EMPLOYMENT
DISCRIMINATION LAW
SYLLABUS AND COURSE OUTLINE

Fall 2006

Professor Caldwell
Room 318 VH
212-998-6192

Assistant:
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REQUIRED TEXT:


ADDITIONAL RESOURCES:

The following texts have been placed on reserve in the library (Students need not purchase either text):

Lewis, Harold and Norman, Elizabeth, Employment Discrimination Law and Practice (2nd ed. 2004);


OFFICE HOURS:

Office hours are set for Tuesdays from 2:30 p.m. to 4:00 p.m. or otherwise by appointment. In order to avoid scheduling conflicts to the extent possible, students are advised to reserve time
during regularly scheduled office hours by contacting Jeannette Marquez (Fifth Floor, VH (212-992-8848), marquezj@juris.law.nyu.edu). Please include “Employment Discrimination–Appointment Request” in the subject line of an e-mail request.

**GRADES:**

Final grades will be based on (i) a final in-class examination and (ii) classroom performance. Failure to participate in class or to attend on a regular basis may result in the lowering of a final grade up to, but not more than, one full step. Excessive absence may result in denial of a grade in, and credit for, the course without additional notice.

**READING ASSIGNMENTS:**

Reading assignments for the first eight weeks of the course are set forth below. Approximations are made on a weekly basis but may be revised if necessary during the semester to accommodate guest speakers and other events. Problems for discussion and review will also be distributed from time to time. Modifications to the reading assignments will be posted as announcements on Blackboard and also communicated to students by e-mail. Students are advised to consult Blackboard for these modifications. Unless otherwise indicated, reading assignments include notes and questions following assigned cases. Not all notes and questions will be discussed in class but will be considered background material for class discussion or final examination.

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**Week 1:**

I. **Introduction**

   A. **Overview of Protection Provided by Federal Law**

      1. Title VII, Sections 703(a)-(c), p. 964
      2. 5th, 13th, and 14th Amendments, U.S. Constitution, p. 985
      4. ADEA, Sections 4 and 12, pp. 991 and 1003
      5. EPA, Section 206(d), p. 989
      6. The Rehab Act, Sections 7(8)(B), 501(b), 503 and 504, pp. 1006, 1008-9
      7. ADA, Sections 3(2) and 1101-105, p. 1012

   B. **Towards an Anti-discrimination Principle**

      1. Historical Background, Donohue, *Foundations of Employment Discrimination*
Week 2:

[Class will not meet on Monday, September 4]

2. Rationalizing Regulation
   a. Legal Theories of Discrimination
      Teamsters, BLACKBOARD
   b. Economic Theories of Discrimination, Donohue, pp. 179-198, BLACKBOARD
   c. Defining Equal Employment Opportunity, Donohue, pp. 35-58, BLACKBOARD

II. The Structure of Anti-Discrimination Law
   A. Individual Disparate Treatment Discrimination
      1. The Meaning of Discriminatory Intent
         Slack v. Havens, BLACKBOARD
         Hazen Paper Co. v. Biggins, BLACKBOARD
         Defining Discriminatory Intent, Donohue, pp. 126-151, BLACKBOARD

Week 3:

2. Proving Individual Disparate Treatment
   a. Order and Allocation of Proof in Circumstantial Evidence Cases
      i. The Plaintiff’s Prima Facie Case
         Burdine, p. 58
         Supp. pp. 6-16
ii. Plaintiff’s Proof of Pretext

Hicks, p. 70  
Supp. p. 16  
Reeves, p. 96  
Supp. pp. 17-18

iii. Causation: Mixed or Dual Motive Cases

Price Waterhouse, p. 107  
Supp. p. 18  
Notes, Supp. pp. 24-29

Week 4:

iv. After-acquired Evidence

McKennon, p. 137  
Supp. pp. 30-31  
Findings of Fact and Appellate Review, p. 144

v. Defendant’s Burden

(a) General Rebuttal, p. 146

(b) The Bona Fide Occupational Qualification Defense

Dothard, Part I, BLACKBOARD  
Johnson Controls, p. 147  
Supp. pp. 31-32

Wilson, p. 162  
Supp. pp. 32-33  
Thurston, p. 769  
Notes 4-5, pp. 777-779

Week 5:

C. Disparate Impact Discrimination

1. Introduction
The Theory of Disparate Impact
Excerpt, Belton & Avery, Employment Discrimination Law (hereafter “Belton & Avery”), BLACKBOARD

2. The Plaintiff’s Case
   a. Objective Criteria
      Griggs, p. 225
      Supp pp. 56-58
      Dothard, Part II, BLACKBOARD
      The Legitimacy of Disparate Impact Theory, Excerpt, Belton & Avery, BLACKBOARD

   b. Subjective Criteria, BLACKBOARD
      Watson, BLACKBOARD

3. The Relevance of the Bottom Line
   Teal, p. 234
   Supp. pp. 59-61

4. Section 703(h) and Seniority Systems
   Teamsters, Part II, BLACKBOARD [See Week 2]
   Notes, pp. 296-298

Week 6:
5. Griggs Reconsidered
   Watson, Part II, BLACKBOARD
   Wards Cove, BLACKBOARD

Stout v. Potter, discussed on Supp. pp. 61-62
Lanning, BLACKBOARD
Supp. pp. 63-67
Donohue, pp. 103-125 [OPTIONAL], BLACKBOARD

C Systemic Disparate Treatment Discrimination

1. Circumstantial Proof of Discriminatory Motive
   Teamsters, Part I, BLACKBOARD [See Week 2]
Week 7:

Olsen’s Dairy, p. 310
The Nature and Extent of Racial Discrimination, Donohue, pp. 152-167,
BLACKBOARD
Ottaviani, p. 316
Supp. p. 68

EEOC v. Sears, BLACKBOARD
Schultz, “Telling Stories about Women and Work, Donohue, pp. 397-408, BLACKBOARD

III. Selected Problems in Employment Discrimination Law

A. Sex

1. Introduction

Sex Segregation, Donohue, pp. 368-397 [SKIM], BLACKBOARD

2. Sex-Plus Discrimination and Pregnancy

Phillips, p. 362
Willingham, p. 364
Supp. pp. 71-74
Newport News, p. 371 [SKIM]
Supp. pp. 71-78

In re Union Pacific Railroad, BLACKBOARD

3. Sex-linked Factors

Manhart, p. 392
Week 8:

B. Sexual Orientation

1. Introduction

   Desantis, p. 399

2. The Employment Nondiscrimination Act of 1995, BLACKBOARD

C. Harassment

a. Sexual Harassment

   Meritor, p. 174
   Supp. p. 33-34

   Burlington, p. 187
   Supp. pp. 34-41

   Oncale, p. 386
   Talbot, Margaret, “Men Behaving Badly,” The New York Times Magazine,
   October 13, 2002, p. 52. BLACKBOARD
   Supp. pp. 79-83

b. Racial, Ethnic, and National Origin Harassment

   Harris v. International Paper Co., BLACKBOARD
   Cerros v. Steel Technologies, Inc., BLACKBOARD