

## FALL 2022 EMPLOYMENT LAW SYLLABUS

**Law 619-1001 Employment Law**  
**William S. Boyd School of Law, UNLV**  
**Fall 2022**  
**TuTh 3:05-4:30 p.m.**  
**Room 112**

### PROFESSOR'S INFORMATION

Professor Ruben J. Garcia

[ruben.garcia@unlv.edu](mailto:ruben.garcia@unlv.edu)  
[twitter.com/@profrubengarcia](https://twitter.com/@profrubengarcia)  
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Open Zoom office hours MW, 4-5pm, unless otherwise noted. You also are welcome to contact me to make a Zoom appointment at any other mutually convenient time. Sign-ups for appointments are on the TWEN page at the Sign-up Sheets tab.

### COURSE DESCRIPTION AND LEARNING OBJECTIVES

This course provides a basic overview of the most common issues to arise in the relationship between an individual and an employer. Principal subjects in the employment law course include: breach of employment contracts, wrongful discharge, workplace health and safety, employee testing, arbitration, post-employment restrictions and workplace privacy rights. The areas of employment benefits, employment discrimination and collective bargaining are discussed, but are covered in more depth in other regularly offered courses. The course is unified through a focus on core policy issues: how and where to strike a balance between the employer's needs in running its business versus worker rights and how best to regulate the employment relationship—through legislation, private causes of action, collective bargaining and/or the unfettered market.

This course will develop the following Learning Objectives:

1. Legal Knowledge: An understanding of the general themes of Employment Law regulation in the United States. Specific knowledge of particular federal statutes such as the Fair Labor Standards Act, the Family Medical Leave Act, the Occupational Safety and Health Act, and the Worker Adjustment and Retraining Notification Act.
2. Analysis and Legal Decision Making: Developing judgment about the use of employment law remedies available to employers and employees.
3. Professional Identity: Determining the effectiveness of employment regulation on the grounds of enforceable rights, minimum labor standards, and economic efficiency.

## FALL 2022 EMPLOYMENT LAW SYLLABUS

4. Policy Evaluation: Developing an identity of the lawyer as counselor and problem solver, not merely as a litigator.

### COURSE MATERIALS

The books for the course are **Dau-Schmidt, Finkin, Garcia & Bent, Legal Protection for the Individual Employee** (6<sup>th</sup> ed. 2021) [hereinafter “Casebook” or “CB”] and **Dau-Schmidt et al, Statutory Supplement to Legal Protection for the Individual Employee** (6<sup>th</sup> ed. 2021) [hereinafter “Stat. Supp.”]. There is also a 2022 Update to the Casebook on the Course Materials tab of the TWEN page. Readings noted below as (TWEN) are available on the class TWEN page, and additional readings on TWEN may be added throughout the semester.

### GRADING, EXAMINATION OR PAPER, AND ATTENDANCE

The grade in this course will be based either on the final examination or the final paper you complete. In accordance with the Student Policy Handbook, I may also combine anonymous and non-anonymous grade components after obtaining examination number identities from the registrar. You will get more information about the procedures for the administration of exams from the Registrar’s Office.

Points will be deducted from your final grade for disrupting the class, not being prepared, not paying attention, and/or being late or absent. You may make up lost points by better participation, improving attendance, and volunteering for assignments. If a student arriving late or leaving early becomes chronically disruptive, I have the discretion to remove a student from the class. If you miss more than six classes, I have the ability to drop you from the class. Readings (noted below as “Handouts” or available on TWEN) also will be distributed in class throughout the semester.

To receive a grade in this course, you must either complete a final exam or a long paper. If you take the final exam, the final grade will be based on performance on an open-book three-hour final exam at BSL **on Tuesday, December 6 at 9 a.m.** If you elect to write a paper, your paper must meet the minimum standards in the Law School Rules for completing the Capstone Writing Requirement (CWR), or you must take the final exam to receive a grade in the course. The minimum requirements are in Student Policy Handbook § 4.02(b), and those are the minimal requirements to receive credit in the course. You will also have regular due dates for interim assignments before your final paper is due. If you choose to complete the final paper, the following due dates for interim assignments apply (no exceptions):

<u>Interim Assignment</u>	<u>Due Date (uploaded to TWEN, all times Pacific)</u>
Topic Statement	Wednesday, September 14, 4 pm
Outline/Bibliography	Wednesday, September 28, 4 pm
Paper Introduction	Wednesday, October 19, 4 pm
First Draft	Wednesday, November 9, 4 pm
In-Class Presentation	Tuesday, November 29, 4 pm
Final Paper Due	Wednesday, November 30, 4 pm

## FALL 2022 EMPLOYMENT LAW SYLLABUS

If you wish to write the paper in for this course, there will be no extensions of the above due dates. If you fail to meet the deadline for any interim assignment, or if your final paper does not meet the law school's CWR standards, you will instead take the final exam to get a grade in the course. I will be happy to work with you throughout the paper process if you choose to do one, but you must make that decision and propose a topic by submitting a topic on the TWEN page by **September 14, 2022, 4 p.m.**

A note on civility: While this class focuses on Employment Law doctrine, the issues and cases we discuss involve contested policy views. I do not expect you to leave your opinions at the door, but I do expect you to be respectful of others and their views.

## FALL 2022 EMPLOYMENT LAW SYLLABUS

### Law School Policies and Disclosures

#### The Remote Law Classroom & Zoom Etiquette

For the live sessions that we will have on Zoom, you should have your camera on during live online sessions. I understand that attending class remotely from home presents challenges for students with family responsibilities. If you need to tend to a family-related issue, please remember to mute yourself, and feel free to temporarily turn off your camera until you are able to return your focus to class. You may petition for an exception to this camera requirement. Students should behave in class much as they would in court or in in-person classes. In particular, students should:

- Treat each other with respect.
- Be on time (moreover, students should not leave a class session early unless they are in desperate discomfort or must tend immediately to a crisis).
- Not read other material, check email, message/chat or surf the web while in a class session.
- Dress appropriately and consider your location and what is viewable in your camera.

#### Public Health

Students must adhere to all [UNLV public health directives](#) and follow guidance and directions communicated by the Boyd School of Law. Students who do not comply with these policies may be asked to leave the classroom. Refusal to follow the guidelines may result in further disciplinary action according to the [UNLV Student Conduct Code](#), including being administratively withdrawn from the course. The health situation in Southern Nevada may change and new directives and guidelines issued.

Students must keep apprised of health directives issued by the University and pay attention to communications from the law school administration.

The law school strongly encourages all of its students to receive the vaccination, including the booster shot, against Covid-19.

This syllabus was drafted in the context of the health situation in Clark County in August 2022. Law school courses are subject to adjustment in line with the conditions affecting the community, University, law school, or this particular section or class. If that becomes the case, notice of and details any adjustments will be provided. In general, should public health circumstances change, corresponding changes to the syllabus may be necessary as well.

#### Attendance ([Student Policy Handbook, 4.02a](#))

Per Student Policy Handbook, 4.02a, regular and punctual class attendance is required. Individual faculty may establish more specific attendance policies. Because law school is a collaborative learning experience, attendance in class benefits all students. Further, course material is cumulative, meaning that each successive class builds upon material previously covered. Students who fail to attend class meetings will be at a disadvantage. Students are responsible for obtaining any and all information given, materials distributed, and assignments made, during missed classes.

## FALL 2022 EMPLOYMENT LAW SYLLABUS

### **Policy on Recording Classes** ([Student Policy Handbook, 6.02](#))

No student may audio-record or video-record any class, or arrange for it to be recorded, without the permission of the course instructor. Course instructors may allow or disallow recording on such occasions and on such terms as they deem advisable. The instructor may rescind permission anytime during the course. The recording policy is subject to exception necessary to provide students with accommodations under the Americans with Disabilities Act.

### **Coursework Policy** ([Student Policy Handbook, 2.02](#))

Pursuant to ABA standards, J.D. students are expected to spend 42.5 hours of combined in-class and out-of-class work over the semester for each academic course credit received.

**Academic Success Program / CASE.** [The Boyd Academic Success Program](#) assists students in removing barriers to academic success. This includes reviewing past exams, giving sample exams or hypotheticals, evaluating study habits, and assisting with time and stress management issues. The Academic Success Program also provides a series of pre-bar exam lectures to assist in preparing to take the bar, as well as opportunities for thoughtful feedback and individualized assistance in bar preparation through the bar prep period.

**Law Library Resources.** The Wiener-Rogers Law Library provides resources to support students' access to information. Reference librarians are available for consultation in person or by phone or email. For library services and resources, *see* [Library Resources](#).

**Academic Misconduct.** Acceptance to the William S. Boyd School of Law (the Law School) represents much more than admission to the study of an intellectual discipline. The privilege of admission comes with a unique set of responsibilities, not only to fellow students, but to the Law School, to the legal profession, and to the public. The legal profession demands the highest degree of trustworthiness, honesty and public integrity. As future members of that profession, students of the Law School are bound to observe principles that reflect the same high standards that govern the practice of law. This [Student Honor Code](#) (the Honor Code) sets forth conduct that is prohibited, and it establishes minimum standards for student professional responsibility. The standards of conduct in the Honor Code are in addition to the standards set forth in the [UNLV Student Conduct Code](#) and the [Law School Student Policy Handbook](#). Violations of the Honor Code will be subject to the procedures and sanctions of the Honor Code.

Academic integrity is a legitimate concern for every member of the University community. We all share in upholding the fundamental values of honesty, trust, respect, fairness, responsibility, and professionalism. By choosing to join the UNLV community, students accept the expectations of the Student Academic Misconduct Policy, and are encouraged to always take the ethical path whenever faced with choices. Students enrolling at UNLV assume the obligation to conduct themselves in a manner compatible with UNLV's educational mission. An example of academic misconduct is plagiarism. Plagiarism is using the words or ideas of another person, from the Internet or any other source without proper citation of the source(s).

See the [Student Conduct Code](https://www.unlv.edu/studentconduct/student-conduct), <https://www.unlv.edu/studentconduct/student-conduct>.

## FALL 2022 EMPLOYMENT LAW SYLLABUS

### **UNLV Policies and Disclosures**

**Copyright.** The University requires all members of the University Community to familiarize themselves with, and to follow copyright and fair use requirements. You are individually and solely responsible for violations of copyright and fair use laws. The University will neither protect nor defend you, nor assume any responsibility for employee or student violations of fair use laws. Violations of copyright laws could subject you to federal and state civil penalties and criminal liability, as well as disciplinary action under University policies. Additional [copyright policy information](#) is available at <https://www.unlv.edu/provost/copyright>.

**Disability Resource Center (DRC).** The [UNLV Disability Resource Center](#) (Student Services Complex, SSC-A, Room 143, <https://www.unlv.edu/drc>, telephone 702-895-0866) provides resources for students with disabilities. Students who believe that they may need academic accommodations due to a permanent disability, temporary or permanent medical need, or academic support due to pregnancy are encouraged to contact the DRC as early as possible in the academic term. A Disabilities Specialist will discuss what options may be available to you. Students who are already registered with the DRC should request their accommodations online each semester, and make an appointment to discuss their accommodations with their instructors.

**Final Examinations.** The University requires that final exams given at the end of a course occur at the time and on the day specified in the [final exam schedule](#).

**Missed Classwork.** Any student missing class, quizzes, examinations, or any other class or laboratory work because of observance of religious holidays will be given an opportunity during that semester to make up missed work. The make-up opportunity will apply to the religious holiday absence only. It is the responsibility of the student to notify the instructor within the first 14 calendar days of the course for fall and spring courses (excepting intersession courses), or within the first 7 calendar days of the course for summer and modular courses, of their intention to participate in religious holidays which do not fall on state holidays or periods of class recess.

**Rebelmail.** Rebelmail is UNLV's official email system for students and by University policy, instructors and staff should only send emails to students' Rebelmail accounts. Rebelmail is one of the primary ways in which students receive official University communications, information about deadlines, major Campus events, and announcements. All UNLV students receive a Rebelmail account after they have been admitted to the University. Emailing within WebCampus-Canvas is also acceptable. The law school has two general email lists for students: INFO and ADMIN-MSGs. Some faculty will use TWEN or personal Gmail groups to send specific class messages.

## FALL 2022 EMPLOYMENT LAW SYLLABUS

**Identity Verification in Online Courses.** All UNLV students must use their Campus-issued ACE ID and password to log in to WebCampus-Canvas. UNLV students enrolled in online or hybrid courses are expected to read and adhere to the [Student Academic Misconduct Policy](https://www.unlv.edu/studentconduct/misconduct/policy), <https://www.unlv.edu/studentconduct/misconduct/policy> which states that “acting or attempting to act as a substitute for another, or using or attempting to use a substitute, in any academic evaluation or assignment” is a form of academic misconduct. Intentionally sharing ACE login credentials with another person may be considered an attempt to use a substitute, and could result in investigation and sanctions, as outlined in the Student Academic Misconduct Policy.

UNLV students enrolled in online courses are also expected to read and adhere to the [Acceptable Use of Computing and Information Technology Resources Policy](#), which prohibits sharing university accounts with other persons without authorization.

**Diversity Statement.** As an institution of higher learning, UNLV represents a rich diversity of human beings among its faculty, staff, and students, and is committed to aspiring to maintain a Campus environment that values that diversity. Accordingly, the University supports understanding and appreciation of all members of its community, regardless of race, sex, age, color, national origin, ethnicity, creed, religion, disability, sexual orientation, gender, gender identity, marital status, pregnancy, genetic information, veteran status, or political affiliation. *See [University Statements and Compliance](#).*

A successful learning experience requires mutual respect and trust between the students and the instructor. Accordingly, the instructor asks that students be willing to listen to one another’s points of view, acknowledging that there may be disagreements, keep discussion and comments on topic, and use first person, positive language when expressing their perspectives.

**\*\*\* Continue to the Next Page for Class Assignments \*\*\***

**FALL 2022 EMPLOYMENT LAW SYLLABUS**

**SCHEDULE OF ASSIGNMENTS**

<b>Class #</b>	<b>Date</b>	<b>Assigned Pages in Casebook (CB)</b>	<b>Statutes and Regulations in Stat. Supp. or TWEN</b>	<b>Topics</b>	<b>Principal Cases and Materials (CB page #)</b>
1	Tuesday 8/30/22	CB 25-49		Who is an Employee?	Hargrove v. Sleepy's LLC (26)
2	Thursday 9/1/22	CB 49-70; Google Form sent for Labor Day Article		Who is the Employer? Vicarious and Direct Responsibility; Joint Employment	Depianti v. Jan-Pro Franchising, Int'l. Inc. (51); Becerra v. Expert Janitorial, LLC (59)
3	Tuesday 9/6/22	CB 82-90, 121-123; Garcia, "Ghost Workers" article (TWEN); Each student will present Labor Day Article in class		Drugs; Unemployment Status; Authorization to Work; The Role of Law Redux	Baughman v. Wal-Mart Stores, Inc. (86); Hoffman Plastic Compounds, Inc. v. NLRB (TWEN)
4	Thursday 9/8/22	CB 162-202	Federal Arbitration Act (TWEN)	Mandatory Arbitration	Epic Sys. Corp. v. Lewis (192); Ernst & Young Common Ground Dispute Resolution Program (165)
5	Tuesday 9/13/22	CB 408-432	Fair Labor Standards Act (Stat. Supp.)	The Regulation of Wages and Hours	Brennan v. Arnheim & Neely, Inc. (418); Glatt v. Fox Searchlight Pictures (424)



**FALL 2022 EMPLOYMENT LAW SYLLABUS**

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6	Thursday 9/15/22	CB 433-462	Portal to Portal Pay Act (Stat. Supp.), 29 CFR 552.6 (TWEN)	Exclusions from Coverage	In re Family Dollar FLSA Litigation (434); Home Care Workers Assn. v. Weil (447)
7	Tuesday 9/20/22	CB 462-480, 490-96	29 CFR 541.100, 541.200, 541.300, 541.301, 541.400 (TWEN)	Compensable Activity	IBP v. Alvarez (462); Integrity Staffing Solutions v. Busk (471); Dufrene v. Browning Ferris, Inc. (490)
8	Thursday 9/22/22	CB 501-522, 534-537, 541-554	29 CFR 541 Subpart F, Subpart G (TWEN)	Tipped Employees; Time Limits and Liquidated Damages; Retaliation; Precarious Hours; Child Labor	Morgan v. Family Dollar Stores, Inc. (514, 534) Kasten v. St. Gobain Performance Plastics (541)
9	Tuesday 9/27/22	CB 249-284		Monitoring and Control: A. Video Surveillance B. Electronic Monitoring	Hernandez v. Hillsides, Inc. (249); Steingart v. Loving Care Agency, Inc. (272)

**FALL 2022 EMPLOYMENT LAW SYLLABUS**

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10	Thursday 9/29/22	CB 4-8, 299-308, 315-316		Control of Employees	Payne v. Western & Atlantic R.R. Co. (4); Rulon-Miller v. International Business Machines Corp. (299); Question (316)
11	Tuesday 10/4/22	CB 797-802, 867-890; Garcia, The Human Right to Workplace Safety in a Pandemic (TWEN)		Establishing Violations of the General Duty Clause and of the Standards	Pratt & Whitney Aircraft v. Secretary of Labor (868); Sea World of Florida v. Perez (881)
12	Thursday 10/6/22	CB 904-913; 957-968; 975-979	Occupational Safety and Health Act (Stat. Supp.); 29 CFR 1977.12 (TWEN)	Employer Defenses; Additional Means to Protect Workers Beyond Inspection and Citation	P. Gioiso & Sons, Inc. v. Occupational Safety & Health Review Commission (904); Whirlpool Corp. v. Marshall (957); Teal v. E.I. Du Pont De Nemours & Co. (975)
13	Tuesday 10/11/22	CB 581-606		Paying for Employee Illness and Injury	Farwell v. Boston and Worcester Rail Road Corp. (583); Cloverleaf Express v. Fouts (601)

**FALL 2022 EMPLOYMENT LAW SYLLABUS**

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14	Thursday 10/13/22	CB 664-671, 733-741, 1207-1215	Family and Medical Leave Act (Stat. Supp.)	Occupational Disease Coverage; Exclusive Remedy Defense; Family Medical Leave Act	Johnson v. City of Winston-Salem (665); Suarez v. Dickmont Plastics Corporation (733); Ragsdale v. Wolverine World Wide, Inc. (1207)
15	Tuesday 10/18/22	CB 317-336		Termination of Employment	Wiseheart v. Meganick (317); Krizan v. Storz Broadcasting Co. (329)
16	Thursday 10/20/22	Guest Speakers TBA (This class will meet on Zoom).		Pathways into Workplace Law	Readings on TWEN
17	Tuesday 10/25/22	CB 125-151, 336-338		Establishing a Terms and Conditions of Employment; Note on the Employee Who Quits; Employee Handbooks; Disclaimers	Woolley v. Hoffman La-Roche, Inc. (128); Ortega v. Wakefield Thermal Solutions (143)
18	Thursday 10/27/22	CB 338-354		Tort: Discharge in Violation of Public Policy	Gardner v. Loomis Armored Inc. (339)

**FALL 2022 EMPLOYMENT LAW SYLLABUS**

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19	Tuesday 11/1/22	CB 354-374		The Implied Covenant of Good Faith & Fair Dealing; Statutory Regulation; General Law of Wrongful Dismissal	Mitchell v. Teck Cominco Alaska, Inc. (354)
20	Thursday 11/3/22	CB 374-394		Manner of Termination; Constitutional Protections for Public Employees	Stringer v. Wal-Mart Stores, Inc. (374); Perry v. Sindermann (386)
21	Tuesday 11/8/22	Paper Presentations (This class will meet on Zoom).			Readings on TWEN
22	Thursday 11/10/22	CB 209-212, 224-243		The Employee's Duty of Faithfulness at Common Law	Quality Systems Inc. v. Warman (209); Buffkin v. Glacier Group (226); Jimmy Johns' Agreement (237)
23	Tuesday 11/15/22	CB 981-987, 1016-1029, 1047-1053	Worker Adjustment and Retraining Notification Act	Unemployment Compensation; Quitting Work and Eligibility for Benefits; Federal Plant Closing and Mass Layoff Law	Holbrook v. Minnesota Museum of Art (1017); Problem (1017); Murphy v. Employment Security Department (1020)

**FALL 2022 EMPLOYMENT LAW SYLLABUS**

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24	Thursday 11/17/22	Paper Presentations (This class will meet on Zoom)			Readings on TWEN
25	Tuesday 11/22/22	Paper Presentations (This class will meet on Zoom).			Readings on TWEN
26	Tuesday 11/29/22	Paper Presentations Paper Prep.; Exam Prep.; Evaluations (This class will meet on Zoom).			Readings on TWEN
	Wednesday 11/30/22	Papers Due, TWEN, by 4 p.m.	Only for students writing the paper		
	Tuesday 12/6/22	Final Exam, BSL, 9 a.m. – Noon	Only for students taking the exam		