

San Jose State University College of Business

Bus 250: Business/Employment Law/Ethics for the General Manager

Green Sheet (syllabus)—Spring 2008

Instructor: *Dr. Stan Malos, J.D., Ph.D.*

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Text: Employment Law for Business (5th Ed. Bennett-Alexander & Hartman; Irwin, 2007).

Overview: This course will provide in-depth exposure to legal issues that arise in managing the employment relationship. A basic understanding of general management practices is assumed.

Prerequisite: None; basic knowledge of or experience with employee relations helpful but not required [don't worry if you haven't had it ☺].

Workload: You will be responsible for learning the basic substance of the text material *on your own outside of class*, while our limited class time will be spent discussing legal cases, text scenarios, chapter-end questions, and other materials, including updates on the nuances of California law. Acquiring substantive knowledge of relevant laws is a minor objective of this course, given that the *basics* of most employment laws are fairly straightforward. Developing the ability to recognize the often subtle *factual situations* in which violations can and do occur in practice, and developing the *critical thinking and research skills* needed to effectively manage, communicate about, and solve resulting problems, will be our primary goal.

Preparation: You will be expected to prepare assigned cases for each class period, and will browse the web to obtain additional information on various issues for discussion in class. You also will gain exposure to on-line legal databases (e.g., Findlaw.com, Lexis) available for management and employment law research. Read all of the author narrative (general descriptive material) in each chapter, and read and **prepare in writing (typed) any California, 9th Circuit, or U.S. Supreme court cases according to the FIRACT format** (see weblink) unless otherwise instructed. If you have time, review the chapter end questions to practice for exams and real career situations.

Class Conduct: Class preparation and participation is critical. Class members will be called upon to present their analyses of questions, cases, and current events. As time permits, we may also conduct simulations and role playing exercises to provide practical experience in management situations (e.g., interviewing, hiring, firing, performance appraisals, promotion decisions, salary reviews) that tend to generate the thorniest issues in employee relations and personnel management. Lecture notes, overheads, updates, and current issues will be posted on my website, which should be checked at least once or twice a week for maximum utility.

Grading: Grades will be awarded based upon a weighted combination of the following:

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| Exams | 400 points |
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| At-will Writing Assignment | 50 points |
| Class HW/Prep/Participation* | 100 points |
| Web Research FIRACTS | 50 points |
| Legal Research Paper (LRP)** | 400 points |
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| Total Points Available | 1000 points |

*The score for this item will be based on instructor and student self-evaluations, with a rough allocation of 50% to the written homework preparation (weekly "FIRACTS"), 40% to in-class contributions, and the remaining 10% to the Harassment Role Play.

**The score for this item will be based on 50 points for the quality of the Initial Fact Situation, 50 points for the quality of your peer review(s) of a classmate's paper, and 300 points for the quality of the paper itself [see posted grading criteria link on main course website].

Final point totals are converted to percentage scores, and final grades are determined in accordance with the commonly accepted distribution whereby "A"s go to scores in the 90s, "B"s to those in the 80s, and so on. Extra credit may be available through random collection of homework.

Exams: Exams will consist of a combination of multiple choice and true/false/data sufficiency questions, as well as short answer or essay questions.

Class Preparation and Participation: Class participation will be evaluated based on the substance and frequency of contributions to class discussions and apparent preparation level (you earn points in this category both by submitting written firacts when requested and participating in discussions). Instructor and self-evaluations will be used. Active participation in discussions is preferred over solely written (partial credit only) submissions.

Web Research FIRACTS: Students will screen, download, and write up one recent case [2003 or later and NOT in our textbook or on the course website!] from an on-line source. Time permitting, students also will participate in role playing the myriad situations [e.g., harassment allegations] in which practical and legal issues in employee relations arise on a day-to-day basis.

Legal Research Paper: For this project, you will conduct legal research to draft a memorandum to management (1+ fact situation of your creation plus 4 pages of legal case law analysis; absolute *maximum* of 6 total pages, including facts and legal analysis--see separate link for details) directed toward solving a problem in the employment law context. *Primary* current caselaw (as opposed to someone else's interpretation of it in *secondary* sources such as your textbook) will be obtained from on-line sources (e.g., Lexis, Findlaw.com). This caselaw will used to compare the facts and legal analyses of those cases with *your* fact situation to predict the outcome and make recommendations to management as to how to handle the situation and improve practices in the future. In this exercise, you will learn how to independently investigate and evaluate and manage your and your organization's potential liability in various situations that evolve out of the employment relationship.

TOPIC COVERAGE AND GENERAL ORGANIZATION OF THE COURSE

- (1) Introduction to the Employment Relationship and the Regulation of Employment: Employment at Will, Exceptions to Employment at Will (e.g., Implied Contracts, Employee Handbooks, Public Policy, Whistleblowing), and Employment Contracts (e.g., Union, others); Legal Significance of Employee and Employer Status (e.g., Independent Contractor/Outsourcing/Contingent Workforce issues); FLSA “Exempt/Non-exempt” issues; Arbitration, Non-competition, and Trade Secrets Non-Disclosure Agreements [NDAs]
- (2) Privacy and related Employee Rights issues, including electronic surveillance; workplace searches; monitoring of telephone, email, and internet usage; drug testing; and regulation of off-work activity.
- (3) The Employment Relationship and Title VII of the Civil Rights Acts of 1964; 1991; State Fair Employment Practices Acts (e.g., California’s Fair Employment and Housing Act); Disparate Treatment, Adverse Impact, proving and defending discrimination claims in general; Race Discrimination under Title VII.
- (4) Legal issues in establishing and managing the employment relationship and related HR processes such as recruitment, affirmative action, selection testing, and performance appraisal
- (5) Gender Discrimination under Title VII; Sexual Harassment and Sexual Affinity Orientation Discrimination under Title VII and FEHA
- (6) Religion & National Origin Discrimination discrimination and related Immigration issues
- (7) Age Discrimination and related retirement benefits issues [e.g., OWBPA; ERISA]
- (8) Disability Discrimination and related issues in Occupational Safety and Health (e.g., OSHA, AIDS, Workplace Violence, Cumulative Trauma Disorders, Ergonomic Standards), Workers Compensation, and the federal Family & Medical Leave Act [FMLA] and state California Family Rights Act [CFRA]