

Law 365-001 | Employment Law | Spring 2025 | 2 credits

Professor(s): Neal Mollen

Thurs. 6:05 – 8:05 pm EST | **Final Exam:** Thurs., May 1, 6:00 pm EST

Reading(s): Estreicher, Harper, and Fasman, Cases and Materials on Employment Discrimination and Employment Law: the Field as Practiced (**6th Ed.** American Casebook Series), ISBN-978-1-64708-219-2 (referred to below as “Estreicher”)

Estreicher and his crew have written a number of employment law-related books, and they all look alike. Please make certain that you have the **6th ed. of the right book.**

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

Communication(s): nmollen@gmu.edu

Office Hours: 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.

Schedule Announcement(s): We will meet every Thursday from 6:05 until 8:05, with a ten-minute break roughly half way through.

COURSE DESCRIPTION

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.

COURSE OBJECTIVES

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

GRADING & PARTICIPATION

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

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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 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.

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COURSE SCHEDULE & ASSIGNMENTS

The required reading for each class will be as follows:

Class 1: The Employment Relationship Estreicher 11-45; Coppage v. State of Kansas, 236 U.S. 1 (1915).
Class 2: At-Will Employment and Contractual Exceptions Estreicher 47-85; Strass v. Kaiser Found. Health Plan of Mid-Atl., 744 A.2d 1000 (D.C. 2000) (while section II.B. is instructive on local discrimination law, our focus will be on the contract claim, esp. II.C).
Class 3: “Just Cause” and the Public Policy Cause of Action Estreicher 85-92; 663-683; Yuan v. Johns Hopkins Univ., 452 Md. 436, 157 A.3d 254 (2017) (you may skim or omit the conversion discussion in the opinion); 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: Whistleblowers and Government Employee Protections Estreicher 683-696; 711-741.
Class 5: Restrictions on Mobility and Competition in Employment Estreicher 745-757; 833-855; Omniplex World Servs. Corp. v. U.S. Investigations Servs., Inc., 270 Va. 246, 618 S.E.2d 340 (2005); Albert v. Loksen, 239 F.3d 256 (2d Cir. 2001).
Class 6: Compensation Estreicher 869-885; 889-910; In re Fam. Dollar FLSA Litig., 637 F.3d 508, 510 (4th Cir. 2011).
Class 7: Disparate Treatment Estreicher 107-116; 122-137; 496-499; Muldrow v. St. Louis, 144 S. Ct. 967 (2024).
Class 8: Disparate Impact Estreicher 197-232; 42 U.S.C. § 2000e-2(k).
Class 9: Sex Discrimination and Harassment Estreicher 353-373; 380-396; 441-49
Class 10: Discrimination and the Duty to Accommodate Estreicher 531-577; 601-606; Groff v. DeJoy, 600 U.S. 447 (2023).
Class 11: October 26: Retaliation Estreicher 627-661.

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Class 12: Timeliness and Arbitration
Estreicher 958-974; 1006-1025; Delaware State College v. Ricks, 449 U.S. 250 (1980).
Class 13: Remedies and Review
Estreicher 913-938; 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).

ACADEMIC STANDARDS & COURSE POLICIES

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.

Honor Code

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://www.law.gmu.edu/academics/academic_standards.

Accommodations for Students with Disabilities

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/>