motors Mfg. of Georgia, Inc.*, 967 F.3d 1121 (11th Cir. 2020) (*en banc*).

Class 12: **Procedural Issues and Timeliness**

Estreicher 949-991; *Pacheco v. Mineta*, 448 F.3d 783 (5th Cir. 2006); *Delaware State Coll. v. Ricks*, 449 U.S. 250 (1980).

Class 13: **Remedies and Arbitration; Review**

Estreicher 1006-1025; *Franks v. Bowman Transp. Co.*, 424 U.S. 747 (1976); *Ford Motor Co. v. E.E.O.C.*, 458 U.S. 219 (1982).

Grades and expectations: Student grades will be based on a final exam. Note, however, that final grades may be *subject to a discretionary class participation adjustment in either direction*. Class attendance and participation are not optional; they are mandatory. Exemplary in-class performance, however, or persistent dereliction in class preparedness and participation, might warrant grading adjustments.

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 class members are always encouraged to participate in the discussion voluntarily—and I will routinely ask for volunteers—you *should expect to be called on without prior warning*.

I understand that unavoidable circumstances might prevent you from participating in our discussion on rare occasions. If circumstances will prevent you from being prepared for a given class, please tell me before we begin. I have no desire to embarrass you by calling on you when you are unprepared.

The Law School has strict and specific rules about attendance, which I have neither the authority nor the inclination to waive. 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 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 without prior approval of the Law School's administration.

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 also 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/>