Course Syllabus

**University of Baltimore School of Law**

**SPRING 2018**

**Course**: WORKERS’ COMPENSATION

LAW 759

Section 511

**Instructor**: JEFFREY C. HERWIG

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OFFICE HOURS: M, T, TH, F: 2pm -4pm; W: after class

**Days/Time:** WEDNESDAY 3:00 TO 4:50

**Location:**  Room assignments are available through MyUB.

**Course Description**:

An examination of the legal principles governing the compensation of employees

or their dependents for injuries or loss of life arising out of employment or

occurring during the course of employment; alternatives to statutory

compensation schemes; causation and other factors affecting claims status to sue;

and related problems.

**Course Materials:**

MARYLAND WORKERS’ COMPENSATION HANDBOOK, 4th ED

SUPPLEMENTAL MATERIALS WILL BE DISTRIBUTED BY THE INSTRUCTOR OR SHALL BE POSTED ON THE CLASS WEBSITE

**Student Learning Outcomes:**

The class will cover all of the basics of Maryland Workers’ Compensation Law as well as many practical litigation skills and techniques. By the end of the semester, students should be able to handle a workers’ compensation claim from beginning to end. The history of this course is that many students choose Workers’ Compensation as their primary area of practice. Many former students actively practice in this area and have demonstrated skills which are significantly exceed what one would expect based upon their years of experience.

**Grades:**

Grades are based entirely upon a final exam. The final exam will be open book. Class participation is encouraged to enhance the learning process but is not a component in the final grade. The reality is that those who are actively engaged in the class will inevitably score well on the final exam.

**Course Expectations:**

American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.

You are expected to complete all reading assignments before class and to participate consistently in class discussion to demonstrate that you have read and reflected on the issues raised in the assignment. The classroom experience will be significantly enhanced by actively engaging in class discussions.

**Attendance**:

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as illustrated below may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

|  |  |  |
| --- | --- | --- |
| Regular Semester Hours | | |
| Credit Hours | Meetings Per Week | |
|  | 1 | 2 |
| 2 | 2 absences | 5 absences |
| 3 | 2 absences | 5 absences |
| 4 | -- | 5 absences |

**Course Website:**

This course has a webpage that links to this syllabus, announcements, the class assignments, and other class materials. You are responsible for self-enrolling in the webpage and for checking it regularly for course information.

Jcherwig.snappages.com

**Computers:**

Students are encouraged to use laptop computers during class to follow along with the lecture which will be in outline form on the course websie.

**Class Cancellation:**

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

**Academic Integrity:**

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor\_code/.

**Title IX Sexual Misconduct and Nondiscrimination Policy:**

The University of Baltimore’s Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB’s nondiscrimination policies can be found at: http://www.ubalt.edu/titleix.

**Disability Policy:**

If you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director of Student Services, at 410-837-5623 or lmetzger@ubalt.edu.

**ASSIGNMENTS**

**There is no assignment in advance of the first class.**

This is the SYLLABUS for the semester:

* State References are to Labor and Employment Article, Annotated Code of Maryland, Title 9 (most recent edition)

1. INTRODUCTION TO WORKERS’ COMPENSATION LAW
   1. Nature of Workers’ Compensation Law
   2. Basic Features of Workers’ Compensation Law, Generally
   3. Basic Features of Workers’ Compensation Law, Maryland Act
   4. Construction of the Article 9-102(a) and (b)

9-506(f)

9-702

1. CONDITIONS OF COMPENSABILITY
   1. Procedural Considerations

1. Jurisdiction 9-203; 9-204;

a. Federal vs. State 9-609; 9-223;

1. State vs. State

2. Venue 9-724

3. Notice and Limitations 9-704; 9-705;

9-706, 9-707;

9-708; 9-709;

9-710; 9-711;

9-712

* 1. Employer/Employee Relationship

1.Definitions: Various “employment 9-101(f); Sub-Title 2

relationships are described of Title 9

throughout Sub- Title 2

(e.g. partners, corporate officers, jockeys)

a. General Statutory Scheme 9-201; 9-202

b. Statutory Employment 9-508

c. Volunteers and Jurors 9-213; 9-220; 9-231 to 9-235;

d. Casual Employment 9-205

2. Illegal Employment/ Employing a Minor 9-103; 9-606

* 1. “Compensable Injury” 9-101; 9-501; 9-502

1. Accidental Personal Injury 9-501

2. Arising Out of and In the Course of

a. Definitions/General Rule

1. Exceptions:
   1. Going and Coming Rule
   2. Exceptions to Going and Coming Rule
      1. Premises
      2. Proximity
      3. Special Hazard
      4. Free Transportation
      5. Special Mission
      6. Dual Purpose Doctrine
2. Deviations from Course of Employment

d. Misconduct/Horseplay/Intoxication 9-506(a) to (e)

1. Social/Recreational and Company-

Sponsored activities, etc.

f. Willful or Negligent Act of a 9-101(b)(2)

Third Person

3. Hernia 9-504

* + - 1. Miscellaneous “Injuries”

a. Infectious Diseases 9-101(b)(3); 9-503 (d)

1. Suicide / Self-inflicted injury 9-506

5. Occupational Diseases 9-502; 9-505

a. Criteria for Compensability: 9-502; 9-503

1. Presumptions: Fire and Police 9-503

Personnel; Dept. of Natural

Resources Officers

c. Occupational Deafness 9-505; 9-649; 9-650

9-651; 9-652

III. WORKERS’ COMPENSATION BENEFITS: (Subtitle 6)

A. Average Weekly Wage 9-602; 9-603; COMAR 14.09.01.07

B. Types of Disability and How Paid

1. Temporary Total Disability 9-618 thru 9-622

1. Definition
2. Benefit Scheme

2. Permanent Total Disability 9-635 through 9-640

1. Definition
2. Benefit Scheme
3. Presumption 9-636

3. Temporary Partial Disability 9-614 through 9-615

1. Definition
2. Benefit Scheme

4. Permanent Partial Disability 9-625 through 9-633

1. Definition
2. Benefit Scheme: Rate x Duration = $\_\_\_\_\_\_
   1. RATE:
3. Minor Disability
4. Regular Disability
5. Serious Disability
6. Toes, etc.
7. Public Safety Employees: 9-628(a) and (g)
   1. DURATION:
8. Scheduled Member
9. Unscheduled Member

C. Reduction on Benefits

1. Apportionment 9-655 through

9-657; 9-608

2. Pension Offset 9-609; 9-610; 9-503(e)

D. Survivor’s Rights 9-632; 9-640; 9-646

E. Death Benefits 9-678 through 9-686

* + 1. General Overview

2. Dependency: 9-679 through 9-686

1. Test and time for determination
2. Computation of benefits

3. Funeral Expenses 9-689

F. Medical Expenses/Benefits 9-660 through 9-664

G. Vocational Rehabilitation 9-670 through 9-675

H. Reopening of Claims 9-736; 9-622

IV. THIRD PARTY CAUSES OF ACTION 9-509

9-901;

9-902;

9-903

A. Exclusivity/Election of Remedies 9-509

1. Rule 9-901 through 9-903; 9-509

a) Dual Capacity Exception

2. Option to sue outside the Act 9-509(a); 9-509(c);

9-509(d)

3. Co-Employees

. B. Distribution of Third Party Recovery 9-902

1. Liens

2, Attorneys Fees

V. SUBSEQUENT INJURY FUND 9-801 through 9-808; 10-201;

10-204

VI. UNINSURED EMPLOYERS FUND 9-1001 through 9-1015; 10-301 through 10-311

VI. PRACTICE AND PROCEDURE 9-701 thru 9-750

A. Make-up of Maryland Workers’ Compensation 9-301 through 9-307

B. At the Commission

1. Filing Claims and documents 9-703; 9-709 thru 9-714;

2. Rules of the Workers’ Compensation Commission: COMAR Title 14, Subtitle 9, Chapters 1 through 7

3. Adjudication of Claims / Trial Preparation

1. Medical Exams 9-720; 9-721;

COMAR 14.09.04.01/. 02

b) Presentation of Evidence 9-715 through 9-720; 9-734;

9-735 (prisoners); 9-724

1. Live Expert Testimony COMAR 14.09.01.26

4. Awards and Orders

a) Generally 9- 308; 9-714

b) Rehearings 9-726

c) Attorney’s / Medical fees 9-731

d) Lump Sums 9-729 thru 9-730

e) Penalties for Late Payment 9-727 thru 9-728

5.Compromise and Settlement Agreements/Stipulations

9-722; COMAR14.09.01.19

C. Appeals 9-737 thru 9-750

1.To Circuit Court generally 9-737 through 9-749

a) Venue 9-738

b) Concurrent Jurisdiction of Workers’ 9-741; 9-742

Compensation Commission and Status of

Commission Order pending appeal

2. To the Maryland courts of appeal