Special Topics in Employment Law:

Emerging and Eternal Issues in Regulating Employment

Professor Barbara A. Lee Spring, 2013

Room 004, Levin Building Thursdays, 9:30 a.m. – 12:10 p.m. lee@smlr.rutgers.edu

Required text: Gary W. Florkowski, *Managing Global Legal Systems* (Routledge, 2006). Available from Amazon.com.

Other required and recommended readings are available at Westlaw Campus Research (on the website of the Rutgers University Libraries) or on the Web—links are provided

January 24, 2013 Course Introduction and Overview

Emerging issues in discrimination: appearance, obesity, domestic violence, therapy animals at work

Assignment for January 24, 2013

Appearance:

- 1. James, Heather R. Note: "If You Are Attractive and You Know It Please Apply," 42 *Val. U. L. Rev.* 629 (2008).
- 2. *Craft v. Metromedia Inc.*, 766 F.2d 1205 (8th Cir. 1985)
- 3. Frank v. United Airlines, 216 F.3d 845 (9th Cir. 2000)

Obesity:

- 4. Abigail Kozol, "Large and In Charge of their Employment Discrimination Destiny: Whether Obese Americans Now Qualify as Disabled under the Americans With Disabilities Act Amendments Act of 2008," 31 *Hamline J. Pub. L. & Pol'y.* 273 (2009).
- 5. *Gimello v. Agency Rent-a-Car Sys. Inc.*, 594 A.2d 264 (N.J. Super. App. Div. 1991).

Domestic violence:

6. Equal Employment Opportunity Commission. *Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees Who Experience*

Domestic or Dating Violence, Sexual Assault, or Stalking, available at http://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm.

Therapy Animals at Work:

7. "Therapy Dog Offers Stress Relief at Work," available at http://www.health.harvard.edu/blog/therapy-dog-offers-stress-relief-at-work-201107223111

January 31, 2013 Psychiatric disorders and the workplace

Assignment for January 31, 2013

- 1. Employing and Accommodating Workers with Psychiatric Disabilities, available at http://www.southwestada.org/html/publications/employment/onthejob/psychiatric.ht ml.2.
- 2. MacDonald-Wilson, Kim. *Reasonable Workplace Accommodations for People with Psychiatric Disabilities*, available at http://www.bu.edu/cpr/reasaccom/employ-read-macdon.html.
- 3. Concannon, James. "Mind Matters: Mental Disability and the History and Future of the Americans With Disabilities Act," 36 *Law & Psychol. Rev.* 89 (2012).
- 4. *Kagawa v. First Hawaiian Bank*, 819 F. Supp. 2d 1125 (D. Haw. 2011).
- 5. *Johnson v. City and County of San Francisco Dept. of Public Health*, 2012 WL 4953099 (N.D.Cal. Oct. 17, 2012).
- 6. Gonzalez v. Ill. State Toll Hwy. Authority, 2010 WL 3731453 (N.D. Ill. Sept. 14, 2010).
- 7. Pierce v. Highland Falls-Fort Montgomery Central School District, 2011 WL 4526520 (S.D.N.Y. Sept. 28, 2011).

February 7, 2013 Gender identity issues in the workplace

Assignment for February 7, 2013

- 1. Lee, Jason. "Lost in Transition: The Challenges of Remedying Transgender Employment Discrimination under Title VII." 35 Harv. J.L. & Gender 423 (2012).
- 2. Chung, Jeannie. "Identity or Condition? The Theory and Practice of Applying State Disability Laws to Transgender Individuals." 21 *Colum. J. Gender & L.* 1 (2011).
- 3. *Smith v. City of Salem, Ohio*, 378 F.3d 566 (6th Cir. 2004).
- 4. *Schroer v. Billington*, 577 F. Supp. 2d 293 (D.D.C. 2008).
- 5. Glenn v. Brumby, 663 F.3d 1312 (11th Cir. 2011).
- 6. *Macy v. Holder*, available at http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt.

February 14, 2013 Social media

Assignment for February 14, 2013

- 1. Byrnside, Ian. "Six Clicks of Separation: The Legal Ramifications of Employers Using Social Networking Sites to Research Applicants." 10 Vand. J. Ent. & Tech. L. 445 (2008).
- 2. Fair, Lesley, "The Fair Credit Reporting Act & Social Media: What Businesses Should Know," available at http://business.ftc.gov/blog/2011/06/fair-credit-reporting-act-social-media-what-businesses-should-know.
- 3. Pietrylo v. Hillstone Restaurant Group, 2009 WL 3128420 (D.N.J. 2009).
- 4. Hispanics United of Buffalo, Inc. & Carlos Ortiz, 2011 WL 3894520 (Sept. 2, 2011).
- 5. Karl Knauz Motors, Inc., 2011 WL 4499437 (Sept. 28, 2011).
- 6. Bielen, Kimberly. "All A-'Twitter': The Buzz Surrounding Ranting on Social-Networking Sites and Its Ramification on the Employment Relationship." 46 New Eng. L. Rev. 155 (2011).
- 7. NLRB General Counsel Memo OM 12-59 (May 20, 2012), available at http://www.americanbar.org/content/newsletter/groups/labor_law/ll_hottopics/2012_a http://www.americanbar.org/content/newsletter/groups/labor_law/ll_hottopics/2012_a <a href="http://www.americanbar.org/content/newsletter/groups/labor_law/ll_hottopics/2012_a <a href="http://www.americanbar.org/content/newsletter/groups/labor_law/ll_hottopics/americanbar.org/content/newsletter/groups/labor_law/ll_hottopics/americanbar.org/content/newsl

February 21, 2013 Structure of global employment regulation; Global and regional organizations

Assignment for February 21, 2013

- 1. Global Employment Regulation powerpoint (on Sakai)
- 2. Florkowski, chapters 1, 2, and 3
- 3. ILO: www.ilo.org
- 4. WTO: http://www.wto.org/english/forums e/students e/students e.htm
- 5. NAFTA: http://www.ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta
- 6. CAFTA-DR: http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta
- 7. KORUS FTA: http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta

February 28, 2013 Regional employment regulation—The European Union

Assignment for February 28, 2013

- 1. EU Powerpoint (on Sakai)
- 2. Florkowski, pp. 73-80
- 3. http://europa.eu/about-<u>eu/index_en.htm</u>

- 4. http://europa.eu/eu-law/index_en.htm
- 5. Klaus-Dieter Borchardt. *The ABC of Community Law*. Luxembourg: Office for Official Publications of the European Communities, 2000. A brief summary of EU institutions and the sources of European Union law. Also available on EurLex: http://europa.eu.int/eurlex/en/about/abc_en.pdf
- 6. Summary of UK law changes resulting from EU Directives: http://www.londonchamber.co.uk/DocImages/1154.pdf
- 7. Roman Angonese v Cassa di Risparmio di Bolzano SpA, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61998J0281:EN:HTML

March 7, 2013 Industrial relations systems and government regulation

Assignment for March 7, 2013

- 1. Florkowski, Chapter 5
- 2. Geoghegan, Thomas. "Consider the Germans: Co-Determination and Works Councils, http://coto2.wordpress.com/2010/03/23/consider-the-germans-co-determination-and-works-councils/
- 3. "M & S Loses Court Ruling Over French Shop Closures," http://www.dailymail.co.uk/news/article-37174/M-S-loses-court-ruling-French-shop-closures.html
- 4. Burke, Patrick J. "Obtaining German Works Council Approval to Collect Employee E-Mail and Electronic Documents."

 http://www.mistieurope.com/pdf//MIS/GSI_German%20Works%20Council%20Approval_whitepaper_UK.pdf

March 14, 2013 No class—students will select a country, not their own, and begin research

March 21, 2013 Spring break

March 28, 2013 Comparative employment legal issues—privacy, whistleblowing

Assignment for March 28, 2013

- 1. Global issues in privacy and whistleblowing powerpoint (on Sakai)
- 2. Network Interference: A Legal Guide to the Commercial Risks and Rewards of the Social Media Phenomenon, 2d ed. (read the "Data Privacy and Security" (p. 39) and "Employment" Sections (page 48)), available at: http://www.reedsmith.com/files/Publication/f7c1a768-c22c-4be5-823e-

<u>606cc6b9408a/Presentation/PublicationAttachment/2289c1ee-ddea-4c39-99ee-f35d71a0fce3/121221social-media_whitepaper.pdf</u>

- 3. Cooper, Daniel P. and Marttila, Helena, *Corporate Whistleblowing Hotlines and EU Data Protection Laws*, available at http://us.practicallaw.com/1-366-2987#
- 4. World Law Group. *Global Guide to Whistleblowing Programs*, available at http://www.theworldlawgroup.com/files/file/WLG%20Global%20Guide%20to%20Whistleblowing%20Programs-2012-For%20Distribution.pdf

April 4, 2013 Comparative employment legal issues—discrimination

Assignment for April 4, 2013

- 1. Lu, Jiefeng. "Employment Discrimination in China: The Current Situation and Principle [sic] Challenges." 32 *Hamline L. Rev.* 133 (2009).
- 2. Uggen, Christopher and Shinohara, Chika, "Sexual Harassment Comes of Age: A Comparative Analysis of the U.S. and Japan." 50 *The Sociological Quarterly* (2009) 201–234, available at http://db.cimtech.brandeis.edu/investigate/teenSH1/PDFarticles/Uggen-Shinohara Sexual Harassment Comes Of Age A Comparitive Analysis of the United States and Japan-2009.pdf
- 3. Barak-Erez, Daphne and Kothari, Jayna. "When Sexual Harassment Goes East: Feminism, Legal Transplantation, and Social Change," 47 *Stan. J. Int'l L.* 175 (2011).
- 4. Perju, Vlad. "Impairment, Discrimination, and the Legal Construction of Disability in the European Union." 44 *Cornell Int'l L. J.* 279 (2011).

April 11, 2013 Presentations and discussion

Assignment for April 11, 2013

Florkowski, Chapter 7

April 18, 2013 Presentations and discussion

April 25, 2013 Presentations and discussion

May 2, 2013 Final exam

Grading:

Written project and presentation	50 percent
Final examination	30 percent
Class participation	20 percent

Additional Optional Readings

- Ralph H. Folsom, Folsom's European Union Law in a Nutshell, 7th ed. (2011).
- Abigail C. Saguy, What is Sexual Harassment? From Capitol Hill to the Sorbonne. 2003 (book).
- Susan Bisom-Rapp, Exceeding Our Boundaries: Transnational Employment Law Practice and the eXport of American Lawyering Styles to the Global W orksite, 25 Comp. Lab. L. & Pol'y J. 257 (2004).
- Hilary K. Josephs, "Upstairs, Trade Law; Downstairs, Labor Law," 33 Geo. Wash. Int'l L. Rev. 849 (2001).
- Mario F. Bognanno, Michael P. Keane and Donghoon Yang, "The Influence of Wages and Industrial Relations Environments on the Production Location Decisions of U.S. Multinational Corporations," 58 *Indus. & Lab. Rel. Rev.* 171 (2005).
- Jeffrey M. Hirsch, "Making Globalism Work for Employees," 54 St. Louis U. L. J. 427 (2010).
- Ruth Bader Ginsburg and Deborah Jones Merritt, "Affirmative Action: An International Human Rights Dialogue," 21 *Cardozo L. Rev.* 253 (1999).
- Janice Bellace, "Achieving Social Justice: The Nexus Between the ILO's Fundamental Rights and Decent Work," 15 *Emp. Rts. & Emp. Pol'y J.* 5 (2011) --history of the ILO.
- Hiroko Hayashi, "Sexual Harassment in the Workplace and Equal Employment Legislation," 69 *St. John's L. Rev.* 37 (1995).
- Gabrielle S. Friedman & James Q. Whitman, "The European Transformation of Harassment Law: Discrimination versus Dignity," 9 *Colum. J. Eur. L.* 241 (2003).
- Elizabeth Goergen, Comment: "Women Workers in Mexico: Using the International Human Rights Framework to Achieve Labor Protection," 39 *Geo. J. Int'l L.* 407 (2008).
- Caricom (Caribbean Common Market) see 23 Comp. Lab. L. & Pol'y. J. 901.
- Richard Frimpong Oppong," Observing the Legal System of the Community: The Relationship Between Community and National Legal Systems Under the African Economic Community Treaty," 15 *Tulane Journal of International and Comparative Law* 41 (2006) 15 *Tul. J. Int'l & Comp. L.* 41
- Alford, Duncan E. "European Union Legal Materials: A Guide for Infrequent Users." 97 *Law Libr. J.* 49 (2005).

Sternlight, Jean R. "In Search of the Best Procedure for Enforcing Employment Discrimination Laws: A Comparative Analysis." 78 *Tul. L. Rev.* 1401 (2004).

Helpful websites:

http://www.theworldlawgroup.com/index.cfm?cm=Menu&ce=details&primaryKey=12

eiu.com (through RU Libraries webpage)

http://libguides.rutgers.edu/content.php?pid=405323&sid=3317346

(guide developed by Donna Schulman, SMLR Librarian—collects helpful resources for employment and labor law in numerous countries)

http://libguides.rutgers.edu/globalworkforce/

(guide developed by Donnal Schulman, SMLR Librarian, for Managing Global Workforce course)