

Labour and Employment Law

Winter 2021

INSTRUCTOR: Judy Fudge
EMAIL: fudgej@mcmaster.ca
Synchronous time: Wednesday,
9:30 to 11:00

OFFICE: KTH 722
OFFICE HOURS: Wednesday, noon to 1:00 and by
appointment
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Course Description

The law plays a major role in shaping almost every aspect of work, from what counts as employment to establishing workers’ basic duties on the job and their rights at work, through their right to organize, to how and when unions are allowed to bargain and go on strike. Moreover, the law regulating employment takes three forms – the common law, direct statutory intervention and legislation designed to promote self-regulation -- and each form has a different justification. This course explores how these different legal regimes frame workplace issues. What interests - the workers, the employers, and the public - does the law try to balance, and which side does it favour?

This course is a hybrid of on-line and synchronous learning. Each week there will be a selection of PowerPoints, lecture videos, readings, podcasts and blogs that you will be expected to read or listen to. There will be a series of assignments, including a group assignment, that you will be submitting on Avenue to Learn. A weekly check list will be provided, and you should download the Brightspace app to keep track of assignments.

Each week we will meet on-line between 10:00am and 11:00am on Wednesdays as an entire groups to discuss exercises and assignments, answer questions and to review the material. Videos, podcasts and PowerPoint slides will also be posted for each week. You will also be required to meet on line each week by 9:30 at the very latestest in your 5 -member small groups. These groups will be established in the second week. You should do your readings before the on-line part of the class.

Course Learning

The course aims to develop knowledge of key concepts and regulatory mechanisms related to employment law and labour law. Students will develop an understanding of the common law’s distinctive methodology and how common law interacts with direct statutory intervention and collective bargaining. The course will assist students in comparing and contrasting these different regulatory regimes – common law, direct statutory regulation and collective bargaining legislation. Students will develop critical thinking and effective communication skills by facilitating critical discussions of the central claims raised in the readings and lectures. Collaborative work skills will be cultivated through a group assignment.

Required Materials and Texts

Required text: David J. Doorey, *THE LAW OF WORK: SECOND and COMPLETE EDITION* (Toronto; Emond 2020). You should purchase this text. It is available from the McMaster bookstore in hardcover or on-line. For each class you will be responsible for reading about 75 pages of the textbook and hard copy is easier to work with. It is expected that you will have read the materials so that you will be prepared to discuss engage with them and you will be assessed on them in the assignments.

Students are also expected to consult the course's Avenue to Learn site several times a week. Checklists, videos, PowerPoint and background information are available there. You will be using Avenue to Learn, Zoom and Mac video in this course.

Course Evaluation Breakdown

Three individual assignments

1. Wednesday **February 3** - Week 4 **worth 10 marks, submit answer on Avenue to Learn February 3rd at 10 pm.**

Short fact situation question with maximum 300-word answer. This assignment will be released 24 hours before it is due, and it is designed to take one hour.

2. **Wednesday March 10** - Week 8 **worth 20 marks, submit answer on Avenue to Learn at noon.**

Review of Hustled (6-part pod cast – 2 hours). See the Assignment in the Assignment Folder in Course Information. This assignment will be released at the beginning of term. You are expected to listen to the entire podcast and reflect upon it. Do not leave this assignment to the last minute.

3. Wednesday March 24 - Week 10 **worth 10 marks, submit answer on Avenue to Learn March 24 at 10 pm.**

Short fact situation question with maximum 400-word answer. This assignment will be released 24 hours before it is due, and it is designed to take one hour.

Pecha Kucha assignment and presentation instructions (30 marks in total)

1. **Group assignments worth 25 marks each** – prepare Pecha Kucha presentation on a covid-related labour and employment issue. Submit on Avenue to Learn April 9 at noon.

See Pecha Kucha assignment and presentation instructions in Assignment Folder under Course instruction. Each member of the group should submit the presentation in their individual folder. One member should post it on the discussion page.

2. **Individual comment on other groups presentation due April 14 at 9 am** on Avenue to Learn 5 per cent. Each individual must submit a comment of at least 50 words with one question in their assignment folder.

Take home – 30 per cent due Noon April 21 on Avenue to Learn.

Short essay – minimum 1000 and maximum 1250 words not including footnotes. This assignment will be released on April 7.

Weekly Course Schedule and Required Readings

Week 1 January 13

Introduction to the course. Themes, operation, assessment.

Week 2 January 20

Doorey, *The Law of Work* pp. 3-67

Part I: The Law of Work: Themes, Frameworks and Perspective

- 1: Canadian Work Law in a Nutshell
- 2: A Framework for Analysing the Law of Work
- 3: Key Perspectives That Shape the Law of Work
- 4: What is Employment?

Establish small groups.

Week 3 January 27

Doorey, *The Law of Work* pp. 67-95; 245-267; 485-521

Part II: The Common Law Regime 73-96

Formation and Requirements of an Employment Contract

- 5: A Brief History of the Common Law Model of Employment
- 6: The Job Recruitment and Hiring Process

Part III: The Regulatory Regime 271-283

- 19: Introduction to the Regulatory Regime

Part IV: Industrial Relations and the Collective Bargaining Regime 459-521

28. Introduction to the Collective Bargaining Regime and the Canadian Labour Movement
29 A Brief History of Labour and the Law
38: Why do Workers Join Union, and What Effects Do Unions Have on Business?
Part V. The Charter of Rights and Freedoms and Work 681-705
39: The Charter of Rights and Freedoms and Work

Week 4 February 3

Doorey, *The Law of Work*, pp. 337-390

21: Introduction to Human Rights at Work

22: The Two-Step Human Rights Model and the Prohibited Grounds of Discrimination

23. The Bona Fide Occupational Requirements, The Duty to Accommodate and Other Discrimination Defences

Assignment – 10 per cent due at 10 pm.

Week 5 February 10

Doorey, *The Law of Work*, pp. 97-132; 285-320

The Employment Contract, 97-132

7: The Requirements to Create and Modify an Employment Contract

8: Expressed and Ancillary Employment Contract Terms

9: Implied and Ancillary Employment Contract Terms

The Regulatory Regime, 285-320

21: Wage Regulation and Pay Equity

22: Regulating Hours of Work, Time Off, and Overtime

Reading week February 17 Class cancelled

Listen to Hustled (6-part pod cast – 2 hours) because assignment is due next week and the podcast takes two hours to listen to. See the Assignment in the Assignment Folder in Course Information. Access the podcast there too or here (<https://www.thestar.com/podcasts/hustled.html>).

Week 6 February 24

Doorey, *The Law of Work*, pp. 153-237

The End of an Employment Contract

10: Termination by an Employer with "Reasonable Notice"

11: Termination by "Frustration"

12: Summary Dismissal: Termination for Cause Without Notice

13: "You Forced Me to Quit!": The Special Case of Constructive Dismissal

14: Damages in Wrongful Dismissal Lawsuits

15: "I Quit!": Termination of the Employment Contract by the Employee

Week 7 March 3

Doorey, The Law of Work, pp 303-16

20: Regulating the End of Employment Contracts

Review – Relationship between the contract of employment and employment regulation

Week 8 March 10

Doorey, The Law of Work, pp 503-556

Canadian collective bargaining in context

31: The Unionization Process

32: Unfair Labour Practices and the right to organize

41: Collective Bargaining and the Making of a Collective Agreement

Wednesday March 10 - Week 8 worth 20 marks, submit answer on Avenue to Learn at noon.

Review of Hustled (6-part pod cast – 2 hours). See the Assignment in the Assignment Folder in Course Information.

Week 9 March 17

Doorey, The Law of Work, pp.557-603; 661-678

34: The Law of Industrial Conflict

48: Public Sector Labour Relations

Week 10 March 24

Doorey, The Law of Work pp. 585-660

35: The Collective Agreement

36: Grievances and Labour Arbitration and "Just Cause" for Discipline in the Unionized Workplace

73: The Regulation of Unions

Week 10 worth 10 marks, submit answer on Avenue to Learn March 24 at 10 pm.
Short fact situation question with maximum 400-word answer.

Week 11 March 31

Discussion of how to do the Pecha Kucha assignment and discussion of covid-19 and labour and employment law.

This class discussion will be critical for the group assignment that is due April 9.

Week 12 April 7

Overview and review for take home.

Release take home.

Week 13 April 14

Discussion of Pecha Kucha presentations.

1. **Group assignments worth 25 marks each** – prepare Pecha Kucha presentation on a covid-related labour and employment issue. Submit on Avenue to Learn April 9 at noon.

See Pecha Kucha assignment and presentation instructions in Assignment Folder under Course instruction

2. Individual comment on other groups presentation due April 14 at 9 am on Avenue to Learn 5 per cent

Take Home – Due noon April 21 through Avenue to Learn

Course Policies

Submission of Assignments

All assignments should be submitted on Avenue to Learn in the appropriate assignment folder.

Grades

Grades will be based on the McMaster University grading scale:

MARK	GRADE
90-100	A+
85-90	A
80-84	A-
77-79	B+

MARK	GRADE
73-76	B
70-72	B-
67-69	C+
63-66	C
60-62	C-
57-59	D+
53-56	D
50-52	D-
0-49	F

Late Assignments

The due dates for assignments are firm. All assignments must be submitted via Avenue to Learn by the due date and for instructions regarding the hard copy see the specific assignment above. Late take home assignments will receive a deduction of 10% per cent of the total mark for each day (or part thereof) the assignment is late (if the assignment is worth 10 marks and it is a day late the penalty is one mark), and assignments that are more than two days late will not be accepted.

Absences, Missed Work, Illness

On-line self-reporting tool – illness lasting less than 3 days. Can only be used once per term. Instructors are not allowed to accept medical notes! These must be submitted to your Faculty office. In the event of an absence for medical or other reasons, students should review and follow the Academic Regulation in the Undergraduate Calendar “Requests for Relief for Missed Academic Term Work”. Please also communicate with the course instructor. The value of in-class assignments that are missed for medical or other accepted reason **may** be added to the take home.

Avenue to Learn

In this course we will be using Avenue to Learn. Students should be aware that, when they access the electronic components of this course, private information such as first and last names, usernames for the McMaster e-mail accounts, and program affiliation may become apparent to all other students in the same course. The available information is dependent on the technology used. Continuation in this course will be deemed consent to this disclosure. If you have any questions or concerns about such disclosure please discuss this with the course instructor.

Turnitin.com

In this course we will be using a web-based service (Turnitin.com) to reveal plagiarism. Students will be expected to submit their work electronically to Turnitin.com and in hard copy so that it can be checked for academic dishonesty. Students who do not wish to submit their work to Turnitin.com must still submit a copy to the instructor. No penalty will be assigned to a student

who does not submit work to Turnitin.com. All submitted work is subject to normal verification that standards of academic integrity have been upheld (e.g., on-line search, etc.). To see the Turnitin.com Policy, please to go www.mcmaster.ca/academicintegrity.

Academic Dishonesty:

<http://www.mcmaster.ca/academicintegrity/students/index.html>

Academic dishonesty consists of misrepresentation by deception or by other fraudulent means and can result in serious consequences, e.g. the grade of zero on an assignment, loss of credit with a notation on the transcript (notation reads: "Grade of F assigned for academic dishonesty"), and/or suspension or expulsion from the university.

It is your responsibility to understand what constitutes academic dishonesty. For information on the various kinds of academic dishonesty please refer to the Academic Integrity Policy, specifically Appendix 3, located at <http://www.mcmaster.ca/policy/Students-AcademicStudies/AcademicIntegrity.pdf>

The following illustrates only three forms of academic dishonesty:

1. Plagiarism, e.g. the submission of work that is not one's own or for which other credit has been obtained.
2. Improper collaboration in-group work.
3. Copying or using unauthorized aids in tests and examinations.

In this course, we will be using a software package designed to reveal plagiarism. Students will be required to submit their work electronically and in hard copy for this purpose.

Department/University Policies:

Labour Studies staff does not date-stamp assignments, nor do they monitor the submission or return of student papers. All papers should be submitted/returned in-class, in tutorials or during Professor/TA office hours. Instructors who utilize Avenue to Learn will provide instructions on that preference.

Absence Reporting:

<https://socialsciences.mcmaster.ca/current-students/absence-form>

On-line self-reporting tool – illness lasting less than 3 days. Can only be used once per term. Instructors are not allowed to accept medical notes! These must be submitted to your Faculty office. In the event of an absence for medical or other reasons, students should review and follow the Academic Regulation in the Undergraduate Calendar “Requests for Relief for Missed Academic Term Work”. Please also communicate with the course instructor.

Code of Conduct:

<http://studentaffairs.mcmaster.ca>

“McMaster University is a community dedicated to furthering learning, intellectual inquiry, the dissemination of knowledge and personal and professional development. Membership in this community implies acceptance of the principle of mutual respect for the rights, responsibilities, dignity and well-being of others and a readiness to support an environment conducive to the intellectual and personal growth of all who study work and live within it.”

This code of conduct applies to the on-line environment and all of our interactions with each other.

Computer Use:

Computer use in the classroom is intended to facilitate learning in that particular lecture or tutorial. At the discretion of the instructor, students using a computer for any other purpose may be required to turn the computer off for the remainder of the lecture or tutorial.

Course Modifications:

The instructor and university reserve the right to modify elements of the course during the term. The university may change the dates and deadlines for any or all courses in extreme circumstances. If either type of modification becomes necessary, reasonable notice and communication with the students will be given with explanation and the opportunity to comment on changes. It is the responsibility of the student to check their McMaster email and Avenue to Learn (if used by instructor) *regularly during the term* to note any changes.

Email Communication Policy of the Faculty of Social Sciences:

All e-mail communication sent from students to instructors (including TAs), and from students to staff, must originate from the student’s own McMaster University e-mail account. This policy protects confidentiality and confirms the identity of the student. It is the student’s responsibility to ensure that communication is sent to the university from a McMaster account. If an instructor/TA receives a communication from an alternate address, the instructor may not reply at his or her discretion. **Please always include student name, ID, course # and TA name in messages.**

Evaluations (On-line):

<http://evals.mcmaster.ca>, and log in via MACID.

These help faculty and the School of Labour Studies to meet our goal of continually improving teaching effectiveness. All students in the course are invited and encouraged to complete the evaluation.

Student Accessibility Services:

<http://sas.mcmaster.ca/>

Location: MUSC – B107

Contact: 905-525-9140 extension: 28652

NOTE: Disclosure of disability-related information is personal and confidential.

Student Accessibility Services offers various supports for students with disabilities. We work with full time and part time students. SAS provides or assists students with their academic and disability-related needs, including: Learning Strategies, Assistive Technologies, Test & Exam Administration, Note-Taking Programs, and Classroom Accommodations. *Please inform the instructor if there are disability needs that are not being met.

McMaster University Policy on Academic Accommodation of Students with Disabilities & McMaster University Anti-Discrimination Policy

- <http://www.mcmaster.ca/policy/Students-AcademicStudies/AcademicAccommodation-StudentsWithDisabilities.pdf>

Student Success Centre: <http://studentsuccess.mcmaster.ca/>

GH-110 905-525-9140 x24254

Some services include: student orientation, academic skills, volunteerism, educational planning, employment and career transition. Writing Support:

<http://studentsuccess.mcmaster.ca/students/academic-skills/writing-support-services.html>

Student Wellness Centre: <http://wellness.mcmaster.ca/>

PGCLL - 210 905-525-9140 x27700

Provides services in: Personal and Psychological Counselling, Mental Health Support, Medical and Health Services