

## COURSE SYLLABUS - Work and the Law

**COURSE NUMBER:** HRD 3420 - 080

**COURSE TITLE:** Work and the Law

**SECTION NUMBER:** 11254

**CLASSROOM LOCATION:** 208 Pawley Hall

**COURSE DATES AND TIMES:** Winter Term, 2018  
Tuesdays, 1:00 P.M. until 4:20 P.M.  
Classes January 9 through April 17, 2018  
Final Examination, April 24, 2018 1:00 P.M..

**FACULTY MEMBER:** Michael P. Long, J.D.      OU Phone: 248-370-3124  
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**OFFICE HOURS:** Tuesdays: Prior to and after class  
**Appointments available** Please contact Professor Long for an appointment.

### **BIOGRAPHICAL STATEMENT:**

Professor Long is an Associate Professor in the Department of Organizational Leadership / Human Resource Development Program and Director of the Ken Morris Center for the Study of Labor and Work at Oakland University. He is an Attorney and Dispute Resolution Professional; a member of the International, National and Michigan Regions of the National Academy of Arbitrators and the Labor Arbitration Panels of the American Arbitration Association, Federal Mediation and Conciliation Service and Michigan Employment Relations Commission; and the Commercial Arbitration Panel of the American Arbitration Association. Mr. Long is the past Chairman of the Chrysler UAW Appeal Board, and as an Employment Relations and Employment Policy consultant for a number of enterprises. He is a graduate of the University of Detroit and the Michigan State University/Detroit College of Law.

### **COURSE DESCRIPTION:**

This course presents an overview of the fundamental laws (statutory, regulatory and common law), policies and procedures that impact employment in the U.S. Topics covered include some basics of the U.S. Constitution as well as the relevant federal and state laws that govern the modern employment relationship such as the recruiting, testing of applicants, selection; the doctrine of at-will employment and its exceptions; obligations of employees; covenants not to compete; termination of the employment relationship; employee reputation, privacy and dignity; workers' compensation; unemployment insurance; and employment rights and responsibilities in general. This is accomplished through lecture material and the study and discussion of Court, and administrative legal decisions using lecture and the Socratic Method.

### **INDIVIDUAL CLASS PREPARATION:**

A significant portion of each student's grade will be based on the student's preparation for class. Students are required to read the assigned chapters in the text prior to class, and be prepared to comment in class on what they have read. This includes private reflection on the case decisions reported in each chapter including private preparation of answers to the "Case Questions" at the end of each decision.

### **WRITING ASSIGNMENTS:**

In lieu of a term papers or quizzes, and in order to facilitate the applied skills related to the ability to effectively read and understand court decisions and statutes in the area of employment relations, students will complete weekly written reports for course credit and use in classroom discussion. The subject matter for the reports supplements the materials in the text book and is designated in *the Schedule of Class Meetings and Assignments* section of the syllabus (beginning at page 5). These reports will be labeled by a Writing Assignment Number and due to the instructor at the beginning of the class period for which they are assigned. The materials covered in these assignments will be included as subject matter for use in examinations.

### **COURSE OBJECTIVES:**

Upon successfully completing this course, the student will be able to:

1. Understand the major issues and laws affecting the employment relationship from both a legal and practical standpoint;
2. Possess and demonstrate a workable knowledge regarding prevention of and/or detection and resolution of violations of the common law and other legal standards affecting employment;
3. Determine from factual situations effective arguments of the employer and/or the individual employee as to violations of a law as well as the probable judicial outcome and appropriate remedy;
4. Understand the common law principles, that greatly affect the employer/employee relationship; and
5. Locate, read and understand court decisions in the area of employment relations.

**METHODOLOGY:**

The subject matter for each session will be covered by:

- Lecture in which the basic assumption is made that each student has studied the assignment for that meeting in advance,
- Active participation by students, who have prepared in advance for class and
- Student presentations

**TEXT AND INSTRUCTIONAL MATERIALS:**

- **Employment Law for Human Resource Practice, Fifth Edition**, by David J. Walsh, South-Western Legal Studies in Business / Cengage Learning, Mason, Ohio, published in 2015. Including its web site where books may be purchased as on-line texts or rented at any bookseller or at: <http://www.cengagebrain.com/shop/en/US/storefront/US?cmd=CLHeaderSearch&fieldValue=1305112121>  
*(You can rent it at Amazon.com for 39.25 - [https://www.amazon.com/Employment-Law-Human-Resource-Practice/dp/1305112121/ref=mt\\_hardcover? encoding=UTF8&me=\)](https://www.amazon.com/Employment-Law-Human-Resource-Practice/dp/1305112121/ref=mt_hardcover?encoding=UTF8&me=)*
- **Other Materials**, as designated by the instructor.

**GRADING POLICY:**

Mid Term Examination:.....	120 pts.
Writing Assignments (12 x 10 pts) .....	120 pts.
Final Examination:.....	120 pts.
Class Preparation & Participation awarded on an at-will basis .....	<u>40 pts.</u>
<b>Total</b> divided by 100 and rounded will be your final grade for this course:.....	<u>400 pts.</u>

**EXAMINATION SYSTEM AND POLICY:**

The mid-term examination is designed to evaluate the student’s progress toward achieving the course objectives. The final examination will be comprehensive, and will measure the student’s understanding of the complex subject of labor and employment relations as they relate to the subject matter of this course.

*PLEASE NOTE:*

*The mid-term and final examinations are scheduled to be objective in nature. The dates of these examinations are included in the Schedule of Class Meetings and Assignments portion of this syllabus. Please arrange your affairs to be present. Because of the nature of this examination, I am very reluctant to allow early or make-up examinations. If you are absent from an examination for good and sufficient cause, you must explain in writing and document any and all reasons and/or excuses within eight days of the scheduled examination. Appropriate action will be at the sole discretion of the instructor.*

### **ATTENDANCE:**

Attendance is very important to your success in this course. Attendance, therefore, is mandatory. Absence from class will negatively affect your grade. In addition, please note the following:

1. If a class is missed on an assignment due date, at the discretion of the instructor, the assignment may be submitted at a later time designated by the instructor for ½ credit.
2. Each student is responsible for obtaining notes and handouts for any missed class from another student; the instructor will not keep them.

It is the student's responsibility to access Moodle for instructions should the University be closed due to inclement weather for instructions on assignments and coursework.

As part of the course grade is based on class participation, any request for an excused absence must be promptly tendered to the instructor, in writing, and accompanied by an appropriate written explanation by the student (no doctor's notes needed) in order to be considered.

### **ACADEMIC CONDUCT POLICY**

All members of the academic community at Oakland University are expected to practice and uphold standards of academic integrity and honesty. Academic integrity means representing oneself and one's work honestly. Misrepresentation is cheating since it means students are claiming credit for ideas or work not actually theirs and are thereby seeking a grade that is not actually earned. Students are advised to read the entire Oakland University Academic Conduct Policy, which can be found at or about page 77 of the Undergraduate Catalog.


## SCHEDULE OF CLASS MEETINGS AND ASSIGNMENTS

“ELHRP” indicates the Employment Law for Human Resource Practice (5<sup>th</sup> Edition) textbook.

*While every effort will be made to maintain the schedule outlined, class schedule, assignments, etc. are subject to change throughout the semester at the discretion of the instructor.*

Class No.	Date	Assignments
1	1-9	<p>Introduction to Work and the Law; Adam &amp; Eve, King Henry 8<sup>th</sup>, Robin Hood, USA, George Washington, etc.</p> <p>Explanation of US Constitution, Court System, and Administrative Procedures and Law; How to read and summarize a legal decision/statute; <i>US Constitution</i>.</p> <p><b>Reading Assignment – US Constitution.</b> <i>The U.S. Constitution can be found at:</i> <a href="https://www.gpo.gov/fdsys/pkg/CDOC-110hdoc50/pdf/CDOC-110hdoc50.pdf">https://www.gpo.gov/fdsys/pkg/CDOC-110hdoc50/pdf/CDOC-110hdoc50.pdf</a></p> <p><b>or</b> <a href="https://www.law.cornell.edu/constitution/overview">https://www.law.cornell.edu/constitution/overview</a></p>
2	1-16	<p><i>ELHRP</i> Chapter 1 Overview of Employment Law Writing Assignments will begin next week.</p>
3	1-23	<p><i>ELHRP</i> Chapter 2 The Employment Relationship</p> <p><b>Writing Assignment 1:</b></p> <p>Illegal Discrimination / Public Policy / Retaliatory Discharge Jones v Musashi Auto Parts <a href="http://law.justia.com/cases/michigan/court-of-appeals-unpublished/2016/327304.html">http://law.justia.com/cases/michigan/court-of-appeals-unpublished/2016/327304.html</a></p>
4	1-30	<p><i>ELHRP</i>; Chapter 3 Overview of Employment Discrimination Michigan Elliot Larsen Civil Rights Act <a href="https://www.michigan.gov/documents/act_453_elliott_larsen_8772_7.pdf">https://www.michigan.gov/documents/act_453_elliott_larsen_8772_7.pdf</a></p> <p><b>Writing Assignment 2:</b></p> <p>Right of Association Michael Anderson v City of LaVergne, US 6<sup>th</sup> Circuit, June 16, 2004 <a href="http://caselaw.findlaw.com/us-6th-circuit/1378443.html">http://caselaw.findlaw.com/us-6th-circuit/1378443.html</a></p>

Class #	Date	Assignments
5	2-6	<p><i>ELHRP</i>; Chapter 5                      Background Checks, References, Verifying Employment Eligibility</p> <p><b>Writing Assignment 3:</b>                      Independent Contractor / Summary Judgment                      Keller v Mirimicrosystems  <a href="http://www.opn.ca6.uscourts.gov/opinions.pdf/15a0055p-06.pdf">http://www.opn.ca6.uscourts.gov/opinions.pdf/15a0055p-06.pdf</a></p>
6	2-13	<p><i>ELHRP</i>; Chapter 6                      Employment Tests</p> <p><b>Writing Assignments 4 &amp; 5:</b></p> <p>4. MICHIGAN DISCLOSURE OF EMPLOYEE JOB PERFORMANCE                      Act 90 of 1996; 423.451 &amp; 423.452  <a href="http://www.legislature.mi.gov/(S(etlvc0554pnbsl55tb5blgr2))/mileg.aspx?page=getobject&amp;objectname=mcl-423-451">http://www.legislature.mi.gov/(S(etlvc0554pnbsl55tb5blgr2))/mileg.aspx?page=getobject&amp;objectname=mcl-423-451</a> and  <a href="http://www.legislature.mi.gov/(S(g5llul55bhizai45qdp2m3ax))/mileg.aspx?page=getobject&amp;objectname=mcl-423-452">http://www.legislature.mi.gov/(S(g5llul55bhizai45qdp2m3ax))/mileg.aspx?page=getobject&amp;objectname=mcl-423-452</a>                      -and-</p> <p>5. MICHIGAN PAYMENT OF WAGES AND FRINGE BENEFITS                      Act 390 of 1978, MCL 408.471 thru 408.490  <a href="http://www.legislature.mi.gov/(S(etlvc0554pnbsl55tb5blgr2))/mileg.aspx?page=getObject&amp;objectName=mcl-408-471">http://www.legislature.mi.gov/(S(etlvc0554pnbsl55tb5blgr2))/mileg.aspx?page=getObject&amp;objectName=mcl-408-471</a></p>
7	2-20	<b>Winter Recess</b>
8	2-27	<b>Mid Term Examination</b>
9	3-6	<p><i>ELHRP</i>; Chapter 12                      Wages, Hours and Pay Equity</p> <p><b>Writing Assignment 6:</b>                      Employee Tips / Minimum Wage                      Myers v. The Copper Cellar Corporation                      US 6<sup>th</sup> Circuit, September 03, 1999  <a href="http://caselaw.findlaw.com/us-6th-circuit/1148652.html">http://caselaw.findlaw.com/us-6th-circuit/1148652.html</a></p>
10	3-13	<p><i>ELHRP</i>; Chapter 15                      OSHA; Michigan Workers' Compensation</p> <p><b>Writing Assignment 7:</b>                      Non-Competition                      Mid-Michigan Medical Billing Service v Williams  <a href="http://www.michbar.org/file/opinions/appeals/2016/021816/62014.pdf">http://www.michbar.org/file/opinions/appeals/2016/021816/62014.pdf</a></p>

Class No.	Date	Assignments	
11	3-20	ELHRP; Chapter 16 Performance Appraisals, Training & Development  <b>Writing Assignments 8 &amp; 9:</b> 8. MICHIGAN BULLARD-PLAWECKI EMPLOYEE RIGHT TO KNOW ACT 397 of 1978; 423.501 thru 423.512 <a href="http://www.legislature.mi.gov/(S(etlvc0554pnbsl55tb5blgr2))/mileg.aspx?page=getObject&amp;objectName=mcl-423-501">http://www.legislature.mi.gov/(S(etlvc0554pnbsl55tb5blgr2))/mileg.aspx?page=getObject&amp;objectName=mcl-423-501</a>  9. MICHIGAN INTERNET PRIVACY PROTECTION ACT – 37.271 thru 37.278 <a href="http://www.legislature.mi.gov/(S(yrzww5rxwd0bwh45ggfo3jis))/mileg.aspx?page=PAsearch&amp;paNumber=478&amp;paYear=2012">http://www.legislature.mi.gov/(S(yrzww5rxwd0bwh45ggfo3jis))/mileg.aspx?page=PAsearch&amp;paNumber=478&amp;paYear=2012</a>	<b>CLASS PICTURE DAY</b> 
12	3-27	ELHRP; Chapter 17 Privacy on the Job: Information, Monitoring & Investigations  <b>Writing Assignment 10:</b> First Amendment – Public Policy LATHAM v. OFFICE OF ATTORNEY GENERAL OF STATE OF OHIO US 6 <sup>th</sup> Circuit; January 10, 2005 <a href="http://caselaw.findlaw.com/us-6th-circuit/1050719.html">http://caselaw.findlaw.com/us-6th-circuit/1050719.html</a>	
13	4-3	ELHRP; Chapter 18 Terminating Individual Employees  <b>Writing Assignment 11:</b> Emotional Distress 11. Yesner v Borgess Medical Center <a href="http://law.justia.com/cases/michigan/court-of-appeals-unpublished/2016/324516.html">http://law.justia.com/cases/michigan/court-of-appeals-unpublished/2016/324516.html</a>	
14	4-10	<b>ELHRP Chapter 19</b> <b>Writing Assignment 12:</b> Workplace Harrassment Vance v Ball State University US Supreme Court <a href="https://www.supremecourt.gov/opinions/12pdf/11-556_11o2.pdf">https://www.supremecourt.gov/opinions/12pdf/11-556_11o2.pdf</a>	
	4-17	<b>Catch-up Class</b>	
	4-24	<b>Scheduled Final Examination</b>	

## **Format for Research Presentations / Study Guides**

One Outline / Study Guide for each case/statute

**Make sure that you include your name and the Writing Assignment number on the top of each page.**

**If the assignment is a case decision:**

Writing Assignment number

Name of Case

Court that decided the case

Date of Decision

Procedural History - What happened in lower courts

Facts - What happened in plain everyday language

Plaintiff Argues . . . . .

Defendant Argues . . . . .

Question to be decided (Issue of case) . . . . .

Holding of Court (Who wins)

Majority Opinion - Why the winner won

Dissent, if any

Rule of case - What does this all mean in simple terms?

**If the assignment is of a statute:**

Writing Assignment number

Popular Name of Statute

MCL Citation

Date statute was passed and last amended

In an Executive Report style, deliver a summary of what the statute covers using 50 words or fewer.

Using bullet points, state the four most important provisions of the statute with appropriate explanations of 50 words or fewer each.



## **SOME LAW BASICS**

### **A super extremely brief outline**

In order to fully understand how any particular law of the United States operates, one must first understand the workings of the United States Constitution.

### **U.S. CONSTITUTION**

The **Constitution is a POWER DOCUMENT**. That is to say that it is a contract that citizens of the United States have with one another in which they each relinquish the right to use certain powers altogether and give the right to wield certain other of those powers to a third, *disinterested* party called the **GOVERNMENT**.

#### **PURPOSE**

The purpose of the Constitution is stated in its Preamble:

*"We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."*

The courts interpret the language of the Constitution in conformance with the intent of the Constitution as outlined in the above quoted Preamble.

#### **INTERSTATE COMMERCE**

Among the powers given to Congress (Article I, Section 8), are the powers to lay and collect taxes, coin money, declare war, support armies and navies, borrow money on the credit of the United States and **"TO REGULATE COMMERCE WITH FOREIGN NATIONS, AND AMONG THE SEVERAL STATES, AND WITH THE INDIAN TRIBES."**

The basis of the government authority in employment relations is what is known as the Commerce Clause of the Constitution by which the government is granted the power to regulate commerce "among the several states".

#### **NECESSARY AND PROPER**

In the same section of the United States Constitution (Article I, Section 8, clause 18), Congress is granted the power to make "all laws necessary and proper" to carry out the regulatory powers granted by the Constitution.

#### **SUPREMACY**

The Federal law preempts conflicting state legislation by virtue of the SUPREMACY CLAUSE (Article IV, clause 2), which states that laws passed by the Congress pursuant to its

Constitutional powers are the "supreme law of the land", biding uniformly, "anything in the Constitution or laws of any state to the contrary notwithstanding". Any powers not given to the federal government by the constitution are reserved to the states and to individuals respectively.

### **BRANCHES OF GOVERNMENT**

In this contract that the people of the United States have with one another called the Constitution, a government is created to wield only those powers given to it by the people.

There are three branches of government as follows:

**Legislative** - Congress has been given the power to make laws.

**Executive** - Has been given the power to implement the laws.

**Judicial** - Has been given the power to determine the propriety of the action of the other two branches, and settle disputes between citizens.

### **JUDICIAL**

The Judicial Branch concerns itself with a number of different questions.

- Did the Legislature have the **right (power?) to pass the law?**
- In this kind of decision, the Court will determine if the law is **CONSTITUTIONAL or UNCONSTITUTIONAL.**
- Did the Executive Branch implement the law as the **Legislature intended?**
- Did the Executive Branch in practice or procedure while implementing the proper intent of the law **exceed the rights (powers)** given to it in the Constitution?
- The Judicial Branch also has to take into account what we call the **COMMON LAW**, which is the law of the land that has not specifically been made into a statute by the legislature. This type of law can be compared to **PAST PRACTICE** as we know it in collective bargaining relationships. Common law for the most part is just as valid as statutory law except where common and statutory conflict; in that case, statutory law prevails.
- The Judicial Branch also wields **Equity** power where it has the power to take action of an extraordinary nature that may even run in opposition to the statutory or common law, in cases of a unique nature, or where there is no adequate remedy at law for the damage that may be done.

The court has discretion in whether to grant **temporary** injunctive relief pending resolution of a dispute. It must, however, consider **four factors**:

1. Did the plaintiff demonstrate a substantial likelihood of success on the merits as to liability?
2. Would non action cause irreparable harm to the plaintiff?
3. Would an injunction cause substantial harm to others?
4. Would an injunction negatively impact the public interest?

### **Who Does What?**

At the trial level, the judge determines what the law allows and does not allow. The judge instructs the jury. The jury (trier of fact) determines what the facts are and then applies the facts to the law according to the instructions given earlier by the judge. (The parties may waive a jury and have the judge serve as the trier of fact.)

**The court controls what the law is** (what rules apply) **and the jury determines the facts** (what did or did not happen) and applies the facts to the law. This way, the court maintains control over the direction of the law is and the jury just decides questions of fact pertaining to the law as determined by the courts.

What happens if the judge, before trial, determines that even if all the facts alleged by the parties are true, there is still no violation of law? The judge does not let the case go to trial by declaring a "summary Judgement."

### **SUMMARY JUDGMENT**

A summary judgment is a decision made on the basis of statements and evidence presented in the legal pleadings and documents filed, without a trial. It is used when there is no dispute as to the material facts of the case, and/or all evidence is viewed in the light most favorable to the movant's opponent, and one party is entitled to judgment as a matter of law. A material fact is one which tends to prove or disprove an element of the claim.

The purpose of summary judgment is to avoid unnecessary trials. It may also simplify a trial, as when partial summary judgment dispenses with certain issues or claims. For example, a court might grant partial summary judgment in a personal injury case on the issue of liability. A trial would still be necessary to determine the amount of damages.

The motion for summary judgment may be brought by any party to the case and supported by declarations under oath, excerpts from depositions which are under oath, admissions of fact and other discovery, as well as case law and other legal authority, that argue that there are no triable issues of fact and that the settled facts require a summary judgment for the moving party. If the motion for summary judgment is denied, the case proceeds in the court system until settled or concluded after trial.