

Employment Discrimination

University of Houston Law Center

Brad Areheart, Spring 2024

COURSE DESCRIPTION AND LEARNING OUTCOMES

This course examines the law regulating employment discrimination and equal employment opportunity. It is an introductory, but comprehensive, course that emphasizes the major analytical frameworks for conceptualizing discrimination and equality in the workplace while surveying the relevant doctrine, focusing primarily on federal employment discrimination statutes (including Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Family and Medical Leave Act of 1993, and the Americans with Disabilities Act).

Students will learn to read, interpret, and explain the major court decisions interpreting the legal prohibitions against employment discrimination on the basis of race, color, sex, religion, national origin, disability, and age. Students will learn to apply those precedents to factual situations, including identifying more than one legal framework that could apply to the same set of facts. Students will also learn to identify and explain the procedural challenges common to employment discrimination litigation, including pleading standards, standards of proof and inference, and discovery.

CLASS MEETINGS

This class will be offered asynchronously on Canvas.

REQUIRED COURSE MATERIALS

Joseph Seiner, *Employment Discrimination: Procedure, Principles, and Practice* (2d Ed. 2019). Additional readings and exercises will be posted on Canvas.

CONTACT INFORMATION

Professor Brad Areheart

E-mail: baarehea@cougarnet.uh.edu

Cell: 865.299.2822. You are welcome to call or text with any questions or concerns.

Zoom: <https://tennessee.zoom.us/j/5139764757>

HOW WE WILL INTERACT THIS SEMESTER

1. THE MESSAGE BOARD

For each module, you will be required to post at least one question or comment to Canvas. To access the message board, click on “Discussions” in Canvas and select the appropriate Module. You can of course post early. Your comment or question need not be lengthy. It can be substantive (“I think the disparate impact doctrine is confusing. Can you explain it in layperson terms?”) or non-substantive (“I am really enjoying the videos in this course.”). You are encouraged, but not required, to respond to other people’s posts. I will also respond to your questions/comments and provide feedback where

appropriate. **Please post at least one comment or question for each module by midnight on Wednesday of the relevant week.**

2. TALKING

While there is not any structured time for us to meet—which is sort of the hallmark of an asynchronous course—I do want to get to know each of you. I know you are not here in town. **So schedule a time to Zoom with me. Or give me a call and introduce yourself.**

3. FORMATIVE ASSESSMENT

Formative assessment can help students identify their strengths and weaknesses, as well as target areas that need work. Formative assessment has unique importance for an asynchronous online course, where a well-meaning student can potentially “disappear.” As such, each week there is an exercise for that module that you can do and post to Canvas for feedback. **If you would like feedback, please post these by midnight on Wednesday of the relevant week.** (I will also post a rubric for each week’s exercise – usually on the Friday of that week’s assigned module.) The vast majority of these exercises are questions I have previously given on actual exams. The exercise document is the last entry for each module and identified as “module [x] exercise.” In keeping with the convenience of an asynchronous course, these opportunities are just that: opportunities. They are not required. I will attempt to provide feedback in a timely fashion on any exercise that you complete and post by Thursday of each week’s module. I cannot provide feedback if the exercise is not posted on time.

FINAL GRADE

Your final grade will be based entirely upon a 3-hour examination. The exam will be open book and will focus on topics discussed in my videos. Format-wise, the final exam will be a series of short-ish essays (see my 10 prior exams, which are posted to Canvas, for examples). Your final exam will be flexibly administered, meaning you may take it anytime on the law school portal during the final exam period (which for UH runs May 1-9).

ADDITIONAL POLICIES

Mental Health and Wellness Resources

The University of Houston has a number of resources to support students’ mental health and overall wellness, including CoogsCARE and the UH Go App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit uh.edu/caps, call 713-743-5454, or visit a Let’s Talk location in-person or virtually. Let’s Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.

The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment. The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

Title IX/Sexual Misconduct

Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

Reasonable Academic Adjustments/Auxiliary Aids

The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing jdcenter@Central.UH.EDU.

Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor’s recordings for their own studying and notetaking. Instructor’s recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Honor Code

The UHLC Honor Code applies to all aspects of this course. You are responsible for knowing all Honor Code provisions and for complying with the Honor Code. Please inquire if you have any questions regarding how the Honor Code’s provisions apply to specific activities or situations related to this course. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus.

AI Generated Text

The software technology known as artificial intelligence has recently expanded its capability to generate text (AI Generated Text). Examples of the technology include what are known as “generative” large language models (LLMs), and a specific implementation what is well known in the general public is ChatGPT. These systems can generate text in response to prompts and/or input of

other text/documents/code/images. The output, the AI Generated Text, appears to have human-mimicking “intelligence” and is thus potentially usable as a substitute for written work product one might generate themselves. AI Generated Text can include computer code or programs as well as human language content.

Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to not prompt, generate, obtain, read, or use any AI Generated Text in relation to any activity or assessment in this course. This applies to AI Generated Text from yourself or others. This pledge includes that your assessment work product in the course is without any contribution from AI Generated Text. This specifically extends to the plagiarism policy and unauthorized aid/materials parts of the Honor Code: AI Generated Text will be treated as from another/other in applying the plagiarism policy to this course. The term “assessment” means any work product generated for this course that is submitted to the instructor or presented in a class session, regardless whether it is graded content or not. Assessments include mid-terms and final exams. AI Generated Text may not be used in the development or drafting of any assessments created by you in a non-proctored environment, such as a “take-home” final examination unless specified as an exception below.

Resources for Online Learning

The University of Houston is committed to student success, and provides information to optimize the online learning experience through our Power-On website (<https://uh.edu/power-on/learning/>). Please visit this website for a comprehensive set of resources, tools, and tips including: obtaining access to the internet, AccessUH, Blackboard, and Canvas; using your smartphone as a webcam; and downloading Microsoft Office 365 at no cost. For questions or assistance contact UHOnline@uh.edu.

UH Email

Please check and use your CougarNet email for communications related to this course. Faculty use the CougarNet email to respond to course-related inquiries such as grade queries or progress reports for reasons of FERPA. To access your CougarNet email, login to your Microsoft 365 account with your CougarNet credentials. Visit University Information Technology (UIT) for instructions on how to connect your CougarNet e-mail on a mobile device.

Webcams

Access to a webcam is required for students participating remotely in this course. Webcams must be turned on (state when webcams are required to be on and the academic basis for requiring them to be on). (Example: Webcams must be turned on during exams to ensure the academic integrity of exam administration.)

Security Escorts and Cougar Ride

UHPD continually works with the University community to make the campus a safe place to learn, work, and live. The security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety, please call 713-743-3333. Arrangements may be made for special needs.

Parking and Transportation Services also offers a late-night, on-demand shuttle service called “Cougar Ride” that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at <https://uh.edu/af-university-services/parking/cougar-ride/>.

Syllabus Changes

Please note that I may need to make modifications to the course syllabus. Notice of such changes will be announced as quickly as possible by email.

ASSIGNMENTS

The scheduled assignments for this semester are laid out below. I have broken the course up into modules, which generally track with the weeks of the semester. You are welcome to work ahead—or if need be, behind. That said, let me encourage you not to fall too far behind. In having taught a fair number of courses asynchronously, the main (and usually only) negative comments I get are along the lines of “The asynchronous nature of the course was hard because I fell behind. But that’s on me, not you.” So I tell you this in advance to make sure you understand there is less hand-holding in a course like this. And if that makes you nervous, I would kindly advise you to consider dropping the course. Autonomy can be a double-edged sword.

| Dates/Topics | Assignments | Formative Assessment |
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| Introductory Module, review at your convenience | <ul style="list-style-type: none"> - Review syllabus - Review 2 short introductory videos | |
| Module 1 – week of 1/16 - 1/19 introduction and administrative process | <ul style="list-style-type: none"> - read Seiner pp. 7-12, 13-27, and 136-37 - review module on canvas - post one comment or question to the message board by Wednesday, Jan. 17 midnight | <ul style="list-style-type: none"> - module 1 exercise - If you want individual feedback on the exercise, please post your answer by Wednesday, Jan. 17 midnight |
| Module 2 – week of 1/22 - 1/26 individual disparate treatment | <ul style="list-style-type: none"> - read Seiner pp. 79-95, 97-113 - review module on canvas - post one comment or question to the message board by Wednesday, Jan. 24 midnight | <ul style="list-style-type: none"> - module 2 exercise - If you want individual feedback on the exercise, please post your answer by Wednesday, Jan. 24 midnight |
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| Module 3 – week of 1/29 - 2/2 mixed motives and retaliation | <ul style="list-style-type: none"> - read Seiner pp. 114-124, 145-167 - review module on canvas - post one comment or question to the message board by Wednesday, Jan. 31 midnight | <ul style="list-style-type: none"> - module 3 exercise - If you want individual feedback on the exercise, please post your answer by Wednesday, Jan. 31 midnight |
| Module 4 – week of 2/5 - 2/9 systemic disparate treatment | <ul style="list-style-type: none"> - read Seiner pp. 125-134 - review cases (teamsters, hazelwood, and falcon) posted on canvas - review bielby expert report posted on canvas - review module on canvas - post one comment or question to the message board by Wednesday, Feb. 7 midnight | <ul style="list-style-type: none"> - module 4 exercise - If you want individual feedback on the exercise, please post your answer by Wednesday, Feb. 7 midnight |
| Module 5 – week of 2/12 - 2/16 disparate impact | <ul style="list-style-type: none"> - read Seiner pp. 169-190, 190-204 - reading on 703(h) exceptions on canvas - review module on canvas - post one comment or question to the message board by Wednesday, Feb. 14 midnight | <ul style="list-style-type: none"> - module 5 exercise - If you want individual feedback on the exercise, please post your answer by Wednesday, Feb. 14 midnight |
| Module 6 – week of 2/19 - 2/23 reverse discrimination and affirmative action | <ul style="list-style-type: none"> - read Seiner pp. 137-145, 301-315 - Read Jay Caspian King, <i>Where Does Affirmative Action Leave Asian-Americans?</i>, N.Y. TIMES, updated July 29, 2021, https://www.nytimes.com/2019/08/28/magazine/where-does-affirmative-action-leave-asian-americans.html (Canvas) - review Weber Case (Canvas) - review module on canvas - post one comment or question to the message board by Wednesday, Feb. 21 midnight | <ul style="list-style-type: none"> - module 6 exercise - If you want individual feedback on the exercise, please post your answer by Wednesday, Feb. 21 midnight |
| Module 7 – week of 2/26 - 3/1 BFOQs & National Origin | <ul style="list-style-type: none"> - read Seiner pp. 355-371, 400-420, 437-443 - review module on canvas - post one comment or question to the message board by Wednesday, Feb. 28 midnight | <ul style="list-style-type: none"> - module 7 exercise - If you want individual feedback on the exercise, please post your answer by Wednesday, Feb. 28 midnight |
| Module 8 – week of 3/4 - 3/8 age discrimination | <ul style="list-style-type: none"> - read Seiner pp. 559-566, 577-595 - review module on canvas | <ul style="list-style-type: none"> - module 8 exercise - If you want individual feedback |

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| | <ul style="list-style-type: none"> - fill out midcourse evals - post one comment or question to the message board by Wednesday, Mar. 6 midnight | on the exercise, please post your answer by Wednesday, Mar. 6 midnight |
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| Module 9 – week of 3/18 - 3/22 “because of ... sex,” pregnancy discrimination, & FMLA; grooming and appearance | <ul style="list-style-type: none"> - read Seiner pp. 321-342, 373-378, 294-300 - review cases (manhart and rogers) posted on canvas - review module on canvas - post one comment or question to the message board by Wednesday, Mar. 20 midnight | <ul style="list-style-type: none"> - module 9 exercise - If you want individual feedback on the exercise, please post your answer by Wednesday, Mar. 20 midnight |
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| Module 10 – week of 3/25 - 3/29 sex discrimination, including harassment | <ul style="list-style-type: none"> - read Seiner pp. 207-209, 211-235, 236-245, 262-268, 209-211 - review module on canvas - post one comment or question to the message board by Wednesday, Mar. 27 midnight | <ul style="list-style-type: none"> - module 10 exercise - If you want individual feedback on the exercise, please post your answer by Wednesday, Mar. 27 midnight |
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| Module 11 – week of 4/1 – 4/5 sexual orientation, gender identity, and religious discrimination | <ul style="list-style-type: none"> - review cases (bostock and blatt) posted on canvas - read Seiner pp. 446-452, 465-475 - review module on canvas - post one comment or question to the message board by Wednesday, Apr. 3 midnight | <ul style="list-style-type: none"> - module 11 exercise - If you want individual feedback on the exercise, please post your answer by Wednesday, Apr. 3 midnight |
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| Module 12 – week of 4/8 – 4/12 religious and disability discrimination | <ul style="list-style-type: none"> - read Seiner pp. 475-485, 489-501, 508-525, 529-532 - review module on canvas - post one comment or question to the message board by Wednesday, Apr. 10 midnight | <ul style="list-style-type: none"> - module 12 exercise - If you want individual feedback on the exercise, please post your answer by Wednesday, Apr. 10 midnight |
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| Module 13 – week of 4/15 – 4/19 disability discrimination | <ul style="list-style-type: none"> - read Seiner pp. 533-557 - review module on canvas - post one comment or question to the message board by Wednesday, Apr. 17 midnight | <ul style="list-style-type: none"> - module 13 exercise - If you want individual feedback on the exercise, please post your answer by |

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| Module 14 – week of 4/22 best practices; practice exam | <ul style="list-style-type: none"> - read Seiner pp. 635-648, 661-662, 663-665, 668-670, 673-678, 683-684, 688-693 - review module on canvas | <ul style="list-style-type: none"> - module 14 exercise - practice exam (self-assess using provided rubric) |

Exam period, May 1-9, 2024: Take Home Final Exam