

## Constitucional rights in the workplace

Academic Year: ( 2023 / 2024 )

Review date: 19-04-2023

Department assigned to the subject: Social and Private International Law Department

Coordinating teacher: GARCIA SALAS, ANA ISABEL

Type: Electives ECTS Credits : 6.0

Year : 4 Semester :

## REQUIREMENTS (SUBJECTS THAT ARE ASSUMED TO BE KNOWN)

- Principles of Law
- Individual employment law.
- Collective labour law.

## OBJECTIVES

What can this course offer?

1. The student will end up understanding the difficulties employees experience when exercising their fundamental rights in the workplace .
2. The student will learn the adaptations, limitations and modulations suffered by human rights in the employment context.
3. In addition to "traditional" rights, the student will learn the relevance of "modern" rights in employment contexts: harassment, data protection, etc.
4. The student will learn about the judicial protection of human rights.

What does this course contribute to Labour Relations students education?

1. Despite of being an optional course, it offers the student the possibility of strengthen knowledge about basic elements and concepts.
2. The fact that human rights are the main object of learning and also the way to acquire and improve the legal skills and knowledge makes the analysis of the cases pleasant and interesting for the student, who will end up identifying the solution for every case.

## DESCRIPTION OF CONTENTS: PROGRAMME

## PROGRAMME

## I. INTRODUCTION

LESSON 1. Fundamental rights and the employment contract. Overview.

1. Fundamental rights in the Spanish Constitution and their protection.
2. Taxonomy of fundamental rights from an employment perspective.
3. Impact of fundamental rights in the employment context and collision between rights. The proportionality test as a reference for the modulation of fundamental rights.

## II. NON EMPLOYMENT SPECIFIC FUNDAMENTAL RIGHTS

LESSON 2. The right to employee's own image.

1. Overview
2. Protection from the illegal recording and broadcast of the employee's image.
3. Personal physical appearance and clothing. Restrictions to this right.

LESSON 3. The employee's right to privacy, honour and dignity.

1. The core of the employee's right to privacy.
2. Right to privacy before and during hiring.
3. Privacy protection during the employment relationship.
  - 3.1. Physical and bodily privacy.
  - 3.2. Monitoring and watch measures on employees' work (computer monitoring, videotaping cameras...).
  - 3.3. Monitoring employee's personal behaviour.
  - 3.4. Monitoring the employee's health condition.

#### LESSON 4. The employee's right to freedom of thought and belief.

1. The employee's right to freedom of thought and belief.
2. Connection and collision with other fundamental rights in the employment context.
3. The exercise of the right to freedom of religion and the fair adaptation to the business organization.
4. The right to object for belief reasons as a part of the right to freedom of thought and belief.
5. Ideological and belief organizations.

#### LESSON 5. The right to freedom of speech.

1. Manifestations, content and differences. General limits.
2. Limits to the right to freedom of speech in employment contexts:
  - 2.1. The employee's duty of good faith,
  - 2.2. Duty of reserve and discretion,
  - 2.3. Verbal insults and right to honour,
  - 2.4. factors for pondering the right to express criticism.
3. The employee's testimony as one of this right's manifestations.
4. The employee representatives' right to freedom of speech: the meaning of this facility and the duty of confidentiality.

### III. THE EQUALITY OF TREATMENT AND NON DISCRIMINATION PRINCIPLE.

#### LESSON 6. The principle of non discrimination in employment relationships.

1. Contexts of discrimination: in access to employment, during the employment relationship in working conditions and on termination of the employment relationship.
2. Affirmative action (positive or reverse discrimination). Direct and indirect discrimination.
3. The prohibition of discrimination against the employee because of such reasons as:
  - 3.1. Sex or sexual orientation.
  - 3.2. Age.
  - 3.3. Personal circumstances (origin, civil status, social condition or relationship).
  - 3.4. Union membership or adhesion to collective agreements.

### IV. EMPLOYMENT SPECIFIC FUNDAMENTAL RIGHTS

#### LESSON 7. Collective labour rights in an individual dimension.

1. The right to freedom of association in an individual dimension.
2. The strike as an individual right: conditions, limits and consequences.
3. Protection of fundamental rights in collective bargaining. The general binding efficacy of collective agreements.

### V. "MODERN" FUNDAMENTAL RIGHTS

#### LESSON 8. Harassment at work.

1. The sexual harassment. Concept and types: "quid pro quo" and environmental.
2. The psychological harassment or mobbing. Concept and behaviours in the employment relationship.
3. The fundamental rights to the physical and psychological integrity and to the dignity at work, supporting the higher legal protection.
4. Prevention of harassment in the workplace as an occupational risk.

#### LESSON 9. Employees' data protection.

1. The right to privacy and the personal data's computerized treatment.
2. Fundamental principles: congruency and rationality, consent or self-determination.
3. Sensitive data.
4. Data processing and recruitment.

#### LESSON 10. The right to education at work.

1. Professional promotion and training.
2. The right of paid leaves of absence for doing exams or professional studies and programs, for choosing shift, for adapting working time.

#### LESSON 11. The right to safety and health at work.

1. The right to safety and health at work as an autonomous right from the fundamental right to life and physical integrity.
2. The right to life and physical integrity as an absolute fundamental right. The right of resistance.
3. The right to safety and health at work's legal development by the Prevention of Occupational Risks Law.

### VI. FUNDAMENTAL RIGHTS PROTECTION

#### LESSON 12. Judicial protection by labour courts

1. Procedural specialties:
  - 1.1. Discriminatory dismissal as void dismissal,
  - 1.2. change of burden of proof,
  - 1.3. employee's resignation with cause,
  - 1.4. protection measures against employee's harassment.
2. Precedence and summariness of judicial proceedings.
3. Appeal (amparo) before the Constitutional Court.
4. The right to effective judicial protection and no retaliation against the employee.

#### LESSON 13. Other ways of protection.

1. Administrative protection: violations and penalties.
2. Criminal protection: employer crimes.

### LEARNING ACTIVITIES AND METHODOLOGY

- Lectures
- Readings on the various issues addressed in the program under study.
- Analysis and discussion of real cases from courts' decisions.
- Resolution of practical exercises individually or in groups, and discussion in class.
- Workshops in groups, in class under the supervision of the teacher.
- Presentation in class of jointly working papers about a case chosen by students.

Office hours (or by videoconference): by appointment or during the hours established by the teacher at the beginning of the semester. The teacher can also assist the student by email.

There will be at least a collective tutoring.

### ASSESSMENT SYSTEM

The course can be passed through the activities developed during the semester (continuous evaluation).

- Resolving practical exercises (3 ECTS)
- Participation in debates in class, and in practical sessions (1 ECTS)
- Workshops (1 ECTS)
- Work about a case and presentation in class (1 ECTS)

Justified absences will be recovered by making a practical assignment at the end of the class period.

For those who do not pass the continuous assessment, there will be a final exam in First (Ordinary) or Second (Extraordinary) Session, equals than 100% of final grade .

<b>% end-of-term-examination:</b>	0
<b>% of continuous assessment (assignments, laboratory, practicals...):</b>	100

### BASIC BIBLIOGRAPHY

- A. MARTIN VALVERDE Contrato de Trabajo y Derechos Fundamentales, , Revista de Derecho Social. N°6/1999., 1999

- AAVV Derechos laborales fundamentales inespecíficos, Comares, 2020
- C. ORTIZ LALLANA Derechos fundamentales y relación laboral, , Revista del Ministerio de Trabajo y Asuntos Sociales. Nº 13/1998, 1998
- J.A. SAGARDOY BENGOCHEA Los derechos fundamentales y el contrato de trabajo, , Civitas, , 2005
- JANNEKE GERARDS Fundamental Rights.The European and International Dimension, Cambridge University Press, 2023

#### ADDITIONAL BIBLIOGRAPHY

- ALTÉS TÁRREGA, J.A., El acoso sexual en el trabajo, , Tirant Monografías, , 2002.
- CORREA CARRASCO, M. (Coord.), Acoso Moral en el trabajo, , Aranzadi, , 2006.
- DESDENTADO BONETE, A. y MUÑOZ RUIZ, A.B., Control informático, videovigilancia y protección de datos en el trabajo,, Lex Nova, , 2012
- F. DE VICENTE PACHES El derecho del trabajador al respeto de su intimidad., Consejo Económico y Social. , 1998.
- F.J. CALVO GALLEGO Contrato de trabajo y libertad ideológica. Derechos fundamentales y organizaciones de tendencia,, CES, , 1995.
- I. RODRÍGUEZ CARDO Poder de dirección empresarial y esfera personal del trabajador, , Consejo Económico y Social del Principado de Asturias, , 2009
- MERCADER UGUINA, J.R. Protección de datos en las Relaciones Laborales, Francis Lefebvre, 2018
- PRECIADO DOMENECH, C.H. Teoría general de los derechos fundamentales en el contrato de trabajo, Thomson Reuters Aranzadi, 2018
- S. DEL REY GUANTER Libertad de expresión e información y contrato de trabajo: un análisis jurisprudencial. , Monografías Civitas. 1994..
- Y. MANEIRO VAZQUEZ La tutela de los Derechos Fundamentales y libertades públicas por los tribunales laborales, , Ed. Netbiblo, 2007..

#### BASIC ELECTRONIC RESOURCES

- Mercader Uguina, J, Goerlich Peset, J.M y De la Puebla Pinilla, A. (Directores) . El foro de Labos:  
<http://https://www.elforodelabos.es/#>