



FACULDADE DE DIREITO  
Universidade de Lisboa

## Course Unit Information Sheet (*Syllabus*)

MASTER OF LAW  
CORPORATE LAW / EMPLOYMENT LAW

Course Unit

Employment Law III - TA

Teaching Staff

Guilherme Dray (Coord.)

Others

Learning goals

Studying Employment Law as a branch of law that seeks justice and the full citizenship at work

Contents

### PART I

#### General Overview

1. The idea of *citizenship at work* within the Western countries
2. *Civil Law* and *common law* systems: differences and common ground
3. Normative sources of law: principles and rules
4. General values of the Employment Law: dignity, equality and freedom
5. Specific principles of the Employment Law: the employees' principle of protection and the freedom of management principle. Need to articulate different principles
6. Employment Law as a branch of law that protects the citizenship: rights of personality and equality and non-discrimination

### PARTE II

#### Rights of personality

1. Concept and reasons for its existence
2. The civil and the labour protection
3. Labour rights of personality
4. Recent topics:
  - 4.1. Freedom of expression and freedom of religion
    - Symbols and religious cults at the workplace
    - Right to free speech ant to criticize the management
  - 4.2. Violation of physical and moral integrity
    - *Mobbing and moral harassment*
    - *Sexual harassment / #Me too movement*
  - 4.3. Right to privacy
    - Hiring selection process – questions regarding sexual and emotional life
    - Hiring employees based on the use of algorithms
  - 4.4. Personal data protection



- Right to control, rectification and actualization – the European RGD
- 4.5. Biometric data
  - The use of *microchips* at the employees 'bodies
- 4.6. Remote surveillance instruments
  - Systems of video surveillance; use of GPS
  - The lawfulness (or unlawfulness) of the proof for dismissal purposes
- 4.7. Confidentiality of messages
  - Email
  - Messaging / Chats
  - Posts at Social Media

### PARTE III

## Equality and discrimination

1. Concept of equality and historic evolution
2. Main international treaties
3. From formal equality to equality of fair opportunities
4. The influence of the United States of America spreading the principle of equality: the *Civil Rights Act de 1964* as a landmark
5. The Welfare State, the Portuguese Constitution and the Portuguese language speaking countries constitutions
6. Main Concepts:
  - *Disparate treatment*
  - *Disparate impact*
  - *Bona fide occupational qualification*
  - *Affirmative actions*
7. Recent Topics
  - 7.1. Disparate treatment at the access to employment
    - Based on gender, color or religion
  - 7.2. Disparate impact at the access to employment:
    - The *afro-americans* case at USA;
    - The women access to employment in Europe
    - The use of *burka* at the workplace
  - 7.3. Discrimination at the execution of the employment contract
    - The principle of equal pay for equal job
    - The *gender pay gap*
    - Discriminatory clauses at collective agreements
    - Maternity and the protection of pregnant and breastfeeding mothers
  - 7.4. Authorized distinctions
    - The USA *bona fide occupational qualification*
    - Lawful salary differences based on productivity and seniority
    - Religious and ideological corporations
  - 7.4. Affirmative actions
    - The USA *affirmative actions*
    - The European implementation of quotes for women and disabled



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- The importance of *soft law*

#### Parte IV Final remarks

##### Employment law as a branch of law that seeks citizenship

1. The idea of individual freedom and the free development of personality
2. The prohibition of discrimination as a matter of freedom and citizenship

##### Skills to be developed

This seminar intends to give the Students a broad understanding of modern topics regarding Employment Law and the fight for a global citizenship. For that purpose students will study rights of personality and equality and non-discrimination at the workplace

##### Methodology

The Seminar will be organized through lectures and practical classes. Students are invited to participate, work at group, and to present papers based on specific cases and court decisions from different geographies. Ultimately, the Students will have to do a final exam, that values 50% out of 100%. The other 50% includes the participation, the presentation of cases and the attendance of classes.

##### Ultimate goals

The main objective of this course is to provide the Students the idea of Employment Law as a discipline that seeks justice and the full citizenship, based on the implementation of rights of personality and equality and non-discrimination legal rules.

##### Bibliography

- AMADO, João Leal - *Contrato de Trabalho*, 5.<sup>a</sup> edição, Coimbra Editora, 2019.
- DRAY, Guilherme
- *Código do Trabalho Anotado*, Pedro Romano Martinez, Luís Miguel Monteiro, Joana Vasconcelos, Pedro Madeira de Brito, Guilherme Dray e Luís Gonçalves da Silva, 12.<sup>a</sup> edição, Almedina, Coimbra, 2020;
  - *An Introduction to Portuguese Employment and Labour Law*, Almedina, Coimbra, 2019
  - *Equality, Welfare State and Democracy*, Almedina, Coimbra, 2018
  - *The Influence of the United States spreading the principle of equality*, Almedina, Coimbra, 2016;
- O Princípio da Proteção do Trabalhador*, Almedina, Coimbra, 2015.
- *O Princípio da Igualdade no Direito do Trabalho — sua aplicabilidade no domínio específico da formação de contratos individuais de trabalho*. Coimbra: Almedina, 1999.
  - “direito à reserva da intimidade da vida privada. O artigo 80.º do Código Civil de 1966”, *Revista de Direito Civil*, Centro de Investigação de Direito Privado, Faculdade de Direito da Universidade de Lisboa, Ano II (2017), Número 3, António Menezes Cordeiro (Dir.), pp. 673-699.
  - “Comunicações Eletrónicas e privacidade no contexto laboral”, *Prontuário de Direito do Trabalho, II*, 2016, Centro de Estudos Judiciários, Almedina, Coimbra, 2016, pp. 103-131
- GOMES, Júlio Vieira - *Direito do Trabalho, I*, Coimbra Editora, 2007.
- FERNANDES, Monteiro - *Direito do Trabalho*, 19.<sup>a</sup> edição, Almedina, Coimbra, 2019
- LEITÃO, Luís Menezes - *Direito do Trabalho*, 6.<sup>a</sup> edição, Almedina, 2019.
- MARTINEZ, Pedro Romano - *Direito do Trabalho*, 9.<sup>a</sup> edição, Almedina, 2019



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- RAMALHO, Maria do Rosário, *Tratado de Direito do Trabalho I, Dogmática Geral*, 4.ª edição, Almedina, Coimbra, 2015;  
- *Tratado de Direito do Trabalho II - Situações Laborais Individuais*, 7.ª edição, 2019.  
- *Direito Social da União Europeia* - Almedina, Coimbra, 2009.  
- XAVIER, Bernardo Lobo – *Manual de Direito do Trabalho*, Verbo, 2011.  
- AAVV – *The Idea of Labour Law*, Edited by Guy Davidov & Brian Langille, Oxford University Press, 2013.

#### LEGISLATIVE ACTS AND OFFICIAL PUBLICATIONS

Portuguese Labour Code

Portuguese Constitution

Civil Code

Universal Declaration of Human Rights

The European Union Chart of Fundamental Rights

*Civil Rights Act* (Title VII) of 1964

Livro Verde Sobre As Relações Laborais, 2016 –

[http://www.gep.msess.gov.pt/estudos/pdf/livro\\_verde\\_2006.pdf](http://www.gep.msess.gov.pt/estudos/pdf/livro_verde_2006.pdf)