



Protective Legislation for Workers | Spring 2015

Prof. Evan Barouh & Troy Rosasco

Contact Information	Evan Barouh, barouhe@stjohns.edu Troy Rosasco, rosascot@stjohns.edu , 631-582-3700 x123
Office Hours	Tuesdays prior to class, by appointment. In addition, we encourage you to post questions in the "Virtual Office Hours" forum on TWEN.
Course Description	<p>This practical course surveys four (4) statutes which are aimed at providing minimum safety, health and economic protections to workers in the workplace and arising from their employment. Those four statutes are: (1) the federal Occupational Safety and Health Act (OSHA); (2) the New York State Workers' Compensation Law; (3) the federal Fair Labor Standards Act of 1938 (FLSA) and (4) 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.</p> <p>Of the 13 class sessions, the first will be an overview of the four statutes we will be surveying. We will then spend three classes devoted to each one of the four statutes we will be studying.</p>
Class Meetings	Tuesdays from 6:15 pm to 8:25 pm on the following dates: January 20, 27, February 3, 10, March 3, 10, 17, 24, 31, April 7, 14, 21, 28 in Room 2M-11
Course Goals	<p>By the end of the course, you should be able to:</p> <ul style="list-style-type: none">• understand the history and purpose of OSHA (prevention of work related illnesses and injuries), and the OSHA inspection and enforcement process;• 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 the enforcement process
- 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 as it contributes to a lively and active learning environment and strengthens your oral communication skills which you will need as a practicing attorney. *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
01/20/15	<p>Overview of the statutes which will be studied during the semester. Joint presentation by Professors Barouh & Rosasco. Review of the history of workplace injuries and illnesses from the 4th Century BC Greece to the present day and how those events, particularly the Triangle Shirt Waist Factory Fire, led to the enactment of the four (4) statutes we will be studying during the semester.</p>	<p>Watch: The Occupational Safety and Health Act read the first 5 sections of the OSH Act. Watch the videos: “The Story of OSHA” at http://www.youtube.com/watch?v=b1N48Z5HerA</p> <p>Watch: PBS American Experience Documentary, Triangle Factory Fire (2011)</p> <p>Read: Cornell University ILR School Website: Remembering the 1911 Triangle Factory Fire, Primary Sources: New York Times Coverage of Fire, March 26, 1911, pg. 1 Transcript of Criminal Trial of Triangle Factory Owners</p> <p>Read: 1914 – 2014 New York Workers’ Compensation Board Centennial Program, pgs. 1 - 7, 16 - 20</p> <p>Read: Mae Keane, The Last ‘Radium Girl,’ Dies At 107</p>
01/27/15	<p>OSHA Overview of the statute, the enforcement scheme, the Agency. Lead by Prof. Barouh</p>	<p>Read: sections 6 through 12 of the OSH Act, 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>
02/03/15	<p>OSHA 5(a)(1) v. 5(a)(2); defenses to citations. Lead by Prof. Barouh</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.); National Realty & Const. Co., Inc. v. OSHRC, 489 F.2d 1257 (D.C.Cir. 1973)</p>
02/10/15	<p>OSHA – multiemployer worksites. Lead by Prof. Barouh</p>	<p>Dic-Underhill, 513 F.2d 1032; 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>03/03/15</p>	<p>New York State Workers' Compensation Law</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/WhatsFraud.pdf</p> <p>Skim: Structure of the Board http://www.wcb.ny.gov/content/main/TheBoard/factsht.jsp</p> <p>Skim (for reference only): "NYS Workers' Compensation Employers' Handbook" http://www.wcb.ny.gov/content/main/Employers/EmployerHandbook.pdf</p> <p>Skim: 2013 NY Workers' Compensation Board Annual Report http://goo.gl/EQ8KKV</p>
<p>03/10/15</p>	<p>Workers' Comp</p> <p>Employees vs. Independent Contractors</p> <p>Accidents Arising Out of and in the Course of Employment</p> <p>Medical Causal Relationship to Work Activities</p>	<p>Read:</p> <p><u>Beach v. Velzy</u>, 238 N.Y. 100, 143 N.E. 805 (1924)</p> <p><u>Mintiks v. Metro. Opera Ass'n, Inc.</u>, 153 A.D.2d 133, 550 N.Y.S.2d 143 (1990)</p> <p><u>Lemon v. New York City Transit Auth.</u>, 72 N.Y.2d 324, 528 N.E.2d 1205 (1988)</p> <p><u>Matter of Husted v. Seneca Steel Serv.</u>, 41 N.Y.2d 140 (1976)</p> <p><u>Wolfe v. Sibley, Lindsay & Curr. Co.</u>, 330 N.E.2d 603, 36 N.Y.2d 505 (1975)</p>

3/17/15	<p>Workers' Comp –</p> <p>Occupational Diseases,</p> <p>Third Party Tort Claims,</p> <p>W C Liens</p>	<p>Read:</p> <p><u>Goldberg v. 954 Marcy Corporation</u>, 276 NY 313, 12 N.E. 2d 311 (1938)</p> <p><u>Matter of Johannesen v New York City Dept. of Hous. Preserv. & Dev.</u>, 84 N.Y.2d 129, 638 N.E.2d 981 (1994)</p> <p><u>Burns v. Varriale</u>, 9 N.Y.3d 207849 N.Y.S.2d 1 (2007)</p>
03/24/15	<p>FLSA 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> <p>http://www.pbs.org/newshour/updates/dont-know-anything-minimum-wage/</p> <p>https://www.youtube.com/watch?v= S0KeeGO660</p>
03/31/15	<p>FLSA Current issues – the living wage, wage theft, independent contractors, unpaid internships</p>	<p><u>Glatt v. Fox Searchlight Pictures</u>,</p> <p><u>Irizarry v. Catsimitides</u></p>
04/07/15	<p>FLSA – The Tip Credit, the Exemptions</p>	<p><u>National Restaurant Association v. Solis</u>, 29 CFR Part 541</p>

04/14/15	<p>Social Security Act-</p> <p>History, Overview of Benefits, Statistics</p>	<p>Read: Brief History of Social Security & Economic Security</p> <p>Read: Helvering v. Davis, 301 U.S. 619, 57 S.Ct. 904 (1937)</p> <p>Read: Understanding the Benefits Pamphlet (2014)</p> <p>Skim: Fast Facts & Figures About Social Security (2014)</p> <p>See: 2013 Social Security Disability Waterfall Chart (Claim Approvals vs. Denials)</p>
4/21/15	<p>Social Security Disability Benefits</p> <p>Intro,</p> <p>SSDI vs. SSI, Insured Status,</p> <p>Five Step Sequential Evaluation Process for Disability Determination</p>	<p>Read: Differences between SSDI & SSI Programs</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>.</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 2015)? 2) Is the Medical Condition Severe? 3) Does Claimant's Medical Condition Meet the Requirements of a Disorder on the Listing of Impairments ? (<i>Skim only</i>) 4) Can the Claimant do "Past Relevant Work"? 5) Can the Claimant do Other Work? <p>Read: Heckler v. Campbell, 461 US 458 (1983).</p>

<p>4/28/15</p>	<p>Social Security Disability Applications, Appeals, Current Policy Issues,</p> <p><u>Class Review & Final Exam Discussion</u></p>	<p>Read: The SSA Disability Appeals Process Pamphlet</p> <p><u>The Administrative Process</u></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><u>Current Policy Issues Facing the Social Security Disability Program</u></p> <p>Watch: Disability, USA (60 Minutes, 6/29/14)</p> <p>Read: Unfit for Work (National Public Radio, 3/22/13)</p> <p>Read: Queens Social Security ALJ Bias Class Action Lawsuit (NY Times, 4/13/11)</p> <p>Read: NY Disability Law Blog Post (10/18/13)</p> <p>Read: Senator Tom Coburn Introduces Bill to Reform SSDI Program (12/17/14)</p>
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