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# NYU Labor & Employment Law

## NEWSLETTER

OF THE CENTER FOR LABOR AND EMPLOYMENT LAW

New York University School of Law

## Resolving Labor and Employment Disputes: A Practical Guide

June 3-4, 2010

**T**HE CENTER'S 63RD ANNUAL CONFERENCE brought together top government officials and leading attorneys in the fields of labor and employment law in a unique two-day program—Resolving Labor and Employment Disputes: A Practical Guide. Taking a page from the 13th Annual Workshop on Labor and Employment Law for Federal Judges, a large part of the program was organized as a series of moot sessions, with attorneys representing both sides in typical labor and employment disputes before a judge or agency officer hearing the matter. • In addition, the Conference celebrated the 75th anniversary of the National Labor Relations Act, with presentations by National Labor Relations Board Chair Wilma Liebman, new NLRB Member Craig Becker, and NLRB General Counsel Ronald Meisburg.

The Center for Labor  
and Employment Law



New York University School of Law

EEOC Commissioner Chai Feldblum also addressed the Equal Employment Opportunity Commission's efforts to enhance the employer-employee dialogue.

Those presiding at conference "hearings" included former NLRB Member Alex Acosta (now Dean of Florida International University's College of Law), Hon. Helen E. Freedman

(Supreme Court of the State of New York, Appellate Division, First Department), J. Michael Lightner (Regional Director, NLRB Region 22), Kathleen Roberts (former Magistrate Judge, U.S. District Court for the Southern District of New York), and Sandra Zeigler (Midwest Regional Director, Office of Federal Contract Compliance Programs). ●

## Resolving Labor and Employment Disputes: A Practical Guide June 3-4, 2010

### Welcome

**Esta R. Bigler** (Director of Labor & Employment Law Programs, Cornell ILR)

**Professor Samuel Estreicher** (NYU Law)

**Professor David L. Gregory** (St. John's Law)

### I. Keynote Address

**Hon. Wilma Liebman** (Chairman, NLRB)

### II. Making Your Case before the NLRB General Counsel

**Moderator: Frederick Braid** (Holland & Knight)

#### 1. Class Arbitration Waivers and Section 7 Rights

**Presiding: Dean Alex Acosta** (Florida Intl. Univ., former Member, NLRB)

**Presenters: Marshall Babson** (Hughes Hubbard & Reed); **Laurence Gold** (Bredhoff & Kaiser)

#### 2. Seeking § 10(j) Relief

**Presiding: J. Michael Lightner** (Regional Director, Region 22, NLRB)

**Presenters: Louis DiLorenzo** (Bond, Schoeneck & King); **Ronald Shechtman** (Pryor Cashman)

### III. General Counsel Meisburg: A Retrospective

**Introduction: Alvin P. Blyer** (Regional Director, Region 29, NLRB)

**Speaker: Hon. Ronald Meisburg** (General Counsel, NLRB)

### IV. Being a Pro-Active In-House Counsel

**Moderator: Meryl Kaynard** (formerly JPMorgan Chase)

**Presenters: Charles (Chip) W. Fournier** (NBC Universal); **Linda Gadsby** (Scholastic); **Gregory R. Meyer** (IBM Corporation); **Karen Mitchell** (Credit Suisse); **Mary Schuette** (Con Edison)

#### 1. Employment Arbitration Clauses

#### 2. Diversity Policies and RIF Audits After Ricci v. DeStefano

### V. Luncheon Address

**Introduction: Celeste Mattina** (Regional Director, Region 2, NLRB)

**Speaker: Hon. Craig Becker** (Member, NLRB)

### VI. Litigating a Trade Secrets Case

**Moderator: Robert Whitman** (Seyfarth)

**Presiding: Hon. Helen E. Freedman** (New York Supreme Court, Appellate Division, First Department)

**Presenters: Laurie Berke-Weiss** (Berke-Weiss & Pechman); **Michael Delikat** (Orrick)

### VII. Dealing with the EEOC

*Enhancing the Employer-Employee Dialogue: The EEOC's Technical Assistance and Mediation Programs*

**Introduction: Professor David L. Gregory** (St. John's Law)

**Speaker: Hon. Chai Feldblum** (Commissioner, EEOC)

### VIII. Contesting Class Certification

**Moderator: Robert Herbst** (Giskan Solotaroff)

**Presiding: Kathleen Roberts** (JAMS, former Magistrate Judge, Southern District of New York)

**Presenters: Zachary Fasman** (Paul Hastings); **Adam Klein** (Outten & Golden)

### IX. Dealing with an OFCCP Audit

**Moderator: Esta R. Bigler** (Cornell ILR)

**Presenters: Katharine Parker** (Proskauer); **Sandra Zeigler** (OFCCP Midwest Regional Director)

### X. Luncheon Address

**Introduction: Dean Richard Revesz** (NYU Law)

**Speaker: Hon. M. Patricia Smith** (Solicitor, U.S. Department of Labor)

### XI. Ethical Issues for In-House Counsel

**Moderator: Pearl Zuchlewski** (Kraus & Zuchlewski)

**Presenter: Dennis P. Duffy** (Baker Botts, formerly AOL Time Warner)

# A Retrospective from NLRB's General Counsel

Ronald Meisburg, Proskauer Rose

**O**N JUNE 3, 2010, I SPOKE AT NEW YORK University Law School's 63rd Annual Conference on Labor Law. It was the last of over 100 public addresses I presented as the General Counsel of the National Labor Relations Board. I used the opportunity to sum up my term and say my farewell as General Counsel.

My term as General Counsel was one marked by a number of initiatives that I believe will improve the enforcement and administration of the NLRA and strengthen and improve the performance of the Agency.

The most far-reaching of these was my first-contract initiative. Begun in April, 2006, its focus was on preserving employee free choice after a union had been chosen as a collective bargaining representative. The concern is that when employees freely choose union representation, free choice is negated unless good faith collective bargaining ensues.

Although the great majority of employers and unions engage in such bargaining without invoking Board

**“I wish to thank my colleagues at the Board, and you, practitioners, academics, labor relations professionals alike, for the work you do every day.”**

processes, statistics showed that nearly 50 percent of 8(a)(5) charges alleging refusal to bargain in good faith were filed in first-contract bargaining situations. Over the four years of the initiative, through the use of enhanced remedies and an active 10(j) injunction program, that number has been cut in half. I think the arrows are pointing in the right direction, and I hope that the Board adopts elements of my initiatives, such as the enhanced remedies, through cases that are currently in the pipeline.

Among my other initiatives were those involving outreach and engagement. On the outreach side, regional offices have



participated in nearly 600 outreach activities in each of the last two years. Audiences have ranged from management and employer groups to unions, civic organizations, and that most exotic of all audiences, high school students. It is important that people know who we are and what we do. This type of outreach helps to accomplish that objective.

I have participated directly in more than one thousand cases during my term. I have a profound appreciation for the vital role that the labor-management bar plays in the development of law under the NLRA, and I think it is important that the General Counsel should engage with them directly. To that end, I have never refused a request by a party to make an oral presentation in a case, and have always extended such an invitation to the other party as well. I have participated in more than fifty such presentations as General Counsel. These presentations serve a number of purposes, including a better understanding by both the Agency and the parties of the legal and factual issues and prosecutorial policies involved in the cases. I compliment the gifted members of the labor-management bar in their excellent, highly professional representation before the Office of the General Counsel during my term.

I wish to thank my colleagues at the Board, and you, practitioners, academics, and labor relations professionals alike, for the work you do every day to advance the causes of the Act, through counseling, advocacy, representation, education, analysis, and that sometimes most elusive of all goals, peace making. I wish you all the best in the years to come, as we continue to work together in this important area of the law. ●

# A Look Back: Remarks by NLRB Chair Wilma Liebman

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**A**T A TIME WHEN SO MANY LAW SCHOOLS are abandoning the teaching of labor law, this year's conference cosponsors—New York University, St. John's University and Cornell University—are remarkable in their continuing commitment to furthering the discipline, NLRB Chairman Wilma Liebman observed in opening remarks. In particular, she recognized the contributions of NYU Law Professor Samuel Estreicher and his strong friendship with the NLRB.

She highlighted a New York Times piece written 25 years ago by Professor Estreicher, which began:

*On the eve of its 50th anniversary, the National Labor Relations Board appears to be at a point of institutional crisis. From all quarters... there is great dissatisfaction....*

*There is no doubt that the board should improve its procedures to conform with a changed labor market and to afford the protection that Congress originally intended. Yet, the important insight of the Wagner Act of the 1930s... remains. Competition in labor markets is imperfect and workers consequently should have available to them the option of union representation.*

Today, at its 75th anniversary, the Board's institutional crisis has hardly improved, Liebman said.

Liebman detailed a record accumulation of difficulties facing the Board over the last three years: the controversy about the Bush Board's deeply divided policy decisions; Congressional scrutiny of those decisions and the resulting Senate gridlock over President Bush's final nominations to fill three vacancies on the Board; the 27-month two-member Board and the legal challenges to its authority, culminating in the Supreme Court's 5-4 ruling against the Board in *New Process Steel*; and the rancorous battle over the Employee Free Choice Act, spilling over into the controversy over President Obama's nominees.

With President Obama's election, Liebman commented, expectations were enormous for a newly constituted Board. These hopes (and fears) were likely exaggerated, she added, given the constraints that any Board must operate under,



including the statutory text, years of precedent, court review, constant turnover of Board members, and delays inherent in the system. Yet, she predicted that an Obama Board would bring an approach to the statute different from that of the Bush era. In dissenting opinions, she has argued for taking into consideration changed workplace and economic realities, including new kinds of employment relationships.

She also acknowledged Professor Estreicher's continuing calls for administrative reforms that can be achieved even without statutory change, including more expeditious representation case procedures and use of rulemaking to change policy, instead of perpetual policy oscillation through adjudication. She suggested that rulemaking should be considered and reported on educational initiatives for the Board's headquarters workforce, which presently lacks rulemaking experience or expertise.

Liebman stated she envisions a revitalized labor law adapted to a transformed economy, a renewed public image for the Board reflecting greater understanding of the continuing importance of collective bargaining in a democracy and fair economy, and a restored confidence in the law, its processes, and the Agency itself. ●

# Changes in the Federal Rules of Civil Procedure

The Honorable Lee H. Rosenthal, United States District Court for the Southern District of Texas

**I**N APRIL 2010, THE SUPREME COURT APPROVED the rule changes proposed by the Advisory Committee on Civil Rules and approved by the Committee on Rules of Practice and Procedure and the Judicial Conference of the United States. The proposed changes include amendments to Civil Rule 26, limiting discovery into communications between certain testifying experts and the lawyers who retain them and into draft expert reports; and to Civil Rule 56, providing a clearer national rule on the procedure for summary judgment motions.

The changes to Rule 26(a)(2)(C) clarify the type of disclosures required for those testifying experts, such as treating physicians, who are not required to provide a written report because they are not retained or specially employed to provide expert testimony in that case or their duties as a party's employee do not regularly involve giving expert testimony. Rule 26(a)(2)(C) will require the party (rather than the expert) to file a disclosure identifying the subject matter of the expert's expected testimony and summarizing the facts and opinions to which the witness is expected to testify. In addition, new provisions in Rule 26(b)(4) will extend work-product protection to drafts of expert disclosures and reports and to most communications between attorneys and experts who are required to provide a written report under Rule 26(a)(2)(B). Full discovery is permitted into communications: (i) relating to compensation for the expert's study or testimony; (ii) identifying facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; and (iii) identifying assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed. These proposed amendments to Rule 26 were widely supported by lawyers on both sides of the "v," united in the belief that the current approach of requiring the disclosure of all draft reports and all attorney-expert communications results in much wasted discovery time, effort, and expense that produces little useful information.

The proposed amendments to Rule 56 seek to improve the procedures for presenting and deciding summary judgment motions and to make the procedures more consistent with those already used in many courts. The changes are procedural only and do not affect the substantive standard

for granting or denying summary judgment. Among other changes, the proposed amended rule requires pinpoint citations to the record to support arguments that the record shows that there is, or is not, a genuinely disputed issue of fact. These amendments are the first significant changes to the summary judgment rule in over 40 years, despite enormous changes in the use of the rule during that period.

In other news of interest to civil practitioners, in September 2010, the Judicial Conference will decide whether to approve for transmission to the Supreme Court a number of changes to the Evidence Rules. The changes are part of a "style" project designed to make the rules clearer and easier to read and understand without changing their substantive meaning. Similar stylistic changes were previously made to the Appellate Rules in 1998, the Criminal Rules in 2002, and the Civil Rules in 2007, with much success. If approved, these changes to the Evidence Rules will become effective in December 2011, but the edited rules are already a very helpful resource.

All the Rules Committees are charged with monitoring the way in which the rules operate and with making proposals as needed to address problems and improve their effective and fair operation in the federal courts. For the Civil Rules Committee, that task includes working to ensure that under the rules, the pleading rules are operating fairly, discovery is proportional to the case, and unnecessary delays and costs are avoided. That requires rigorous study and thoughtful examination of pleading, discovery, motions, trials, and case management. In May 2010, the Civil Rules Committee hosted an important conference on these topics at Duke University School of Law. In preparation for that conference, the Federal Judicial Center and others conducted empirical research to gain accurate information on how the system is in fact operating under the current rules and law, how long discovery actually takes, and how much it costs. Very thoughtful judges, academics, and lawyers with experience in diverse areas, drawing on different approaches under state rules as well as federal, prepared papers for the conference. Panels of distinguished lawyers, judges, and academics, with a variety of views and experience, guided robust discussion during the two-day conference. The results will likely range from recommendations for rule changes, to proposals for changes in education and training for lawyers and judges, to suggestions for developing different kinds of materials and resources to make civil litigation more efficient and predictable. The conference will help set the agenda for the Civil Rules Committee for years to come. ●

# THIRTEENTH ANNUAL NYU WORKSHOP Employment Law for Federal Judges

March 17-19, 2010

**N PARTNERSHIP WITH NYU LAW'S DWIGHT D.** Opperman Institute of Judicial Administration and the Federal Judicial Center, the Center for Labor and Employment Law gathered judicial speakers and attendees, practicing attorneys and several academics in NYU's Pollack Colloquium for the 13th Annual NYU Workshop on Employment Law for Federal Judges on March 17-19, 2010. Among the most highly-rated programs on the FJC's calendar, the 2010 workshop was extended from a two-day format to a three-day program. Forty-seven judges from 36 federal district courts and one federal circuit court attended.

## The Changing Litigation Landscape

**Professor Theodore Eisenberg** (Cornell Law) and **Professor Richard A. Nagareda** (Vanderbilt Law)

## Evidence Issues/Use of Experts

**Hon. John G. Koeltl** (U.S. District Court for the Southern District of New York); **Laura S. Schnell** (Eisenberg & Schnell); **Professor Paul Secunda** (Marquette University Law); **Robert Whitman** (Seyfarth Shaw)

## Short Primer on Statistics for Judges

**Professor Stephen Choi** (NYU Law)

## Trade Secrets/Non-Competition Clauses; Proposed Restatement of Employment Law

**Hon. P. Kevin Castel** (U.S. District Court for the Southern District of New York); **Laurie Berke-Weiss** (Berke-Weiss & Pechman); **Jeffrey S. Klein** (Weil, Gotshal & Manges)

## Mediation: Do's and Don'ts

**Hon. Celeste Bremer** (Magistrate Judge, U.S. District Court for the Southern District of Iowa); **Hon. Karen Klein** (Magistrate Judge, U.S. District Court for the District of North Dakota); **Margaret Shaw** (JAMS); **Donna Malin** (Johnson & Johnson)

## Class and Collective Actions

**Zachary D. Fasman** (Paul, Hastings); **Adam Klein** (Outten & Golden)

## Sex and Racial Discrimination: Cutting-Edge Developments

**Hon. Laura Taylor Swain** (U.S. District Court for the Southern District of New York); **Terri L. Chase** (Jones Day); **Anne Vladeck** (Vladeck, Waldman, Elias & Engelhard)

## Retaliation and Whistleblowers

**Hon. John Gleeson** (U.S. District Court for the Eastern District of New York); **Jonathan Ben-Asher** (Ritz Clark & Ben-Asher); **Michael I. Bernstein** (Bond, Schoeneck & King)

## Electronic Discovery

**Hon. James. C. Francis IV** (Magistrate Judge, U.S. District Court for the Southern District of New York); **Theodore O. Rogers Jr.** (Sullivan & Cromwell); **Pearl Zuchlewski** (Kraus & Zuchlewski)

**The Workshop was extended...  
to a three-day program  
and included forty-seven  
judges from thirty-six federal  
district courts and one  
federal circuit court.**

## Disparate Impact; Affirmative Action

**Hon. Nancy Gertner** (U.S. District Court for the District of Massachusetts); **Mindy G. Farber** (Farber Legal); **Gary R. Siniscalco** (Orrick, Herrington & Sutcliffe)

## Jury Instructions; Jury Reactions to "Mixed Motive" Instructions

**Lee Bantle** (Bantle & Levy); **Preston L. Pugh** (Pugh, Jones, Johnson & Quandt, P.C.); **Professor David Sherwyn** (Cornell University)

The highlights of the 2010 Workshop included a well received mock hearing on the Trade Secrets case, presided over by Judge Kevin Castel and argued by Laurie Berke-Weiss and Jeffrey Klein, and an introduction to the use of statistics in employment cases provided by Professor Stephen Choi of NYU Law. ●

# How Employees View Form Contracts, and Why It Matters

Professor Zev J. Eigen, Northwestern University School of Law and NYU Center for Labor and Employment Law Research Fellow

**M**ANDATORY ARBITRATION AGREEMENTS are lauded by employers and some academics as faster, cheaper, and as potentially offering greater access to a hearing on the merits for disputes when low potential damages might otherwise preclude plaintiffs' attorneys from representing wronged employees.<sup>1</sup> Mandatory arbitration agreements are criticized as being unfairly foisted upon employees in an exploitive abuse of the power imbalance in most employment relationships. The claim is that because most employees are more dependent on their employers for work than employers are on individual employees for their labor, employers are able to extract higher "rents," in the form of the concession to resolve disputes in a private forum, waiving employees' right to a trial by jury.

Mandatory arbitration agreements are examples of "form-adhesive contracts." Form-adhesive contracts are drafted by organizations and are intended to be signed by multiple individuals, offered on a take-it-or-leave-it basis with no opportunity afforded to signers to negotiate on the terms before consenting. These contracts are ubiquitous—in addition to the employment setting, we sign such contracts when we put our money in banks, use credit cards and cell phones, purchase just about anything online, travel, or even browse the web. Scholarship that has evaluated form contracts<sup>2</sup> focuses on their contents—observing the rate at which they contain exploitive terms, mostly in the consumer contract setting. What is often overlooked is how individual signers of these contracts experience and interpret them—an important matter to consider when few signers of form contracts read the contracts, let alone understand them. As such, it may be the case that how we conceive of these contracts is based on observations of behavior, events, and other signals well beyond the four corners of the agreements.

In the employment context, is it important how employees experience and interpret mandatory arbitration contracts they sign? Is there a relationship between how they regard such contracts and how they behave as employees? For instance, are they more or less loyal, litigious, or likely to give the company a chance to internally resolve disputes when they arise? These questions are important not only for employers considering implementing mandatory

arbitration programs, but also for employers that require employees to sign any form contract or forms that appear to be contractually valenced documents. These questions are addressed in an article recently published in the *Connecticut Law Review*.<sup>3</sup> Based on interviews with sales associates of a large national retailer and survey responses of MBA students, this article suggests that employees who regard mandatory arbitration agreements as truly binding on them (i.e., they believe that they are bound by what they signed), are more likely to regard their employment relationships as "relational"—imbued with trust, loyalty and a set of ethical commitments. Conversely, employees who regard such signed contracts as non-binding are more likely to view their employment relationships as "transactional"—as a mere market exchange.

This research is preliminary. Additional evidence is necessary to learn more about the effects of these perceptions of contract on employment relationships, and more broadly on relationships between drafters and signers of form-adhesive contracts. To this end, I have conducted an online experiment involving 1,860 participants that lends further evidence that less adhesive experiences in consenting to contract generates greater contract compliance, and that providing employees reasoned feedback following attempted breach yields the greatest positive effect on employee performance as compared to other framings of the demand. This research also suggests that under certain circumstances, a form-adhesive contract may be less likely to induce signers to perform an undesirable task than a naked request to perform the task with no contract at all. The hope of this continuing line of research is to open up the black box of how form contracts are experienced broadly. Because form contracts permit no negotiated exchange before signers consent, the only opportunity for negotiated or reciprocal exchange occurs post-contract formation. In the employment context, this has clear implications for understanding important things like organizational citizenship behavior, turnover, litigiousness and related metrics. ●

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<sup>1</sup> See, e.g., David Sherwyn, Bruce Tracy & Zev Eigen, *In Defense of Mandatory Arbitration of Employment Disputes: Saving the Baby, Tossing Out the Bathwater and Constructing a New Sink in the Process*, 2 U. PA. J. LAB. & EMP. L. 73 (1999).

<sup>2</sup> The terms "form-adhesive contract" and "form contract" are being used interchangeably.

<sup>3</sup> Zev J. Eigen, *The Devil in the Details: The Interrelationship Among Citizenship, Rule of Law and Form-Adhesive Contracts*, 41 CONN. L. REV. 381 (2008), available at <http://ssrn.com/abstract=1105424>.

<sup>4</sup> Zev J. Eigen, *Towards a Behavioral Theory of Contract: Experimental Evidence of Consent, Compliance, Promise and Performance*, available at <http://ssrn.com/abstract=1443549>.

# Estreicher's Judicial Performance Index

## 2008-09 Supreme Court Labor & Employment Decisions

**SAMUEL ESTREICHER**

**DWIGHT D. OPPERMAN PROFESSOR OF LAW  
DIRECTOR OF THE CENTER FOR LABOR AND  
EMPLOYMENT LAW**

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**P**OLITICAL CRITERIA FOR JUDGING THE Supreme Court's work are hopelessly unsatisfying as long as we reserve the right to have different political views and legal philosophies—and the Court continues to have a completely discretionary docket. Instead, I apply a more limited criterion that may generate broader consensus: Is the Court deciding what it has to in deciding the question presented and no more than it has to?

In the table that follows, I apply this criterion to labor and employment cases decided during the Court's 2008-09 Term. The Court receives a grade of 1 if it decides the case on the issue presented by the petition and the facts, and rules no more than necessary to address that question. The Court receives a score of 0 if it purports to decide a broader issue. On the other hand, if it hears a case and fails to address a fairly presented issue, it also receives a score of 0.

We have four years of results. In the 2005-06 term, the Court heard 9 cases involving labor and employment issues. The maximum score it could have received was 9; instead, it received a grade of 4, for an overall performance score of .44. See LEL Spring 2007, p.13. In the 2006-2007, the Court heard 4 relevant cases and received the maximum score of 4, for an overall performance score of 1. See LEL Spring 2008, p.10. In 2007-08, the Court decided 12 relevant cases and received a grade of 11, for an overall performance score of .91. See LEL Spring 2009, p.12. Search back issues of LEL online at [www.abanet.org/labor/lel-newsletter.shtml](http://www.abanet.org/labor/lel-newsletter.shtml). Last year, the Court decided 9 cases raising labor and employment issues and received a grade of 6, for an overall performance score of .67.

We will apply the same criteria to evaluate the Court's work product during the 2009-10 term. Stay tuned. ●

CASE	ISSUE
<i>Fitzgerald v. Barnstable</i> , 129 S. Ct. 788 (2009)	Does Title IX of the 1972 Education Amendment's implied right of action preclude constitutional claims to remedy sex bias by federally funded educational institutions under 42 U.S.C. § 1983?
<i>Locke v. Karass</i> , 129 S. Ct. 798T (2009)	May a State under the First Amendment condition public employment on payment of agency fees used to finance extra-unit litigation by bargaining agent's affiliates?
<i>Crawford v. Metro. Gov't of Nashville</i> , 129 S. Ct. 846 (2009)	Does the anti-retaliation provision of § 704(a) of Title VII of the Civil Rights Act of 1964 protect a worker from being dismissed because she cooperated with her employer's internal investigation of sexual harassment?
<i>Kennedy v. Plan Adm'r for DuPont Sav. &amp; Inv. Plan</i> , 129 S. Ct. 865 (2009)	Whether limitation on assignment or alienation under ERISA § 1056(d)(1) invalidated act of divorced spouse, the designated beneficiary under ex-husband's pension plan, purporting to waive her entitlement under the plan through a federal common law waiver embodied in a divorce decree that was not a qualified domestic relations order (QDRO) under, and hence did not fall within QDRO exception in, §1056(d)(3)?
<i>Ysursa v. Pocatello Ed. Ass'n</i> , 129 S. Ct. 1093 (2009)	Does the First Amendment prohibit a state legislature from removing the authority of state political subdivisions to make payroll deductions for political activities under a statute that is concededly valid as applied to state government employees?
<i>14 Penn Plaza v. Pyett</i> , 129 S. Ct. 1456 (2009)	Is an arbitration clause contained in collective bargaining agreement which clearly and unmistakably waives the union members' right to a judicial forum for their statutory discrimination claims, enforceable?
<i>AT&amp;T v. Hulteen</i> , 129 S. Ct. 1962 (2009)	Whether an employer violates Title VII when, in making post-Pregnancy Discrimination Act of 1978 (PDA) eligibility determinations for pension and other benefits, it does not restore service credit that female employee lost when they took pregnancy leaves under lawful pre-PDA leave policies?
<i>Gross v. FBL Fin. Serv.</i> , 129 S.Ct. 2343 (2009)	Must a plaintiff present direct evidence of discrimination in order to obtain a mixed-motive instruction in a non-Title VII discrimination case?
<i>Ricci v. DeStefano</i> , 129 S.Ct. 2658 (2009)	Did the City violate Title VII and Equal Protection Clause by disregarding results of written promotion test because of racially disproportionate result?

# Employer Reputation at Work

Samuel Estreicher, Dwight D. Opperman  
 Professor of Law and Director of the Center  
 for Labor & Employment Law, NYU Law

**E**MPLOYER REPUTATIONAL COSTS – THE loss in value of a firm’s reputational assets if a firm reneges on promises to workers, both express and implied – has played an important role in the economic literature of employment contracts, but as a factor itself has not generated sustained analysis. Reputation is often offered as a late-appearing deus ex machina, explaining why opportunistic behavior by employers, even in internal labor markets, is likely to be relatively unimportant.

This standard explanation for the enforceability of implicit labor contracts in internal labor markets is problematic for at least three reasons. First, it assumes a well-functioning information market about past and projected firm behavior, because a loss in employer reputation can only occur if job applicants from the external labor market are readily able to distinguish between “opportunistic” behavior (i.e., a termination of employment reflects an employer’s reneging on implied promises of deferred compensation or late-career immunity from close performance monitoring) and legitimate behavior (i.e., a discharge reflects an appropriate response to shirking on the job or unforeseen business conditions). Secondly, the reputational-loss account is a static one. It assumes that employers in the first period (when they make express or implied promises of deferred compensation or late-career job security) are in the same product or labor market position in the late period (when they are expected to perform on these promises). In cases where the employer in the later period has gone under, operates in a different product market, or has a need for workers with a different skill set than in the first period, it will become even more difficult for job applicants in the external labor market to evaluate whether a firm’s past behavior is a valid predictor of their probable job experience with that firm. Finally, the reputational-loss explanation also makes certain problematic assumptions about how workers process information.

The deficiencies of the standard explanation require either a reconsideration of implied labor market theory, or, if implied labor market arrangements remain economically desirable, an identification and possible strengthening of institutions that might enhance the firm’s reputational costs when breaking promises to workers. ●

*Reprinted with permission from Samuel Estreicher, Employer Reputation at Work, 27 Hofstra L. & Emp. L. J. 1 (Fall 2009).*

JUDICIAL RESTRAINT?	NON-DECISION?	NET SCORE
Decided question presented.	No	1
Decided question presented.	No	1
Decided question presented under § 704(a)'s opposition clause, leaving open whether lower court misread its participation clause as well.	No	1
Decided question presented.	No	1
Decided question presented.	No	1
Did not really decide the question presented.	Yes	0
Decided question presented.	No	1
Decided more than the question presented.	No	0
Decided more than the question presented.	No	0

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# New York's “Faithless Servant” Doctrine

Matthew Carhart '10, NYU Law

**T**WO RECENT APPELLATE DECISIONS have set forth a particularly expansive version of New York’s “faithless servant doctrine,” the damages rule against agents who have breached the duty of loyalty to principals. According to *Phansalkar v. Andersen Weinroth & Co.*, 344 F.3d 184 (2d Cir. 2003) and *Astra USA, Inc. v. Bildman*, 914 N.E. 2d 36 (Mass. 2009) (applying New York law), an employee who has breached the duty of loyalty automatically forfeits all the salary she earned after her breach. When applying the doctrine, judges are not permitted to consider the magnitude of the breach or the extent of the employer’s loss.

These decisions pair vague rules with harsh remedies, a dangerous combination for employees. In *Phansalkar*, the court required a partner at an investment firm who failed to turn over income to his employer to forfeit both his salary during the entire period in which he did not disgorge income and all the investment income he earned during that period, even though the trial court found the failure to turn over income to be non-fraudulent. In *Astra*, the Court required a CEO of a major insurance company to forfeit \$5,599,097 in salary and \$1,180,000 in bonuses because of repeated instances of sexual harassment and his refusal to cooperate with the company’s investigation into that harassment.

Because the New York Court of Appeals has not ordered forfeiture under the faithless-servant doctrine since 1941, *Phansalkar* and *Astra* are playing a key role in influencing the development of the doctrine. However, these recent decisions are in considerable tension with the precedent of the New York Court of Appeals and with well-established principles of tort, contract, and trust law. The faithless-servant rule, which aims to deter breach, effectively assesses punitive damages for what would normally be a breach of contract. Further, under longstanding precedent in New York, punitive damages are only applied to “outrageous” torts or “extreme” breaches of fiduciary duty.

Additionally, neither decision distinguishes between the duties of fiduciaries-agents and ordinary employees. Other state supreme courts have increasingly recognized that the full spectrum of duties of agents should not be applied to all employees. Consider, for instance, the duty of agents to disclose all relevant information to the principal.

As applied to employees, this amounts to little more than a duty to perform one’s job properly. While a failure to disclose information to an employer might be grounds for termination, an ordinary employee should not be forced to repay years of compensation under the faithless-servant doctrine because of the routine mistakes she made.

While deterring breach of fiduciary duty is a worthy goal, it is also important to protect employees by ensuring that the harsh remedy of forfeiture is meted out sparingly. By following the lead of other states towards a limited version of the doctrine, New York can do this. ●

## Chapter 8 of the Restatement of the Law Third, Employment Law

**I**N THE LAST ISSUE OF *NYU LABOR & Employment Law*, we gave the authors of the restatement process a chance to introduce their work on the individual chapters. On May 18, 2010, Professor Estreicher and Cornell Law School Dean Stewart J. Schwab presented Chapter 8 of the Restatement Third of Employment Law at the American Law Institute (ALI)’s annual meeting; Professor Estreicher serves as the Restatement Third of Employment Law’s chief reporter. Dean Schwab is the reporter for Chapter 8. The ALI membership tentatively approved the chapter with some alterations.

### Employee Obligations and Restrictive Covenants

Chapter 8 describes the legal duties employees owe their employers. Beginning with a statement of the general common-law duty of loyalty, succeeding sections focus on the most frequent applications of the common-law duty of loyalty (i.e. the duty not to disclose or use confidential information, the duty not to compete with one’s current employer, and the right to compete with former employers).

Further sections analyze the validity of express restraints on competitive actions former employees can take against former employers. The wide array of restrictive covenants—no-compete clauses, confidentiality clauses, financial penalty clauses, etc.—are analyzed under a common framework. To be enforceable, the restrictive covenant must be reasonably tailored in time, geography, and scope to protect legitimate

employee and employer interests. The last section of the chapter addresses the division of intellectual property between employer and employee. ●

## Improving the Administration of the National Labor Relations Act Without Statutory Change

Samuel Estreicher, Dwight D. Opperman  
Professor of Law, and Director of the Center  
for Labor and Employment Law, NYU Law

**A** GREAT DEAL OF DISCUSSION AND controversy surround whether Congress will enact the proposed Employee Free Choice Act (EFCA), a measure that would establish union bargaining authority without election and allow arbitrators to impose first-time collective bargaining agreements where the parties are unable to do so. Comparatively little attention is being paid to what can be done under existing law. Whether or not EFCA becomes law, attention needs to be drawn also to how the National Labor Relations Board (NLRB), the agency responsible for enforcing our labor laws, can better organize its resources to: minimize the serious problem of administrative delay in holding elections and seeking court injunctions; use forms of rulemaking and advisory opinions to give parties better notice and opportunity to participate in the formulation of legal change; recast existing approaches to give unions better access to the employee electorate once it is clear that an election will be held; and improve available remedies under existing law to deter employer violations. ●

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*Reprinted with permission from Samuel Estreicher, Improving the Administration of the National Labor Relations Act, 25 ABA J. Lab. & Empl. L. 1 (2009).*

# Chilean Labor Law Enforcement After Pinochet

César F. Rosado Marzán, Professor of Law,  
Chicago-Kent College of Law

**I** AM UNDERTAKING A 7-MONTH, ethnographic field study of the Chilean labor inspectorate and of its labor courts to see how the most law-abiding and institutionally solid Latin American country, Chile, pairs up with Michael Piore and Adrew Schrank's theory of "Latin" labor inspectorates. Such labor inspectorates, different from Anglo-American models of labor law enforcement, are said to be "generalist" and "pedagogical" in nature, rather than "specialist" and "punitive," as labor law enforcement institutions tend to be in Anglo-American jurisdictions.

However, my preliminary results show that while the Chilean labor inspectorate is generalist in structure and has undergone massive reform and reconstruction post-dictatorship, it is also a highly punitive and bureaucratic institution, not a professional one with pedagogic aims.

But labor regulation is an ever-evolving phenomenon. Using legal arguments based on the protection of property rights, employers have been challenging the jurisdiction of the inspectorate in key regulatory areas, such as subcontracting. The winning legal argument in many instances has been that the inspectorate cannot make any adjudication of contractual relations. Only courts can make that kind of determination. As a result, inspectors cannot fine employers for violating some laws, such as those related to subcontracting. Given the slow nature of judicial justice, many employers thought they were home free from government oversight.

But, again, labor regulation is a dynamic thing. In 2009 the country passed a labor justice reform that provides for speedier resolution of labor law claims through expedited procedures and by hiring new labor judges. These new judges are proving to be very assertive—and punitive—in dealing with scofflaw employers.

Hence, Chile only partially retains aspects of the so-called "Latin" labor law enforcement system—the generalist structure of inspection. But even here, Chile diverges from the Latin model because the inspectorate's jurisdiction has been formally limited and labor courts play a fundamental role in enforcing the labor laws.

But the most ironic of all outcomes that I have observed in Chile is that the legacy of the Pinochet dictatorship, whose

*(Continued on the next page)*

main policy makers were liberal economists, has not been an absence of the state in labor law enforcement, but its opposite. The creation of a collective labor law in 1978 by “Chicago Boy” José Piñera, which limited collective rights to workers, and the political incapacity of democratic governments to change the law as a result of conservative opposition has led to an over-reliance on state institutions to enforce labor laws. Self-regulation, which is a main trend in countries with liberal leanings and which can be made possible through collective bargaining and other strategies, is almost absent in Chile.

In a manner similar to that of 20th Century Marxists, whose aim was to “smash the state” and establish communism but instead created huge, bureaucratic states, anti-state ideologues in Chile ended up creating the conditions for state gigantism. As in many other jurisdictions, one of the lessons that we can glean from the Chilean case is that ideology can lead to dramatic unintended consequences in labor regulation. ●

## Unionism under Globalization: The Demise of Voluntarism?

Samuel Estreicher, Dwight D. Opperman  
Professor of Law, and Director of the Center for Labor and Employment Law, NYU Law

**W**E ARE NOW BEGINNING TO SEE A qualitative change in labor’s relationship to the state: trade unionism as a supplement to politics. Labor’s economic objectives have not changed; the means are undergoing changes. The response to the deepening of competitive forces in private markets in the U.S.—from deregulation, changing technology and the opening up of global labor and product markets (in large part due to reductions in transportation and communication costs and the lowering of trade barriers)—organized labor will increasingly function predominantly as a political organization. Collective bargaining provides an institutional *raison d’être* and a critical source of funding for unions, but will only be one (and a diminishing one at that) of several means for advancing the interests of its members and other constituencies. This is not to suggest the emergence of a labor party based on the European model. It is an American variant: the fortunes of the labor movement will increasingly become ever more closely tied to the fortunes of the

Democratic Party and economic goals will be increasingly achieved not at the bargaining table, but through the provision of public resources. ●

*Reprinted from Samuel Estreicher, Trade Unionism under Globalization: The Demise of Voluntarism?, 54 St. Louis U. L. Rev. 415 (2010).*

### ON OUR BOOKSHELF

## Regoverning the Workplace: From Self-Regulation to Co-Regulation

CYNTHIA ESTLUND  
*Yale University Press, 2010, 320 pages*

A central goal of American labor law has been to promote forms of industrial self-governance in which workers could fairly participate. But in recent decades, unions and collective bargaining have declined to under 8 percent of the private sector labor force, while individual employee rights and labor standards have proliferated. The net result has left workers with lots of legal rights but no representation at work. And without collective representation, even workers’ legal rights are often underenforced. Without collective representation, employees who might consider complaining or filing a lawsuit over unlawful workplace practices face both collective action problems and a fear of employer reprisals; and rarely is there enough at stake for an individual employee to sue over those practices after he has left the job.

At the same time, firms’ own structures of self-governance have become even more sophisticated and central to public regulatory strategies across the developed world and across fields of regulation. Powerful legal and social forces have pushed firms to self-regulate, and to take on board the task of realizing public norms through internal compliance structures. Perhaps the best example of these developments in the workplace is the law of employment discrimination, which has fostered, rewarded, and shaped the growth of corporate policies and procedures to promote equal employment opportunity and workforce diversity. But the decline of unions and the absence of any legally sanctioned non-union forms of collective representation means that workers have no institutionalized voice in those increasingly important structures of self-regulation.

In this new book, I argue that the trend toward “regulated self-regulation” is here to stay, and that worker-friendly reformers should seek not to stop that trend but to steer it in a socially productive direction by securing for workers an effective voice within employers’ self-regulatory processes. The linchpin of that steering effort is the essential role of stakeholder (and employee) representation in promoting

compliance, a proposition that is well-supported in theory, empirical research, and experience. In a regulatory regime that relies heavily on self-regulation, effective representation of the beneficiaries of regulation—here, the employees—is an essential safeguard against what others have called “cosmetic compliance”—against cheating or slacking off behind the pretense of self-regulation. So if the law is going to encourage and reward employers that effectively self-regulate, it should include employee representation among the requisite elements of effective self-regulation. In other words, there should be no self-regulation without employee representation. If the law can be retooled to encourage forms of self-regulation in which workers participate, it would help both to promote public values and legal compliance and to revive employee voice within workplace self-governance. ●

**Cynthia Estlund is the Catherine A. Rein Professor of Law at the New York University School of Law. She is also the author of *Working Together: How Workplace Bonds Strengthen a Diverse Democracy* (Oxford University Press, 2003).**

#### ON OUR BOOKSHELF

## Retaliation and Whistleblowers: Proceedings of NYU’s 60th Annual Conference on Labor

**EDITOR: PAUL M. SECUNDA, PROFESSOR OF LAW, MARQUETTE UNIVERSITY LAW SCHOOL, NYU CENTER FOR LABOR AND EMPLOYMENT LAW RESEARCH FELLOW**

**Kluwer Law International, 2008, 808 pages**

As the New York University’s Annual Conference on Labor reached its venerable 60th year of producing the best in labor and employment scholarship for practitioners, government officials, and academics, it was my pleasure to serve as the Editor of that Volume.

The theme for the 2007 Conference was “Retaliation and Whistleblowers,” and, given the number of cases concerning these topics in federal and state court, the timing could not have been better. For instance, the United States Supreme Court turned its full attention to workplace retaliation claims in the *Crawford* case in 2009 and the *Burlington Northern* case in 2006. Additionally, the Court’s decision in *Garcetti v. Ceballos* placed the focus like never before on the plight of public employee whistleblowers at the federal, state, and local level. Finally, states and municipalities continue to struggle in laying out the scope of permissible claims under state constitutional and statutory whistleblower provisions and under the common law of wrongful discharge.

The questions considered by the authors in the 60th volume were comprehensive and include: (1) What are the implications of the Supreme Court’s decision in *Burlington Northern v. White*? (2) To what extent do statutes like the ADEA and the FLSA, which lack express opposition clauses, impliedly protect such employee activity? (3) What lies on the horizon for whistleblower claims under the Sarbanes-Oxley Act and other whistleblower laws administered by the U.S. Department of Labor? (4) What special considerations should inform corporate investigation of whistleblower claims? (5) Do state whistleblower laws preempt common law developments under the tort of wrongful discharge for public policy? (6) Are employers aware that collective protests by non-union workers may be NLRA-protected even if they are not seeking to be represented by a labor union? And (7) in light of *Garcetti*, will government employers be expanding the formal definition of jobs to foreclose the First Amendment avenue for their employees?

The Conference was a wonderful success, with over 200 attorneys, government officials, and academics in attendance. Attendees were treated to six panels over two days on every aspect of the law of retaliation and whistleblowing. In addition, former NLRB Board Chairman Peter Hurtgen was honored for his contributions to labor and employment law. Bruce Raynor, former president of UNITE HERE, provided after-dinner remarks. Conference participants also heard from former Acting Solicitor for the Department of Labor Jonathan Snare and Chairman Wilma Liebman of the NLRB, with introductory remarks from former Board Member Marshall Babson.

Besides papers by panelists, ten other nationally-recognized practitioners and academics also provide commentary on retaliation and whistleblowing legal topics in the volume. Contributors included Profs. Eric Schnapper of the University of Washington School of Law, Deborah Brake of the University of Pittsburgh Law School, Richard Moberly of the University of Nebraska School of Law, Jonathan Macey of Yale Law School, Terry Morehead Dworkin of University of Indiana Business School, Cynthia Estlund of the NYU School of Law, Richard Carlson of South Texas College of Law, Alex Long of the University of Tennessee School of Law, and Erica Collins and Marjorie Culver of Paul Hastings.

Finally, the editor would be remiss if he did not thank Sam Estreicher, the Director of the NYU Center for Labor and Employment Law and the Series Editor of these books, for providing wonderful guidance and direction for this Volume’s publication. ●

# With a Milestone Collaboration, St. John's School of Law Marks the Opening of its Center for Labor and Employment Law

David L. Gregory, Dorothy Day Professor of Law and Executive Director of the Center for Labor and Employment Law, St. John's University School of Law

**N**YU'S 63RD ANNUAL CONFERENCE ON Labor brought together some of the foremost scholars and practitioners in the field of labor and employment law. For St. John's Law School, it also marked the official launch of its Center for Labor and Employment Law and the start of an innovative collaboration with New York University School of Law and Cornell University ILR School. "With its array of distinguished speakers addressing important labor and employment issues of the day, the Conference was an auspicious anchor for our Center's inauguration," says David L. Gregory, the Center's Executive Director and the Law School's Dorothy Day Prof. of Law. "Our work with NYU and Cornell creates a wonderful synergy, one that is sure to grow as we all move forward with our major initiatives."

The Center for Labor and Employment Law at St. John's Law School provides a forum where students, practitioners and scholars come together to explore the practice and theory of labor and employment law. Central to the Center's mission and offerings is the importance, and sanctity, of doing good work in the world. Students gain a strong foundation for this work through the Law School's comprehensive labor and employment law curriculum that includes classes and externships in the public and private sectors. They also have the opportunity to engage with labor and employment law professionals at a range of conferences, symposia, workshops and other programs and events hosted by the Center each year. As Prof. Gregory notes: "With the generous support of dedicated faculty, alumni and friends, the Center strives to show students, by engagement and example, that they can be successful practitioners who also give back to their communities."

The Center's mission gains support and momentum through the partnership with NYU and Cornell. "This is a very natural evolution," Prof. Gregory remarks. "I've known Prof. Estreicher for some time as the beloved Dean of the global academic community of labor and employment law professors

and scholars. When I came to St. John's to begin my teaching career in 1982, he was the Chair of the Labor and Employment Law Committee of the Association of the Bar of the City of New York. I joined as a rookie member, and that marked the beginning of nearly 30 years of friendship and collaboration. Sam is a remarkable person dedicated to leaving this world a better place for all who work for a living. St. John's is deeply honored to accept his enthusiastic invitation to join with NYU and Cornell at the 2010 Conference on Labor and beyond."

Among collaborative offerings in the coming year are international symposia where practitioners, educators and students will explore topics at the leading edge of labor and employment law. On March 18-19, 2011, together with the Catholic Scholars for Worker Justice, St. John's Law School, NYU Law and Cornell ILR will jointly host a conference on the Theology of Work and the Dignity of Workers at St. John's Queens, New York campus. Contemporary labor and employment issues—including wage and hour claims; underfunded public sector pensions; insufficient minimum wages; chronic overwork; rampant unemployment and underemployment; and the immigration debate—will be explored in the context of timeless truths offered in the Catholic theology of work and related scriptural stories and parables. Prof. Estreicher will deliver the luncheon address on Michael Harrington, author of the seminal 1962 book *The Other America* that exposed the prevalence of poverty in the United States and inspired that decade's War on Poverty.

On July 20-23, 2011, the tripartite collaboration continues with a symposium on Labor and Employment Dispute Resolution: International and Comparative Perspectives to be held at the University of Cambridge's Fitzwilliam College in Cambridge, England. Jointly presented with St. John's Law School's Hugh L. Carey Center for Dispute Resolution and its Center for Global Studies, the conference will host labor and employment law authorities from around the world, including William B. Gould IV, the Charles A. Beardsley Professor of Law, Emeritus at Stanford Law School and former Chairman of the National Labor Relations Board. Presenting international, comparative and transnational themes around topics such as the future of fair employment, legal protection against unlawful discrimination, executive compensation, intellectual property, and trade secrets, the conference will build on the internationally recognized symposia on transnational labor and employment issues that St. John's Law School sponsored, and Prof. Gregory chaired, at University College Dublin's School of Law in July, 2000 and at the University of London Queen Mary at Charter House Square in July, 2006. ●

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*For more information on the Center for Labor and Employment Law at St. John's Law School and its upcoming programs, please visit [www.law.stjohns.edu](http://www.law.stjohns.edu) or contact [clel@stjohns.edu](mailto:clel@stjohns.edu).*

# BOARD NEWS

**ETHAN BRECHER** won a jury verdict in *Raedle v. Credit Agricole SA* (04-cv-2235, U.S. District Court, Southern District of New York). The claim was for tortious interference when Credit Agricole and a supervisor at the bank interfered with a former employee's bid for a job at another company.

**ZACHARY FASMAN**, representing the defendant in *Ward et al. v. Kroger Co. et al.* (U.S. Court of Appeals, Ninth Circuit, 08-55614), won the third appeal, in which the court dismissed civil RICO class action brought following a labor dispute, establishing that actions taken during a single labor dispute do not meet the continuity requirements of a civil RICO action.

**WILLIS GOLDSMITH** was rated by Chamber USA 2010 as "Leader in their Field."

**ANTON HAJJAR** has been elected to membership of the Council of American Law Institute in 2010. Paul Secunda is a new member of the Institute.

**JEFFREY KLEIN** was a National Finalist for the Lawdragon 500 Leading Lawyers in America 2010.

**HENRY LEDERMAN** recently represented the petitioner in *Rent-A-Center West, Inc. v. Jackson*, in which the U.S. Supreme Court held that a clause in an arbitration agreement delegating to an arbitrator the issue whether the arbitration agreement itself is unconscionable is presumptively enforceable.

**J. MICHAEL LIGHTNER**, associate member of the Center's advisory board, was inducted into the College of Labor and Employment Lawyers in the Class of 2009.

**KERRI STONE**, one of the Center's research fellows, was named an officer of the Judge Rosemary Barkett American Inn of Court in Miami, Florida.

## WELCOME NEW ADVISORY BOARD MEMBERS

A recent presenter at both the Workshop on Employment Law for Federal Judges and this summer's 63rd **LAURIE BERKE-WEISS** represents businesses, partnerships, not-for-profit corporations and individuals in connection with commercial disputes and transactions, employment issues, as well as with respect to a wide range of personal concerns. Ms. Berke-Weiss appears before federal and state courts and government agencies on litigated matters including breach of contract claims, non-competition agreements, partnership matters, sexual harassment and other complaints of employment discrimination, and independent contractor disputes.

A partner in Ritz Clark & Ben-Asher LLP in New York, **JONATHAN BEN-ASHER** represents executives, professionals and other employees in employment disputes, including those involving employment contracts, executive compensation, whistleblowing and employment discrimination. He also has particular expertise in Sarbanes-Oxley whistleblowing cases, and disputes concerning executive compensation in the financial services sector. Mr. Ben-Asher recently spoke at the 13th Workshop on Labor and Employment Law for Federal Judges.

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### THIS NEWSLETTER IS A MAJOR PLATFORM FOR OUR COMMUNITY.

Please be sure to send the Center your news updates—anything from relocations to career changes and recent achievements.

**SEND YOUR NEWS UPDATES** to our Editor, Alia Haddad at [CLEL@nyu.edu](mailto:CLEL@nyu.edu) or (212) 992-8820.

# Congratulations

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## to the Board Members ranked among the Top 100 Most Powerful Employment Attorneys in America by *Human Resources Executive*:

Michael Delikat	Willis Goldsmith	Theodore Rogers Jr.
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## Farewell from the Editor

After three and half years as the Center's administrative assistant, I bid the Center, our readers, and our advisory board farewell.

When I started in February 2007, my work at the Center was planned to take up spare afternoons for one semester; however, I have encountered a wonderful team that readily took me in and put me to work. The chance to work on the wide array of programming the Center plans and to work on the Center's newsletter since its inception, quickly turned one semester into three and a half years.

However, after graduating from New York University with both a Bachelor of Arts and a Master of Arts in economics, I have nearly run out of degrees to get at New York University, and must now bid you farewell. I will be returning to Zurich, Switzerland to begin the next steps in my professional life.

“Der Abschied von einer langen und wichtigen Arbeit ist immer mehr traurig als erfreulich.”  
[*The farewell from long and important work is always more sad than joyful.*]

—Friedrich von Schiller

My time at the Center was truly tremendous, and I'd like to thank Torrey Whitman, Samuel Estreicher, and Rosetta Abraham for making it heart-wrenchingly difficult to leave after all this time. Thank you to the Board, the various program faculty and of course our readers for allowing me to work with and for you.

— Nora Strecker

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# NYU Labor & Employment Law

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**THE CENTER FOR LABOR AND EMPLOYMENT LAW** was created in 1996 to establish a nonpartisan forum for debate and study of the policy and legal issues involving the employment relationship.

The Center has four major objectives:

- 1 To promote workplace efficiency and productivity**, while at the same time recognizing the need for justice and safety in the workplace and respecting the dignity of work and employees
- 2 To promote independent, nonpartisan research** that would improve understanding of employment issues generally, with particular emphasis on the connections between human resources decisions and organizational performance
- 3 To sponsor a graduate program** for the next generation of law teachers and leading practitioners in the field
- 4 To provide a forum for bringing together leaders** from unions, employees and companies, as well as representatives of plaintiff and defense perspectives, for informal discussions exploring new frameworks for labor-management relations, workplace justice, fair and efficient resolution of employment disputes and representation in the workplace