

EMPLOYMENT DISCRIMINATION SYLLABUS

Fall 2009
Professor Levit

Texts: ZIMMER, SULLIVAN & WHITE, CASES AND MATERIALS ON EMPLOYMENT DISCRIMINATION (7th ed. 2008) [“Zimmer”]

Notes: As the semester goes along, I will periodically update you on where we stand, and make clear in class what the reading assignment is for the next class.

I. **The Policy Bases for Antidiscrimination Laws** 761-87

A. **Introduction** 761

B. **Discrimination and the Free Market** 762-770

Jacob Gersen, Markets and Discrimination

C. **Why Prohibit Discrimination** 770-79

Patricia Williams, The Alchemy of Race and Rights

D. **The Costs and Benefits of Prohibiting Discrimination** 779-87

II. **Disparate Treatment**

A. **Individual Disparate Treatment Discrimination 1**

B. **Elements of an Individual Disparate Treatment Case**

1. Intent to Discrimination

Slack v. Havens 2-9

Hazen Paper Co. v. Biggins 9-15

2. Terms, Conditions or Privileges of Employment

Hishon v. King & Spalding 16-18

Minor v. Centocor 18-23

C. Proving the Discrimination Element

Plaintiff's Prima Facie Case

McDonnell Douglas Corp. v. Green 50-59 (skip pages 60-61)

O'Connor v. Consolidated Coin 88-89, note 5

Patterson v. McLean Credit Union 62-63

Ash v. Tyson Foods, Inc. 63-67 (skip 68-note 2 on 71)

Read from note 3 on 71-78, including:

Note on Reverse Discrimination 76

Preferences for Older Workers General Dynamics v. Cline (U.S. 2004) (notecase) 77

Note Comparing Section 1981 and Title VII 78

[Gross v. FBL Financial Services](#) [web link](#)

Defendant's Rebuttal and Proof of Pretext

Reeves v. Sanderson Plumbing Products, Inc. 78 – 88 (stop at the end of note 3)

Linking Discriminatory Intent to the Employer's Treatment of Plaintiff

Read § 703(m) on page 23

Price Waterhouse v. Hopkins 32-50

Desert Palace v. Costa 24-32

D. Implementing *Desert Palace* and *Reeves*

Rachid v. Jack in the Box 95-111

[Sprint/United Management Co. v. Mendelsohn](#) web link

Evaluate Problem 1.1 on page 111 as a review exercise

E. Systemic Disparate Treatment (Chapter 2) 115

1. Formal Policies of Discrimination

Los Angeles Dept. of Water & Power v. Manhart 116-122

2. Patterns and Practices of Discrimination

(Helpful hint: Be sure to read the footnotes in Teamsters and Hazelwood)

Teamsters v. United States 123-29

Hazelwood School District v. United States 129-140

Pay attention to Bazemore v. Friday (in note 4 on page 138)

Skim *Sophisticated Statistical Techniques* pages 141-155 (You don't have to be able to do the math)

II. Defenses to Disparate Treatment Cases 155

A. Rebutting the Inference of Discriminatory Intent

Personnel Administrator v. Feeney 155-57

EEOC v. Sears Roebuck & Co. 157-71

B. Bona Fide Occupational Qualifications 171-173

International Union, UAW v. Johnson Controls, Inc. 173-183

C. Voluntary Affirmative Action 183-184

Johnson v. Transportation Agency of Santa Clara County 184-201

D. Affirmative Action and the Constitution 201-04

III. Systemic Disparate Impact 207

A. The Concept of Disparate Impact Discrimination

Griggs v. Duke Power Co. 207-13

Wards Cove Packing v. Atonio 213-223

Smith v. City of Jackson 223-231

B. Disparate Impact Law After the 1991 Civil Rights Act 231-32

1. Plaintiff's Prima Facie Case

a. Particular employment practice

Watson v. Fort Worth Bank & Trust 232-37

Connecticut v. Teal 237-46

Do Problem 3.1 246

b. The employer uses the practice

Dothard v. Rawlinson 246-51

Do Problem 3.2 251

c. The quantum of impact 252-54

(Note: You aren't expected to "do the math"—just understand the ideas: the problem of small sample sizes, obtaining the right comparator groups, etc.)

2. Defendant's Rebuttal

a. The employer's use does not cause impact 254-55

b. Business necessity and job relatedness

We will focus on Lanning v. SEPTA note 3 page 263-64 first

El v. SEPTA 255-266

SKIP Problem 3.3

3. Plaintiff's Surrebuttal: Alternative Employment Practices 267

Adams v. City of Chicago 268-75

C. Section 703(h) Exceptions 275-76

1. Professionally Developed Tests

Albemarle Paper Co. v. Moody 276-81

Bryant v. City of Chicago 281-87

{Very optional: If you want to read the EEOC's Uniform Employee Selection Guidelines, 29 C.F.R. §§ 1607.1 to 1607.16, they are available at on the web at <http://www.uniformguidelines.com/uniguideprint.html>. A series of Interpretive Questions and Answers are available at: <http://www.uniformguidelines.com/qandaprint.html>}

2. Bona Fide Seniority Systems 288-91

3. Bona Fide Merit and Piecework Systems 291-92

IV. The Interrelation of the Three Theories of Discrimination 293-top of 301

Do Problem 4.1 293-94

[Ricci v. DeStefano](#) web link

A. The Interrelationship of Individual and Systemic Disparate Treatment 294

Baylie v. FRB 295-99

B. The Relationship Between Individual Disparate Treatment and Disparate Impact 299

C. The Relationship Between Systemic Disparate Treatment and Disparate Impact 300-top of 301

V. Sex Discrimination 331-32

A. Sexual and Other Discriminatory Harassment 370

1. Discrimination "because of" sex

Meritor Savings Bank v. Vinson 370-76

Oncale v. Sundowner Offshore Services, Inc. 332-37

a. Discrimination on the Basis of Sexual Orientation 337

Vickers v. Fairfield Medical Center (6th Cir. 2006) 337-45

b. Reverse Discrimination and Personal Relationships 346-47

2. Elements of harassment

a. Severe or pervasive harassment

Harris v. Forklift Systems, Inc. 376-82

b. The “reasonable person” requirement 382-83

c. “Unwelcome” conduct 383-84

d. Vicarious liability

Burlington Industries, Inc. v. Ellerth 384-94

Pennsylvania State Police v. Suders 394-403

Matvia v. Bald Head Island Management, Inc. 403-418

Weeks v. Baker & McKenzie video (if time permits)

B. Employer Consideration of Gender Differences

1. **Grooming and Dress Codes** 347

Jespersion v. Harrah’s 347-53

2. **Discrimination Because of Pregnancy** 353-55

Newport News Shipbuilding v. EEOC 355 (notecase)

Maldonado v. U.S. Bank 355-62

California Federal Savings & Loan Ass’n v. Guerra 362-68

Accommodating Pregnancy Under the ADA 368

Childrearing Leave 368

Note on the Family and Medical Leave Act 369

Do Problem 5.1 369-70

3. **Equal Pay for Equal Work** Lecture (no reading)

VI. **Retaliation** 461

Clark County School District v. Breeden 461-67

A. **Protected Conduct** 467-68

Laughlin v. Metropolitan Washington Airports Authority 468-73

B. **Adverse Action** 473

Burlington Northern & Santa Fe Railway Co. v. White 473-81

[Crawford v. Metropolitan Government of Nashville and Davidson County](#) [web link](#)

VII. **Age Discrimination** 481-82

A. **“Good Cause” and “Reasonable Factors Other Than Age”**

[Kentucky Retirement Systems v. EEOC](#) [web link](#)

B. **Other Exceptions**

1. **Bona Fide Executive Exemption** 482

2. **Exception for Police and Firefighters** 482

3. **Bona Fide Employee Benefit Plans** Lecture (No Reading)

4. **Early Retirement Incentive Plans** Lecture (No Reading)

VIII. **Procedures for Enforcing Antidiscrimination Laws**

A. **Introduction** 595-96

B. **Private Enforcement: The Administrative Phase** 596

1. **Introduction** 596

2. **Filing a Timely Charge** 597

Ledbetter v. Goodyear Tire & Rubber Co., Inc. 598-616

C. **Private Enforcement: Filing Suit** 620-21

Problem 7.1 621-22 [assume that there is a typo on page 622, and that December 15, 2007, is actually February 15, 2007]

D. **Private Enforcement: Relationship of the EEOC Charge to Private Suit**
622-26

E. **Missouri Human Rights Act**

Mo. Rev. Stat. §§ 213.010-213.137 (2008) (not in your book: copies of selected statutes will be available on the table in the Story Suite)

IX. **Judicial Relief** **Lecture (No Reading)**

A. **Equitable Remedies**

B. **Legal Remedies**

1. Compensatory Damages

2. Punitive Damages

3. Damage Caps

C. **Attorneys' Fees**

Class Participation

I reserve the right to include a class participation component in your grade. In a seminar, where we hope you will learn a particular area of the law in depth, keeping up with the reading is particularly important. Since I value a healthy and vigorous class discussion in which many voices are heard, I reserve the right to count class participation. Specifically, I may raise the grades of those who make the most valuable and consistent contributions to class conversation *up to a full grade*. For example, someone who writes a "C" exam and earns this boost might go to a C+, a B-, or a B, depending on the strength of his or her participation.

There is also a flip side. Strong participation will be rewarded, but adequate preparation is part of the expected performance in the class. If you are not prepared, that should be reflected in your grade. Thus, the grade of any person who is called on and is unprepared during the semester will be lowered ½ grade (e.g., someone unprepared who earns a B on his or her exam, would receive a B- in the course), and an additional ½ grade for each subsequent time being unprepared.

Office Hours (Room 2-411)

Feel free to stop by **any time** (mornings are usually the easiest time to find me); I'm usually here and will always be happy to see you.

If you would rather reach me by phone, my office number is 816-235-2391, home is 913-338-3242. E-mail is levitn@umkc.edu.

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