

**WESTERN STATE COLLEGE OF LAW  
at Westcliff University**

**EMPLOYMENT LAW**  
Professor Jennifer Ton  
Summer 2024

**Class Syllabus**

**Course Overview**

To provide the student with a basic survey of the vast and varied practice areas encompassed in the general classification “employment law.” The course will explore the fundamental bases that form the employment relationship, the rights and duties of both employees and employers, and the common statutory and case law systems related to the employee-employer relationship.

**Learning Objectives**

**Objective One:** The student should understand the various disciplines within this large field which should better enable them to make certain externship, clerking and preliminary career choices.

**Objective Two:** The student should understand his or her basic legal rights and duties as both employer and employee after law school.

**Objective Three:** Through classroom participation, the student should further develop oral advocacy basic competence.

**Objective Four:** The student should learn some practical approaches to advising both employer and employee clients on common employment-related topics.

In addition to these class-specific goals, through the exercises, interactive discussions and group activities required by this class, you should continue to develop the following institutional learning outcomes:

1. **Analytical Reasoning.** Analyzing issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems.
2. **Effective Communication.** Identification of audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation.
3. **Information Competency.** The ability to gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action.

4. **Interpersonal Effectiveness.** Development of individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals.
5. **Personal and Professional Integrity and Ethical Behavior.** Demonstration of a multi-dimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.
6. **Professional Competence.** Application of skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession.

### **Required Materials**

*Employment Law: Cases and Materials* (7<sup>th</sup> Edition) by Willborn, Schwab, and Lester. Published by Carolina Academic Press.

The required text is to be brought to all classes. The student is expected to have read the material assigned for each week and to be ready to engage in a knowledgeable, in-depth, spirited discussion of the issues raised in the assignment.

Additional material, including handouts or library research, may be assigned during the semester at the professor's discretion.

I intend to be fully prepared for each class and I expect nothing less from the student.

### **Examination and Grading**

Your final grade will be based on a mid-term examination (35%), final examination (50%) and participation (15%).

The mid-term examination will be a multiple-choice test. It will occur in the fifth week of the semester and will cover the materials discussed in the first four weeks of class. The mid-term grade will represent 35% of your overall grade in the class.

The final examination may cover any material covered during the course and will consist of both multiple-choice and short answer questions. The final exam grade will represent 50% of your overall grade in the class.

Applicable grading policies and procedures of the university will be implemented in producing the final grades.

### **Classroom Participation**

Regular attendance and full participation of all class members in each class is expected. Participation will represent 15% of your overall grade in the class and may reflect your attendance, level of preparation for class, performance on assignments, and/or class participation.

More important than a grade is your reputation, which you are formulating as a law student. I expect none of my students will want to create a reputation of laziness or unpreparedness with their classmates or their professor. That reputation will stay with you far longer than a single class grade.

### **Expectations Regarding Preparation Time for the Course**

This course involves substantial work outside of the classroom. You have readings from the texts and from other sources provided through the Syllabus. It is estimated that, on average, the assigned reading and other classroom preparation should require six or more hours outside the classroom for each class session.

### **Office Hours**

As an adjunct and a full-time practicing lawyer, I will not maintain regular office hours at the school. That said, I will make myself reasonably available to any student who wishes to schedule a telephone call or meet with me.

I can make myself available at the school in the evening before or after class or for scheduled appointments to discuss the class. I can also be available for virtual Zoom meetings or scheduled telephone calls.

To schedule an appointment for a meeting or telephone call, please send me an email at [jton@wsulaw.edu](mailto:jton@wsulaw.edu). While I will remain flexible, it would be best if you try to schedule an appointment at least two days prior to the meeting or phone conference you are requesting.

### **Disability Services Statement:**

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Library Building, Room 275-B. Dean Espinoza's phone number and email address are: (714) 459-1117; [despinoza@wsulaw.edu](mailto:despinoza@wsulaw.edu).

When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation.

If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Marisa Cianciarulo at [mcianciarulo@wsulaw.edu](mailto:mcianciarulo@wsulaw.edu) or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

### **Western State College of Law – Programmatic Learning Outcomes**

Western State College of Law's curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

**(1) Doctrinal Knowledge**

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

**(2) Practice Skills**

Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

**(3) Legal Analysis**

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

**(4) Legal Research**

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

**(5) Communication**

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

**(6) Advocacy of Legal Argument**

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

**(7) Client Sensitivity and Cultural Competency**

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

**(8) Legal Ethics**

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

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## Class Schedule and Reading Assignments

### CLASS 1: LEGAL BOUNDARIES OF THE EMPLOYEE / EMPLOYER RELATIONSHIP

Thursday, June 6, 2024

#### Subjects To Be Covered:

- Forms of Employer-Worker Relationships
- Employee v. Independent Contractor
- Covered Employees and Employers
- Joint Employer Doctrine

#### Reading Assignments:

- Pages 17-72 of the text.
  - *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 342
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### CLASS 2: FUNDAMENTAL TERMS AND CONDITIONS IN THE EMPLOYEE / EMPLOYER RELATIONSHIP

Tuesday, June 11, 2024

#### Subjects To Be Covered:

- At-Will Employment
- Exceptions to At-Will Employment
- Agreements that Expressly Provide for Termination for Cause
- Term Agreements
- Where No Provision for Termination, Termination Terms Implied by Law
- Implied Contract Not to Terminate Except for Good Cause
- Defining Good Cause

#### Reading Assignments:

- Pages 73-146 and 199-206 of the text.
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### CLASS 3: BASIC EMPLOYEE RIGHTS

Thursday, June 13, 2024

#### Subjects To Be Covered:

- Political Rights and Free Speech Issues
- Public Employee vs. Private Employee
- Employee Privacy Issues
  - In the Workplace
  - Away from the Workplace
- Drug Testing
- Rights to Thoughts and Inventions

#### Reading Assignments:

- Pages 226-293 and 387-403 of the text.
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## **CLASS 4: DISCRIMINATION, HARASSMENT, AND RETALIATION IN THE WORKPLACE**

Tuesday, June 18, 2024

### **Subjects To Be Covered:**

- Introduction to Federal Anti-Discrimination Laws
  - Title VII (The Civil Rights Act of 1964)

### **Reading Assignments:**

- Title VII, Sections 2000e through 2000e-3
  - Found at: <https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>
- Pages 500-528 of the text (*Bostock v. Clayton County, Georgia* (2020) 140 S. Ct. 1731).

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## **CLASS 5: DISCRIMINATION, HARASSMENT, AND RETALIATION (CONTINUED)**

Thursday, June 20, 2024

### **Subjects To Be Covered:**

- Continued Discussion of Federal Anti-Discrimination Laws
  - ADEA (Age Discrimination in Employment Act)
  - ADA (Americans with Disabilities Act) and ADAAA (ADA Amendments Act)
  - EPA (Equal Pay Act)
  - Section 1981 of the Civil Rights Act of 1866
  - Rehabilitation Act
  - IRCA (Immigration Reform and Control Act of 1986)

### **Reading Assignments:**

- ADEA (29 U.S.C § 620 *et seq.*); Sections 621 and 623(a)-(f), (k)-(l)
  - Found at: <https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967>
- Please read and be ready to discuss the text of The Civil Rights Act of 1866 (42 U.S.C. § 1981)
  - Found at: <https://www.law.cornell.edu/uscode/text/42/1981>

\*\* NOTE: There are no reading assignments from the text for this class session, but there will be a significant reading assignment for class 7 on related issues, so you may want to read ahead. \*\*

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## **CLASS 6: DISCRIMINATION, HARASSMENT AND RETALIATION (CONTINUED)**

Tuesday, June 25, 2024

### **Subjects To Be Covered:**

- Introduction to State Anti-Discrimination, Harassment, and Retaliation Laws:
  - California Fair Employment and Housing Act (FEHA)
- Differences Between Title VII and FEHA

### **Reading Assignment:**

- Please read and be ready to discuss California Government Code § 12940.
  - [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=12940](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=12940)

\*\* NOTE: There are no reading assignments from the text for this class session, but there will be a significant reading assignment for class 7 on related issues, so you may want to read ahead. \*\*

**CLASS 7: DISCRIMINATION, HARASSMENT AND RETALIATION (CONTINUED)**

Thursday, June 27, 2024

**Subjects To Be Covered:**

- Other Laws Prohibiting Harassment and Retaliation:
  - Proving Discrimination
    - Disparate Treatment
    - Disparate Impact
    - Failure to Accommodate
  - Proving Harassment

**Reading Assignment:**

- Pages 407-499 of the text.
  - Pages 528-558 of the text.
  - Pages 564-579 of the text.
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**CLASS 8: FINISH DISCRIMINATION, HARASSMENT AND RETALIATION**

Tuesday, July 2, 2024

- Continued Discussion of Other Laws Prohibiting Harassment and Retaliation

**MIDTERM EXAMINATION**

- The mid-term examination will cover the materials discussed in the first four weeks of class.
  - Your mid-term grade will represent 35% of your overall grade in the class.
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**NO CLASS ON THURSDAY, JULY 4, 2024**

Happy 4<sup>th</sup> of July!

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**NO CLASS ON TUESDAY, JULY 9, 2024**

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**CLASS 9: WAGE AND HOUR REGULATION OF THE EMPLOYMENT RELATIONSHIP**

Thursday, July 11, 2024

**Subjects To Be Covered:**

- FLSA
- California Labor Code and Regulations

**Reading Assignment:**

- Pages 595-633 and 648-658 of the text.
  - *Brinker Restaurant Corp. v. Superior Court* (2012) 273 P.3d 513
  - Please also review IWC Wage Orders numbered 1, 2, 4, and 9 which can be found at:
    - <https://www.dir.ca.gov/iwc/wageorderindustries.htm/>
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## **CLASS 10: EMPLOYEE BENEFITS ISSUES**

Tuesday, July 16, 2024

### **Subjects To Be Covered:**

- Medical Insurance Issues
  - COBRA and CAL-COBRA
- Various Leave Issues
  - Vacations
  - Family and Medical Leave Act (FMLA)
  - California Family Rights Act (CFRA)
  - California Healthy Families Act
  - Other common leave provisions
- Pension Issues
- Other benefits commonly found in the marketplace
- ERISA
- Unemployment Insurance
- Social Security and SDI Disability Benefits

### **Reading Assignment:**

- Pages 659-692 and 697 (section 3) - 719 of the text.
- Please read the “FAQs on COBRA Continuation Health Coverage for Workers”
  - <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/cobra-continuation-health-coverage-consumer.pdf>
- Please review the following web page maintained by the DLSE about employee vacation rights in California:
  - [http://dir.ca.gov/dlse/faq\\_vacation.htm](http://dir.ca.gov/dlse/faq_vacation.htm)

## **CLASS 11: EMPLOYEE DUTIES TO THE EMPLOYER**

Thursday, July 18, 2024

### **Subjects To Be Covered:**

- Duty of Loyalty
- Confidentiality and Trade Secrets

### **Reading Assignment:**

- Pages 339-361 of the text.

## **WORKPLACE SAFETY AND INJURIES**

### **Subjects To Be Covered:**

- OSHA
- Workers Compensation (WC)

### **Reading Assignment:**

Please read the information contained on the following websites:

- OSHA: <https://www.osha.gov/workers> (including each of the hyperlinks for the FAQs)
- WC – Employee Info: <https://www.dir.ca.gov/dwc/injuredworker.htm> (including the 6 tabs at top of page)
- WC – Employer Info: <https://www.dir.ca.gov/dwc/employer.htm>
- Ways around WC Exclusivity: <https://bermanlawyers.com/how-to-avoid-workers-compensation-limits-in-construction-site-and-workplace-accidents/>

## **CLASS 12: TERMINATION**

Tuesday, July 23, 2024

### **Subjects To Be Covered:**

- Reasons for Termination
  - At-Will Arrangement
  - Good Cause
- Recommended Procedures
  - Communicating Termination Decision
  - Exit Interviews
  - Severance Agreements
- Non-Compete Clauses

### **Reading Assignment:**

- Pages 363-386 of the text.
  - *Edwards v. Arthur Anderson LLP* (2008) 44 Cal.4th 937
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## **CLASS 13: CLAIMS THAT ARISE OUT OF TERMINATION**

Thursday, July 25, 2024

### **Subjects To Be Covered:**

- Wrongful Termination in Violation of Public Policy Claims
- Whistleblower Claims
- Defamation
- Intentional Infliction of Emotional Distress (IIED)
- Other Post Termination Claims

### **Reading Assignment:**

- Pages 185-197, 315-319, and 326-335 of the text.
  - Please also read and be prepared to discuss the following cases:
    - *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167
    - *Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654
    - *Moorpark v. Superior Court* (1998) 18 Cal.4th 1143
    - *Jensen v. Hewlett Packard Co.* (1993) 14 Cal.App.4th 958
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## **FINAL EXAMINATION:**

August 1, 2024  
6:40pm-9:40pm  
Room 811