

SYLLABUS

This course will provide a survey of employment laws in the United States. With the continuing erosion of the employment-at-will doctrine, and the resultant dramatic increases in the number of workplace-related lawsuits, it is a certainty that many of you will spend a significant portion of your lawyering careers counseling, negotiating, litigating, and/or using methods to resolve employment disputes, and that all of you will have at least some involvement therein.

Some of the topics covered include who is an employee, wrongful termination, public policy protections, employee mobility/restrictive covenants, wage and hour, employee accommodations, discrimination, and employment torts.

Class Preparation and Attendance Policy

Attendance is required. It is essential to analyze and carefully read the material assigned and to participate in class. Questions and class interaction are encouraged. The reading assignments are listed below. The reading assignments should be done the week before the scheduled class. For example, on the first day of class, you will have read the introduction and the additional referenced reading.

To help guide your understanding of the materials, an overview and supplemental materials (including hypotheticals) are available for review online at fishlawfirm.com/employmentlawclass

Students who have exhibited thorough preparation and/or meaningful contribution to class discussions (including through the drafting assignments) will have their final grades raised by as much as two steps (for example, from a B+ to an A). On the other hand, students who are repeatedly unprepared (or who do not meaningfully participate in the drafting assignments) or repeatedly not here when called upon may have their grades lowered by up to two steps (for example, from a B to a C+).

My office hours are on Sunday from 8 am until 10 am. If unavailable during that time, you can contact me to schedule a mutually available time. My telephone number is: 630-336-6720 and my email is dfish@fishlawfirm.com.

Text

The main text for this course is Employment Law: Private Ordering and Its Limitations, Fifth Edition. Authors: Glynn, Sullivan, and Arnow-Richman.

Final Exam

The final exam is in-person. It will likely require issue spotting and require that you have a deep understanding of the materials we cover. An understanding of the reading assignments and lectures are important for performing well on the final exam.

Notice on Academic Honesty

You are presumed to know and understand all of the law school's policies and procedures. I call your especial attention to the following passages from the NORTHERN ILLINOIS UNIVERSITY COLLEGE OF LAW STUDENT HANDBOOK § 2.2.1, "Rule of Professional Conduct":

It is professional misconduct for a member of the law school to (1) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; or (2) engage in conduct that is proscribed by law and that reflects adversely on the member's honesty, trustworthiness, or fitness to practice law in other respects.

If you do not understand what conduct constitutes plagiarism, unauthorized collaboration, or other academic or professional misconduct, please come speak with me for clarification. Submission of written work by a student at the College of Law is deemed to certify exclusive authorship without any assistance not specifically authorized by the professor. HANDBOOK § 2.4.

Violations of these requirements that come to my attention will be referred to an Associate Dean and may result in disciplinary charges initiated against the offending student. Violations may also have ramifications for the Character and Fitness assessment that you will undergo for admission to the bar.

Accessibility/Accommodations

If you need an accommodation for this class, please contact the Disability Resource Center as soon as possible. The DRC coordinates accommodations for students with disabilities. It is located in the Campus Life Building, Suite 180, and can be reached at 815-753-1303 or drc@niu.edu. Also, you may want to contact Associate Dean Anita Maddali for more assistance.

Audio- and Video-Recording

Audio or video-recording of any class meeting, or any part thereof, by any electronic means (analog or digital) is prohibited by any student. Failure to abide by this rule by any student is a violation of the College of Law Rule of Professional Conduct. From time to time we will video and audio record classes and lectures.

Weekly Schedule, Reading & Class Topics

Date	Topic	Casebook Reading	Additional Reading
Class 1 1/14	Introduction & Who is an Employee/ Employer	Introduction (xxv- xxxix), 1-4, 12-36	<p><i>Secretary of Labor v. Lauritzen</i>, 835 F.2d 1529 (7th Cir. 1987)(focus on Judge Easterbrook's concurring opinion)</p> <p><i>Simpkins v. DuPage Hous. Auth.</i>, 893 F.3d 962 (7th Cir. 2018)</p> <p><u>California Lawsuit against Uber & Lyft</u></p> <p>Assignment: Think of a few jobs you have held. Do you think you could have been properly classified as an independent contractor? Apply the different tests we read to those job duties.</p>
Class 2 1/21	Employment at Will	55-66, 82-93	<p><i>Duldulao v. Saint Mary of Nazareth Hosp. Ctr.</i>, 115 Ill. 2d 482 (1987); <i>LaScola v. U.S. Sprint Communications</i>, 946 F.2d 559 (7th Cir. 1991)</p> <p>Drafting Assignment: You represent a small company that wants you to review its employee handbook. Provide suggested language for the handbook to assure that employees remain at-will. Try writing it on your own before looking to AI, Internet examples, etc.</p>
Class 3 1/28	Employment Contracts	105-109, 117-132 137-140; 148-154	<p>Elon Musk Pay Ruling <i>Tornetta v. Elon Musk</i> (first 10 pages of ruling required, the other 190 pages are interesting but not mandatory!)</p> <p>Drafting assignment: You graduate from law school and land a job at a law firm. You are verbally told you will get paid \$50,000 per year plus 10% of what you make for the firm in the form of a bonus at year end. Draft an employment contract that you think would protect you while also being acceptable to the law firm.</p>
Class 4 2/4	Employment Torts	155-167; 172-182 189-200; 205-208 209-225	<p><u><i>Rackley, v. Fairview Care Centers, Inc. :: 2001 ::</i></u> (Utah Supreme Court)</p>

Sharenow v. Drake Oak Brook Resort LLC, 2022 WL 2715854 (N.D. Ill. July 13, 2022)

Class 5 2/11	Competition/ Employee Loyalty	359-372 392-402 409-410
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<https://www.chicagotribune.com/2023/01/18/david-fish-eliminating-noncompete-contracts-will-empower-employees-and-entrepreneurship/>

(820 ILCS 90/) Illinois Freedom to Work Act

<https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes>

Drafting Assignment: NIULAW wants to prevent its deans from leaving, recruiting faculty to leave, or teaching at any other law school. Draft a restrictive covenant for the law school and be ready to discuss the advice you would provide to NIULAW.

Class 6 2/18 (Class Will be Recorded)	Workplace Privacy	246-273, 286-292
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820 ILCS 55, Illinois Right to Privacy in the Workplace Act

McDonald v. Symphony Bronzeville Park, 2022 IL 126511 (Ill. 2002).

Social Media: <https://www.shrm.org/topics-tools/employment-law-compliance/illinois-updates-privacy-law-to-address-social-media>

Criminal conviction protections:

<https://dhr.illinois.gov/conviction-record-protection-frequently-asked-questions.html>

Captive Audience Prohibitions (anti-union and religion):

<https://www.chicagotribune.com/2024/07/30/gov-j-b-pritzker-signs-measure-tightening-child-labor-regulations/>

Drafting Assignment: Draft a workplace privacy section of a handbook for an employer.

Class 7 2/25	Statutory Protections/ Discrimination	411- 413; 420- 448; 461-467	
3/4	Statutory Protections/Discrimi nation (Continued)	495-501; 530-559	<p><i>EEOC v. Sunbelt Rentals</i>, 521 F3d 306 (4th Cir. 2008)</p> <p><i>Rice v. Universal Beauty Products, Inc.</i>, 19 C 1378, 2021 WL 7085254, at *5 (N.D. Ill. Sept. 28, 2021)</p> <p>Drafting Assignment: Draft an anti-discrimination policy for your client, a fast food restaurant. Be sure to cover protected classes in Illinois.</p>
3/11 No Class— Spring Break			
Class 8 3/18	Review/Overview /Illinois Protections		
Class 9 3/25	Accommodating Worker Lives	561-571 580-601	<p><u>GOELZER v. SHEBOYGAN COUNTY WISCONSIN (2010) FindLaw</u></p> <p><i>Kirchoff v. Chem Processing, Inc.</i>, 2021 WL 650885 (N.D. Ill. Feb. 19, 2021)</p> <p>Drafting Assignment: For an employer, draft a section of a handbook addressing workplace accommodations.</p>
Class 10 4/1	Employee Compensation	615- 648 654-655	Drafting Assignment: For an employer, draft a section of a handbook addressing overtime compensation.
Class 11 4/8	Workplace Safety	657-662 681-684	<p><i>Sherman v. Kraft Gen. Foods, Inc.</i>, 272 Ill. App. 3d 833 (4th Dist. 1995)</p> <p>Drafting Assignment: For an employer, draft a section of a handbook addressing workplace</p>

safety and what employees should do when injured at work.

Class 12 4/15	Managing Risk	701-714; 718-723 727-735; 738-742; 768-777	Drafting Assignment: Draft an arbitration clause for an employer who wants to avoid class action lawsuits.
Class 13 4/22	ERISA/Review		Article: https://www.debofsky.com/wp-content/uploads/2022/05/What-is-ERISA-DeBofsky-Mark_Trial-Journal-Summer-2022.pdf <i>Andrews-Clark v. Travelers</i> , 984 F. Supp. 49 and <i>Perlman v. Swiss Bank</i> , 195 F.3d 975 Good Luck!