

Coverage: This class will address the governance and management of the workplace, and the legal and practical influences on the essentially contractual relationship between employer and employee. We will study the basic employment contract and the at will presumption. We will look at various common law exceptions to at will employment. We will then look at the federal anti-discrimination statutes. We will consider the degree of privacy an employee can legitimately claim. Depending on time, we will probably briefly cover wage and hour law, OSHA and worker safety law, the family medical leave act, the WARN act and plant closing, and union - management relations. Workers Compensation is a separate course and will not be covered.

Class information: The final examination will be open book. Computers approved by the administration will be allowed. Some writing, group meetings, and other out-of-class work will be required in addition to the standard reading assignments. Attendance and class participation may affect your grade. If you have a documented disability, please speak to the associate dean's office about reasonable accommodation.

Contact with professor: I welcome your comments and questions. My office phone is 885 7022. My e-mail is "lillard@uidaho.edu." My office is 205. Feel free to come up and speak to me after class. I will be using the Lexis/Nexis Blackboard service to communicate with you. You will soon receive instructions on how to sign up and get on that service.

Reading: The text is *WorkLaw: Cases and Materials*, 2d Ed. by Marion G. Crain, Pauline T. Kim and Michael Selmi.

Movies: Lots of movies give you insight into the law as well as the context of work and discrimination. In class you may hear me mention *Crash*, *Roger & Me*, *Modern Times* (*Charlie Chaplin* movie), *The Office* (TV show), *North Country*, *Norma Rae*, *Up in the Air* and possibly some others. This is your excuse to "do homework" by sitting in front of the TV screen!

I will give you hard copies of all this information, including a full first syllabus. These materials are for preliminary posting.

Sigmund Freud (1836-1939) wrote: Love and work are the cornerstones of our humanness. Love and work... work and love, that's all there is.

Pope John Paul II (1920-2005) wrote in 1981: Work is one of the characteristics that distinguish man from the rest of creatures, whose activity for sustaining their lives cannot be called work. Only man is capable of work, and only man works, at the same time by work occupying his existence on earth. Thus work bears a particular mark of man and of humanity, the mark of a person operating within a community of persons.

Oscar Wilde (1854-1900) wrote: The best way to appreciate your job is to imagine yourself without one.

Samuel Gompers (1850-1924, Founder of American Federation of Labor) wrote: What does labor want? We want more schoolhouses and less jails; more books and less arsenals; more learning and less vice; more leisure and less greed; more justice and less revenge; in fact, more of the opportunities to cultivate our better natures.

John Locke (1632-1704) wrote: All wealth is the product of labor.

Abraham Lincoln (1809-1865) wrote: Labor is prior to, and independent of, capital. Capital is only the fruit of labor, and could never have existed if labor had not first existed. Labor is the superior of capital, and deserves much the higher consideration. *Also* The strongest bond of human sympathy outside the family relation should be one uniting working people of all nations and tongues and kindreds.

Sophocles (dates unknown) said: Without labor nothing prospers.

Cesar Chavez (1927-1993, Farmworker organizer) wrote: The fight is never about grapes or lettuce. It is always about people.

Owen D. Young (1874-1962, President General Electric) wrote: "Government means politics, and interference by government carries with it always the implication of coercion. We may accept the expanding power of bureaucrats so long as we bask in their friendly smile. But it is a dangerous temptation. Today politics may be our friend and tomorrow we may be its victims."

Hal Lancaster (American author) wrote: Getting fired is nature's way of telling you that you had the wrong job in the first place.

Anonymous: American work is a "Monday through Friday sort of dying"

Franklin Schneider, "Against Adulthood," Washington City Paper, Vol 32, No. 1, Jan 6-12, 2012 (p. 15, 19): The "independence" of the employed is so conditional as to be nonexistent, i.e., you're independent as long as you keep coming to work every day in perpetuity. [Y]our work always benefits your superiors more than it benefits you, your boss's boss' boss' boss is getting rich while you can barely make your Kia payment. The closer you look, the more that "independence" of yours looks like slavery.

Workplace Law - Introductory Syllabus

When I ask you to “skim,” I mean for you to read quickly so that you are familiar with the concepts and basic facts. You will not be called on for “skimmed” materials. You are expected to read thoroughly and be prepared to address all material not marked “skim;” in other words, “read” is the default assignment!

Note, I would like to move fairly quickly through these materials. We will try to do two cases on Wednesdays and three cases (or segments) on Tuesdays and Thursdays. Please go with the flow and stay up with the class. If you read too much one day and we don't get to it, do all of us the courtesy of reviewing the material just before class, so that the discussion keeps moving forward without a lot of fumbling and hemming & hawing. (This is good prep for your lives as lawyers, where you'll find that you often get a phone call, or get “called on” in a meeting, and you are suddenly obliged to speak cogently on something you haven't thought about for days.)

For Day One of class, Tuesday, January 7, please do all the introductory assignments, A-E. We will discuss only Local 1330, including the questions suggested in paragraph E. I hope to start assignment 1 (p. 95 et seq) on Wednesday; discussion of that assignment will certainly continue into Thursday.

I. Introduction

A. Read *Local 1330, United Steel Workers of America v. US Steel Corp.* This case has been included in this edition of the book, but my handout has more interesting facts. (See Text 267-290. Look at p. 277 for a graphic photo.) The case should be attached electronically, BUT A HARD COPY HAS BEEN MADE FOR YOU AS WELL. You'll find it in the library box (by Thursday afternoon). Read the hard copy primarily for the facts - skim the law. **This will be the first case we discuss in class.**

B) Consider renting the film *Roger and Me* (about Flint, Michigan). Glance at <http://www.colorado.edu/IBS/pubs/pec/pec2003-0003.pdf> (Or google “effects of layoffs”) Bruce Springsteen's *Ghost of Tom Joad* album features a song about Youngstown. (Do you know who Tom Joad is?)

C) Skim “Chapter 8: Employment Security” from *Employment Law*, 2d Ed. by Carlson, on electronic reserve. (This will not be up until Monday afternoon.)

D) Think about:

Who/what is harmed and who/what is benefitted by the closing of the Youngstown plant? Was the plant “profitable” when it was shut down? Was “profitability” the real issue for US Steel? If not, what was the real issue for US Steel?

Why did this case come out as it did?

Who actually governs the American workplace? Who should? If the government should have any say in the American workplace, why? And how (using what tools)?

II. The contractual relationship between employer and employee

1) Employment contracts, Gap Fillers and Presumptions: 95-111

Consider the employment relationship using your knowledge of contract law; what happens, legally, when someone is employed? What is the moral/emotional response of the *Payne* majority judges to firing without cause? What is their response to firing with whimsy or malice? What is their vision of the employer/employee relationship? Judge Ingersoll writes for the majority, “men must be left to buy and sell where they please.” Who are the men the majority judges are thinking about? What is the buying and selling the majority judges are thinking about? With whom do the majority judges identify? What is the dissent’s vision of the employment relationship? How do the majority and the dissent differ on their appreciation of power?

Is the *Savage* court using “at will” as a “default rule” or a “presumption?” Is the *Savage* court following the standard rules of contracts law? What would Prof. Summers say? (See p. 110)?

Consider renting *Up in the Air*, a recent movie.