

Course Outline

COURSE:	LAWS 3401A – Employment Law
TERM:	FALL 2019
PREREQUISITES:	LAWS 0.5 credit from LAWS 2201, LAWS 2202, LAWS 2501, LAWS 2502, BUSI 2601 and 0.5 credit in LAWS at the 2000 level.
CLASS:	Day & Time: Tuesdays 11:35am-2:25pm Room: Please see Carleton Central for current room location
INSTRUCTOR:	Dr. Ania Zbyszewska
CONTACT:	Office: Room C475 Loeb Building Office Hrs: Tuesdays 3:00pm - 4:00pm, Wednesdays 3:30pm - 4:30pm Telephone: 613-520-2600 ext. 2621 Email: ania.zbyszewska@carleton.ca

CALENDAR COURSE DESCRIPTION

Legal regulation of the employment relationship; its contractual basis; defining employment; rights and duties of employees and employers; termination of employment; statutory regulation through employment standards legislation, human rights codes, workers' compensation acts, occupational health and safety and related statutes.

COURSE DESCRIPTION

The primary purpose of this course is to explore the legal regulation of the employment relationship in Canada at common law and through statutes. Topics will include defining employment; rights and duties of employees and employers; termination of employment; statutory regulation through employment standards legislation, human rights codes, workers compensation acts, occupational health and safety and related statutes. This course does not focus on collective bargaining regimes which is the focus of the Labour Law course.

The approach in this course is socio-legal and contextual. In addition to looking at the law itself, that is, the common law and statutory norms that regulate employment and other personal work relations, we will also look at their historical development and a range of contemporary critical policy issues related to ever-changing world of work to assess the fit between legal norms and the lived realities of work for a diverse Canadian population.

REQUIRED TEXTS

David J. Doorey, *The Law of Work*. Complete Edition (Toronto: Emond, 2017) (at the University Bookstore)

NOTE: Other supplementary readings and materials (video, audio, etc.) will be placed on cuLearn. While these are not designated as 'required' during every week (though they are designated as such during some weeks), you are *strongly encouraged* to engage with these materials as they will help you with your critical understanding and completion of your assessments.

SUPPLEMENTARY TEXTS

Students may find it helpful to locate statutes and cases discussed in this course. Some key websites are:

- Department of Justice- Canada (Consolidated Statutes) <https://laws.justice.gc.ca/eng/>
- Ontario Laws – E-Laws: <https://www.ontario.ca/laws>
- Access WestlawNext or Quicklaw on the Carleton University Library website.

EVALUATION

(All components must be completed in order to get a passing grade)

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

The assessment and evaluation in this course are structured as follows (see details below):

- 1. Critical Commentaries (2x10%each) 20% (due 26 September & 17 October, cuLearn)**
- 2. Mid-term Exam 35% (12 November, in class)**
- 3. Work History Interview: Narrative and Analysis 45% (due 6 December)**

1. Two Critical Commentaries; 750-1000w, approx. 3-4 double-spaced pages each (2x10%= 20%)

Write two critical commentaries on (a choice of):

- A legal case, OR
- An academic journal article, OR
- An employment law issue in the media, OR
- An employment/employment law issue on film.

In each case, you are required to draw on course materials (at least 1 article **and/or** your course textbook) in your interpretation and commentary on the chosen piece(s).

2. Mid-term Exam (35%)

The in-class mid-term exam will include short-response questions, a choice of essay questions, problem questions.

3. Work History Interview: Narrative and Analysis (45%); 2500w, approx. 10 double-spaced pp, + Research Log (interview questionnaire, notes, signed consent form)**

Interview someone you know about their work history, including the types of jobs (i.e. contracts) they held, relations with employers, and their experiences of transitions in and out of work during different life stages. Drawing on course materials, write a narrative (max 3 pages) and analysis (min 7 pages) of your interviewee's work history. In your analysis focus on the role that legal regulation has played in shaping this person's work experiences. Be sure to think about and consider the different types of legal norms and regimes (common law, statutory, etc.) that regulate work relations in Canada, and in Ontario specifically. Also, reflect on particular circumstances, regulatory gaps and other problems that might affect how someone navigates and experiences the world of work at different life stages or because of their social location.

****PLEASE NOTE:**

As part of this assessment, you will be required also to:

- Participate in **independent study and exercise in week 3** (24 September). During this exercise, you will informally interview one of your peers about their work experience and encounters with, or knowledge of employment law. You will then write a **brief memo summarizing your interview (400-500 words)**, which will be **due by noon, Monday 30 September** (cuLearn). Arrangements for the peer pairing will be discussed in week 2 class.
- Participate in **in-class tutorial in week 7** (29 October) on ethical considerations related to interviewing, and on the theory and practice of interview as a legal and research technique. You will then be asked to **submit a sample interview questionnaire for comments by noon, Monday 4 November** (cuLearn).

Both, the memo and the questionnaire will be graded on a pass/fail basis, and you will receive feedback on both these items. Your participation in both exercises and submission of two passing memos will constitute 5% of the “Work History Interview” grade. These items cannot be separated meaning that you must both participate and submit the accompanying document in both exercises to get the 5% credit.

You will also be required to submit your **Research Log** as an Appendix to your assessment. This will include your interview questions, interview notes and signed consent form.

If you are unable to make one of these dates for an important reason or due to mitigating circumstances, please let me know as soon as you can so that we can come up with alternative arrangements.

WEEKLY SCHEDULE**1. September 10 – Introduction to Employment Law in Canada**

- Why regulate work? Work vs employment? Why is employment law relevant in your life?
- Introduction to the personal employment relationship - common law and statutory regimes
- Course overview and logistics

Required Readings:

The Law of Work, Chapter 1, 2 and 3 (pp 3-46)

Recommended Supplementary Materials (cuLearn):

J. Fudge “Beyond Vulnerable Workers: Towards a New Standard Employment Relationship”, *Canadian Labour and Employment Law Journal* 12 (2005): 151-176.

J. Cantor, “[Working Anything but 9 to 5: Scheduling Technology Leaves Low-Income Parents with Hours of Chaos](#)”, *The New York Times*, August 13, 2014.

Objection! Goldblatt Partners Podcast, [Episode 1: Unpaid Work: Why making unpaid work illegal won’t make it stop](#) (15.10 mins audio)

2. September 17 – The World of Work and Contemporary Labour Markets

- From industrial standard employment to ‘Work 4.0’
- Employment and labour market regulation – a matter of policy and politics
- The ‘end of work’ or non-stop work?

Required Readings:

The Law of Work, Chapter 4, 5 (pp 47-75) and 19 (pp 245-256)

Recommended Supplementary Materials (cuLearn):

H. Arthurs, [*Fairness at Work: Federal Labour Standards for the 21st Century*](#) (Chapter 2)

Canadaland: CRUDE, [Episode 5: A Town, Annihilated](#) (33.36mins audio)

<https://talent.canada.ca/en>

3. September 24 – Employment (Law) in Daily Life – Diversity of Experiences (Independent Study and Peer Exercise – *Lecture Cancelled*)

- Work portraits in mass media and film – independent study/viewing
- **Exercise: Peer-to-peer interviews on encounters with work and employment law, memo writing and memo submission to cuLearn (instructions on peer-to-peer session arrangements will be provided in class during week 2); memo due by noon, Monday 30 September.**

Required Reading/Listening/Viewing:

Atkinson Live, Lovers & Fighters, Series 2, Episode 3 [Working While Black](#) (37.14mins audio)

The Broad Experience, Episode 42: [The outsider within: Transgender in the workplace](#) (21.29mins audio)

[Laila](#), Diane Beaudry/NFB, 1980 (10mins video).

[El Contrato](#), Min Sook Lee/NFB, 2003 (51mins video)

****DUE DATE: Thursday, 27 September - First Critical Response**

4. October 1 – Getting Hired

- Recruitment and hiring in common law and in statute (non-discrimination)
- Requirements of employment contracts in common law and statute
- Contractual terms – expressed and implied

Required Readings:

The Law of Work, Chapter 6, 7, 8 and 9 (pp 79-123); Chapter 25 (329-333); Chapter 26 (341-344)

Recommended Supplementary Materials (cuLearn):

Changing Workplaces Review, s. 5.2.1. [Definition of employee](#)

Changing Workplaces Review, s. 5.2.2. [Definition of employer](#)

[Lian v J. Crew Group Inc.](#), [2001] 54 O.R. (3rd) 239, 2001 CanLII 28063 (ON SC).

E. Raymer, "[Contracting in the gig economy](#)", Canadian Lawyer Magazine Online, 26 November 2018.

5. October 8 – Terms and Conditions

- Wages, time and leaves
- Wage discrimination and pay equity

Required Readings:

The Law of Work, 21 and 22 (pp 269-315)

Recommended Supplementary Materials (cuLearn):

[Changing Workplaces Review, s. 5.3.1; 5.3.7](#)

M. Crawley and A. Janus, "[Ford government freezing \\$14 minimum wage as part of labour reform rollbacks](#)," CBC News, posted October 23, 2018.

M. Cornish, [A Growing Concern: Ontario's Gender Pay Gap](#). Canadian Centre for Policy Alternatives, 2014 (pp 1-36).

L. Duxbury and C. Higgins, [Revising Work-Life Issues in Canada: The 2012 National Study on Balancing Work and Caregiving in Canada](#) .

6. October 15 – Human Rights at Work

- Grounds of discrimination
- Discrimination and accommodation – during the employment contract
- Bona fide occupational requirement defense

Required Readings:

The Law of Work, Chapter 25, 26 (pp329-351 – review from week 4); Chapter 27, 28, 29 (pp353-392)

Recommended Supplementary Materials (cuLearn):

OHRC, [Who is Protected at Work?](#) and [Grounds of Discrimination](#)

[*BC \(Public Service Employee Relations Commission\) v. BCGSEU \(Meiorin\)*](#) [1999] 3 SCR 3.

TakeLaw.ca Podcast, [#metoo Harassment in Ontario: OSHA and the Law](#). (June 28, 2018).

****DUE DATE: Thursday October 17 – Second Critical Response**

OCTOBER 21 –25 Fall Break, No Classes

7. October 29 – Occupational Health and Safety

- Health and safety obligations of employers and employees
- Workers compensation system
- **In-class tutorial on research ethics and interview skills**

Required Reading and Materials (text and cuLearn):

The Law of Work, Chapter 24 (pp317-328)

Ontario, Office of the Worker Adviser, [Filing a WSIB Claim](#).

Ontario Ministry of Labour, [Workplace Fatalities](#) (January 2018).

Ontario, [A snapshot of occupational health and safety in Ontario](#), 2016.

CRUDE, [Episode 5: A Town, Annihilated](#) (33.36mins) (if you have not listened in week 2, now is time)

Sarah Morin, [“More remains to be done 5 years after Lac-Mégantic, says rail safety consultant, CBC News,”](#) posted July 6, 2018.

8. November 5 – Termination of Employment – When Things don’t Work Out

- Termination by agreement, frustration, with reasonable notice
- Quitting a job

Required Readings:

The Law of Work, Chapter 11, 12, 13 (133-167); Chapter 17 (pp 217-223)Chapter 23 (303-315)

Recommended Supplementary Readings (cuLearn):

D. Lublin and E. Dooley, [‘What’s the right way to quit a job on good terms?’](#) Special to the Globe and Mail, published June 25, 2017.

D. Doorey, [‘Is it time to abolish ‘reasonable notice’ in employment contracts?’](#) @lawofwork

9. November 12 – Mid-term Exam**10. November 19 – Termination of Employment – When Things go Wrong**

- Dismissal – Summary, Constructive, Wrongful
- Common law remedies for wrongful dismissal

Required Readings:

The Law of Work, Chapter 14, 15, 16 (169-215)

Recommended Supplementary Readings (cuLearn):

McKinley v. BC Tel [2001] 2 S.C.R. 161, 2001 SCC 38.

[Negative Amanda Todd post costs man his job](#), CBC News, posted Oct 16, 2012.

11. November 26 – Critical Policy Issues – Claims and Enforcement

- Making claims under the ESA and other statutes
- Access to justice issues related to enforcement

Required Readings (cuLearn):

Ontario, [Filing an Employment Standards Claim](#)

S. Mojthehdzadeh, [“Ministry of Labour puts hold on proactive workplace inspections, internal memo says”](#), Reposted from The Star.com, October 25, 2018.

L. Vosko, E. Tucker, M. Thomas and M. Gellatly, [“New Approaches to Enforcement and Compliance with Labour Regulatory Standards: The Case of Ontario, Canada”](#), Research Report for the Law Commission of Ontario study of precarious work, 2011.

12. December 3 – Critical Policy Issues – Unemployment, Mobility, Care, Climate Change

- In this final session, we explore a range of critical policy issues that challenge employment law norms and return to the question of whether they serve their purpose, and to the broader questions about the limits and possibilities of law.

Required Readings:

The Law of Work, Chapter 30 (pp 395-406), Chapter 31 (pp 407-419)

Recommended Supplementary Materials (cuLearn):

[Interview with a Free Man](#), Nicolas Levesque/NFB, 2015 (6mins video)

S. Marsden, "Silence Means Yes Here in Canada": Precarious Migrants, Work and the Law, *Canadian Labour and Employment Law Journal* 18(1)(2014): 1-38.

S. A. Khan, "From Labour of Love to Decent Work: Protecting the Human Rights of Migrant Caregivers in Canada", *Canadian Journal of Law and Society* (2009) 24(1), pp.23-45.

S. Block and G. Edward Galabuzi, [Canada's Colour Coded Labour Market: The gap for racialized workers](#), Wellseley Institute and Canadian Centre for Policy Alternatives, 2011.

S. MacKinnon, *Decolonizing Employment: Aboriginal inclusion in Canada's Labour Market* (University of Manitoba Press, 2015), Chapter 2 (ebook).

****DUE DATE: December 6 – Work History Interview: Narrative and Analysis**

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: <https://carleton.ca/equity/accommodation/academic/students/>

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: <https://carleton.ca/equity/accommodation/academic/students/>

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally scheduled exam (if applicable). <https://carleton.ca/pmc/students/accommodations/>

Plagiarism

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet.

Plagiarism is a serious offence.

More information on the University's Academic Integrity Policy can be found at:

<https://carleton.ca/registrar/academic-integrity/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/sexual-violence-support/>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit:

<https://carleton.ca/equity/accommodation/academic/>

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>