

Course Outline – Employee Rights for Solo Practice University®

This course will have twelve one-hour classes.

(1) Overview of Employee Rights Law

a. Pros and Cons of Employee Rights Practice

- i. Pros: interesting, fight for little guy, can find value in work, open frontier of niches/opportunity, can be profitable if careful and disciplined approach
- ii. Cons: high emotion/negativity in litigation, many struggle to be profitable, value traps

b. Case Evaluation: Big-Picture Issues and Traps

- i. Financial Injury & Damages- the Threshold Issue (Usually)
- ii. Traps
 1. The High-Merit/Low-Value Trap
 2. Don't provide good value (e.g. \$1000 demand letter)
 3. Spread self too thin
 4. Jack-of-all-trades trap
 - a. Vast practice areas: know the landscape, but don't try to farm it all
 5. Take clients don't get along with
 6. Other (talk to experienced attorneys in your chosen location, specific practice types)
- iii. Merits/Statistics – Generally tough for employees
 1. Fed Stats, example
 2. WI discrimination law, example
- iv. Selectivity – Importance of
 1. Fact-intensive cases
 2. Choose right
 3. Learn from others' mistakes, try to avoid your own
- v. Litigants' Resources/Leverage
 1. Plaintiff's usual resources
 2. Defendant's usual resources

c. Common Views of Plaintiff/Employee, of Defense/Employer

- i. Emotional
 1. Common Plaintiff perspectives
 2. Common Defendant perspectives
- ii. Incentives
 1. Plaintiff's Attorney
 - a. Hourly-Based
 - b. Contingency & Value- Based
 2. Defense Attorney
 - a. Usually hourly

d. Employment at will doctrine

e. Termination-Based Claims

- i. 3 classes of claims/employment-at-will exceptions
 1. Contractual- Type Claims
 - a. CBA/Union
 - i. Labor Law
 - b. Contract - Non-Union
 - i. Contract Offshoot claims (e.g. common law that handbook creates for-cause contract)
 - c. Arbitration
 2. Discrimination- Type Claims
 - a. Fed. Discrim.
 - i. Title VII
 1. Protected classes
 2. 1983
 - ii. State Discrimination
 1. Duplicate Title VII, plus
 - a. More protected classes
 - b. Different forums and remedies
 2. FMLA
 3. Anti-Bullying
 - b. Common Law- wrongful discharge

f. Wage & Benefit Claims

- i. Wage Claims
 1. Screen for:
 - a. Damages within SOL
 - b. Current employee vs. former
 - c. Systemic/class vs. individual
 2. Minimum Wage & Overtime
 - a. FLSA
 - i. Damages
 - ii. SOLs
 - iii. Collective Action
 - iv. Exemptions
 - v. Forums
 - b. State
 - i. Damages
 - ii. SOLs
 - iii. Exemptions
 - iv. Class/Collective Action

- v. Forums
- 3. Full-Pay Wages
 - a. Statutes (State)
 - b. Contract-based
- 4. Equal Pay/Discriminatory Wages
- 5. Specialty Worker Wages (e.g. DOL wage claims for immigrants or child labor, prevailing wage)
- ii. Benefit Claims
 - 1. Unemployment
 - 2. ERISA
 - a. Short term and long term disability
 - b. Pension/401k
 - c. Health insurance
 - 3. Workers Comp.
 - 4. SSD
- g. Other Adverse Actions, Incl. Post-Employment**
 - i. Non-compete
 - ii. Defamation
 - iii. Privacy
 - iv. Fraud & RICO

(2) Intake/Prospective Client Process

- a. Example Employee Intake FORM
- b. Example Employee Intake CALLER
- c. Case Evaluation
- d. Case feasibility

(3) Setting Up an Employee Rights Practice

(a) **Disclaimer:** set-up areas I am and am not experienced in

(b) Set-Up Considerations: Lifestyle & Financial

- i. Goals-- Start with Ends in Mind
 - 1. My view: Good Existence is first
 - 2. TED video re Experiencing Self vs. Remembering Self
 - 3. Ideals
 - a. Hours
 - b. Work environment
 - c. Areas of practice
 - 4. Revenue –
 - a. How much you need vs. realistic
 - b. Back-end (contingency) vs. Front-end (e.g. hourly or flat fees)
 - 5. Overhead

- a. Core costs
- b. Discretionary costs

(c) Education

- ii. Talk to experienced EE rights attorneys
 - 1. Talk to attorneys in different areas, e.g. solo discrimination specialist, 30+ attorney wage class action firm, boutique labor law firm, etc.
 - 2. Ways to meet experienced attorneys
 - a. Via Organizations: www.nela.org, State-affiliates of NELA, www.justice.org (AAJ), State-affiliates of AAJ, ACS, bar organizations (e.g. ABA L&E section, IRR of WI Bar)
 - b. Via listserv
 - c. Via events (e.g. moot court)
 - d. Via mentoring program
 - e. Via co-counsel (bring them a case, work)
 - 3. Questions to ask
 - a. Areas of interest?
 - b. Areas of success?
 - c. Areas of opportunity?

(d) Identify Limited Scope and Niche(s) of Practice

- i. Factors to Align: What Makes a Good Area for You is an:
 - 1. Area of interest
 - 2. Area of value
 - 3. Area of opportunity (market), not too much competition
 - 4. Area of efficiency
 - a. e.g. unbundled services?
- ii. Identify Limitations (NO “jack-of-all-trades”)
- iii. Examples of focused/niche practices:
 - 1. wage class actions, federal employees, qui tam, disability discrimination, sexual harassment.

(e) Identify Core Competencies

- i. Procedural
 - 1. e.g. EEOC and/or State agency procedure, DOL procedure, federal court rules
 - 2. read, e.g. discrim. agency procedural manual; local federal court’s local rules
- ii. Substantive
 - 1. e.g. read FLSA collective action treatise

(f) Marketing

- i. What's effective? You sure?
- ii. Expensive
 - 1. YP
 - 2. Radio
 - 3. TV
 - 4. Findlaw
- iii. Free
 - 1. Blog
 - 2. Articles contributed (for bar, etc.)
- iv. Inexpensive
 - 1. Blog/advance
 - 2. Google Adwords

(g) Fee Issues

- i. Learn legal limitations
 - 1. Practice-Area-Specific
 - a. e.g. WI workers comp atty fee capped at 20%, WI UC capped at
 - 2. Ethics Rules
 - a. Know ethics rules, cases re billing (e.g. contingency requirements)
 - b. Retainer rules
 - i. e.g. WI ethics rules require retainer agreement incl. specific language depending on various fee types, factors
- ii. Hourly
 - 1. Cons and Pros
- iii. Value-Based
 - 1. Contingency
 - 2. Flat fee
 - 3. Hybrid: flat fee + contingency; reduced hourly + contingency
- iv. Diversity in fees
 - 1. e.g. too many back-end contingency-fee cases with low front-end revenue