

**EMPLOYMENT DISCRIMINATION (3 cr)**  
**Professor Elizabeth Bartholet**  
**Spring 2008**

**COURSE INFORMATION AND SYLLABUS**

**Text:** Rutherglen & Donahue, EMPLOYMENT DISCRIMINATION (Foundation Press 2005)

**S:** Refers to 2007 Supplement (Foundation Press 2007)

**M:** Refers to Multilithed Packet available at the Distribution Center

**Administrative Details**

*Contact Information for Professor Elizabeth Bartholet*

Office: Hauser Hall 422

Telephone: (617) 495-3128

E-mail: ebarthol@law.harvard.edu

Office Hours: Fridays: 3:00pm - 5:00 pm

(Email Prof. Bartholet directly for appointment, or just walk in – but if the latter, best to check with my assistant to make sure I'll be here.)

Faculty Assistant: Eleanor Topping

Office: Hauser Hall 418

Telephone: (617) 496-0551

Email: etopping@law.harvard.edu

*Course Website*

Check the course website for announcements and materials. To access it, go to <http://myhls.law.harvard.edu>, and log into the site via the "Login to My HLS" link. Click on the "Courses" Menu tab and then click on **Employment Discrimination**. Student's planning to cross-register must do so at the HLS Registrar's office. When the paperwork is completed, the registrar's office will notify the IT office to set up an account for the student. Auditors need to bring a note (email will suffice) from the faculty member or the faculty assistant describing the need for access to the iCommons site to the Student Services Administrator in Hauser 025. Non-HLS auditors also need to bring a picture ID or school ID # to the Student Services Administrator in Hauser 025.

**Course Requirements**

There will be a take-home examination on a scheduled day.

Grades will be based primarily on the exam, but may be adjusted up on the basis of class performance if the class enrollment is 50 or less, and, if assigned written or oral exercises are given, may be adjusted up or down based on such exercises.

## SYLLABUS

Week	Date		Pages
1	Jan 29	<b>INTRODUCTION</b>	
		Historical Perspective	Text 1-5
		Speech by President Kennedy, June 11, 1963	M
		U.S. Supreme Court Justices Lewis, <i>Justice Dept. Reshapes Its Civil Rights Mission</i> , NY Times, p. 1 (6/14/07)	M M
		Theories of Discrimination: <i>Teamsters</i> Supp. 1B	Text 5-31 S 5-9
	Jan 30	<i>Price Waterhouse v. Hopkins</i>	Text 31-48
		<b>INDIVIDUAL CLAIMS OF INTENTIONAL DISCRIMINATION:</b> <i>McDonnell Douglas</i>	Text 49-62
2	Feb 5	<i>Furnco, Hicks</i>	Text 62-90
		Supp. 2B: <i>Ash v. Tyson Foods, Inc.</i>	S 10-11
	Feb 6	<b>After-Acquired Evidence, Retaliation:</b> <i>McKennon, Taitt</i> Supp. 2C	Text 90-107 S 11-12
		<i>Burlington Northern &amp; Santa Fe R. Co. v. White</i> , 26 S. Ct.2405 (2006)	S 12-24
		<i>Jordan v. Alternative Resources Corp.</i> (4 <sup>th</sup> Cir. 2006), <i>cert.</i> <i>denied</i> , 127 S. Ct. 2036 (07)	M
3	Feb 12	<b>CLASS CLAIMS: FROM INTENTIONAL DISCRIMINATION TO DISPARATE IMPACT:</b> <i>Hazelwood, Bazemore, Griggs</i>	Text 108-49
	Feb 13	<i>Albemarle</i>	Text 149-73
4	Feb 19	<i>Davis, Dothard, Teal</i>	Text 173-211

	Feb 20	<i>Wards Cove</i>	S 25 Text 211-21
		Bartholet, <i>Application of Title VII to Jobs In High Places</i> , 95 Harv. L. Rev. 945 (1982 ), §§ I, III C, V, pp. 948-59, 983- 98, 1026-27	M
5	Feb 26	Krieger and Fiske, <i>Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment</i> , pp. 1027-1038, 1052-1061	M
		Carey, <i>Study Finds Police Training Plays Key Role in Shootings</i> , NY Times, p.A8 (6/2/07)	M
		<b>SEX DISCRIMINATION</b>	
		<b>Equal Pay &amp; Comparable Worth:</b> <i>Manhart</i>	Text 222-25 Text 279-93
	Feb 27	Pregnancy: Geduldig, Newport News	Text 293-317
		<i>Paid leave for Maternity Is the Norm, Except In...</i> , NY Times, p. B6 (10/6/07)	M
6	March 4	<b>Work-Family Conflict:</b> <b>VISITORS:</b> Brad Karp, Esq. and Claudia Hammerman, Esq. of Paul, Weiss, Rifkind, Wharton and Garrison <b>ADDITIONAL ASSSIGNMENT PACKET TO BE DISTRIBUTED</b>	
		Leonhardt, <i>Scant Progress On Closing Gap in Women's Pay</i> , NY Times, p.1 (12/24/06)	M
	March 5	<b>BFOQ:</b> <i>Dothard, Johnson Controls</i>	Text 317-42
7	March 11	<b>Sexual Harassment:</b> <i>Meritor, Oncale, Burlington Industries v. Ellerth</i>	Text 342-90 S28-31
	March 12	Hebert, <i>Why Don't 'Reasonable Women' Complain about Sexual Harassment?</i> Indiana Law Journal, Vol. 82 (2006)	M

Wright, *The Evolutionary Psychology of the Female Mind*, *The New Republic* (11/28/94) M

**OTHER GROUNDS OF DISCRIMINATION:**

8 March 18 **National Origin:** *Espinoza, Garcia* Text 391-411  
*Maldonado v. City of Altus*, 433 F.3d. 1294 (10<sup>th</sup> Cir. 06) M

March 19 **Religion:** *Hardison* Text 411-27

**AFFIRMATIVE ACTION:**

*Weber* Text 478-501

**SPRING BREAK MARCH 25-26**

9 April 1 *Sheet Metal Workers, Johnson* Text 461-78,  
Supp. Ch. 6 502-20  
S34-35

April 2 Kang, & Banaji, *Fair Measures: A Behavioral Realist Revision of "Affirmative Action,"* 94 Calif.L.R.1063 (2006) M

**PROCEDURES**

Statute of Limitations, Supp. 7 B: *Ledbetter* Text 521-24  
S 37-47

10 April 8 **Class Actions:** *Falcon* Text 560-73  
Supp. 7 C S 47-51

**Arbitration:** *Gilmer* Text 573-89

Sternlight, *Creeping Mandatory Arbitration: Is It Just?* 57 M  
Stan. L. Rev. pp. 1631-1648 (2004-2005)

April 9 Sternlight, *supra*, pp.1648-75 M

**Remedies:** *Albermarle, Franks, Teamsters* Text 589-625

11	April 15	<b>Attorney Fees:</b> Christiansburg	Text 643-52
		<b>AGE DISCRIMINATION:</b> <i>Metz, Hazen</i>	Text 693-713, 717-26 S 53
	April 16	<i>Smith, Criswell</i>	Text 726-61
12	April 22	<b>DISABILITY DISCRIMINATION:</b> <i>Bragdon, Sutton, Toyota</i>	Text 762-822
		<i>Davis, Barnett</i>	Text 831-59
	April 23	<i>Chevron</i> <i>Huber v. Wal-Mart, (8<sup>th</sup> Cir. 2007), cert granted, __</i> <i>U.S.__(12/07/07)</i>	Text 867-878 M