**Employment Discrimination**

Law 284.1, Fall 2013

Room 10, MT 2:10-3:25

**Professor Albiston**

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**Course Description:**

This course examines the law regulating employment discrimination and equal employment opportunity, including Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, and the Americans with Disabilities Act. It is an introductory, but comprehensive, course that emphasizes the major analytical frameworks for conceptualizing discrimination and equality in the workplace. The course will combine a pragmatic, litigation-oriented perspective with a theoretical, sociological one, as it investigates the assumptions underlying various legal approaches and situates legal trends within larger social and historical contexts. The primary focus will be federal law with an eye toward broader public policy concerns.

**Course Materials:**

Zimmer, Sullivan & White, Cases and Materials on Employment Discrimination (Aspen, 8th Ed. 2013).

Reading posted on the course bSpace page.

**Course Requirements:**

The primary basis for the course grade will be the final exam at the end of the semester. Students also will be evaluated based on their participation in discussion. Participation will be assessed by considering the following factors: attendance; evidence of comprehension and critical analysis of the material; quality of comments and questions in class discussion; and respectful engagement with ideas raised by other students.

**I. Introduction**

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| August 26 * Introductory conversation.
* Legal theories v. social theories of discrimination.
* Krieger, The Content of Our Categories
* Sturm, Second Generation Employment Discrimination
 | **Krieger, read pp.1161-1217.****Sturm, read pp. 458-520.****Readings are posted on bSpace.** |

**II. Individual Disparate Treatment Theory**

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| August 27* Intent to discriminate.
* Employment relation.
* Terms, conditions, or privileges of employment – adverse employment action.
 | **CB 1-16, 61-67**.* Skip note 7, p.67.
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| **NOTE: NO CLASS ON SEPTEMBER 1ST – HOLIDAY** | **MAKE UP WILL BE 9/6, ROOM 10, 2:10-3:25.** |
| September 3rd & 6th**NOTE: 9/6 IS A FRIDAY MAKE UP CLASS.*** Proving discrimination.
* Burden shifting framework.
	+ Plaintiff’s prima facie case
	+ Defendant’s rebuttal
	+ Pretext
* Nuances of proving disparate treatment.
 | **CB 16-61.****Skip the following:*** Note on Litigating IDT Cases, p.37-39.
* Note 6, p.45.
* Note on Preferences for Older Workers, p.48.
* Note 6, p.54.
* Notes 4-6, p.60.
 |
| September 9th & 10th* Causation: Linking Bias to Adverse Employment Action.
* Pulling individual disparate treatment standards together.
 | **CB 68-102.****Skip the following:*** Note 11, p.86.
* Note 13, p.87.
* Note 17, p.89.
* Note on Evidentiary Issues about Admissions Testimony, p.90-91.
* Notes 3-5, p.98.
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 **III. Systemic Disparate Treatment**

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| September 16th & 17th* Formal policies of discrimination
* Pattern and Practice Discrimination Theories
 | **CB 107-128; 159-166 through note 1.****Skip the following:*** Notes 5, 7 & 8 pp.113-14.
* Notes 7, 8, & 9 pp. 127-28.
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| September 23rd & 24th* *WalMart* and the future of systemic theories
* Defenses to systemic theories
* **Possible Guest Speaker: Jocelyn Larkin of the Impact Fund**
 | **Skim Expert Report of William Bielby in *WalMart* (posted on bspace).****CB 128-132.****CB 146-159; 169-189.****Skip the following:*** “Affirmative Action” under the ADEA, pp. 184-85.
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**IV. Disparate Impact Theory**

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| September 30* Intro to Disparate Impact Theories
* Note: as you read *Wards Cove*, be aware that the Civil Rights Act of 1991 legislatively overruled much of this decision as it applies to Title VII actions.
 | **CB 191-205; 217 (stop at “Plaintiffs’ Proof of a Prima Facie Case”).** |
| October 1* Disparate Impact after the Civil Rights Act of 1991
 | **CB 217 (start at “Plaintiffs’ Proof of a Prima Facie Case”) -238.** |
| October 7* Defenses to Disparate Impact Theories
 | **CB 238-257.** |
| October 8th* Combining systemic theories.
* *Ricci*: the rock and the hard place.
 | **CB 257-263; 281(start at subsection B)-312.****Skip the following:*** Note 4, p.287.
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**V. Sexual and Other Harassment**

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| October 14* Defining Sexual and Other Harassment.
* **Recommended reading**: Laura Beth Nielsen, Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment (2000).
 | **CB 360-374.****Nielsen article is posted on bSpace.****Skip the following:*** Note 5, pp. 371-72.
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| October 15* Sex, Sexual Orientation, and Gender Identity
* David Schwartz, When is Sex Because of Sex? The Causation Problem in Sexual Harassment Law [excerpt].
 | **CB 325-347.****Schwartz article excerpt is posted on bSpace.** |
| October 21st-22nd* Employer Liability for Sexual Harassment & Defenses
* *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004) [excerpt]
* **Recommended reading:** Beth A. Quinn, The Paradox of Complaining: Law, Humor, and Harassment in the Everyday Work World (2000).
 | **CB 374-399.****Skim *Penn. State Police v. Suders* excerpt posted on bSpace.****Quinn article is posted on bSpace.****Skip the following:*** Note 6, p.384.
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**VI. Pregnancy & Care Giving Under Title VII and the FMLA**

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| October 28th & 29th* Pregnancy and care giving under Title VII
* Stereotype theory revisited
 | **CB 347-360.** **[materials TBD]****Skip the following:*** Note 4, p.356.
* Note 9, p.357-58.
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| November 4* Pregnancy and care giving under the FMLA
 | **[materials TBD]** |
| November 5* Bringing gender theories together
 | **[materials TBD]** |
| **NOTE: NO CLASS NOVEMBER 11 – HOLIDAY** | **MAKE UP WILL BE 11/15, ROOM 10, 2:10-3:25.** |

**VII. The Americans with Disabilities Act**

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| November 12* Americans with Disabilities Act
* Individual with a disability
 | **CB 487-509.** |
| November 15 **NOTE: 11/15 IS A FRIDAY MAKE UP CLASS.*** Qualified individual with a disability
 | **CB 510(bottom)-536.** |
| November 18* Reasonable accommodation
 | **CB 536-563.****Skip the following:*** Note 5-6, p. 555-56.
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| November 19* Undue hardship, special problems
 | **CB 563-592.****Skim 584-592.****Skip the following:*** Notes 3-4, pp. 373-74.
* Note 6, p. 574.
* Note on Deference to the EEOC, pp. 574-577.
* Note 1, p. 581.
* Note 5, p. 583.
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| November 25th* ADA wind up
* **Possible Guest Speaker: Claudia Center**
 | **Reading TBA.** |

**VIII. Special Topic and Conclusion**

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| November 26th * Attorney’s fees, prevailing party, and strategic behavior.
* Course wind up.
 | **CB 683-688.** |