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
            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
      3. Whistleblower-Type Claims
         a. Statutory
         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](http://www.nela.org), State-affiliates of NELA, [www.justice.org](http://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