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LESSON: Employment Law
SOURCE: Lesson created by us
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I. GOALS: Studying employment law helps students:

- A. Understand their rights as employees;
- B. Learn the history and foundation of the employer-employee relationship;
- C. Think critically about the balance of power in employer-employee relationships;
- D. Build on their understanding of contracts after our previous contracts class.

II. OBJECTIVES:

- A. Knowledge Objectives: — As a result of this class, students will be better able to
 1. Understand the fragile nature of their employment agreements;
 2. Identify the responsibilities of parties to “term” employment contracts, like professional athletes and movie stars.
 3. Know the
- B. Skills Objectives: — As a result of this class, students will be better able to
 1. Speak in front of the large group class;
 2. Think on their feet and respond to questions;
 3. Argue persuasively on important legal issues;
 4. Handle controversial issues like race and gender discrimination in a civilized manner.
- C. Attitude Objectives:— As a result of this class, students will feel
 1. Like the employment system is a delicate balance between employee and employer rights, often favoring the employer in the kinds of jobs teenagers usually have;
 2. That employment agreements and terminations are not always “fair;”
 3. That, despite these sometimes unfair relationships, at least employers cannot fire people for discriminatory reasons or reasons that violate public policy.

III. CLASS METHODS:

- A. Quick class poll: Who has jobs?
 1. Use the whiteboard and ask who in the class either has a job, will have a job this summer, or has had a job in the past.
 2. Explain that about 50 percent of people 16-24 were employed last July. Compare the class average to that number.
 3. Write down some sample jobs that the class has. In all likelihood, none of them will be for a fixed “term.”
 - a. Ask some of the employed teens if they had an agreed upon “term” of work.
- B. The “At Will” System. Explain that in jobs where there is no “term,” the employer can fire you for almost any reason.
 1. Show 22 second Donald Trump “you’re fired” montage (Trump link included in slide 4).
 2. Explain that this “at will” system is the reason employers can lay people off or downsize them for no relation to the employee’s work quality.
 - a. Show scene from “Office Space” wherein the consultants (The Bobs) have a talk with Peter, explaining that most of his friends will be downsized while he will be promoted. The highlights is Peter saying, “so you’re going to fire Michael and Samir and give me more money?” Demonstrates that employer can do just about whatever in terms of

firings. Brought DVD from home, could not find link to the exact scene online.

C. The “at will” system at work: Employee Privacy

1. Series of cases based on characters in *The Office* to demonstrate that employer can fire you for almost any reason in an at-will situation, even if it means “unfairly” interfering with your personal life. The purpose of this part is to show cases that the students will likely think were unfair in order to teach them that firings are not always fair.

2. Case #1: Jim and Karen are dating. Karen leaves Dunder Mifflin to work for Staples. David Wallace tells Jim he needs to break up with Karen or be fired. Jim refuses to break up with Karen. David Wallace fires him.

a. Poll the class with a show of hands. Make sure everyone commits to yes or no.

b. Cold call a “no” hand to explain the reasoning for why the firing should not be allowed.

c. Cold call a “yes” hand to explain the reasoning for why the firing should be allowed.

d. Reveal the answer: Yes, firing is allowed (Employment Law casebook explains that “most cases like this allow the firing”).

3. Case #2: What if David had told Jim not to date Pam, Jim’s coworker. Could David fire Jim for dating Pam?

a. Poll the class with a show of hands. Make sure everyone commits to yes or no.

b. Cold call a “no” hand to explain the reasoning for why the firing should not be allowed.

c. Cold call a “yes” hand to explain the reasoning for why the firing should be allowed.

d. Reveal the answer: Yes, firing is allowed. *Patton v. J.C. Penney* (Oregon 1986).

4. Case #3: What if, after Jim marries Pam, Jim has an affair with Leslie from Parks and Recreation. Can David fire him for that?

a. Poll the class with a show of hands. Make sure everyone commits to yes or no.

b. Cold call a “no” hand to explain the reasoning for why the firing should not be allowed.

c. Cold call a “yes” hand to explain the reasoning for why the firing should be allowed.

d. Reveal the answer: Yes, firing is allowed. *Staats v. Ohio National Life Insurance* (W.D. Pa. 1985).

5. Case #4: What if Jim walked into the office and found Michael having an affair with Erin, his secretary. Could David fire **Jim** for that?

a. Poll the class with a show of hands. Make sure everyone commits to yes or no.

b. Cold call a “no” hand to explain the reasoning for why the firing should not be allowed.

c. Cold call a “yes” hand to explain the reasoning for why the firing should be allowed.

d. Reveal the answer: Yes, firing is allowed. *Hillenbrand v. Evansville* (Ind. Ct. App. 1983).

6. Case #5: What if it was Michael that David fired for having been discovered?

- a. Poll the class with a show of hands. Make sure everyone commits to yes or no.
 - b. Cold call a “no” hand to explain the reasoning for why the firing should not be allowed.
 - c. Cold call a “yes” hand to explain the reasoning for why the firing should be allowed.
 - d. Reveal the answer: Yes, firing is allowed. Rogers v. IBM (1980).
7. Other “outrageous” firings (slide 12): Volunteering at AIDS clinic, going to night school, smoking (cases listed in slide 12).
8. By this time, the class should be pretty well worked into a froth over the outrageous firings. If a discussion happens [which it did, lots of questions], let the students talk things out and challenges their answers Socratically. In the end, the role of the teacher is to explain that there is no easy answer for why these firings are allowed, other than that it is simply an at-will system and workers and employers are allowed to come and go freely to inspire economic advancement.
- a. As a part of the discussion, explain that most jobs require drug testing (61 percent). Take another class poll to see if the class thinks drug tests are an invasion of privacy.
- D. “Term contracts” and for cause firings.
1. Remind the class that the vast majority of American employment agreements are not for an agreed upon term, they are “at-will.” (slide 14 has a nice pie chart showing the disparity to help the visual learners).
 2. Explain that in some narrow circumstances, there are “term” contracts; often in professional sports.
 - a. Slide 15 shows three Seattle coaches who signed multi-year “term” contracts.
 - b. Show video from NFL network about Jim Mora being fired after only one year of his five-year contract with the Seahawks (link included in slide 16).
 - c. Explain that all three coaches were fired before their contracts ended.
 3. Unlike “at will” contracts where employee can be fired for just about any reason at any time, term contracts can only be terminated “for cause” or by a “buyout.”
 - a. Explain the elements of “for cause” firings. The four factors of “satisfactory work” for which a violation must exist in order to fire someone “for cause”:
 - Regular attendance;
 - Obedience to reasonable work rules;
 - Reasonable quantity and quality of work;
 - Avoidance of conduct that hurts employer’s business.
 - b. Show the records of the coaches who were fired.
 - i. Poll the class: were the bad records these coaches had enough to demonstrate “for cause” firings?
 - ii. Challenge the “yes” answerers and “no” answerers. For “yes” answerers, explain that these coaches did lots of good things and did win some games here and there. For the “no” answerers, reminds them how much money the teams lost on account of the many losses the coaches earned. Make the answerers hold their ground as preparation for serving as hostile witnesses in the mock trial.

iii. Explain that none of the coaches were fired “for cause” and instead required “buyouts” of their contracts: the employer was required to pay the extra years of the contract.

E. Exceptions to “at-will” employment.

1. Remind class that most employment agreements are “at will” and employer can usually fire you for any reason (chart on slide 23).

2. Explain two main exceptions to “at will” employment:

a. Employer cannot fire you for a reason that violates public policy:

i. String of cases from *30 Rock* demonstrating public policy firings.

ii. Case #1: Fulfilling a public obligation: jury duty. Liz Lemon gets called for jury duty. Jack tells her she can’t be gone for jury duty. He tells her to dress up like a crazy person and get out of it. “Do whatever it takes to get out of jury duty. If you don’t get out of that jury, you’re fired.” Liz tries, but gets selected for the jury. Can Jack fire her?

a. Poll the class with a show of hands. Make sure everyone commits to yes or no.

b. Cold call a “no” hand to explain the reasoning for why the firing should not be allowed.

c. Cold call a “yes” hand to explain the reasoning for why the firing should be allowed.

d. Reveal the answer: No, firing is not allowed. *Nees v. Hocks* (Or. 1975). Cannot fire someone for fulfilling a public duty or obligation.

iii. Case #2: Committing an illegal act. Jack tells Kenneth he needs to phone in a death threat to President Obama. Kenneth knows this is a federal crime with huge penalties. Jack tells Kenneth he has to do it anyway or Jack will fire him. Kenneth still refuses and Jack fires him.

a. Poll the class with a show of hands. Make sure everyone commits to yes or no.

b. Cold call a “no” hand to explain the reasoning for why the firing should not be allowed.

c. Cold call a “yes” hand to explain the reasoning for why the firing should be allowed.

d. Reveal the answer: No, firing is not allowed. *Johnson v. Del Mar Distributing*. Cannot fire someone for refusing to commit an illegal act.

b. Employer cannot fire you or refuse to hire you for a discriminatory reason.

i. Explain the many federal statutes (slide 30) that prohibit you from employment discrimination based on (slide 31):

- Race
- National origin
- Ethnicity
- Religion
- Gender
- Age
- Disability

ii. Case #1: Individual Discriminatory Impact: Sven the Dane. Sven, a mechanic for Boeing, gets laid off. He thinks he was laid off because he was Danish. He reapplies for the job. He thinks he'll get it because he is qualified. He doesn't get it. The job remains open. Boeing hires Ole, a Norwegian.

a. Sven sues Boeing. He claims he was passed over because of his ethnicity. Boeing claims it didn't hire Sven because of his criminal record of stealing from employers. Sven thinks this reason is a pretext.

b. To prove a case of discrimination, Sven must show:

- Must show he was passed over and was qualified.
- Employer can respond with other reason.
- Sven can then prove pretext.
 - Could use evidence that manager used phrases like "dumb dirty Dane" or other bad things about Danes.

iii. Case #2: Systemic Disparate Impact: When an employer has a policy in place that, while looking neutral on its face, has a **disparate impact** on races, genders, or religious persons.

a. Seattle City Light has huge crews of people who dig ditches. The only real requirement for this job is to be good with a shovel. But Seattle City Light requires ditch-diggers to have a college degree, even though it is unrelated to ditch-digging. This results in only Norwegians working on these crews and no Danes.

b. The Danes sue. Seattle City Light says it's always had this requirement and certainly doesn't have it in place to discriminate against Danes.

i. What result?

a. Poll the class with a show of hands. Make sure everyone commits to yes or no.

b. Could call a "no" hand to explain the reasoning for why the degree requirement should not be allowed.

c. Could call a "yes" hand to explain the reasoning for why the degree requirement should be allowed.

d. Reveal the answer: No, degree requirement is not allowed. Griggs v. Duke Power. Degree not related to ditch-digging and had impact of keeping races out, despite lack of discriminatory intent.

iv. Case #3: Sexual harassment: Elle Woods from *Legally Blonde*. Elle Woods works at a law firm. The partner who runs the firm makes unwelcome sexual advances to Elle. He tells her she will be promoted if she has sex with him, and he'll fire her if she doesn't have sex with him.

a. Quid pro quo sexual harassment. Employer cannot make such threats.

v. Change of facts: Later, Elle Woods is at work at the law firm, and many of the men are being gross. They aren't coming onto her or demanding sexual favors. But they are making a lot of misogynistic remarks, telling terrible jokes about women, and being very graphic in talking about sex and women they'd like to "score" with.

a. Hostile work environment. Employer responsible for environment with atmosphere of sex discrimination. Elle can sue.

i. Gentle reminder to students to avoid such situations, remind them that not everything is "funny."

F. Employment Law Review Problem: Tiger and Elin Woods

a. Tiger Woods and his ex-wife, Elin Woods, have separated and divorced after revelations of Tiger's infidelity. Elin has moved to Seattle and gotten a job as a server at Top Pot donuts, the greatest restaurant in the history of the world. She did not agree upon any specified amount of time in accepting the job. Her manager, a deeply moral person who doesn't believe in divorce, learns that Elin is a divorcee. She immediately fires Elin. Can she do that?

i. Yes (employee privacy cases). Poll class and challenge answers.

b. Tiger had an endorsement deal with Dick's hamburgers to serve as spokesperson. The deal was set for \$1 million per year for four years. The contract allowed Dick's to end the agreement unilaterally "for cause" but did not explain what circumstances could count as "cause." After Tiger's many sexual affairs were revealed publicly, Dick's ended the agreement in the second year, claiming it ended the contract "for cause." Dick's would have owed Tiger \$2 million for the next two years.

ii. Is this a "for cause" firing? Poll class. Probably not, not really related to his work as spokesman. But there are good arguments either way.

iii. In all likelihood, a negotiated buyout case.

c. Tiger decides to take a year off from golf and work as an instructor at the Green Lake Pitch and Putt. He applies for the job. He is, quite obviously, very qualified to be a golf instructor. He is passed over for the job, and the course hires Annika Sorenstam, a famous female golfer, instead. Tiger has a hunch that he was passed over because he's a man, but he has no proof. The golf course says it hired Annika because she has a better short game and is thus more qualified.

i. If Tiger has no other proof, can he win his case for sex discrimination?

a. Poll class.

b. Probably not. He can't show that employer's reason was a pretext for sexism.

ii. What if he finds out that only women work at the course?

a. Poll class.

b. It would certainly help his case. But if the employer has a good reason for all the other people working there, the fact that they are women probably isn't that persuasive.

iii. What if he finds out that the female manager runs a sexist blog that includes crude epithets against men?

a. This is a great way to show that the employer's reason was a pretext and that the real reason was gender discrimination. Tiger will, in all likelihood, win this case.

d. After being fired from Top Pot, Elin decides to try her hand at being a bouncer. She applies to be a bouncer with the company that owns several bars in Seattle, including the Little Red Hen. Upon filling out the application, she finds a job requirement that "all applicants be at least 6' 3" tall." She does her research and finds that, because of this height requirement, all the company's bouncers are men. The company claims it has no bias against women, it just wants tall people as bouncers.

i. Is this height requirement valid? Poll class.

ii. No. *Griggs v. Duke Power*. Height requirement not closely related to bouncing. Lots of good short bouncers out there. Employer has to develop a better requirement that is more closely related to bouncing.