COURSE SYLLABUS

BUSINESS LAW 485: LABOR AND EMPLOYMENT LAW
Professor Dosanjh Zucker
Fall 2004

Office: BB 4227
Telephone: (818) 677-2408
Fax: (818) 677-6264
e-mail address: kiren.dosanjh@csun.edu

Office Hours: Tuesday and Thursday: 12:15-1:30 p.m.
Thursday: 6:30 p.m. - 7:00 p.m.

Course Description

Students will examine the development of labor law in the United States from the early common law to the existing federal statutory framework. Students will analyze judicial and administrative application and interpretation of existing federal statutes. Additionally, students will explore topics in U.S. employment laws such as family leave, equal pay, wrongful discharge, employee defamation, employer-related immigration laws, workplace privacy, safety, and discrimination, and other current developments. Whenever relevant, students will consider covered topics within the context of the global business environment.

Course Learning Objectives

At the end of this course, students will be able to:
- Critically analyze developments in U.S. labor and employment law;
- Communicate their analysis effectively both orally and in writing;
- Apply their critical analysis of labor and employment law to make effective strategic decisions in business;
- Identify and resolve ethical dilemmas arising in labor and employment relationships; and
- Conduct legal research on labor and employment issues.

Course Text

The text for this course is Labor and Employment Law: Text and Cases, David P. Twomey (West 12th ed.) 2004.
Policy on Academic Honesty
Cheating (or any other form of academic dishonesty) on exams or in relation to any aspect of the grading process will *not be tolerated*. Please read and become familiar with the section of the current section of the CSUN Catalog entitled “Academic Dishonesty” during the first week of class. Unless stated otherwise, *everything* that you turn in for course credit *must* represent *your own work*.

COBAE students’ “core values” are: respect, honesty, integrity, commitment, and responsibility. In all aspects of the course and in each class session, you should strive to uphold these core values. See: [http://www.csun.edu/busecon/CoreValues.pdf](http://www.csun.edu/busecon/CoreValues.pdf)

Grade Determination
Your final grade in the course will be decided as follows:

First Midterm Exam: 15%
Second Midterm Exam: 15%
Final Exam: 25%
Writing Portfolio (3 “writing samples”): 15%
Term Project: 20%
Attendance/Participation/Preparation: 10%

TOTAL: 100%

*There will be no makeup exams.*
Grades are determined by a careful process designed to ensure fairness. Therefore, grades will *not* be changed unless there has been a clerical or computational error.

<table>
<thead>
<tr>
<th>Grade</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>93 - 100%</td>
</tr>
<tr>
<td>A-</td>
<td>90 - 92.9%</td>
</tr>
<tr>
<td>B+</td>
<td>87 - 89.9%</td>
</tr>
<tr>
<td>B</td>
<td>83 - 86.9%</td>
</tr>
<tr>
<td>B-</td>
<td>80 - 82.9%</td>
</tr>
<tr>
<td>C+</td>
<td>77 - 79.9%</td>
</tr>
<tr>
<td>C</td>
<td>73 - 76.9%</td>
</tr>
<tr>
<td>C-</td>
<td>70 - 72.9%</td>
</tr>
<tr>
<td>D+</td>
<td>67 - 69.9%</td>
</tr>
<tr>
<td>D</td>
<td>63 - 66.9%</td>
</tr>
<tr>
<td>D-</td>
<td>60 - 62.9%</td>
</tr>
<tr>
<td>F</td>
<td>0 - 59.9%</td>
</tr>
</tbody>
</table>

Exams
There are two midterm exams and one final exam. The first midterm exam will be given in class on **Tuesday September 28**. The second midterm exam will be given in class on **Thursday November 4**. The final exam will be given on **Tuesday December 7** at 10:15 a.m.-12:15 p.m.. Both the multiple-choice and essay questions will require analysis and application of the law to given hypothetical situations. The essay must use “IRAC” format, a method of legal analysis we will employ in class.

Writing Portfolio/“Writing Samples”
As CSUN College of Business graduates have attested, excellent writing skills are extremely valuable in today’s competitive workplace and law schools. This course offers you the opportunity to develop your writing skills and to create a portfolio of writing samples for prospective employers. The writing sample assignments will simulate tasks
that could be given to you by an employer in the labor field. I recommend you keep your writing sample assignments together in a folder.

I will provide you with feedback on both the content and style of your completed “writing sample” assignments. A “Key to Writing Feedback” will be provided to you in class. You will receive a grade of 1-10 for each of the writing sample assignments, which will be averaged and weighted in your final grade (15%).

Details and due dates for the writing sample assignments are located in Appendix A of this syllabus. In order to complete the record of your writing samples for a future employer’s review, you should retain a copy of Appendix A in your folder.

Term Project: Due Date: December 2 at beginning of class.

The term project provides you with an opportunity to engage in sophisticated legal research and develop a “law review style” article on a labor/employment law topic of your choice. As explained below, this project allows you to enter the Business Law Association’s 2004-2005 Writing Competition.

Length
Minimum of 15 pages (double spaced) of text (not including end notes)

Content
The article should provide a critical analysis to support a thesis rather than a mere summary of the “state of the law.” For example, your article could:

- Compare different federal Circuit Court of Appeals’ treatment of a particular issue and analyze how the “Circuits’ split” may be resolved by the United States Supreme Court;
- Analyze a trend in courts’ analysis of the same issue in different cases and offer an explanation of the trend (e.g. support of a particular public policy) and/or the effect of the trend (e.g. narrows scope of statutory protection of employees);
- Synthesize courts’ reasoning and analyze the potential impact on employers and/or employees;
- Analyze an issue created by a court decision which the court did not seem to recognize; or
- Analyze a new statute and its purpose and offer a prediction on judicial interpretation of the statute.

Style
The article should be organized under headings and subheadings written in “small capital letters” in an outline form. Here is an example of a part of an outline:

I. INTRODUCTION
II. THE IMPACT OF HOFFMAN PLASTIC
   A. EEOC GUIDANCE AFTER HOFFMAN PLASTIC
   B. JUDICIAL INTERPRETATION OF HOFFMAN PLASTIC
      1. FLSA CLAIMS
      2. STATUTORY DISCRIMINATION CLAIMS
Endnotes should follow “A Uniform System of Citation” (17th ed. 2000) (“Bluebook”). Here are some “Bluebook basics” (I can provide further assistance on an individual basis):

- **Case from Court Reporter** (case name not mentioned in text of your article):
- **Case from Court Reporter** (case name mentioned in italics in text of your article):
- **Statute**:
- **Law Review article**:

**Your article must include references to at least five court cases and one law review article.** Information on legal research will be given on Tuesday September 21: we will meet at 11:00 a.m. at Lab B in the Oviatt Library Main Floor West Wing. (Guest speaker: Alan T. Schroeder, CSUN Business and Law Librarian.)

**Business Law Association (BLA) Competition**

This year, the Business Law Association is sponsoring a writing competition for students taking a business law course requiring a paper on a law-related topic, with a monetary award for “first place” and “honorable mention.” Students interested in entering this competition are strongly encouraged to follow the “suggested” work schedule below.

**Term Project Work schedule**

<table>
<thead>
<tr>
<th>Required</th>
<th>Suggested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submit Abstract (150 word maximum summarizing your thesis) on or by 10/19</td>
<td>Submit Abstract on or by 10/14</td>
</tr>
<tr>
<td>Submit completed article 12/2 at beginning of class</td>
<td>Submit Outline on or by 11/9</td>
</tr>
<tr>
<td>PLEASE NOTE: your term project grade will be reduced by half a letter grade if you fail to submit an abstract on or by 10/19.</td>
<td>Complete Draft on or by 11/23 and see me for comment (11/23 is the last date I will hold appointments regarding a draft)</td>
</tr>
<tr>
<td>PLEASE NOTE that late submissions of term projects will not be accepted.</td>
<td>Submit completed article 12/2 at beginning of class</td>
</tr>
</tbody>
</table>
Class Preparation, Participation, Attendance, and Professional Conduct

My goal is to encourage you not only to attend every class, but to be prepared for class and to make meaningful contributions to our class discussions. Class sessions are designed to deepen your understanding, broaden your viewpoints, and provide you with an opportunity to contribute to and enjoy a professional learning environment.

Professional Conduct in Class

Courteous conduct “contributes” to class while discourteous conduct detracts from it. Courteous conduct includes turning off cell phones and pagers before class, not eating in class, not leaving the classroom during class sessions unnecessarily, and showing respect for others’ points of view and contributions.

Class Preparation

The reading list found below shows the order of topics presented in the course, and provides topical reading assignments and homework including court opinions (“cases”) to brief, exercises, and “Chapter Questions and Problems” (“chapter questions”). Students are responsible for briefing each listed case. Chapter questions must be answered using complete sentences in paragraph format. At different times, students’ homework will be collected for feedback and to verify preparation. Each of the case briefs and assigned chapter questions must be typed on separate paper ready to be submitted. Directions on case briefing are available on my website.

Participation Grading

At the beginning of each class session, I will have available a piece of paper with the class roster. THIS SHEET IS NOT AN ATTENDANCE SHEET. I will take attendance separately. Instead, this is a “Participation Sheet:” Your signature by your name indicates that you have prepared the assignment for this class session. As described above, to be prepared, you must have written case briefs and responses to assigned chapter questions. Academic honesty requires that you sign the sheet only if you are prepared. If I discover that you have signed the sheet when you are not prepared, I will cross off your signature from the participation sheet. If you sign the sheet when you are not prepared a second time, you will receive an F as your participation grade due to academic dishonesty.

There will be 24 class sessions requiring participation. Your participation will be graded as follows:

<table>
<thead>
<tr>
<th>Number of Times You Sign the Participation Sheet</th>
<th>Grade Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>24, 23, 22, 21</td>
<td>A, A-, B+</td>
</tr>
<tr>
<td>20, 19, 18</td>
<td>B+, B, B-</td>
</tr>
<tr>
<td>17, 16, 15</td>
<td>C+, C, C-</td>
</tr>
<tr>
<td>14, 13, 12, 11</td>
<td>D+, D, D-</td>
</tr>
<tr>
<td>10 or less</td>
<td>F</td>
</tr>
</tbody>
</table>
Your preparation determines your participation grade range. The quality of your contributions to class discussion and the level of professionalism you demonstrate in class will determine your grade within that range. Students who attend most classes and are prepared but contribute little to class discussions will earn a grade at the low end of their range. Similarly, students who fail to demonstrate professionalism in class will earn the lowest grade in their range (see above for description of professionalism in class). I may use my discretion to cross off a student’s signature on a participation sheet for unprofessional conduct in a class session.

**Socratic Method:**
Along with other methods, this course uses the “Socratic Method:” you will be called on at random to answer questions requiring you to analyze, evaluate, and integrate cases you have briefed for class and to offer your analysis of assigned chapter-end questions. Be prepared to be asked follow-up questions requiring you to explain your answers fully. In class, your questions will typically be met with a question. [See Appendix B to syllabus].

**Attendance Policy**
Missing class, arriving to class late or leaving class early will adversely affect your final grade. Note: arriving late or leaving early counts as a “half- (½) absence.”
- 5 or more absences: final grade in the course will be reduced one level. For example, if your total points equate to a “C” for the semester (including your participation grade) then your final grade in the course will be reduced to a “D” if you have 2 and ½ or more class sessions.
- 15 or more absences: final grade in the course will automatically be “F.”

**CLASS “CALENDAR” OF DEADLINES, AND “SPECIAL EVENTS:”**

**September:**
Writing Assignment One Due: September 2
Legal Research Guest Speaker/Class session at Oviatt Library: September 21
Writing Assignment Two Due: September 23
Midterm One: September 28

**October:**
Term Project Abstract Due by: October 19
Writing Assignment Three Due: October 28

**November:**
Midterm Two: November 4

**December:**
Term Project Due: December 2
Final Exam: December 7 at 10:15 a.m.
<table>
<thead>
<tr>
<th>Topic</th>
<th>Chapter Number</th>
<th>Court Opinions (&quot;cases&quot;)</th>
<th>Chapter Questions and Problems</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overview; Early Doctrines; Current Applications</td>
<td>One</td>
<td>Vegelahn (p. 9); Hitchman (p. 10); Lawlor (p. 13); Brown (p. 18)</td>
<td>2, 4</td>
</tr>
<tr>
<td>Railway &amp; Airline Labor Relations</td>
<td>Two</td>
<td>Consolidated (p. 31)</td>
<td>8,11,12</td>
</tr>
<tr>
<td>The National Labor Relations Act</td>
<td>Three</td>
<td>Jones &amp; Laughlin (p. 42); Umpires (p. 52); Roadway (p. 57); Town &amp; Country (p. 65); Boston Medical Center (p. 70); Golden State Transit (p. 77); Hendricks County (p. 82); Bonanno (p. 85); Marion Hospital (p. 95); Gissel “I” (p. 99); Gissel “II” (p. 106); Hoffman Plastic (p. 116)</td>
<td>4,5,6, 8,9</td>
</tr>
<tr>
<td>Employer Unfair Labor Practices</td>
<td>Four</td>
<td>Weingarten (p. 129); Epilepsy Foundation (p. 132); Electromation (p. 135); Transportation Mgt. (p. 141); Brown Food Stores (p. 144); Great Dane Trailer (p. 150); Fibreboard (p. 162); Fall River (p. 169); Wheeling-Pittsburgh (p. 176)</td>
<td>7, 8, 11, 12,13</td>
</tr>
<tr>
<td>Regulation of Union Activities</td>
<td>Five</td>
<td>Lechmere (p. 203); Tree Fruits (p. 217); Safeco (p. 220); DeBartolo II (p. 222)</td>
<td>15</td>
</tr>
<tr>
<td>Legality of Strikes</td>
<td>Six</td>
<td>TWA (p. 242); Ohio Power (p. 245); Kellogg (p. 247); Boys Market (p. 250); ILA (p. 254)</td>
<td>7,8,9,10, 11</td>
</tr>
<tr>
<td>Dispute Settlement Law</td>
<td>Seven</td>
<td>Yellow Freight (p. 268)</td>
<td>9,11</td>
</tr>
<tr>
<td>Occupational Safety and Health</td>
<td>Ten*</td>
<td>Whirlpool (p. 371); Marshall (p. 375)</td>
<td>6,8,12</td>
</tr>
<tr>
<td>Wage and Hour Law; Closings and Unemployment; Foreign Workers</td>
<td>Seventeen*</td>
<td>Singh p. 663); Dinges (p. 665); Shanti p. 680</td>
<td>5,8</td>
</tr>
<tr>
<td>Topic</td>
<td>Chapter</td>
<td>Pages</td>
<td></td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Discrimination Laws; “Protected Classes” under Title VII and the Constitution</td>
<td>Eleven*</td>
<td>Pollard (p. 397); Griggs (p. 401); Feldstein (p. 408); Meritor (p. 431); Oncale (p. 433); Burlington (p. 438); Fragante (p. 445); Van Johnson (p. 451)</td>
<td></td>
</tr>
<tr>
<td>Procedures and Remedies</td>
<td>Twelve</td>
<td>Albermarle (p. 480); Weber (p. 488); San Francisco POA (p. 494)</td>
<td></td>
</tr>
<tr>
<td>Pay Equity; Age Discrimination</td>
<td>Thirteen</td>
<td>Corning Glass (p. 523); Crawford (p. 532); Rhodes (p. 539); Oubre (p. 543)</td>
<td></td>
</tr>
<tr>
<td>Disability Discrimination Laws; Workers’ Compensation, SSDI, and the ADA; Medical Leaves</td>
<td>Fourteen</td>
<td>Cook (p. 551); Sutton (p. 563); Toyota (p. 567); Barnett (p. 569); Halliman (p. 573)</td>
<td></td>
</tr>
<tr>
<td>Employment Relationships: Contractual and Tort Theories</td>
<td>Fifteen</td>
<td>Adams (p. 597); McGlothen (p. 602)</td>
<td></td>
</tr>
<tr>
<td>Employee Privacy Topics</td>
<td>Sixteen</td>
<td>O’Connor (p. 620); Ortega (p. 623); Sanders (p. 627); Cramer (p. 629); Patchogue-Medford (p. 63)</td>
<td></td>
</tr>
</tbody>
</table>

* = please note break in numerical order of text chapters.
General Instructions
Each of the writing assignments must be typed on separate paper and will be graded on a scale of 1-10. These assignments are to be submitted in “hard copy” (not by e-mail or fax) by the beginning of class on the dates listed below. One point will be deducted from the assignment’s grade for each business day (M-F) it is late. You will be provided with writing feedback on both content and style.

Assignment One: Due August September 2 (“Speech writing”)
You are an intern in the Los Angeles office of U.S. Congresswoman Minnie Rivers. Congresswoman Rivers has been invited to speak at a luncheon to celebrate the upcoming 70th Anniversary of the National Labor Relations Act hosted by the Labor Rights Lawyers Association, a group of attorneys who represent labor unions.

Her senior speechwriter will write the introduction and conclusion, but Rivers wants you to write the part of the speech addressing the legal obstacles faced by early unionization efforts. She wants to remind the attorneys of the legal theories used by employers in the 19th and early 20th Centuries, briefly describe court cases and use quotes from U.S. Supreme Court Justices like Justice Holmes. She hopes that this part of the speech helps to emphasize the important context of the National Labor Relations Act which established employees’ statutory rights to form and join labor unions.

This part of the speech should be no longer than 300 words. Congresswoman Rivers wants to be” informative but not boring.” Congresswoman Rivers gave you her own copy of the Twomey text and tells you that Chapter One will be very helpful to you in completing this assignment.

Assignment Two: Due September 23 (“Letter to Client”)
You are an intern for Oviatt, Tampa, and Nordhoff, a labor and employment law firm in Northridge, California which represents employers. One of the firm’s clients is Michael’s Painting Co., the Van Nuys company featured in chapter 3 question 12 on pp. 122-123 in your Twomey text. Assume that the facts have occurred not in March to April 1998 but August to September 2004. The owners of Michael’s Painting, Michael and Laurie Abikasis, contacted Senior Partner Sierra Oviatt to ask whether their actions were “illegal” and whether their creation of “Painting LA, Inc.” would “shield them from liability.”

Senior Partner Sierra Oviatt has asked that you write a letter to Mr. and Mrs. Abikasis for her signature identifying and explaining the unfair labor practices in which the owners of Michael’s Painting have engaged, and informing them that their “alter ego” entity does
not shield it from liability. The letter should be no longer than two single-spaced pages. A guide to the format of a “business letter” will be distributed and discussed in class.

Assignment Three: October 28 (“Internal Memo to Managers and Supervisors”)

You are the Human Resources Manager for Home Baking Company of Northridge, California. A recent unsuccessful union organizing drive seems to have left managers and supervisors angry at their employees, which might be the cause of a recent rise in the number of disciplinary actions being taken against employees. Further, employees who were “union activists” have complained of abusive language regarding their attempts to unionize.

Home Baking Company’s attorneys, Oviatt, Tampa, and Nordhoff, have advised you to train managers and supervisors on NLRA’s sections 8(a)(1) and 8(a)(3). As part of your training efforts, you will write a memo to managers and supervisors in which you explain the protections provided by these sections and the “Wright Line test” in understandable language with examples. Partner Sierra Oviatt has referred you to the case of Tasty Baking Co. v. NLRB summarized in Chapter 4 question 14 of the Twomey text, in which a federal appellate court upheld the NLRB’s findings that the employer had violated NLRA’s sections 8(a)(1) and 8(a)(3).

You are further advised not to use the specific example of vulgarities used by Kenney against William Martin in Tasty Baking: instead, you may warn against the use of such language both in the context of NLRA rights and other workplace concerns, and against threats made to employees for engaging in protected activities such as union-organizing. Guidance on writing such an internal memo will be provided in class.
APPENDIX B:
SOCRATIC METHOD: Sample Questions\footnote{Based on The Miniature Guide to Critical Thinking Concepts and Tools by Dr. Richard Paul and Dr. Linda Elder, (2003 Foundation for Critical Thinking)[ describing “Universal Intellectual Standards: And questions that can be used to apply them”]}

[Note: this list offers examples of both initial and “follow-up” questions that may be posed to you in class as we review cases and “practice test questions” from the textbook. This is not a “checklist” of all questions that will be asked of you in class, but rather is designed to familiarize you with the Socratic Method that is used in this course.]

- **Clarity:**
  - Could you elaborate further?
  - Could you give me an example?
  - Could you illustrate what you mean?

- **Accuracy:**
  - What rule of law are you applying here?
  - Is that what the court decided?
  - What assumptions are you making?
  - What assumptions did the court make in arriving at its ruling?

- **Precision:**
  - Could you be more specific?
  - Could you give me more details?
  - Could you be more exact?
  - What rule/element of the rule are you applying here?

- **Relevance:**
  - How does that relate to the problem?
  - How does that answer the question?
  - How does that help resolve the issue?
  - What can this case teach business owners/consumers?

- **Depth:**
  - What are the public policies/social goals at stake in this case?
  - What public policy/social goal does the court seem most concerned with?
  - Summarize the rulings of the cases that we have studied on this topic.

- **Breadth:**
  - Can you look at this from another perspective? Does this change your conclusion? Why/why not?
  - Is there another point of view? Explain.
  - How might this ruling impact business/society?

- **Logic:**
  - Does the evidence support your conclusion? Why?
  - Does case precedent support your conclusion? Why?
  - Make an argument for the other side [plaintiff/defendant].
  - Change the facts to change the outcome. Why does this change the outcome?

- **Significance:**
  - Is this the most important issue at stake?
  - Which of these facts is most important to you/the court?
  - Create a scenario involving a lawsuit in which this case would be precedent.

- **Fairness:**
  - Are you evaluating this issue from all points of view?
  - What ethical frameworks are you using in arriving at that conclusion?
  - Do you agree with the court’s ruling? Why or why not?