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, and various common law exceptions to at will employment. We will then look at the federal anti-discrimination statutes. We will discuss wage and hour law. Depending on time, I will introduce: employee privacy, 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.

Goals/Learning Outcomes: In this class you will continue to learn the black letter law, and consider the broader policies and practices that surround the law and legal institutions. You will further your general abilities in legal analysis and reasoning, and grow in oral and written communication skills and problem solving. These will be honed and tested in class discussion, out-of-class assignments, and on the final exam. This course will introduce you to the basics of workplace law, as a start toward preparing you for a practice in that field. I also hope to prepare you to be thoughtful employers who act in compliance with law and good sense. You can expect a great deal of class discussion.

Exam and other class requirements: The final examination will be OPEN book and open note (as will be described in class - no commercial outlines, treatises, etc). Computers approved by the administration will be allowed. Past examinations are on electronic reserve to aid your study. 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 accommodations. Many sample finals are on e-reserve.

Contact with professor: I welcome your comments and questions at any time. 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.

Reading: The text is Work Law: Cases and Materials, 3d Ed. by Marion G. Crain, Pauline T. Kim and Michael Selmi. Attached you will find the syllabus for the first section of the class. I have asked you to find and read some cases on your own. In accordance with ABA Standard 310, the College of Law awards one credit hour for experiences that are reasonably designed to involve 50 minutes of classroom or direct faculty instruction and two hours of out-of-class student work per week. The Course requirements outlined in this and future syllabi, with respect to materials and assignments, in my professional judgement, are complex enough in nature that it is expected that the amount of out-of-class time it will take students to complete the assignments will meet the rule. I will provide hard copies of this syllabus in class.
**Class rules:** You may not record class without my express permission or as a formal disability accommodation. No weapons may be displayed in class; please call 911 if you see one. For the University’s firearms policy Q & A, please see: http://www.uidaho.edu/public-safety-and-security/Weapons-on-Campus.

**Seating chart will be handed out** on Thursday of the first week. Please sit where you can see and hear. Speak to the associate dean’s office if you need reasonable accommodations.

**Support of students:** If you have a problem of any kind on the day of the final exam, contact Dean Dodge’s office, not me, as we wish to protect the anonymous grading process.

Reasonable accommodations are available for students who have documented temporary or permanent disabilities. Ideally, students in Moscow and Boise should meet with CDAR by the end of the first week of class to assess if any accommodations are needed for courses and/or examinations. All accommodation requests are then submitted by CDAR to Dean Dodge for final approval. CDAR serves as the sole evaluator of medical documentation and determines reasonable accommodations on a per semester basis. The College of Law does not have the authority to evaluate or grant disability accommodations without CDAR first submitting a recommendation. You may contact CDAR by calling 208-885-6307 or emailing cdar@uidaho.edu. It is ultimately the student’s responsibility to seek a disability accommodation, and until an accommodation is approved by CDAR and Dean Dodge, no student will be entitled to receive any accommodations. To learn more about CDAR, visit its website at http://www.uidaho.edu/current-students/cdar. Moscow students may also visit CDAR in suite 127 of the Pitman Center. Please review the College of Law Catalog and Student Handbook for more information on the disability accommodation process.

Be aware that the facts of cases are sometimes disturbing and hit close to home. Our class discussions will be free-wheeling as we make analogies, invent hypotheticals, and address public policy. We will not all agree; the world would be boring and stagnant if we did. We are training you to be lawyers, and lawyers generally believe that virtually any problem is helped by being brought to light and discussed. We generally believe that the cure for bad speech is more speech, to paraphrase Louis Brandeis. That said, professionalism and common courtesy dictate that speech be appropriate to the time, place and audience. Lawyers strive to be impeccable in their choice of words; sometimes we all need to receive feedback about the effect of our words on others. We are all students of the law and of the legal profession, and will be working together on this. All student voices are welcome and respected in my classroom. I grant every student a presumption of good faith, and expect you to do the same for your classmates. If you have concerns, please come and see me. If you wish to express yourselves further, the following resources exist: the College of Law Associate Dean of Students; the University Dean of Students office and staff (885-6757); the UI Counseling & Testing Center’s confidential services (885-6716); or the UI Office of Human Rights, Access, & Inclusion (885-4285). Finally, remember that sometimes it is very good to be upset or disturbed. From this comes learning, action, and change.
Quotations - to get you started:

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.

Ceasar 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) wrote:
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.

Confucius said:
Choose a job you love, and you will never have to work a day in your life.

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WORKPLACE LAW
SYLLABUS #1

I. Introduction to the class: Do this entire section (a, b, and c) for Day One of class.

The first day of class will be Tuesday, January 9. Before the first day of class, please:

a) Read Local 1330, edited version attached in this email. If you did not receive email, please contact me directly. Please read primarily for the facts. Look at the law, but the main point is that the workers and the union lost. Consider:

-- 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)?

b) Also read in Crain, Kim and Selmi, Work Law, 3rd Ed (“the text”): pages xi-xiii; pages 4-9; and pages 250-253; 261-62. Feel free to read more in this portion of the text book, but nothing more is required.

c) Consider renting the film Roger and Me (about Flint, Michigan). A documentary, Struggles in Steel, available at the law library, allows you to see the interior of working steel factories. Glance at http://www.colorado.edu/IBS/pubs/pec/pec2003-0003.pdf (Or google “effects of layoffs”). Listen to Bruce Springsteen’s song “Youngstown,” (or read the lyrics) from his Ghost of Tom Joad album. (Do you know who Tom Joad is? If not, google him.)

THE FOLLOWING ASSIGNMENTS WILL CONTINUE ONE PER DAY, UNLESS OTHERWISE NOTED.

II. The contractual relationship between employer and employee

1) 101-112; read 56-64 as background; consider renting the movie Up in the Air

2) 113-14, Review 109-110, 151-160; answer Savage questions attached to this syllabus

3) 122-151

4) Prepare the following exercise:

Company employs 300 people in two different plants, 50 miles apart. Company has made the same series of policies (MESP) as set out in Asmus - in other words, use the Asmus facts. Now Company is under financial stress, but is not in imminent risk of bankruptcy. Plaintiff is laid off
and not given a chance for reassignment and retraining, although he was given severance. He sues for breach of contract.

If you sit to my left in the classroom (as I face you, my left), think like employer/Company, arguing the right to make unilateral modifications.

If you sit to my right, think like employee/plaintiff, arguing no right to make unilateral modifications.

Assume you are arguing to the state supreme court in the brand new state of Laboria, which has not yet developed law on employee contract modifications. Assume Asmus and all the note cases exist, but none is binding on your brand new court. Argue for the rules you’d like the court to adopt, and how you’d like the rules to apply in your situation.

Come to class with a hard copy of your prepared arguments. Turn them in to me for check-off purposes at the end of class. They will be returned to you. This is required but will not be graded.

5) 168-77; read the full case, majority opinion only, of Metcalf v. Intermountain Gas Co., 778 P.2d 744 (Idaho 1989). Pay attention to the facts, as well as to the holdings/rules of the cases.

6) A good wrap up; read Pugh v. See’s Candies. Read mainly for the facts, not the law which is somewhat out of date. People with last names A-L read: 116 Cal.App.3d 311. Please with last names M-Z read 250 Cal.Rptr. 195 (Cal. App. 1988). Please do NOT talk to each other about the cases until you are told to in class. After class read the other version of the case. Consider renting one of the various filmed versions of Death of a Salesman. The main character, Willy Loman, says, “You can't eat the orange and throw the peel away. A man is not a piece of fruit.”

7) Do “Employment Manuals - Advice to Employers” assignment (attached). Read Mitchell v. Zilog, Inc., 125 Idaho 709, 874 P.2d 520 (1994). Turn in your answers to questions 1 and 3, in hard copy, by two hours before the start of class, using the box in the main office or under my door. If you would like personal feedback on the assignment, please so indicate. This is required but will not be graded.

III. The Public Policy Exceptions to At-Will

8) 179-191, 196 (note3) - 207; 191-196, but only skim the Hayes case; 212-219

9) 207-212. Answer the following questions. Come to class with a hard copy of your prepared arguments. Turn them in to me for check-off purposes at the end of class. They will be returned to you. This is required but will not be graded. Do not worry about HIPPA in your answers.

If Nurse Kirk came in to see you, what advice would you give her in the following two situations:
a) It’s 4 hours after Debbie Crain came in, she is still alive, and Nurse Kirk thinks she is being treated improperly. Norma Sellers, the Director of Nursing, has told Nurse Kirk to document, report, and otherwise stay out of it. Nurse Kirk calls you – what should she do now?

b) It’s September. Debbie Crain died in July. Nurse Kirk is considering giving medical records to the Crain family. How should she handle this? Does it matter whether she is considering approaching the family on her own, or whether the family has asked her for the records and she is considering whether or not to hand them over

10) 191-196; 212-219

IV. Other workplace torts

11) 353-68 Intentional Infliction of Emotional Distress (IIED or “outrage”). Consider the following hypo: **What if:** Debra Agis was employed by the Howard Johnson Restaurant Company as a waitress. One day the restaurant manager, Mr. Dionne, notified all waitresses that a meeting would be held at 3 p.m. At the meeting, he informed the waitresses that “there was some stealing going on,” but that the identity of the person or persons responsible was not known and that, until the person or persons responsible were discovered, he would begin firing all the present waitresses in alphabetical order, starting with the letter “A.” Dionne then fired Debra Agis. Should Ms. Agis recover for IIED? What further facts, if any, would you want to know? (Do assume that she was not the thief!) What would her damages be? Should her damages be greater or smaller than another innocent waitress whose last name began with Z, and was the last waitress fired? Would the waitresses have to be actually fired in order to recover? See 355 NE2d 315 (Mass., 1976).

12) 439-455 Defamation

V. Wrap up on at-will

13) 230-39; 457-460; Read Montana Statute 39-2-901; Review this entire syllabus #1, then prepare for your new role in the state legislature! If you were a legislator, would you draft a statute changing the at will presumption? Why or why not? How would the statute read? What if you were a legislative aide to a legislator, and were assigned the task of drafting a statute protecting workers from arbitrary and unfair terminations. What approach would you take? How, exactly, would you draft the statute? Come to class with a hard copy draft of statutory language. Come also with a written statement about why you would or would not support any state legislation. (Note, perhaps you would prefer federal legislation?) Come to class with a hard copy of your prepared arguments. Turn them in to me for check-off purposes at the end of class. They will be returned to you. This is required but will not be graded

END OF SYLLABUS #1

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Savage questions - Assignment 2 - Looking at Savage, p. 109, please jot down answers to these questions; no need to turn anything, but be prepared for class discussion

1) Was a contract formed between Mr. Savage (S) and Spur Distributing Co (SD)? Yes or No

2) Where did the offer and acceptance take place? What people were involved?

3) Was the contract oral or written?

4) What was the consideration for the contract? (Do not address the “additional consideration” issue, just the consideration that makes this a contract.)

5) What were the express terms of the contract? (Hint, give me exact quotes from the case)

6) How did S think these express terms should be interpreted by the court?

7) How did SD think the express terms should be interpreted by the court?

8) If S had convinced the court that the terms and interpretation were as he said, what more would he need to prove and what arguments would he make? (Still just discuss to the express terms and their interpretation, nothing about “additional consid” or moving.)

9) If S had convinced the court that the terms and interpretation were as he said, what arguments and evidence would SD bring in?

10) If S had convinced the court that the terms and interp were as he said, who should win in your opinion, and why?

11) Within the contract cause of action, what does S say about his moving from Penn to Tenn?

12) What does SD say about his moving from Penn to Tenn?

13) What were examples from precedent of additional consideration overcoming the at will presumption?

14) Why did S’s move from Penn to Tenn fall short, exactly? Was it a matter of S’s law being wrong or the facts not being on his side?

15) Is the Savage rule of additional consideration still good law?

16) What if Mr. Savage had accepted less than market rate as his salary? Would the court be more convinced that he was entitled to better than at will?
Savage exercise continued:

17) What does Prof. Summers think of the “mutuality” rule? Of the “additional consideration” rule?

18) What is the superficial issue in this case? What is the real issue in this case?

19) Do you agree with the result in this case? Why or why not?

20) Should Mr. Knestric have been able to undo the contract made by Mr. Peterson?
Employment Manuals - Advice to Employers - Assignment 7

Assume you are an employment lawyer representing employers. Please prepare answers to all of the following questions. In particular, please draft language as requested in questions 1 and 3. Please turn in a copy of your answers to questions 1 and 3 by two hours before class to my box in the main office. Please put your name on your papers. (All I need to see is your language drafted pursuant to questions 1 and 3. Please keep a copy for yourself of your answers to all of the questions so that you can talk about them in class.)

1) A client comes to you and says that he realizes that for 15 years he has been handing out to all new employees an employment manual like the one in Wooley. He would like to make clear to his employees that they are at will. What can/should he do/say? Please draft some language for him to put in writing to his employees.

2) Would you generally advise all your clients to avoid creating good cause contracts?

3) Would you tell your clients to avoid manuals or policy directives? if they want to have a manual or policy directive, what questions would you ask? why? Assume that one group of clients says that they want their managers to be able to look up in the handbook what would constitute “good” reasons to fire someone. Please draft the language you would advise them to include in the handbook. (The handbook will be available, through discovery, in future lawsuits.)

4) If a client (a different client from the one in Q.1 above) wants to have a probationary period, what questions would you ask him? why? what would you advise?

5) Any general hiring advice for your clients?

6) What if (still a third) a client calls you up and says she wants to fire someone because she thinks the employee has been doing a poor job. What questions do you ask her? why? what advice do you give?