

**Employment Discrimination
Course # 22115**

Version 8-22-23

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M/T/R 2:30-3:30
Classroom 125
Fall 2023

9. Reading assignments

If we do not cover all the material in a given class, then for the next class please review the material we did not get to in the prior class and read the entire assignment for the next class. We will cover the assigned material in the assigned order, even if the dates may change.

The assignments below are necessarily tentative. We will discuss on the first day of class a creative way for us to do make-ups.

August

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|----|-------|--|
| 22 | ∅ | What is discrimination? |
| 24 | ∅ | The common law governing the employment relationship. |
| 28 | 27-40 | Coverage. |
| 29 | 40-60 | Pleading, discovery, summary judgment (just skim Iqbal). |
| 31 | ∅ | Research paper / final project workshop. Design a discrimination/harassment training program? Bridget Buckley will discuss researching employment discrimination topics. |

September

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|----|----------------|--|
| 4 | | Labor Day |
| 5 | 80-95 | Circumstantial evidence cases. |
| 7 | ∅ | Joshua Onyemachi, of Clemans Nelson, will guest speak. |
| 11 | 96-113 | Circumstantial & direct evidence. |
| 12 | 114-20, 123-24 | Mixed motive cases. |
| 14 | 145-57 | Retaliation. |
| 18 | 157-67 | More retaliation. |

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|----|---------|--------------------------|
| 19 | 169-90 | Disparate impact. |
| 21 | 190-205 | More disparate impact. |
| 25 | 207-24 | Harassment (Yom Kippur). |
| 26 | 224-45 | Harassment. |
| 28 | 245-68 | Harassment. |

October

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|----|--|---|
| 2 | 279-301 | Race & color. |
| 3 | 301-17 | Reverse discrimination; affirmative action. |
| 5 | 319-36 | Sex discrimination. |
| 9 | Fall break | |
| 10 | Fall break | |
| 12 | 336-38 + Bostock: | Sexual orientation. |
| 16 | 355-71 | BFOQ |
| 17 | 371-90 | Grooming, appearance, equal pay. |
| 19 | 399-420 | National origin. |
| 23 | 420-43 | National origin |
| 24 | 445-60 | Religion. |
| 26 | Arbitration-Advocates Symposium in Columbus. | |
| 30 | 460-75 | Religion. |
| 31 | 475-93 | Religion. |

November

| | | |
|----|---|-------------|
| 2 | 507-20 | Disability. |
| 6 | 534-53 | Disability. |
| 7 | 560-77 | Age. |
| 9 | 577-90 | Age. |
| 13 | 599-617 | Remedies. |
| 14 | TBA – student presentations? | |
| 16 | Tent. no class | |
| 20 | TBA – student presentations? | |
| 21 | TBA – student presentations? Last day of classes. | |
| 23 | Thanksgiving | |
| 29 | Exam (8:30 a.m., room 129) | |

Research Paper Addendum

Deadlines (all are 5:00p; please submit everything by email to r-bales@onu.edu):

- 9/7/22: Topics due.
- 9/21/23: One-paragraph abstract and brief (< 1 page) outline due.
- 10/19/23: First draft due.
- 11/2/23: Second draft due.
- 11/29/23: Final article due.

The following criteria will be used in determining this part of the grade: structure, depth of analysis, research, grammar, bluebooking proficiency (perfection is not required but you should at least be in the ballpark), and density of writing. These criteria are not necessarily directly proportional: if your grammar is so poor that I cannot understand analysis, do not expect a high grade.

The article should be roughly 7500 words, but *do not pad your word count*. See “density of writing” in the previous paragraph; see also papers.ssrn.com/abstract_id=907143.

You may choose your topics on a first-come, first-reserved basis, beginning immediately, by e-mailing me. You may choose from a topic on the attached list, or you may choose your own. On the email reserving your topic, please provide me with your name, your topic, and the topic number if your topic is from the attached list. If your topic is not from the attached list, please include a one-paragraph description of your topic. Choose a novel legal topic – one that allows you to argue for a position that has not yet been advanced in a law review article. You are not ineluctably tied to your topic selection. If subsequent research pulls you toward a tangential issue, just let me know and obtain my approval. (I require approval not because I want to limit your ability to choose topics, but because I want to make sure that your topic is not overly broad. You could write multiple volumes on “sex discrimination”, so that would not be a good topic.)

For general guidance on choosing a topic, structuring your argument, writing your article, etc., see Eugene Volokh’s *Academic Legal Writing* (any edition; our library has several copies). You should at least glance through this book before you start working on your article (or on your Note, if you are on Law Review).

I will not, under any circumstances, accept any late articles. Plan to have your article prepared early in case an emergency requires your absence on or near the due date. I need the articles in on time so I can timely submit final grades.

We all learn better writing techniques from having someone critique our written work. If you do not turn in drafts, you will learn little from the writing experience. Please submit drafts

to me by email in Microsoft Word so I can make comments using Track Changes. I will be happy (I *really* mean this – do not feel like you are imposing on me by sending me a third or fourth draft) to review additional drafts throughout the semester as long as you submit them to me at least ten days before the final due date. When I receive a draft, I will reply to you quickly to confirm that I received it; if you do not receive a quick reply please contact me to ensure I received it. I try to get my comments back to you within a week; if you have not heard from me in that time, please email me to make sure I still have it.

I review drafts in the order I receive them. If you submit a draft a few days *before* a deadline, you're likely to get a much quicker turn-around than if you submit it at 5:00p on the due date.

This is the last significant writing experience that many of you will have in law school before you graduate and begin practice. It is my responsibility to ensure that when you leave this course, you have the research and writing skills necessary to practice successfully. I take this responsibility very seriously. (I have a personal interest in the issue; if an ONUL graduate is a poor writer, the legal community will think poorly not only of that graduate, but also of ONUL as an educational institution – and therefore of me.) If you are unwilling to do the work it takes to ensure that your article is grammatical, understandable, and demonstrates a basic familiarity with the Bluebook and with employment discrimination law, then I suggest writing the exam or taking a different course.

I have higher expectations than you probably are accustomed to for student-written articles. You likely will work harder on this article than you have ever worked on a paper before. Your doing so will enable me to give a glowing recommendation to your prospective employers on your research/writing/analysis skills – the skills most in demand by legal employers. Also, if you look at my resume (available online), you'll note a long list of co-authored articles. Most of those articles were written by students in one of my courses. Those articles give you a pretty good idea of what I am looking for in your article.

Potential Paper Topics

1. Should an employer be required to show that diversity training actually works before that training can be used as a defense in a discrimination or harassment case? See This is an intervention, *The Economist*, August 27, 2022 p. 73; F. Dobbin & A. Kalev, *Getting to Diversity*, Harv. U. Press 2022.