**Introduction to Work Law**

**UC Berkeley School of Law**

**Law 227.22 | Spring 2024**

**Tu Th 3:35-5:25pm**

**Law 140**

**Syllabus**

Professor Diana Reddy (she/her)

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https://www.law.berkeley.edu/our-faculty/faculty-profiles/diana-s-reddy/

Office Hours: Thursdays, 11am-1pm walk-in, or by appointment Mondays, 11am-noon

<https://calendly.com/dsreddy-ucb/prof-diana-reddy-s-office-hours-spring-2024>

BCourses Site: <https://bcourses.berkeley.edu/courses/1531783>

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# Course Description and Learning Objectives

This course is a survey of the law of work, designed to introduce students to the many overlapping schemes for regulating the relationship between workers and employers. I am thrilled you are taking this course. It will be useful to students who have an interest in working in the labor and employment field, whether you intend to represent workers, employers, or the government. It is also designed to be useful to students who expect to be an employee or an employer at some point in their lives, i.e. almost everyone who attends law school. Work law is a foundational site where we must make decisions about how to balance our economic and democratic commitments. After a long period of relative stasis, things are changing rapidly in the field, making it an exciting time for students and practitioners. As we collectively contemplate the “future of work,” being well-informed about what’s at stake could not be more important.

This course largely focuses on the laws which regulate the relationship between “employers” and “employees.” As such, the course starts with the foundational question of who counts as an employee, who counts as an employer, and why that matters. It then covers a host of issues related to job quality, such as the legal regulation of wages, time off, workplace safety and health, employee privacy, and job security; provides a quick overview of social insurance programs related to work, such as unemployment insurance, social security, and workers' compensation; and concludes with a discussion of work and how to regulate it in the "gig" economy, including by briefly discussing how the law might better protect independent contractors.

This course briefly introduces the topics of collective action by workers and unions and the prohibitions on discrimination in the workplace, but it will not delve into them in detail. Students wanting to focus on those topics should take Labor Law and Employment Discrimination law, respectively (and I very much encourage you to do so!).

Throughout the course, we will focus on the historical evolution of work law and the strategic actors who have reshaped it, the important public policy questions raised by work law, and how the regulation of work shapes and is shaped by broader societal inequalities, including class, race, gender, disability, immigration status and more. In my experience, situating the law within its historical and socio-political context improves understanding of doctrine.

\*Please note that students who have previously taken Employment Law should NOT enroll in Work Law, since it will cover largely the same material.\*

By the end of this semester, students should be able to:

* Name and describe the leading historical eras and doctrinal paradigms for regulating work;
* Explain the importance of defining who is an “employee,” articulate the major legal tests currently used to determine employee status, and apply those tests to specific factual scenarios;
* Identify the major laws that currently regulate the relationship between employees and employers; explain their most importation provisions and their limitations;
* Effectively and quickly spot legal issues concerning employee status, termination, post-employment conditions and agreements, wages, hours, health and safety, time off, and other issues discussed during the class;
* Describe the general policy goals and broad legal framework of employment discrimination law and labor law;
* Summarize ongoing policy debates about the “future of work” and explain at a high level the legal protections available to independent contractors;
* Critically assess the ways in which work law shapes and has been shaped by racism and other forms of systemic inequality; and
* Better articulate your positions, including by anticipating and responding to counter-arguments.

# Requirements and Assessment

The course will be graded on the NC/PC/P/H/HH system, and I will evaluate your performance based on the following criteria.

Class participation: 10%

Two short quizzes: 10% (5% each)

Final exam: 80%

**Class Participation**:

Regular in-person class attendance and participation are required. The substance of class discussion will be considered part of the course subject matter and fair game for the final examination. Multiple unexplained absences will affect your participation grade. If you need to miss class for an important reason (illness, family commitments, conflicting professional activities), please send me an email before class, or as soon as reasonably practicable, letting me know. As a general matter, classes will not be recorded, because no one needs to feel more nervous or under scrutiny than they already do in law school.

During most every class, I will call on some students at random to answer questions about cases and other assigned materials. I use this method because in my experience, it is the method that best promotes learning and retention long term, even if it is annoying in the short term. I also use this method because I want you to know that you have what it takes to engage meaningfully on a regular basis, without over-preparing or agonizing over the days you are supposed to be “on-call.” That said, I understand that life happens and there are times when you will not be sufficiently prepared to engage meaningfully. In addition to any excused absences (illness, family commitments, etc), you are also able to opt-out of being cold-called for three class sessions during the semester with no penalty. In order to avail yourself of this option, you MUST email me letting me know by 9pm the night before class.

When I am not calling on specific students, I very much want to hear from all of you, either in response to my questions or when you have thoughts, ideas, or questions. Please don’t make me stand up there and talk to myself. You were admitted to Berkeley Law because who you are and what you think is important; your active engagement benefits us all.

I also welcome participation through other means, including through posting questions/resources/reflections on BCourses, coming to office hours, etc.

**Quizzes**:

There will be two very short in-class quizzes (15 minutes or less, closed book, no notes), during weeks 6 and 10. These will include multiple-choice and short-answer questions and will involve applying law to fact as you will be asked to do on the exam. These are designed to be relatively low-stakes opportunities for formative assessment, to check for understanding and to receive feedback.

**Final Exam**:

The final examination will be an in-class four-hour exam, scheduled for Tuesday, April 30, 2024, starting at 1:30pm. It will be open-book and open-note, but you cannot consult any other materials, including online materials, during the exam. There will be a final review session before the exam (most likely on April 25).

**Course Policies**

**Technology**

You may use your laptop during class to take notes or consult readings. Please do not use your laptop for things that are not related to class.

You are not allowed to rely on generative AI for any assignments for this course unless I specify otherwise.

**Communication**

Please bring your substantive questions and ideas to my office hours – that’s why I am there! I am thrilled to continue classroom conversations with you then. As for email, I will do my best to respond to shorter inquiries within 2 business days. I would promise to respond more quickly, but I would inevitably let you down.

**Kindness/Humility/Learning to Lawyer in Impossible Times**

The fundamental nature of this class is that we will at times discuss difficult social realities. We will purposefully delve into topics that are complicated, contested, and about which our views, our leaders’ views, and our fellow community members’ views vary dramatically. There is no way to teach you this material or prepare you to be an advocate without leaning into this messiness (it only gets harder when you’re a lawyer).

I expect everyone to engage respectfully and constructively – and ideally, if we’re up to it, with humility, curiosity, kindness. Please keep in mind that even though we are engaged in an academic enterprise, these issues may also be personal for some in the class and that human reality should shape how we speak. That said, it doesn’t help any of us learn, grow, or become persuasive advocates for the things we believe in, for you to hold back earnest perspectives or important real-world counterarguments. Speak up and speak kindly.

**Accommodations**

I want everyone to be able to engage with this material fully. If you need accommodations for extended illness, disability, or pregnancy, please contact Chelsea Yuan, Director for Student Services, Accessible Education, for assistance. All accommodation requests must initially be handled through Chelsea.

**Academic Integrity**

The Academic Honor Code governs the conduct of all students during their academic and pre-professional activities at Berkeley Law. Students are expected to adhere to this code scrupulously. If you have any questions about whether your conduct may violate the code, please contact me or the Dean of Students before you act. If you are found to have engaged in academic misconduct, you may face severe consequences, including a failing grade in this class or removal from the program, and the Bar will also receive notification of your conduct.

**Grade Concerns**

Feedback is essential for growth, which is why assessments are important. That said, grades are an imperfect proxy for learning. Please know now that your grade, alone, says virtually nothing about how successful you will be as a lawyer, how intelligent I think you are, how important I think your perspective is, or how much everyone at Berkeley Law is rooting for you. Please come to office hours to discuss any questions about grading.

# Course Materials

The textbook for this course is the brilliant and innovative Crain, Kim, Selmi & Rogers, Work Law: Cases and Materials (4th ed. 2020). The book itself is required; any supplements are options.

At times, there will be additional readings, which will be made available on the class’s BCourses website.

Attached is a topic overview and tentative schedule. Because I want to be able to flexibly respond to real-world developments and the dynamism of classroom discussion, I will provide specific reading assignments unit by unit as we go along. On average, there will be 20-30 pages of reading per class, generally more if it’s background and policy and less if it’s case law.

# Topic Overview and Tentative Schedule

**UNIT ONE: INTRODUCTION**

1. What Is at Stake When We Regulate Work?; Historical Approaches To Regulating Work (January 9)

2. Contemporary Approaches to Regulating Work; The Future of Work (January 11)

**UNIT TWO: DEFINING THE EMPLOYER-EMPLOYEE RELATIONSHIP**

3. Who is an Employee, and Why Does it Matter? (January 16)

4. Other Legal Tests for Employee Status (January 18)

5. Who is an Employer, and Why Does it Matter? (January 23)

**UNIT THREE: THE DURABILITY OF EMPLOYMENT AND ITS TERMINATION**

6. Employment at Will; Free Labor and the Thirteenth Amendment (January 25)

7. Contracting for Job Security, and Defining Just Cause (January 30)

8. Public Policy Exceptions to At-Will (February 1)

9. The WARN Act, Severance Agreements, and Unemployment Insurance (February 6)

10. Non-Competition and Non-Solicitation Clauses (February 8)

11. Who Gets What? (February 13) **\*IN CLASS QUIZ #1\***

**UNIT FOUR: TERMS AND CONDITIONS – HOURS AND WAGES**

12. The Fair Labor Standards Act (February 15)

13. Covered Employees (Review), Compensable Time (February 20)

14. Exceptions and Enforcement (February 22)

**UNIT FIVE: TERMS AND CONDITIONS – HEALTH AND SAFETY**

15. Workers Compensation (February 27)

16. Exclusivity of Remedies and Exceptions (February 29)

17. The Occupational Safety and Health Act (March 5)

18. The Employee Retirement and Income Security Act (March 7)

19. Family Medical Leave Act and Other Sources of Protected Time Off/Wage Replacement for Health, Disability, and Caretaking (March 12) **\*IN CLASS QUIZ #2\***

**UNIT SIX: EMPLOYMENT DISCRIMINATION OVERVIEW – INCLUDING COMMON LAW & CONSTITUTONAL APPROACHES TO DIGNITARY HARMS AND ABUSE**

20. General Concepts in Employment Discrimination Law (March 14)

21. Abuse and Harassment (March 19)

22. ADEA and ADA (March 21)

**SPRING BREAK – NO CLASS**

**UNIT SEVEN: LABOR LAW OVERVIEW -- INCLUDING COMMON LAW & CONSTITUTONAL APPROACHES TO EMPLOYEE VOICE**

23. Employee Rights under the National Labor Relations Act (April 2)

24. Forming a Union and Collective Bargaining (April 4)

**UNIT EIGHT: ENFORCEMENT**

25. Arbitration in the Union and Non-Union Context (April 9)

26. Limiting Mandatory Employer Arbitration (April 11)

**UNIT NINE: THE “GIG” ECONOMY AND PROTECTING INDEPENDENT CONTRACTORS**

27. Policy Issues: What do Workers Want? What Is at Stake? (April 16)

28. Legal Protections for Independent Contractors (April 18)

REVIEW SESSION: April 25

FINAL EXAM: April 30, 1:30pm