Employment Discrimination Law 37:575:316:01 Fall 2012 Rutgers University

Class: Tuesday 6:10-9:10

Murray 115

Prof. Lisa Schur

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This course will cover the fundamental issues of American employment discrimination law. Topics will include laws to protect workers from race, sex, age, and disability discrimination.

The objectives of the course are to help students: 1) Understand and think critically about the basic framework of anti-discrimination law in the U.S; 2) Develop the ability to read, analyze, and evaluate statutes and legal decisions; and 3) Develop the ability to identify and articulate both sides of legal and policy arguments.

Readings for the course include excerpts from the textbook *Labor and Employment Law* by David Twomey, and other cases and materials. They are available on-line at Sakai by following these steps:

Go to http://sakai.rutgers.edu

- 1. Enter your Rutgers ID and password in the upper right corner
- 2. Click on the tab that says "37:575:315:01 F12 Emp Disc"
- 3. Click on "Resources" at the left
- 4. Click on the folder titled "37:575:315: F12 Emp Disc Resources"
- 5. Click on the folder for the week you want, then the file you want to download. Many of the readings are in Adobe Acrobat format. If your computer doesn't have it, you can download the reader for free at http://www.adobe.com/products/acrobat/readstep2.html

Submitting copies of the computer research assignment and the written brief or opinion to Sakai

You should submit hardcopies of the short computer research assignment and the longer written brief or opinion in class, and also upload these to Sakai so there is a permanent record. Follow the directions above to get onto the Sakai site, and click on "Assignments" on the left. You can submit your research assignment and the longer paper either by copying text into the "Submission" box or by attaching a file.

Also, please check "Announcements" on the left of the Sakai site each week for any updates on the class and assignments. All assignments are expected to be submitted on time. Late papers will be downgraded by a third of a grade (e.g., A to A-) for 1-2 days late, two-thirds of a grade (e.g., A to B+) for 3-4 days late, and a full grade for 5 or more days late.

It is very important to bring hardcopies of the readings to class. Supplemental material will also be handed out in class and/or entered on Sakai. If you find outside material that is relevant to our employment law discussions you can give it to me (in person or through email) and I will make sure that everyone in the class gets a copy.

Class attendance is mandatory and reading assignments are expected to be completed before class. Please turn off cell phones and blackberries during class time, as they can be distracting. If you have a health problem or other emergency that requires you to miss a class, please inform the professor of the situation before the class if possible, or as soon after the class as you can.

Course requirements (basis for final grade in parentheses):

- 1) Midterm (20%)
- 2) Participation in a mock trial, including writing a brief or opinion (30%)
- 3) Final exam (30%) (covers entire course)
- 4) Computer project (10%)
- 5) Class participation (10%)

Class 1 (Sept. 4)

Introduction

Review of employment laws, employment-at-will

How to read a case

Film on civil rights movement

<u>Class 2</u> (Sept. 11)

Race

Twomey pp. 395-409, 410-417, 763-769

Griggs v. Duke Power Company

U.S. v. Villages of Elmwood Park and Melrose Park

Additional readings on Sakai:

U.S. Constitution, Section 8 ("Commerce Clause") and First Amendment

Bari-Ellen Roberts, <u>Roberts v. Texaco: A True Story of Race and Corporate America</u> (excerpt)

Civil Rights Update on Texaco case, Winter 1997

Chaney v. Plainfield Healthcare Center (customer/client discrimination)

Barrett v. Whirlpool (hostile work environment, retaliation)

Douglas El v. SEPTA (prior convictions)

Optional: Bruce Levine, Who Built America, pp. 535-551

<u>Class 3</u> (Sept. 18)

Guest speaker: Donna Shulman, Librarian, Rutgers School of Management and Labor Relations: Introduction to Conducting Web-based Legal Research

Religion, sexual orientation, transgender status

Twomey pp. 417-432

Feldstein v. The Christian Science Monitor (religion)

Mormon Church v. Amos (religion)

Audra Sommers v. Budget Marketing (transgender status)

Glenn v. Brumby (transgender status)

Additional readings on Sakai:

TWA v. Hardison (religion, standard of undue hardship)

Shahar v. Bowers (homosexuality)

Enriquez v. West Jersey Health Systems (transgender status)

<u>Class 4</u> (Sept. 25)

Sexual harassment

Film in class: "North Country"

Twomey pp. 432-448

Oncale v. Sundowner Offshore Services (sexual harassment)

Burlington Industries v. Ellerth (sexual harassment)

Additional readings on Sakai:

Thompson v. North American Stainless (sexual harassment)

Daniel Goleman, "Sexual Harassment: About Power, Not Lust"

"Facts About Sexual Harassment," EEOC website

<u>Class 5</u> (Oct. 2)

Grooming and Dress

EEOC v. Sage Realty (grooming and dress/sexual harassment)

"The Dreadlock Deadlock," Newsweek, Sept. 10, 2001 (grooming and dress)

Eatman v. UPS (grooming and dress)

Jesperson v. Harrah Operating Company (grooming and dress)

National origin, protection against retaliation

Twomey pp. 448-456, 761-762

Fragrante v. City and County of Honolulu (national origin)

Burlington Northern Santa Fe R.R. v. White (protection against retaliation)

Additional readings on Sakai:

EEOC v. Sephora (English-only rules)

Espinoza v. Farah Manufacturing (citizenship requirement)

Class 6 (Oct. 9)

One-page paper due on computer search regarding state laws on sexual orientation

Title VII exceptions

Twomey pp. 456-465, 760-761, 771

UAW v. Johnson Controls (bona fide occupational qualification)

Civil Rights Act of 1964, Section 703(e) and 703(h) (p. 760-761)

Civil Rights Act of 1991, Section 112, "Expansion of Right to Challenge Discriminatory Seniority Systems" (p. 771)

Additional readings on Sakai:

Re-read TWA v. Hardison (bona fide seniority system)

Procedures and remedies: burden of proof, disparate treatment and disparate impact

Twomey pp. 473-485, and "burden of proof" section on pp. 766-767

Desert Palace Inc. v. Costa (burden of proof)

Albemarle Paper Company v. Moody (remedies)

EEOC v. Peoplemark (remedies)

Additional readings on Sakai:

"Burden of proof in disparate treatment and disparate impact cases"

Lanning v. Southeastern Pennsylvania Transportation Authority (burden of proof)

Class 7 (Oct. 16)

Procedures and remedies: affirmative action

Twomey pp. 485-497, 506-512

Steelworkers v. Weber (affirmative action plan)

San Francisco Police Officers' Assoc. v. City and County of San Francisco (affirmative action plan)

Beverly Enterprises v. Herman (federal contractors)

Additional readings on Sakai:

Eldrege v. Carpenters (affirmative action plan)

Taxman v. Board of Education of the Township of Piscataway ("reverse discrimination")

Ricci v. DeStefano ("reverse discrimination")

Procedures and remedies: arbitration of discrimination claims

Twomey pp. 497-506

Gilmer v. Interstate/Johnson Lane (arbitration as exclusive remedy)

Hall Street Associates v. Mattel (arbitration as exclusive remedy)

EEOC v. Waffle House (arbitration as exclusive remedy)

Review for midterm

Class 8 (Oct. 23)

Midterm

Class 9 (Oct. 30)

Procedures and remedies: other remedy options

Twomey pp. 512-515

Saint Francis College v. Al-Khazraji (Civil Rights Act of 1866)

Additional readings on Sakai:

Shaare Tefila Congregation v. Cobb (Civil Rights Act of 1866)

Pay equity

Twomey pp. 523-533

Renstrom v. Nash Finch Company (pay equity)

Corning Glass Works v. Brennan (equal pay for equal work)

County of Washington v. Gunther (comparable worth)

Additional readings on Sakai:

Ledbetter v. Goodyear (pay equity)

Lilly Ledbetter Fair Pay Act of 2009

Age discrimination

Twomey pp. 534-549

Zippittelli v. J.C. Penney (age discrimination)

Smith v. City of Jackson Mississippi (age discrimination)

EEOC v. Liggett and Meyers Inc. (age discrimination)

Rhodes v. Guiberson Oil Tools (age discrimination)

Oubre v. Entergy Operations (age discrimination)

<u>Class 10</u> (Nov. 6)

<u>Disability discrimination:</u> Rehabilitation Act, Americans with Disabilities Act Definition of disability, prima facie case

Excerpt on disability discrimination models and evidence from Schur, Kruse, and Blanck, Are People with Disabilities Sidelined or Mainstreamed? (Cambridge University Press, forthcoming 2013)

Twomey pp. 553-564, 567-570, 783-787, 789-792

Cook v. State of Rhode Island (obesity)

School Board of Nassau County, Florida v. Arline (contagious diseases)

Horgan v. Simmons (HIV positive)

Additional readings on Sakai:

Harlan Hahn, "Toward a Politics of Disability: Definitions, Disciplines, and Policies," Social Science Journal, October 1985.

Ellison v. Software Spectrum (cancer)

Class 11 (Nov. 13)

<u>Disability discrimination: "Otherwise-qualified" for employment position, reasonable accommodations, employer defenses</u>

Twomey pp. 564-567, 571-574

U.S. Airways v. Barnett (seniority systems)

Huber v. Wal-Mart (reasonable accommodation)

Additional readings on Sakai:

Treadwell v. Alexander (otherwise-qualified)

Wallace v. Veterans Administration (former drug addiction)

Palmer v. Circuit Court (direct threat defense)

Lyons v. Legal Aid Society (reasonable accommodations, undue hardship defense)

Lisa Schur and Douglas Kruse, "Best Practices in Employing People with Disabilities"

Class 12 (Nov. 27)

Preparation and practice for mock trials

Class 13 (Dec. 4)

Mock trials #1 and #2

Class 14 (Dec. 11)

Mock trial #3 Briefs/opinions due

Review for final exam