

INTERSESSION 2009

**EMPLOYMENT DISCRIMINATION: DRESS AND APPEARANCE REGULATION IN THE
CASINO INDUSTRY**

LAW 790C

Professor Mitu Gulati, Duke University Law School
Professor Ann McGinley, William S. Boyd School of Law. UNLV

Amended Syllabus, Policies and Procedures

January 5, 6, 7, 8, 9, 10, 2009

9:30-11:30 AM & 1:30 to 3:30 PM Every day

Room 110

Two Credits

COURSE OBJECTIVE:

This course uses the lens of the casino industry to examine federal employment discrimination law and policy regarding employer regulation of employee dress and appearance. Because the appearance requirements in the casino industry tend to be at the extremes in terms of what employers require of employees, the study of this industry allows us to gain a unique perspective on not only the current state of the law, but also on where it is likely to go in the near future. The foundation blocks for the course are readings on dress and appearance based discrimination that draw from classic work in law, sociology, psychology and economics. This theoretical material will be supplemented with “on the ground” examinations of how the theories and formal legal structures play out in practice. To implement this latter element of the course, we will invite local guest speakers including human resources executives, employment lawyers and, of course, employees. The centerpiece of the course will be an “on the ground” examination of the impact of the decision in *Jespersen v. Harrah’s Operating Co.*, 444 F.3d 1104 (9th Cir. 2002) (en banc). Through this examination, students should consider whether case law translated to behavior “on the ground.”

The course will also examine the theme of gender and racial identity and expression, and the performance of identity in the workplace, and the implications for Title VII law.

Course Credits: This is a two (2) credit class. Because the class earns two credits, there is a **significant amount of reading to do.** We recommend highly that you do **your reading over the semester break so that you will be able to keep up with the class.** The class will be very fast paced.

Project/Paper

All are required to write a **well-written** paper which is due on the last day of the class. Your project/paper assignment in this class is to explore the “on the ground” realities of the impact of the Ninth Circuit’s recent *en banc* decision in the case *Jespersen v. Harrah’s Operating Co.* that we will be discussing extensively in class.

Specifically, we want your project to address two questions. First, what does the Ninth Circuit’s decision tell employers with regards to what they can or cannot do with respect to specific dress and appearance requirements in the casino and entertainment industry in Las Vegas? To address this question, you will not only have to read the Ninth Circuit’s opinion carefully, but also think about various jobs in the casino/entertainment industry in Las Vegas where the opinion could have an impact. In other words, your report could work through hypothetical examples of typical jobs in the industry.

The second question then is to ask whether the realities of the day-to-day operations of these businesses reflect your predictions about changes the industry should have made in response to the *Jespersen* case. You can report on these day-to-day operations using a variety of sources including publicly available reports on how the operations of the casinos might have changed (or not) in response to the case; observations you make yourself; discussions with industry lawyers and human resources who we bring to class. Should you have conversations with people outside the context of the class, please be careful to assure them that these are informal conversations for informational purposes alone that will not be attributed to them in any way. Realistically, we assume that much of the information you will report will be based on conversations with people you know in the industry. Given that, it is very important that you report to us what information you obtained from talking to others – such as your friends or acquaintances who work in the industry – and what information you obtained from observation or public sources. For you to do more formal interviews that you use in your report, you would likely have to obtain approval from the University Internal Review Board that oversees the use of human subjects. It is unlikely that you would have time to get such approval in such a short class. We will let you know about this the first day of class.

In class, starting on the second day, we will discuss your observations and progress on your reports. Your final reports should be no longer than ten pages in length (1.5 in line spacing – we leave the matter of margins, etc., to your discretion). They papers are to be handed in on **Saturday, January 10 before the AM class to Professor McGinley.**

In your report, we expect that you will incorporate insights from the articles that we discuss in class. The amount of energy and space you devote to each of the two questions that we have set forth above should be about the same.

Please give us the paper in final draft form. This means no spelling, grammatical or bluebooking errors. This also means good organization, topic sentences and transitions,

etc. You must edit, and re-edit this piece. Your paper/project will be worth **20%** of your final grade.

Required Readings:

DAY #1: MONDAY, 1/05

1. [DIANNE AVERY & MARION CRAIN, BRANDED: CORPORATE IMAGE, SEXUAL STEREOTYPING, AND THE NEW FACE OF CAPITALISM, 14 DUKE J. GENDER L. & POL'Y 13 \(2007\).](#)

2. [JESPERSEN V. HARRAH'S OPERATING CO., 444 F. 3D 1104 \(9TH CIR. 2006\)\(EN BANC\).](#)

3. [JENNIFER C. PIZER, FACIAL DISCRIMINATION: DARLENE JESPERSEN'S FIGHT AGAINST THE BARBIE-FICATION OF BARTENDERS, 14 DUKE J. GENDER L. & POL'Y 285 \(2007\).](#)

DAY #2: TUESDAY, 1/06

1. [DEVON W. CARBADO & MITU GULATI, WORKING IDENTITY, 85 CORN. L. REV. 1259 \(2000\).](#)

2. [PRICE WATERHOUSE V. HOPKINS, 490 U. S. 228 \(1989\) \(PART I, II C AND IV ONLY\).](#)

3. [RENE V. MGM GRAND HOTEL, INC., 305 F.3D 1061 \(9TH CIR. 2002\)\(EN BANC\).](#)

DAY # 3, WEDNESDAY, 1/07

1. [KATHARINE T. BARTLETT, ONLY GIRLS WEAR BARRETTES: DRESS AND APPEARANCE STANDARDS, COMMUNITY NORMS, AND WORKPLACE EQUALITY, 92 MICH. L. REV. 2541 \(1994\).](#)

2. [WILSON V. SOUTHWEST AIRLINES, 517 F. SUPP. 292 \(N. D. TEX. 1981\).](#)

DAY #4, THURSDAY, 1/08

1. [ANN C. MCGINLEY, BABES AND BEEFCAKE: EXCLUSIVE HIRING ARRANGEMENTS AND SEXY DRESS CODES, 14 DUKE J. GENDER L. & POL'Y 257 \(2007\).](#)

2. HAMM V. WEYAUWEGA MILK PRODS., 332 F. 3D 1058 (7TH CIR. 2003) (READ ONLY JUDGE POSNER'S CONCURRENCE).

DAY #5, FRIDAY, 1/09

1. RUSSELL K. ROBINSON, CASTING AND CASTE-ING: RECONCILING ARTISTIC FREEDOM AND ANTIDISCRIMINATION NORMS, 95 CAL. L. REV. 1 (2007).
2. SCHROER V. BILLINGTON, 2008 U. S. DIST. LEXIS, 104 FAIR EMP. PRAC. CASES 628 (D. D.C. SEPT. 19, 2008).

DAY #6, SATURDAY, 1/10

1. KIMBERLY A. YURACKO, PRIVATE NURSES AND PLAYBOY BUNNIES: EXPLAINING PERMISSIBLE SEX DISCRIMINATION, 92 CAL. L. REV. 147 (2004).
2. LEWIS V. HEARTLAND INNS OF AM. LLC, 2008 U.S. DIST. LEXIS 92525 (S. D. IOWA, NOV. 13, 2008).
3. ROHALY V. RAINBOW PLAYGROUND DEPOT, INC., 2006 WASH. APP. LEXIS 1917 (AUG. 28, 2006).