

Pathway to Practice: Labor and Employment Law

For students who are considering a career in labor and employment law, the following list identifies the core courses in the field, as well as more specialized courses and seminars in the area, related skills courses, clinics, and externship courses. Please note that not all courses will necessarily be offered each year.

Labor and Employment Law Core Courses

Employment Law — Examines the law governing the workplace, asking throughout what forms of regulation are most appropriate. Should the terms of employment be left to the market and private contracting? Should government intervene and specify minimum standards of employment? What are the advantages and disadvantages of conceptualizing rights at work as individual as opposed to collective rights? The class explores these questions in regards to a series of concrete interests, such as job security, job mobility, privacy and other dignitary interests, employee speech, employee compensation and benefits and health and safety concerns.

Labor Law — Focuses on the National Labor Relations Act, which governs union organizing, collective bargaining, and the use of economic weapons (strikes, lockouts, pickets, and boycotts) in workplace disputes over wealth distribution, power and voice. The course has an explicit focus on class conflict and the law's role in regulating worker protest: it concerns itself with abuses of employer power, the formation of a social movement (labor unionism) as a response to those abuses, and the law's efforts to protect, channel and constrain collective activities by workers.

Employment Discrimination — Examines the law governing employment discrimination. The focus is on federal statutes that prohibit discrimination on the basis of race, sex, national origin, religion, age and disability. The course will consider the basic legal frameworks for proving discrimination as well as specific situations that may or may not fit into those frameworks, including the intersection between race and sex, performances of gender, pregnancy in the workplace, and reasonable accommodation of individuals with disabilities.

Related Courses

Health Law — This survey course will introduce students to the legal issues related to quality, cost, and access to healthcare. The course will examine, among other things, the liability of healthcare professionals and institutions, professional licensure, private health care financing, and Medicaid and Medicare. There will also be analysis of the Patient Protection and Affordable Care Act.

Individual Rights & the Constitution - This course investigates the scope and meaning of race equality, sex equality, implied fundamental rights, and economic justice under the Reconstruction Amendments. We will pay particular attention to the development of the Fourteenth Amendment's liberty and equality guarantees and to current controversies including abortion, affirmative action, and gay rights. We will ask substantive questions regarding constitutional doctrine: For example, which forms of discrimination does, or should, "equal protection" prohibit? Another category of questions will focus on interpretive methods: What is the appropriate role of text, structure, history, and prudence in constitutional interpretation? In discussing these questions, we will examine how political and social change has influenced the resolution of constitutional disputes and how non-judicial actors, as well as courts, have constructed constitutional meanings.

Law and History: Law and Social Movements Seminar — The primary objective of this course is for students to gain insight into the relationship between law and social movements. We will examine lawyers' role in social change; the processes by which social movements engage in lawmaking; the ways in which legal frameworks shape social movements' identities and goals; and the lines of causation running between grassroots mobilization, judicial opinions, statutes, and administrative regulations. We will explore these theoretical issues via four case studies drawn from twentieth-century U.S. history: the labor, civil rights, feminist, and conservative movements. The course is designed to give students a knowledge base that will help them to think critically about their roles as lawyers.

Organization and Regulation of the Healthcare Enterprise — The complex business of health care finance and delivery is structured by reference to an array of regulatory and statutory requirements. This course focuses on these requirements as they apply to the organization and regulation of healthcare enterprises, rather than the physician-patient relationship. Students will explore for-profit and non-profit governance in the healthcare enterprise, legal relationships between institutions and medical providers, fraud and abuse, antitrust, and Medicare/Medicaid reimbursement and rate setting.

Pensions & Tax-Favored Savings — This course is an in-depth study of the law governing pension and profit-sharing plans and other tax-favored savings arrangements, such as individual retirement accounts (IRAs). The tax treatment of contributions to, earnings of, and distributions from qualified (i.e., tax-subsidized) and non-qualified deferred compensation arrangements will be compared. The rules governing the terms and operation of qualified deferred compensation plans are studied intensively, including workforce coverage, allocation of contributions and benefits, funding, fiduciary responsibility, vesting, and the timing, forms and taxation of distributions. The economics of

deferred compensation and the dual policies of protecting employee reliance and properly targeting savings tax subsidies are emphasized. The primary focus of the course will be the tax law regulation of deferred compensation arrangements, but students will also be introduced to the labor law regulation of employee benefit plans (both pension and welfare) under the Employee Retirement Income Security Act of 1974 (ERISA). The course will be taught from draft chapters of a new casebook. Students will work extensively with Subchapter D and related provisions of the Internal Revenue Code (and corresponding regulations) and ERISA. Federal Income Taxation is not a prerequisite for this course; students who have not taken Federal Income Taxation would not face a significant disadvantage.

Regulating Work Seminar — This seminar explores the socio-legal significance of how we define work, using an interdisciplinary lens. The course will survey the justification for regulating work across a variety of doctrinal areas, asking which activities count as “work” for purposes of a particular regulatory goal, and why? What counts as income or compensation, and why? We will begin by considering the historical and sociological forces that have produced cultural norms around work. We will then focus on particular activities that have presented challenges to regulators. For example, when is an activity considered a hobby or leisure activity, and when is it income-generating work (in the eyes of the law)? Are brand “trendspotters” and campus brand representatives working? How can we distinguish volunteers from workers? Are student interns working? Suppose work is done out of a sense of altruism, to advance some exogenous social goal, or out of love—does it still count as work at law? Are unpaid caregivers working? Even within traditional employment relationships questions arise about what activities count as work. For example, is compliance with employer dress codes or appearance policies work? If doing so requires consuming the employer’s fashions or products and modeling them, is that work as well? Is commuting part of working time? What about emotional labor or efforts designed to minimize the effects of lack of racial or class privilege in the workplace—do these “invisible” efforts represent labor? Many areas of law are implicated, including (but not limited to) labor and employment law, employment discrimination law, tax law and policy, and family law. Prior course work in one of these areas (particularly employment law will be helpful, but there are no formal prerequisites).

SECRECY AND WHISTLEBLOWING — [This course is part of the ethics curriculum, but is not considered a “survey” ethics course; therefore, students who take this course are eligible to take other ethics courses.] Whistleblowing is the deliberate act of disclosing information about alleged wrongdoing, and often occurs in the context of a confidential relationship or an organization. The law of whistleblowing includes:

- mandates to disclose alleged wrongdoing;
- prohibitions on retaliation against whistleblowers;
- the promise of compensation for those whistleblowers who have experienced such retaliation;
- financial incentives for whistleblower; and
- requirements that institutions create mechanisms that facilitate whistleblowing, such as telephone hotlines for anonymous tips.

This course places particular emphasis on how the law of whistleblowing applies to lawyers (who are subject to professional obligations of confidentiality) and to constituents of organizations (such as employees).

Welfare Benefits – Federal Legislative and Regulatory Compliance - Employers provide compensation to their employees in various forms including cash, paid time off, retirement and welfare benefits. Typically, employers provide welfare benefits to their employees via tax preferred options that are sanctioned under the Internal Revenue Code. The rules surrounding the method of providing those benefits in a tax-preferred manner can be confusing to employers as there is no single set of rules that can be applied to all the benefits. In addition, welfare benefits are subject to ERISA and must comply with a myriad of rules and regulations under those provisions. Welfare benefits are defined in ERISA being provided by “any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).” This 1 unit course taught on three Saturdays, will provide an overview of the various requirements under the IRC, ERISA and the other laws and regulations regarding welfare benefits, the development of those rules via the regulatory and other rulemaking processes and developing case law. In addition, the course will spend some time on the new requirements under PPACA that apply to employer sponsored group medical benefits.

Related Skills Courses

Arbitration Law, Theory and Practice — This course introduces students to the law, theory, and practice of Arbitration. The course addresses the interplay between the jurisdiction of the courts and the authority of the arbitrator, examining common law, the Uniform Arbitration Act used by most states, and the Federal Arbitration Act. The course develops legal and theoretical frameworks through case studies and articles, in which students examine and extrapolate lessons from both practitioners and theorists. The course also focuses on the analytical and interpersonal skills necessary for attorneys to be successful in arbitration, whether as an advocate or as an arbitrator. The course mixes the case-study approach with simulations in multiple contexts, including consumer, commercial, financial, and employment disputes, which allows students to work through an arbitration from the initial arbitration agreement to details of the actual arbitration hearing. Students undertake several written assignments, including drafting an arbitration agreement, Arbitration Claim, Motion to Compel

Arbitration, Motion to Confirm Award, and Motion to Vacate Award, as well as solving ethical problems. Students present oral arguments on the motions and participate in two mock arbitrations.

Pretrial Practice and Settlement - Focuses on developing the skills necessary for effective client representation at the pretrial stage of litigation, from the initial client interview through settlement negotiations. Several sections of this course are offered, each of which meets at a different time with a different instructor. In this course, students will "litigate" two civil cases. Successful completion of the written and in-class exercises will require mastery of basic lawyering skills and the ability to analyze factual situations under the appropriate substantive laws.

Employment/Civil Rights Mediation and Dispute Resolution Theory and Practice - This course explores employment and civil rights mediation and dispute resolution processes in the private and public sectors, and includes attention to the negotiation underpinnings of mediation and dispute resolution. The course provides concepts and tools that apply to a wide variety of employment and civil rights disputes, including discrimination, harassment, failure to hire or promote, wrongful termination, severance, health and safety violations, unfair wages, and workers compensation under state and federal, employment and civil rights statutes. The course focuses on the development of the theoretical, analytical, and interpersonal skills necessary to be successful as both negotiator/advocates and mediator/dispute resolution experts in multiple employment and civil rights mediation and dispute resolution processes, including Equal Employment Opportunity Commission conciliation and mediation, court-ordered dispute resolution, ombuds programs, and internal corporate dispute resolution. The course develops theoretical and analytical frameworks through case studies and articles, in which students examine and extrapolate lessons from both practitioners and theorists. The course develops mediation skills through simulation exercises, in which students hone their powers of communication and persuasion, and experiment with tactics and strategies typically used in negotiation and mediation. There are no prerequisites for this course.

Introduction to U.S. and Comparative Alternative Dispute Resolution Processes - This survey course will introduce students to the fundamentals of alternative dispute resolution theory and practice. The course will analyze and compare a range of dispute resolution processes (such as litigation, negotiation, mediation, arbitration, dialogue facilitation, victim-offender dialogues, circles, ombudspersons, public dispute systems, on-line dispute resolution, mini-trials, and other mixed processes) and applications to specific types of problems and disputes (such as consumer, criminal, labor and employment, family and youth, restorative justice, environmental, public disputes, multi-party, cross cultural and international). The course will explore critical issues in the ways that societies and organizations structure their dispute resolutions systems and choose among available processes. The course will include attention to comparative dispute resolution systems, and examine the extent to which factors such as history, tradition, culture, economics, politics, institutional developments, and legal norms influence the design and selection of systems for handling different kinds of disputes, both in the U.S. and in other countries. The course will include readings, discussion, videos and demonstrations to provide students with an enhanced understanding of differences in dispute resolution processes. Examples of model rules, state and federal statutes and court rules and dispute resolution program rules and guidelines will be reviewed. There are no prerequisites for this course.

Mediation Theory and Practice - Introduces students to mediation theory and practice. The course explores mediation within the larger context of dispute resolution processes, and includes attention to the negotiation underpinnings of mediation. The course focuses on the development of the analytical and interpersonal skills necessary to be successful in mediations, whether as advocates or mediators. The course develops analytical frameworks through case studies and articles, in which students examine and extrapolate lessons from both practitioners and theorists. The course develops mediation skills through role play exercises, in which students hone their powers of communication and persuasion, and experiment with tactics and strategies typically used in mediation. The readings and the role play exercises draw from a wide variety of mediation contexts, such as civil litigation, family, victim-offender, commercial, and employment disputes, and provide concepts and tools that apply to all types of dispute resolution. There are no prerequisites for this course.

Preparing Commercial Agreements - Course provides students an opportunity to work with the basic tools used by attorneys to prepare business contracts, both the simple and the complex. The purpose of the course is to teach students how to create a general business contract, and studies in detail contemporary styles and methods for writing with precision the essential elements of a contract. During this course students also will be familiarized with some of the forms of agreements currently in use in the legal business world, including confidentiality agreements, employment agreements, real estate agreements, acquisition agreements, and related legal instruments that are collateral to such contracts, including powers of attorney, incumbency and secretary's certificates, and legal opinions. In addition to studying the mechanics of writing and modifying such documents, the course will devote considerable time to the practical realities of commercial legal practice, including working with both allied and opposing counsel, clients, and the many business and other non-legal specialists who participate in the process involved in creating contracts.

Related Clinics and Externship Courses

Civil Rights & Community Justice Clinic

The Civil Rights & Community Justice Clinic focuses on immigration, employment, housing, and public health. Clinic students provide individual representation for their clients - immigrants/refugees, workers, individuals with housing and home mortgage concerns, seniors, and individuals with HIV/AIDS and other disabilities - in conjunction with community legal services providers and non-profits that protect and advance the civil

rights of individuals in these client groups. These providers typically include the Legal Services of Eastern Missouri Immigration Project and the Public Benefits Project (Health & Welfare Unit), St. Louis Equal Housing Opportunity Council, Beyond Housing, the Immigration Law Firm, EEOC, and the NLRB. Clinic students also provide broader-based community representation and engage in a diverse range of "non-traditional," sometimes interdisciplinary, collaborative, community lawyering strategies and skills, including legislative drafting and advocacy, community education ("street law"), policy development, communication and media advocacy, and dispute resolution under the supervision of Professor Tokarz. The Mediation Clinic operates in conjunction with the Civil Rights & Community Justice Clinic and introduces students to mediation and dispute resolution practice in various contexts. During the semester, clinic students interview, counsel, and represent a minimum of 6 clients. Clinic students participate in and observe at least 3 mediations or other dispute resolution processes at US Arbitration & Mediation Service-Midwest, EEOC, Community Mediation Service, Missouri Department of Special Education, St. Louis City Housing Court, and/or the Better Business Bureau. Past clinic students report gains in a variety of key areas, including writing clearly and effectively, solving complex real world problems, improving client advocacy and dispute resolution skills, contributing to the welfare of the community, understanding people of different racial and class backgrounds, working collaboratively with professionals from other disciplines, learning effectively on one's own through reflective practice, developing a professional identity, and clarifying career goals. This course is beneficial for JD/MSW, JD/MBA, JD/MPH, and other joint degree students and students who contemplate starting their own firms.

Congressional and Administrative Law Externship (D.C.)

Each student admitted to this externship works with the clinic director to obtain an externship in a Congressional Office, Administrative Agency, or Nongovernmental Organization in Washington, D.C. Admission to the externship is by application only and occurs in late January. There is an informational meeting each fall for 1Ls and 2Ls who are considering applying for the following academic year. The application process includes submission of a short statement of interest, a transcript, and resume. Interested students must also include the name of a professor to serve as a reference on their behalf. All candidates will be interviewed, and final selections are made based on the interview, faculty references, the statement of interest, writing ability and demonstrated academic achievement. 3L students must complete the ethics requirement prior to beginning the program. Student and instructor collaborate during the semester preceding the student's placement in making office selection/obtaining a position. Students meet individually with the instructor and as a group on a regular basis in Washington D.C. In Congressional Office placements, students will perform professional staff work, primarily research and writing on legislation. The externship also will provide students with the opportunity to observe Congressional hearings, mark ups and floor debate. A course in legislation is recommended. Those interested in an administrative agency will be assisted in obtaining a federal administrative agency externship in Washington D.C. in a subject area that matches the student's interest. The student will perform hands-on professional staff work of the type commonly done in the agency office. The externship will also provide students with the opportunity to observe administrators making decisions about such agency activities as rule making, advising the public and case handling. The Administrative Law course is recommended for this externship. Students are also encouraged to take, as preparation, courses in the subject area of the agency in which they will be placed. Placements in nongovernmental organizations will also be available to interested students.