



Protective Legislation for Workers | Spring 2014

Profs. Barouh/Rosasco

Bios:

Evan Barouh graduated from the Cornell ILR School in 1982 and from St. John's University School of Law in 1987. From August 1983 to August 1984, the year before he started at St. John's Law, he was a paralegal in the labor and employment law practice group of Simpson Thatcher & Bartlett. In September 1987, he joined the New York Regional Office of the U.S. Department of Labor, Office of Solicitor where he has been ever since. The majority of his practice is devoted to enforcement of the Fair Labor Standards Act and the Occupational Safety and Health Act. He runs the term-time law school student externship program at the NY Solicitor's office and has mentored St. John's Law School students since 2005. He is a 2012 recipient of the Federal Executive Board's Award for Distinguished Career Service. Evan serves on the Executive Committee of the Board of Advisors of the Center for Labor and Employment Law.

Troy Rosasco graduated from the Cornell ILR School in 1985 and from St. John's University School of Law in 1989. After initially working at the national management-side employment law firm Jackson Lewis, he found his comfort zone representing workers and currently practices in the areas New York Workers' Compensation, Social Security disability, ERISA disability claims, municipal disability pensions and Zadroga Act 9/11 Victim Compensation Fund claims. Since 1995 he has been a partner at Turley, Redmond, Rosasco & Rosasco, LLP with offices in New York City and Long Island. He was the founding Co-Chairman of the New York State Workers' Compensation Alliance, a former Executive Board Member of the New York Injured Workers' Bar Association and a former Board Member of the National Organization of Social Security Claimants' Representatives representing the Second Circuit. In 2009, he was presented with the Clara Lemlich Distinguished Public Service Award by the Triangle Shirtwaist Factory Fire Memorial in NYC. Troy serves on the Board of Advisors of the Center for Labor and Employment Law at St. John's Law School.

Contact Information	Evan Barouh, barouhe@stjohns.edu Troy Rosasco, rosascot@stjohns.edu , 631-582-3700 x123
Office Hours	Tuesdays prior to class, by appointment and Thursday evenings by appointment. In addition, we encourage you to post questions in the "Virtual Office Hours" forum on TWEN.
Course Description	This practical course covers statutory safety and health protections for workers, including the federal Occupational Safety and Health Act (OSHA) and the New York State Workers' Compensation Law. It also covers economic security protections for workers under the federal Fair Labor Standards Act (FLSA) and the Social Security Act (SSA). At all

times the professors will balance traditional teaching methods with real world examples, forms and practical guidance that may be easily used by students in transitioning to post-law school employment opportunities.

Class Meetings

Tuesdays, 8:35pm – 10:35pm, Room 1-13

Course Goals

By the end of the course, you should be able to:

- understand the history and purpose of the federal OSHA (prevention of work related illnesses and injuries), employer record- keeping requirements, inspections, citations, and how to defend employers
- understand the history and purpose of the New York Workers' Compensation Law (compensation and medical care for workers after work related injuries and illnesses), eligibility, benefit levels, inter-relationships with tort claims, and how to file employee claims
- understand the history and purpose of the federal Fair Labor Standards Act (FLSA), coverage, exclusions, overtime definitions and pay rates, and how to file employee claims
- understand the history and purpose of the three legs of the federal Social Security Act in protecting the economic security for workers through the Retirement Program, the Disability Program and the Survivors' Program and how to file claims for all types of benefits

Required Textbooks

1. No textbook required. Readings as assigned, which will be posted on TWEN.

Assessment

Your final grade will be based on a final examination, which will consist of a closed book, two hour essay exam.

Active class participation is a requirement of the course. *Exceptional* participation, in both quality and quantity, will be recognized with up to a half letter grade increase. Conversely, subpar participation will result in either a half or whole letter grade deduction.

Attendance

Regular attendance is a requirement of the course. In accordance with the Student Handbook, you may miss up to and including two class sessions (4 hours) without penalty. Any absence above this number will result in automatic failure of the course. If you arrive late or leave early, it will be counted as a half absence. If you are unprepared, you will be marked absent for the class.

Course Website

We will be using TWEN as our course website.

Laptop Policy

You are welcome to use laptops, iPads, and other similar devices for legitimate classroom purposes, i.e. taking notes. No surfing the internet, use of headphones or cell phones (including texting) is allowed in class.

Schedule

All readings are from materials we will post on TWEN and which are also accessible on the internet and on Westlaw.

Date	Topic(s)	Assignment
1/7/14	<p>Introduction to the class. Joint presentation by ERB & TGR.</p> <p>History, context, and perspective on the first portion of the class – Workers’ Compensation and OSHA -- development of laws designed to prevent workplace injuries and illnesses (OSHA) and to compensate employees who are injured or killed in the workplace (Workers Compensation Laws).</p>	<p>Read the first 5 sections of the Occupational Safety & Health Act at: http://goo.gl/vrxBJw</p> <p>Watch the videos: “The Story of OSHA” “The Fight for Occupational Safety and Health”</p> <p>Watch: PBS American Experience Documentary, Triangle Fire (2011)</p> <p>Skim: Cornell University ILR School Website: Remembering the 1911 Triangle Factory Fire</p> <p>Skim: Richard A. Epstein, “The Historical Origins and Economic Structure of Workers' Compensation Law.” 16 Georgia Law Review 775 (1981).</p>
1/14/14	<p>OSHA: Overview of the statute, the enforcement scheme, the Agency.</p>	<p>Read: sections 6 through 12 of the OSH Act</p> <p>http://goo.gl/vrxBJw</p> <p>New York State Electric & Gas Corporation v. Secretary of Labor, 88 F.3d 98, Marshall v. Barlow’s Inc., 436 U.S. 307, 98 S.Ct. 1816 (1978), Chao v. OSHRC (Eric K. Ho) 401 F.3d 355 (5th Cir. 2005)</p> <p>Look at www.oshrc.gov</p>
1/21/14	<p>OSHA 5(a)(1) v. 5(a)(2); defenses to citations</p>	<p>Sect’y of Labor v. Post Buckley Schuh & Jerningan, 2012 O.S.H.D. (CCH) P 33220, 2012 WL 1565789 (O.S.H.R.C.);</p> <p>National Realty & Const. Co., Inc. v. OSHRC, 489 F.2d 1257 (D.C.Cir. 1973)</p>
1/28/14	<p>OSHA – multiemployer worksites</p>	<p>Dic-Underhill, 513 F.2d 1032;</p> <p>Secretary of Labor v. Anning-Johnson, 4 O.S.H. Cas. (BNA) 1193, 1975-1976 O.S.H.D. (CCH) P 20690, 1976 WL 5967 (O.S.H.R.C.)</p>

<p>2/04/14</p>	<p>New York State Workers' Compensation</p> <p>-Overview, Structure, Claims Process</p>	<p>Read: Employees' Guide to Workers' Compensation in New York State http://www.wcb.ny.gov/content/main/Workers/InjuredOnTheJob.pdf</p> <p>Read: Claimant Information Packet with Claim Forms http://www.wcb.ny.gov/content/main/TheBoard/EmployersClaimantInformationPacket.pdf</p> <p>Read: Understanding Your Schedule Loss of Use Award http://www.wcb.ny.gov/content/main/TheBoard/SLU.pdf</p> <p>Read: What is Workers' Compensation Fraud? http://www.wcb.ny.gov/content/main/TheBoard/WhatIsFraud.pdf</p> <p>Skim: Structure of the Board http://www.wcb.ny.gov/content/main/TheBoard/factsht.jsp</p> <p>Skim: "NYS Workers' Compensation Employers' Handbook" http://www.wcb.ny.gov/content/main/Employers/EmployerHandbook.pdf</p> <p>Skim: 2011 Workers' Compensation Board Annual Report & Statistics http://www.wcb.ny.gov/content/main/TheBoard/2011AnnualReport.pdf</p>
<p>2/11/14</p>	<p>Workers' Comp –</p> <p>Accidents, Arising Out of and in the Course of Employment, Medical Causal Relationship</p>	<p>Read:</p> <p>Lemon v. New York City Transit Auth., 72 N.Y.2d 324, 528 N.E.2d 1205 (1988)</p> <p>Matter of Husted v. Seneca Steel Serv., 41 N.Y.2d 140 (1976)</p> <p>Wolfe v. Sibley, Lindsay & Curr. Co., 330 N.E.2d 603, 36 N.Y.2d 505 (1975)</p> <p>Mintiks v. Metro. Opera Ass'n, Inc., 153 A.D.2d 133, 550 N.Y.S.2d 143 (1990)</p> <p>Schechter v. State Ins. Fund, 6 N.Y.2d 506, 160 N.E.2d 901 (1959)</p>
<p>2/18/14</p>	<p>No Class</p>	

2/25/14	<p>Workers' Comp –</p> <p>Occupational Diseases, Third Party Tort Claims, Liens</p>	<p>Skim: "Occupational Disease Under the New York Workmen's Compensation Law, " <i>St. John's Law Review</i>: Vol. 42: Iss. 4, Article 1., Chojnacki, Robert J. (1968)</p> <p>http://scholarship.law.stjohns.edu/lawreview/vol42/iss4/1</p> <p>Read:</p> <p>Burns v. Varriale, 9 N.Y.3d 207, 879 N.E.2d 140 (2007)</p> <p>Bellamy v Columbia Univ., 50 A.D.3d 160, 851 N.Y.S.2d 406 (2008)</p>
3/04/14	No class. Spring Break.	
3/11/14	<p>Fair Labor Standards Act (FLSA)</p> <p>History and overview, coverage, what is work? NYS wage law</p>	<p><u>Brooklyn Savings Bank v. O'Neil</u>, 324 U.S. 697, 65 S.Ct. 895;</p> <p><u>Anderson v. Mt. Clemens Pottery</u>, 328 U.S. 680, 66 S.Ct. 1187;</p> <p><u>Chao v. Gotham Registry</u>, 514 F.3d 280</p>
3/18/14	<p>FLSA Current issues – the living wage, wage theft, independent contractors, unpaid internships</p>	<p>Glatt v. Fox Searchlight Pictures,</p> <p>Irizarry v. Catsimides</p>
3/25/14	<p>FLSA – The Tip Credit, the Exemptions</p>	<p>National Restaurant Association v. Solis,</p> <p>29 CFR Part 541</p>

4/01/14	<p>Social Security Act</p> <p>History & Overview</p>	<p>Skim & Explore: Social Security Administration History Webpage</p> <p>Read: Understanding the Benefits Pamphlet (2013)</p> <p>Read: Helvering v. Davis, 301 U.S. 619 (1937)</p> <p>Read: Fast Facts & Figures About Social Security</p>
4/08/14	<p>Social Security Disability Benefits</p> <p>– Intro, SSDI vs. SSI, Insured Status, Five Step Sequential Evaluation Process for Disability Determination</p>	<p>Read:</p> <p>Differences between SSDI & SSI Programs (Chart)</p> <p>Insured Status: Collier v. Barnhart, 473 F. 3d 444 (2nd Cir 2007)</p> <p>§ 404.1505. Basic definition of disability</p> <p>§ 404.1520. Evaluation of disability in general.</p> <p>Five Step Sequential Evaluation Process for Disability Detail</p> <ol style="list-style-type: none"> 1) Is Claimant performing Substantial Gainful Activity (SGA)? SGA Income Caps 2) Is the Medical Condition Severe? 3) Does Claimant’s Medical Condition Meet a Listing? 4) Can the Claimant do Past Relevant Work? 5) Can the Claimant do Other Work? Read: Heckler v. Campbell, 461 US 458 (1983).

<p>4/15/14</p>	<p>Social Security Disability</p> <p>Applications, Appeals, Current Policy Issues</p>	<p>See: 2012 Social Security Disability Waterfall Chart (SSA)</p> <p>Read: The Appeals Process Pamphlet</p> <p>The Administrative Process</p> <ol style="list-style-type: none"> 1) Online Initial Application 2) Request for Reconsideration 3) Request for Hearing Before Administrative Law Judge (ALJ) – see SSA Form 501 <ol style="list-style-type: none"> a. The Hearing <ol style="list-style-type: none"> i. Who is the ALJ? ii. Where is the Hearing – Video or Face to Face iii. Medical Evidence & Jurisdictional documents iv. Claimant testimony – credibility v. Medical Experts vi. Vocational Experts vii. Written Decision 4) Request for Review by SSA Appeals Council 5) Federal Court Complaint & Review <p>Current Policy Issues Facing the Social Security Disability Program</p> <p>Watch: Disability, USA (60 Minutes, 10/6/13)</p> <p>Read: Queens Social Security ALJ Bias Class Action Lawsuit (NY Times, 4/13/11)</p> <p>Read: Rejected Queens Disability Claims May Be Reheard (NY Times, 1/11/13)</p> <p>Read: Unfit for Work (National Public Radio, 3/22/13)</p> <p>Read: Is Disability the New Welfare? (LA Times, 4/3/13)</p> <p>Read: A Disability Lawyer Responds (The National Review Online, 4/3/13)</p>
<p>4/22/14</p>	<p>Final review and questions</p>	<p>No additional readings.</p>