

AALS Section on Employment Discrimination and Section on Labor Relations and Employment Law 2011 Newsletter

Introduction

This year the AALS Section on Employment Discrimination and Section on Labor Relations and Employment Law once again combined forces to produce an annual AALS Newsletter. This newsletter begins with an update regarding relevant AALS presentations, including hot topics panels. It continues with a list of hires, promotions, moves & awards, followed by a list of announcements, and a list of publications from section members. The newsletter concludes with a Supreme Court round-up.

Section Presentations

Section on Employment Discrimination

Thursday, January 5, 9:00 – 10:30 AM

Maryland Suite C, Lobby Level, Washington Marriott Wardman Park Hotel

Solidarity: The New Antidiscrimination Law?

Moderator: Julie C. Suk, Yeshiva University, Benjamin N. Cardozo School of Law

Speakers: Devon Wayne Carbado, University of California, Los Angeles, School of Law; Jennifer Gordon, Fordham University School of Law; David A. Hollinger, Preston Hotchkis Professor of American History, Department of History, University of California, Berkeley, Berkeley, CA; Sophia Z. Lee, University of Pennsylvania Law School; Robin A. Lenhardt, Fordham University School of Law; Reva B. Siegel, Yale Law School

This panel will address the concept of solidarity in the law of equal employment opportunity. The relationship between equality and social cohesion is behind the new “post-racial” or “post-civil rights” paradigm, and will be significant to the employment discrimination doctrine that evolves after *Ricci v. DeStefano*. Our aim is to generate an interdisciplinary conversation about the following set of questions: What is the relationship of solidarity to different understandings of equality? Why and how is solidarity important in the workplace? Does the enforcement of civil rights by racial minorities and women lead to balkanization in the workplace? To the extent that U.S. employment discrimination law is thought to catalyze the promotion of diversity, does it foster bonds between individuals from different backgrounds in a pluralistic society? In what

ways can we understand antidiscrimination law as promoting/forging solidarity in the workplace? Under what circumstances will antidiscrimination law threaten cohesion/solidarity?

This debate should generate questions about what we might mean by solidarity. For instance, does solidarity presuppose existing distributions and baselines or provide critical tools for describing and challenging them? What are the social, economic, and cultural forces that lead the redistributive function of employment discrimination law to be understood as a zero-sum game in the United States? In what ways have anti-classification/individualist or anti-subordination/group status approaches to employment equality been concerned all along with questions of solidarity? Or, would a focus on solidarity change the logic of employment discrimination law? What tools does this inquiry into solidarity in the workplace give us for understanding current Title VII and Equal Protection doctrine, or for imagining changing doctrine?

Business Meeting at Program Conclusion.

Labor Relations and Employment Law Luncheon

Thursday, January 5, 12:00 – 1:30 PM

Washington Room 5, Exhibition Level, Washington Marriott Wardman Park Hotel

Sections on Labor Relations and Employment Law, Co-Sponsored by Section on Employee Benefits and Executive Compensation

Thursday, January 5, 2:00 – 5:00 PM

McKinley, Mezzanine Level, Washington Marriott Wardman Park Hotel

Public Employees: Labor Issues in an Era of Economic Recession

(Papers to be published in *Employee Rights and Employment Policy Journal*)

Moderator: Ann C. McGinley, University of Nevada, Las Vegas, William S. Boyd School of Law

Speakers: Rafael Gely, University of Missouri School of Law; Michael Z. Green, Texas Wesleyan University School of Law, *Speaker from a Call for Papers*; Ann C. Hodges, The University of Richmond School of Law; Martin H. Malin, Illinois Institute of Technology, Chicago-Kent College of Law; Judy Neumann, Commissioner, Wisconsin Employment Relations Commission, Madison, WI; Joseph E. Slater, University of Toledo College of Law; Peggie Smith, Washington University in St. Louis School of Law

Given the economic recession, public employees are in a particularly precarious position. A number of jurisdictions have challenged the collective bargaining rights of public employees. Public employees risk losing employment, job security and pension benefits. The program will examine the legal, political and economic issues surrounding public employees' employment relationships. Noted scholars and practitioners will focus on the history of public employee collective bargaining, circumstances occurring in Wisconsin, Ohio and other states that are

attempting to restrict bargaining rights, how employees fare in states that do not have collective bargaining rights, empirical research concerning the unionization of public employees through card-checks, the employment conditions of marginal public employees, and other related topics. Scholars will also consider the economics leading to this situation and make suggestions for change.

Business Meeting at Program Conclusion.

Other Programs of Potential Interest

Crosscutting Program

Thursday, January 5, 10:30 AM – 12:00 PM

Maryland Suite C, Lobby Level, Washington Marriott Wardman Park Hotel

The Antibalkanization Turn in Antidiscrimination Law and Theory?

Section on Women in Legal Education

Thursday, January 5, 10:30 AM – 12:00 PM

Delaware Suite A, Lobby Level, Washington Marriott Wardman Park Hotel

New Voices in Gender

Sections on Education Law and Law and Sports Joint Program, Co-Sponsored by Section on Sexual Orientation and Gender Identity Issues

Thursday, January 5, 2:00 – 5:00 PM

Delaware Suite A, Lobby Level, Washington Marriott Wardman Park Hotel

Taking Stock at Title IX's 40th Anniversary: Athletics, Single-Sex Education, and Bullying/Harassment

Section on Minority Groups, Co-Sponsored by Section on Africa

Friday, January 6, 10:30 AM – 12:15 PM

Thurgood Marshall East, Mezzanine Level, Washington Marriott Wardman Park Hotel

Minority Conservatives and Their Impact on Legal Theory

Section on Law and Interpretation, Co-Sponsored by Section on Legal Writing Reasoning and Research

Friday, January 6, 4:00 – 5:45 PM

Wilson C, Mezzanine Level, Washington Marriott Wardman Park Hotel

Law as a Discourse Community: Critical Perspectives on Legal Discourse

Section on Alternative Dispute Resolution, Co-Sponsored by Sections on Civil Procedure and Litigation

Saturday, January 7, 10:30 AM – 12:15 PM

Maryland Suite B, Lobby Level, Washington Marriott Wardman Park Hotel

The Supreme Court and the Future of Arbitration

Section on Sexual Orientation and Gender Identity Issues

Saturday, January 7, 10:30 AM – 12:15 PM

Delaware Suite B, Lobby Level, Washington Marriott Wardman Park Hotel

Violence and the LGBT Community: Bullying, Bashing, and Sex Crimes

Hot Topic Program: Church Autonomy, the Ministerial Exception, and Hosanna-Tabor v. EEOC

Saturday, January 7, 10:30 AM – 12:15 PM

Check AALS program for location

Section on Employee Benefits and Executive Compensation, Co-Sponsored by the Section on State and Local Government Law

Saturday, January 7, 1:30 PM – 3:15 PM

Delaware Suite B, Lobby Level, Washington Marriott Wardman Park Hotel

An Objective Discussion on Public Sector Pension Plans

Section on Sexual Orientation and Gender Identity Issues

Sunday, January 8, 9:00 – 10:45 AM

Virginia Suite B, Lobby Level, Washington Marriott Wardman Park Hotel

Out in the Classroom and in Academy

Hires, Promotions, Moves & Awards

Entry-Level Hires

Jason Bent (VAP at Penn State) to Stetson

Brian Clarke (Washington & Lee adjunct) to Charlotte Law

Jessica Clarke (Columbia Assoc-in-Law) to Minnesota

Matthew Dimick (Law Research Fellow at Georgetown) to Buffalo Law

Deborah Eisenberg (Visitor at Maryland) to Maryland Law

Charlotte Garden (Teaching Fellow at Georgetown) to Seattle U.

Dave Sidhu (Baltimore Law adjunct) to New Mexico Law

Promotions and Tenures

Keith Cunningham-Parmeter (Willamette) has been promoted and awarded tenure

Lisa Durham Taylor (Atlanta's John Marshall) has been promoted and awarded tenure

Susan Harthill (Florida Coastal) has been promoted and awarded tenure

Ann Lofaso (West Virginia) has been promoted and awarded tenure

Joe Seiner (South Carolina) has been promoted and awarded tenure

Juliet Stumpf (Lewis & Clark) has been promoted to Professor

Emily Gold Waldman (Pace) has been promoted and awarded tenure

Lateral Moves

Jim Brudney (Ohio State) to Fordham

Miriam Cherry (McGeorge-Pacific) to Saint Louis University

Ruben Garcia (Cal Western) to UNLV

Jeff Hirsch (Tennessee) to UNC

Nancy Leong (William & Mary) to Denver

Juan Perea (Florida) to Loyola-Chicago

Sandra Sperino (Temple) to Cincinnati

Administrative and Other Appointments

Jane Korn (Arizona) to Dean at Gonzaga

Paul Harpur (Griffith University - Australia) to Doctorate Research Fellowship at University of Queensland at the TC Beirne School of Law

Nancy Hogshead-Makar (Florida Coastal) named Senior Director of Advocacy at the Women's Sport Foundation

Richard Moberly (Nebraska) to Associate Dean

Nicole Porter (Toledo) to Associate Dean for Academic Affairs

John Rumel (Idaho), appointed as a full-time faculty member at the College of Law

Charlotte Sanders (Georgia State Univ. College of Business), secondary appointment at the College of Law

Honors and Awards

Rick Bales (N. Ky.-Chase) named the 2010 Frank Sinton Milburn Outstanding Professor at the University of Northern Kentucky and appointed to American Law Institute

Wendy Greene (Samford-Cumberland) named recipient of the 2011 Harvey S. Jackson Excellence in Teaching Award for Upper Level Courses

Nancy Levit (UMKC) received the University of Missouri-Kansas City Chancellor's Award for Teaching

Cynthia Nance (Arkansas) named Nathan G. Gordon Professor and received the 2012 ABA Spirit of Excellence Award

Angela Onwauchi-Willig (Iowa) named the Charles and Marion Kierscht Professor of Law and appointed to American Law Institute

Kathy Stone (UCLA) named the Arjay and Francis Miller Professor of Law

Visits

Ben Bratman (Pitt) to McGeorge-Pacific (2011-2012)

Aaron Lacy (SMU) to Pittsburgh (2011-2012)

Michael Nader (Bakers Daniel) to Adjunct at Notre Dame Law (starting Spring 2011)

Paul Secunda (Marquette) to Wisconsin (Fall 2011)

Juliet Stumpf (Lewis & Clark) has been appointed as a visiting Scholar at McGill University with the Hans & Tamar Oppenheimer Chair in Public International Law and the Centre for Human Rights and Legal Pluralism (Spring 2012)

Andrew Stumpf (Michigan Instructor) has been appointed as an Adjunct Professor in the University of Alabama's LLM in Taxation program (Summer 2011)

Conferences & Other Announcements

Indiana Journal of Law and Social Equality Symposium: Whither Social Equality?

The newly-formed *Indiana Journal of Law and Social Equality*'s symposium *Whither Social Equality?* will explore the current state of social equality thought from a variety of perspectives and address a variety of different forms of (in)equality (race, class, gender, sexual orientation, intersectionality, and familial status). It will be held on March 30, 2012, in Bloomington Indiana. Submit papers, proposals, or abstracts to ijlse@indiana.edu by January 16, 2012. Papers may be accepted for publication, presentation at the symposium, or both. Papers may vary in length from short essays to more traditional law review length (latter preferred).

NYLS Symposium on Discrimination Cases after *Iqbal*

The New York Law School Law Review and the Employee Rights Advocacy Institute for Law & Policy present the symposium *Trial by Jury or Trial by Motion? Summary Judgment, Iqbal, and Employment Discrimination*. The symposium will be held Monday, April 23, 2012, 8:30 a.m. – 4:45 p.m. For more information, please visit <http://www.nylslawreview.com/employment-law-speaker-information/>.

Public Sector Unions Around the World

On July 2, 2012, a one-day conference will be held in Philadelphia on public sector unions around the world. Leading scholars from the United States, Japan, France, Canada, Germany, Greece and Italy will discuss their public sector unions. Each country will be represented by a legal and a non-legal scholar. The conference has been organized by Matt Finkin from Illinois and Marty Malin from Chicago-Kent will be the legal scholar from the US.

This program is being sponsored by the US and Canadian Branches of the International Society for Labor and Social Security Law and by the International Association of Labour Law Journals. (To join the US Branch of the ISLSSL, visit law.unl.edu/islssl. Membership is inexpensive, includes a subscription to the Comparative Labor Law & Policy Journal, and provides great opportunities to network with overseas colleagues.) The program is being offered in conjunction with the 16th World Congress of the International Labour and Employment Relations Association, which will be in Philly from July 2-5. www.ilera2012.com. As a result, this will be a good set of events to meet lots of interesting people from around the world.

We're not sure yet of the arrangements: registration fee (but it will be low), housing, precise location, etc. But please think about attending and mark your calendars. If you're interested, please drop Steve Willborn a note (willborn@unl.edu), so we can make sure we have the right size room and so he can make sure to let you know details as they develop.

Carl A. Warns Jr. Labor & Employment Law Institute

The Twenty-Ninth Annual Carl A. Warns Jr. Labor & Employment Law Institute will take place on June 21 & 22, 2012, at the Downtown Marriott in Louisville, Kentucky. Attendees will be a

nice blend of practitioners, public servants, and professors. If you are unfamiliar with Louisville, it is a great place to spend a few days. More information is available at <http://www.law.louisville.edu/node/7592>.

7th Annual Colloquium on Labor and Employment Law

The 7th Annual Colloquium will be in Chicago on Friday, September 14, and Saturday, September 15, 2012, at Loyola Chicago and Northwestern law schools. Friday's program will be held at Loyola with Northwestern taking over on Saturday. There will be breakfast and lunch both days and a dinner on Friday night. More announcements will be made, but in the meantime, mark your calendars!

The Section on Women in Legal Education asked us to include the following two announcements.

Child Care Available

The Women's Section scored a significant victory last spring when it successfully petitioned the AALS to reinstate AALS-sponsored group child care at the AALS Annual Meeting. The AALS sponsored child care at the Annual Meeting from 2002 to 2009, but discontinued the service for the 2010 meeting due to low usage. In response, the AALS Section on Women in Legal Education formed a Work-Life Committee, which spent several months investigating the cancellation. The Work-Life Committee and the Women's Section board then submitted a letter to the AALS requesting that the cancellation of childcare services at the annual meeting be reversed. See <http://dl.dropbox.com/u/1588115/Letter%20to%20Prager%20FINAL%20rev.pdf>. The Section's position was that failure to offer childcare services makes it difficult for those with young children to attend the conference, and the cancellation is disproportionately likely to disadvantage junior women faculty.

In response to the request, the AALS Executive Committee has agreed to offer an AALS Annual Meeting child care center for 2012 and 2013, subject to sunseting after that period. If it is underutilized in those two years, it will not be continued. **If you will have children with you at the conference and would like to do your part to make sure that childcare is offered in the future, please consider using this service during the 2012 Annual Meeting in D.C.**

Information, including fees, hours, registration procedures, etc. is detailed on the registration form (PDF), available at <http://www.aals.org/am2012/childcarereg.pdf>. The deadline for advance registration is December 16, 2011. Please register as early as possible; space is limited. This campaign was an impressive group effort by the Women in Legal Education Section's Executive Committee and newly-formed Work-Life Committee. In addition, special credit is due to Danne Johnson (Oklahoma City), Joan Krause (UNC), Nancy Levit (UMKC), Lisa Pruitt (U.C. Davis), and Nareissa Smith (Florida Coastal) for help with research and drafting; Joan Williams (Hastings) and Deborah Rhode (Stanford) for endorsing our request; and Bridget Crawford (Pace) for her blog posts on the issue.

Mentoring Available

At different stages of their careers, individuals may need different types of mentoring. Mentoring needs could be in teaching, in scholarship development, or with work-life issues and experiences. Therefore, a “one size fits all needs for all times” approach to mentoring has proven difficult to implement in the past.

The Section on Women in Legal Education’s Mentoring Program takes a different approach to traditional mentoring. The Section’s program is structured as an “a la carte” program. The volunteer mentors and their expertise and experiences are listed on the Mentoring Program web site. Individuals who desire mentoring are encouraged to contact directly any volunteer mentor on the list who matches the individual’s particular mentoring need(s). Mentors are available to give assistance and advice concerning teaching, scholarship and work-life issues. The URL for the site is: <http://law.unl.edu/wile>.

Professor Colleen Medill at the University of Nebraska administers the web site and serves as the chair of the Mentoring Program. Her e-mail is cmedill2@unl.edu. You may contact Colleen if you want assistance in finding a "match" for the type of mentoring you are seeking.

The Mentoring Program Committee currently is working to develop the web site, publicize it, and expand the list of mentors. The members of the Mentoring Program Committee are: Colleen E. Medill, Chair (Nebraska); Marina Angel (Temple); Michelle Simon (Pace) Jennifer Hendricks (Tennessee); Sandra Sperino (Cincinnati); Melissa Marlow (Southern Illinois); Nicole Huberfeld (Kentucky); Kerri Stone (Florida International); and Ruth Jones (Pacific).

The Section’s Mentoring Program and the web site are a work in progress. If you have suggestions for the web site and improving the quality of the program, please contact any member of the Mentoring Program Committee.

Mentoring Opportunity

The Section also is looking for individuals who want to be mentors. If you would like to be a mentor, please contact Colleen Medill for a Volunteer Mentor Application Form. Colleen can be reached at cmedill2@unl.edu.

Speed Mentoring Session: Thursday, Jan. 5, 9:00 AM-10:15 AM

The Section is sponsoring a “Speed Mentoring” session which will pair experienced faculty members with newer faculty members for facilitated networking sessions. Every 10 minutes, conversation partners will change in a designated order.

To be held in Delaware Suite A, Lobby Level, Washington Marriott Wardman Park Hotel

2011 Labor and Employment Publications

The following publication information was submitted by faculty in response to requests for updates that we posted on the Workplace Profs' blog and disseminated over email. We have only included publications that will have 2011 publication dates. A few of you submitted publications with 2012 publication dates; we have not included those below but they can of course be submitted for next year's newsletter.

Happy reading all!

Books

N. Jeremi Duru, *Advancing the Ball: Race, Reformation, and the Quest for Equal Coaching Opportunity in the NFL* (Oxford University Press 2011).

Joel Wm. Friedman, *The Law of Employment Discrimination: Cases & Materials*, (Foundation Press 8th edition 2011).

Ann C. Hodges, *Public Sector Employment: Cases and Materials* (2d ed. ThomsonWest 2011) (with Martin H. Malin and Joseph E. Slater).

Serena Mayeri, *Reasoning from Race: Feminism, Law, and the Civil Rights Revolution* (Harvard University Press 2011).

Ramona L. Paetzold & Steven L. Willborn, *The Statistics of Discrimination: Using Statistical Evidence in Discrimination Cases* (West 2011).

Steven L. Willborn, Stewart J. Schwab, John F. Burton, Jr., & Gillian L.L. Lester, *Employment Law: Cases and Materials* (5th edition, Lexis).

Articles, Chapters, and On-Line Publications

Rick Bales, *A Data-Driven Snapshot of Labor and Employment Law Professors*, 56 ST. LOUIS U. L. J. ____ (forthcoming 2011); *The U.S. Employment Law Perspective on Protecting Research and Development*, chapter in Marilyn Pitard et al., *Business Innovation: A Legal Balancing Act – Perspectives from Intellectual Property, Labour and Employment, Competition and Corporate Laws* (Edward Elgar Pty Ltd, forthcoming 2011).

Stephen F. Befort, *Unilateral Alteration of Public Sector Collective Bargaining Agreements and the Contract Clause*, 59 BUFF. L. REV. 1 (2011); *Let's Try This Again: The ADA Amendments Act of 2008 Attempts to Reinvigorate the "Regarded As" Prong of the Statutory Definition of Disability*, 2010 UTAH L. REV. 993.

Susan Bisom-Rapp, *Increasing the Employment Rate of Older Workers: European Objectives and US Lessons*, 27 INT. J. COMP. L.L.I.R. 301 (2011) (with Malcolm Sargeant); *Learning from*

Troubled Times: Pursuing Equality Outside an Anti-discrimination Law Frame by Rethinking the Promotion of Safe Work during the Bush Administration, 45 U.S.F. L. REV. 603 (2011); *Decent Work, Older Workers, and Vulnerability in the Economic Recession: A Comparative Study of Australia, the United Kingdom and the United States*, 15 EMP. RTS. & EMP. POL'Y J. 43 (2011) (with Andrew Frazer & Malcolm Sargeant); Guest Editor, *Introduction - Symposium issue: Decent Work in a Post-Recessionary World*, 15 EMPLOYEE RTS. & EMP. POL'Y J. 1 (2011).

Caroline Mala Corbin, *The Irony of Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 106 NW. U. L. REV. Colloquy 96 (2011).

Keith Cunningham-Parmeter, *Forced Federalism: States as Laboratories of Immigration Reform*, 62 HASTINGS L.J. 1673 (2011) (analyzing the experimental value of state immigration laws, including those involving employment verification); *Alien Language: Immigration Metaphors and the Jurisprudence of Otherness*, 79 FORDHAM L. REV. 1545 (2011) (critically evaluating the metaphoric representation of immigrants in Supreme Court texts, including *Hoffman Plastic Compounds*).

Ellen Dannin, *Why the Amendments to the NLRB's Proposed Election Regulations Should Be Approved*, Public Commentary, 29 CFR Parts 101, 102 and 103, Representation - Case Procedures; Proposed Rule RIN 3142-AA08 (Economic Policy Institute Issue Brief) August 19, 2011 <http://web.epi-data.org/temp727/Dannin%20NLRB%20REGS%20COMMENTS.pdf>; *No Rights Without a Remedy: The Long Struggle for Effective National Labor Relations Act Remedies*, American Constitution Society Issue Brief, June 7, 2011 <http://www.acslaw.org/publications/issue-briefs/no-rights-without-a-remedy-the-long-struggle-for-effective-national-labor->; *Democracy's Work - Work in a Democratic Society*, American Constitution Society Issue Brief, April 25, 2011 <http://www.acslaw.org/acsblog/democracy%E2%80%99s-work-work-in-a-democratic-society>.

Michelle Eviston & Rick Bales, *Capping the Costs of Consumer and Employment Arbitration*, __ TOLEDO L. REV. __ (forthcoming 2011).

Tracey George, Mitu Gulati and Ann C. McGinley, *The New Old Legal Realism*, __ NW. L. REV. __ (forthcoming 2011).

Melanie Goff & Rick Bales, *An Analysis of an Order to Compel Arbitration: To Dismiss or Stay?*, __ PENN ST. L. REV. __ (2011); *A "Plausible" Defense: Applying Twombly and Iqbal to Affirmative Defenses*, 34 AM. J. TRIAL ADVOC. __ (2011).

Wendy Greene, *Black Women Can't Have Blonde Hair...in the Workplace*, 14 J. GENDER, RACE & JUST. 405 (2011); *Title VII: What's Hair (and Other Race-Based Characteristics) Got to do With It?*, 79 COLO. L. REV. 1355 (2008) was cited by the Chicago Commission on Human Rights in two public accommodations race discrimination cases: Scott v. Owner of Club 720 and Lyke v. Owner of Club 720.

Paul Harpur, Ben French, & Rick Bales, *Australia's Fair Work Act: A Big Step Forward for Disability Discrimination Law*, 2011 CORNELL H.R. REV. __.

Melissa Hart, *From Wards Cove to Ricci: Struggling Against the “Built in Headwinds” of a Skeptical Court*, 46 WAKE FOREST L. REV. 261 (2011).

Susan Harthill, *A Comparative Analysis of Workplace Bullying As An Occupational Safety and Health Concern*, 34 HAST. J. INT’L & COMP. L. 253 (2011).

Ann C. Hodges, *Avoiding Legal Seduction: Reinvigorating the Labor Movement to Balance Corporate Power*, 94 MARQUETTE LAW REVIEW 889 (2011) (Symposium on Promoting Employee Voice in the New American Economy); [*The Case against Boeing: Why Congressional Interference is Unjustified*](#), American Constitution Society Blog, June 29, 2011.

Sharona Hoffman, *The Importance of Immutability in Employment Discrimination Law*, 52 WILLIAM & MARY LAW REVIEW 1483 (2011).

Arthur S. Leonard, *The Miraculous Year 2010 in United States Gay Rights Law: Anomaly or Tipping Point?* 3 AMSTERDAM LAW FORUM No. 2, 176 (2011) (on-line journal).

Rosalie Berger Levinson, *Gender-Based Affirmative Action and Reverse Gender: Beyond Gratz, Parents Involved, and Ricci*, 34 HARVARD J. OF LAW AND GENDER 1 (2011).

Nancy Levit, *The Limits on Lawsuits by Lawyers Against Law Firms and the Prospects for Creating Happy Lawyers*, 73 U. PITTSBURGH L. REV. ____ (forthcoming 2011).

Ariana Livingston, *Toward a Cohesive Interpretation of the Electronic Communications Privacy Act for the Electronic Monitoring of Employees*, 114 W. VA. L. REV. (forthcoming 2011); *Workplace Privacy and Monitoring: The Quest for Balanced Interests*, 59 CLEV. ST. L. REV. (forthcoming 2011).

Alex Long, *Employment Retaliation and the Accident of Text*, 90 OREGON LAW REVIEW ____ (2011).

Ann C. McGinley, *Ricci v. DeStefano: Diluting Disparate Impact and Redefining Disparate Treatment*, __ NEV. L. J. __ (2011) (symposium); *Work, Care Giving and Masculinities*, 34 SEATTLE U. L. REV. 703 (2011) (symposium on Joan Williams’s book).

Lindsay Mongenas & Rick Bales, *Defining Independent Contractor Protection Under the Rehabilitation Act*, __ HAMLIN L. REV. ____ (forthcoming 2011).

James Moore & Rick Bales, *Elections, Neutrality Agreements, and Card Checks: The Failure of the Political Model of Industrial Democracy*, __ INDIANA L.J. ____ (forthcoming spring 2011).

Andrew Powell & Rick Bales, *Ethical Problems in Class Arbitration*, __ J. DISPUTE RESOL. ____ (forthcoming fall 2011).

Gowri Ramachandran, *Confronting Difference and Finding Common Ground*, 34 SEATTLE UNIVERSITY LAW REVIEW 725 (2011) (colloquy on Joan Williams's book *Reshaping the Work-Family Debate: Why Men and Class Matter*); *Pulling the Ladder Up Behind You: Feminism and Family*, Issues in Legal Scholarship (2011) (Legal Feminism Now issue) (online peer-reviewed publication).

Laura A. Rosenbury, *Working Relationships*, 35 WASH. U. J.L. & POL'Y 117 (2011).

John Rumel, *Federal Disability Discrimination Law and the Toxic Workplace: A Critique of ADA and Section 504 Case Law Addressing Impairments Caused or Exacerbated by the Work Environment*, 51 SANTA CLARA L. REV. 515 (2011).

Paul Secunda, *Pickering v. Bd. of Education: Unconstitutional Conditions and Public Employment in First Amendment Law Stories* (Thomson-West) (Richard Garnett and Andrew Koppelman eds.) (2011); *Neoformalism and the Reemergence of the Rights-Privilege Distinction in Public Employment Law*, 48 SAN DIEGO L. REV. 907 (2011); *The Contemporary "Fist Inside the Velvet Glove": Employer Captive Audience Meetings Under the NLRA*, 5 FLA. INTL. U. L. REV. 351 (2011); *Foreword, Promoting Employee Voice in the New American Economy*, 94 MARQ. L. REV. 757 (2011); *New Governance of the Transnational Variety: Can Transnational Domestic Labor Regulation Harness the Power of Private Legal Regulation?* (reviewing David J. Doorey, *In Defense of Transnational Domestic Labor Regulation*, 43 VANDERBILT J. TRANSNATIONAL L. 953 (2010)), JOTWELL (Apr. 25, 2011), at <http://worklaw.jotwell.com/new-governance-of-the-transnational-variety-can-transnational-domestic-labor-regulation-harness-the-power-of-private-legal-regulation.>; *U.S. Supreme Court Amicus Brief of Civil Procedure Professors in Support of Respondents, Wal-Mart Stores Inc. v. Dukes, No. 10-277* (with Melissa Hart, Alexandra Lahav, Arthur Miller, and Adam Steinman) (filed March 1, 2011) (regarding class action rules for employment discrimination action); *The Wisconsin Republican Party Doth Protest Too Much, Methinks*, ACS Blog, March 28, 2011, <http://www.acslaw.org/acsblog/the-wisconsin-republican-party-doth-protest-too-much-methinks>; *Walker's Attack on Union is Un-American*, Op-Ed Column, The Cap Times, Feb. 19, 2011.

Peggie Smith, *The Pitfalls of Home: Protecting the Health and Safety of Paid Domestic Workers*, 23 CANADIAN J. OF WOMEN & L. 309 (2011); *Work like any Other, Work Like No Other: Establishing Decent Work for Domestic Service Workers*, EMPLOYEE RIGHTS & EMPLOYMENT POLICY J. 157 (2011).

Sandra Sperino, *Rethinking Discrimination Law*, 110 MICH. L. REV. 69 (2011).

Suja Thomas, *Oddball Iqbal and Twombly and Employment Discrimination*, 2011 ILL. L. REV. 215.

Supreme Court Round-Up

Decided Cases

AT & T Mobility LLC v. Concepcion, 131 S.Ct. 1740 (2011)

Held that the Federal Arbitration Act preempted a California state law which provided that class-action waivers in consumer contracts of adhesion were unconscionable in certain instances.

Borough of Duryea, Pa. v. Guarnieri, 131 S.Ct. 2488 (2011)

Held that a public employee's protection against retaliation from his employer extends only to instances where the employee has petitioned the government on a matter of public, not private, concern.

CIGNA Corp. v. Amara, 131 S.Ct. 1866 (2011)

Held that although the district court did not have authority under Section 502(a)(1)(B) of ERISA to reform CIGNA's pension plan, it did have authority to do so under another provision, Section 502(a)(3).

Chamber of Commerce of U.S. v. Whiting, 131 S.Ct. 1968 (2011)

Held that the Immigration Reform and Control Act does not preempt an Arizona statute providing for revocation of licenses of state employers knowingly or intentionally employing unauthorized aliens and requiring all Arizona employers to use E-Verify.

CSX Transp., Inc. v. McBride, 131 S.Ct. 2630 (2011)

Held that under the Federal Employers' Liability Act, a defendant railroad "caused or contributed to" a railroad worker's injury, permitting a plaintiff to recover, if the railroad's negligence played a part—no matter how small—in bringing about the plaintiff's injury.

Kasten v. Saint-Gobain Performance Plastics, 131 S.Ct. 1325 (2011)

Held that the Fair Labor Standards Act, which protects individuals from being discharged in response to filing "any complaint," applies not only to written complaints but also to oral complaints made by employees.

Mayo Foundation for Medical Educ. and Research v. U.S., 131 S.Ct. 704 (2011)

Held that the Treasury Department's rule that treats medical residents as full-time employees, and thus not exempt from the payment of payroll taxes, is a valid interpretation of federal law.

National Aeronautics and Space Admin. v. Nelson, 131 S.Ct. 746 (2011)

Held that NASA did not violate a constitutional right to informational privacy of federal contractor employees by requiring them to undergo standard background checks.

Staub v. Proctor Hosp., 131 S.Ct. 1186 (2011)

Held that an employer is liable under the Uniformed Services Employment and Reemployment Rights Act if a supervisor's act, motivated by antimilitary animus that is intended to cause an adverse employment action, is a proximate cause of the ultimate employment action.

Thompson v. North American Stainless, LP, 131 S.Ct. 863 (2011)

Held that an employer may be liable under Title VII for retaliating against an employee who is claiming discrimination by firing the employee's fiancé and that the fiancé would have standing to sue on his own behalf for being fired.

Wal-Mart Stores, Inc v. Dukes, 131 S.Ct. 2541 (2011)

Held that a nationwide class of female Wal-Mart employees did not meet the Federal Rules of Civil Procedure 23(a)(2) commonality requirement – as there was not a common mode of exercising discretion identified – and that the class could not have brought back pay claims under Rule 23(b)(2) as the claims were not incidental to the requested injunctive or declaratory relief.

Pending Cases

Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC (No. 10-553)

Granted cert. to determine whether the “ministerial exception” applies to a teacher at a religious elementary school who teaches the full secular curriculum, but also teaches daily religion classes, and who is a commissioned minister.

Knox v. Service Employees Intern. Union, Local 1000 (10-1121)

Granted cert. to determine: (1) Whether a state, consistent with the First and Fourteenth Amendments, can condition employment on the payment of a special union assessment intended solely for political and ideological expenditures without first providing a notice that includes information about that assessment and provides an opportunity to object to its exaction? (2) Whether a state, consistent with the First and Fourteenth Amendments, can condition continued public employment on the payment of union agency fees for purposes of financing political expenditures for ballot measures?

Coleman v. Court of Appeals of Maryland (10-1016)

Granted cert. to determine whether Congress abrogated states' Eleventh Amendment immunity when it passed the self-care leave provision of the Family and Medical Leave Act.

Christopher v. SmithKline Beech Corp. (11-204)

Granted cert. to determine (1) whether deference is owed to the Secretary of Labor's interpretation of the Fair Labor Standards Act's outside sales exemption and related regulations; and (2) whether the Fair Labor Standards Act's outside sales exemption applies to pharmaceutical sales representatives.

Elgin v. Department of Treasury (11-45)

Granted cert. to determine whether the Civil Service Reform Act precludes federal district courts from jurisdiction over constitutional claims for equitable relief brought by federal employees.

Filarsky v. Delia (10-1018)

Granted cert. to determine whether a lawyer retained to work with government employees in conducting an internal affairs investigation is precluded from asserting qualified immunity solely because of his status as a private lawyer rather than a government employee.