

**Law 210-001| Discrimination in Employment | Spring 2025 | 2 credits**

**Professor(s):** Charles M. Henter

Mon. 4:00 – 6:00 pm EST | **Final Exam:** Take Home TBD

***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 or stereotypes 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(s): [REQUIRED]** 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.

1. Cases and Materials on Employment Discrimination by Sullivan, Bornstein, and Zimmer (10th ed. 2021) (<https://aspenpublishing.com/products/sullivan-employmentdiscrimination10>)
2. Supplement of additional cases in PDF format will be provided
3. Statutory and Regulatory Supplement in PDF format will be provided
4. Additional materials may also be provided

**Reading(s): [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.

**Communication(s):**

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**COURSE DESCRIPTION & OBJECTIVES**

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.

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**GRADING & PARTICIPATION**

*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.

*Participation*

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.

**ACADEMIC STANDARDS & COURSE 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](http://www.law.gmu.edu/academics/honor_code)

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	<u>General Subject of Class</u>	<u>Assignment</u>
Class 1 27 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 McDonnell Douglas; Hazen Paper	p. xxv-xxviii; 1-23 n5  29 U.S.C. § 623 42 U.S.C. §§ 1981, 2000e-2 & 12112
Class 2 03 Feb	INDIVIDUAL DISPARATE TREATMENT (cont.) Evidence of Discriminatory Intent Burdine, Reeves, Patterson; Ash  Reverse Discrimination Santa Fe Trail  Employer Liability: Staub	p. 28-35 n2, 37 n6- 48 n5; 52-56 n2; 60-65n2  42 U.S.C. §§ 1981 & 2000e-2(a)  Case Supplement p 1-6
Class 3 10 Feb	INDIVIDUAL DISPARATE TREATMENT (cont.) Adverse Employment Actions Causation & Mixed Motives Price Waterhouse; Desert Palace; Gross	p. 67-68; 83-87 n4; 93 n13-95; 97-101;  42 U.S.C. § 2000e(m) & 2000e-2(m)  Case Supplement 6-20
Class 4 17 Feb	INDIVIDUAL DISPARATE TREATMENT (cont.) Causation & Mixed Motives (cont.) Comcast  SYSTEMIC DISPARATE TREATMENT Formal Policies: Manhart Patterns & Practices Teamsters & Hazelwood Wal-Mart v. Dukes	p. 103-111; 119-125 n4; 126-137, 141-45 n2  FRCP 23
Class 5 24 Feb	SYSTEMIC DISPARATE TREATMENT (cont.) Defenses & BFOQ Feeney; Johnson Controls  Voluntary Affirmative Action Lecture on SFFA	p. 160-169 n3; 171-173; 180 n2-188  42 U.S.C. § 2000e-2(e) & (j)  Case Supplement p. 21-28

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<u>(cont.)</u>	<u>General Subject of Class</u>	<u>Assignment</u>
Class 6 03 Mar	SYSTEMIC DISPARATE IMPACT Basic Concepts Griggs; Wards Cove  Modern Structure—Plaintiff’ Prima Facie Case Watson; Teal; Dothard	p. 189-195; 200 n1-202 n4; 204-207 n2; 211-214 n2; 217- 22; 225-232 n1
Class 7 17 Mar	SYSTEMIC DISPARATE IMPACT (cont.) Modern Structure—Rebuttal & Business Necessity and Job Relatedness Albemarle Paper Tension Between Systemic Disparate Treatment and Impact Ricci v. DeSefano SPECIFIC TYPES OF DISCRIMINATION Because of Sex Oncale	p. 247-50; 264-65; 273-89 n3; 307-10
Class 8 24 Mar	SPECIFIC TYPES OF DISCRIMINATION (cont.) Because of Sex Bostock Sex Stereotyping & Grooming Grooming & Race: CROWN Acts Pregnancy: PWFA Harassment: Meritor	p. 342 n3-43 n4; 345-54; 382- 92  42 U.S.C. § 2000e(k) Case Supplement p. 28-35 PWFA Handout
Class 9 31 Mar	SPECIFIC TYPES OF DISCRIMINATION (cont.) Because of Sex (cont.) Harassment: Harris Vicarious Liability: Ellerth/Faragher Vicarious Liability: Vance  Because of Religion Abercrombie & Fitch	p. 392-413; 432-40  42 U.S.C. §§ 2000e(j)
Class 10 07 Apr	SPECIFIC TYPES OF DISCRIMINATION (cont.) Because of Religion Our Lady of Guadalupe; Groff RFRA: 5th Cir. Braidwood  Retaliation Breedon	p. 444-46; 451-59; 465 n7-69; 481-93  42 U.S.C. § 2000e-3 Case Supplement 35-43

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<u>(cont.)</u>	<u>General Subject of Class</u>	<u>Assignment</u>
Class 11  14 Apr	SPECIFIC TYPES OF DISCRIMINATION (cont.) Retaliation (cont.) Burlington Northern; Nassar Disability ADA Amendments Act of 2008 Definition of Disability	p. 495-502; 515-26  42 U.S.C. §§ 12102, 12111, & 12112 29 C.F.R. § 1630.2, especially (g) through (l)  Case Supplement p. 43-54
Class 12  21 Apr	SPECIFIC TYPES OF DISCRIMINATION (cont.) Disability (cont.) “Regarded As” Qualified Individual with a Disability Reasonable Accommodations Barnett; Albertson’s Drug and Alcohol Abuse Qualification Standards & Defenses Direct Threat—Chevron	p. 535-38; 546 n4-547 n5; 548-58 n3; 575-81  42 U.S.C. §§ 12113 & 12114 29 C.F.R. § 1630.2(m) through (r)  Case Supplement p. 54-62
Class 13  24 Apr	SPECIFIC TYPES OF DISCRIMINATION (cont.) Disability (cont.) Qualification Standards & Defenses Business Necessity LECTURE ON ADMINISTRATIVE PROCEDURES, DAMAGES, & RELIEF Filing and Time Limits Equitable and Legal Relief Ford Motor Statutory Limits on Damages	p. 605-06; 645-63  42 U.S.C. § 1981a 42 U.S.C. § 2000e-5(e), (g), & (k)