

# Selected Current Bibliography on Labor & Employment Law

*compiled by* Book Review/Casenote Editor

Included in this bibliography are recent articles on United States labor and employment law. An attempt has been made to provide full and complete bibliographical data. Readers are encouraged to submit additional titles for possible inclusion in the future.

## ***Age Discrimination***

Lisa-Marie France, *Recent Development: Age Discrimination – Protection for Employees Over Forty*, 57 ARK. L. REV. 215 (2004).

Peter J. Prettyman, Note, *How to Discriminate Against Old Lawyers: The Status of Partners, Shareholders, and Members Under the Age Discrimination in Employment Act with Addendum Discussing Clackamas Gastroenterology Associates, P.C. v. Wells*, 37 IND. L. REV. 545 (2004).

Amy L. Schuchman, Note, *The Special Problem of the “Younger Older Worker”*: *Reverse Age Discrimination and the ADEA*, 65 U. PITT. L. REV. 339 (2004).

## ***Americans with Disabilities Act***

Timothy J. Cahill & Betsy Malloy, *Overcoming the Obstacles of Garrett: An “As Applied” Saving Construction for the ADA’s Title II*, 39 WAKE FOREST L. REV. 133 (2004).

Ruth Colker, *The ADA’s Journey through Congress*, 39 WAKE FOREST L. REV. 1 (2004).

Lisa Eichhorn, *The Chevron Two-Step and the Toyota Sidestep: Dancing Around the EEOC's "Disability" Regulations under the ADA*, 39 WAKE FOREST L. REV. 177 (2004).

Adam A. Milani, *Wheelchair Users who Lack "Standing": Another Procedural Threshold Blocking Enforcement of Titles II and III of the ADA*, 39 WAKE FOREST L. REV. 69 (2004).

Andrea Kloehn Naef, Note, *Toyota Motor Manufacturing v. Williams: A Case of Carpal Tunnel Syndrome Weakens the Grip of the Americans with Disabilities Act*, 31 PEPP. L. REV. 575 (2004).

Michelle Parikh, Note, *Burning the Candle at Both Ends, and There is Nothing Left for Proof: The Americans with Disabilities Act's Disservice to Persons with Mental Illness*, 89 CORNELL L. REV. 721 (2004).

Bryan P. Stephenson, Comment, *I'm So Lonesome I Could Cry . . . But Could I Sue?: Whether 'Interacting With Others' Is a Major Life Activity Under the ADA*, 31 PEPP. L. REV. 773 (2004).

Mark C. Weber, *Exile and the Kingdom: Integration, Harassment, and the Americans with Disabilities Act*, 63 MD. L. REV. 162 (2004).

### ***Anti-Discrimination Generally***

Henry L. Chambers, Jr., *The Effect of Eliminating Distinctions Among Title VII Disparate Treatment Cases*, 57 SMU L. REV. 83 (2004).

Sandi Farrell, *Toward Getting Beyond the Blame Game: A Critique of the Ideology of Voluntarism in Title VII Jurisprudence*, 92 KY. L.J. 483 (2003/2004).

Rachael Hinkle, Comment, *Sex, Race, and Sour Grapes: A Look at the Sixth Circuit's Summary Judgment Jurisprudence in Title VII Hostile Work Environment Claims*, 30 OHIO N.U. L. REV. 85 (2004).

Ann C. McGinley, *Functionality or Formalism? Partners and Shareholders as "Employees" Under the Anti-Discrimination Laws*, 57 SMU L. REV. 3 (2004).

Rhonda M. Reeves, *One of These Things is not Like the Other: Analogizing Ageism to Racism in Employment Discrimination Cases*, 38 U. RICH. L. REV. 839 (2004).

Robert Austin Ruescher, *Saving Title VII: Using Intent to Distinguish Harassment from Expression*, 23 REV. LITIG. 349 (2004).

### ***Collective Bargaining***

Kathleen A. Brady, *Religious Organizations and Mandatory Collective Bargaining Under Federal and State Labor Laws: Freedom From and Freedom For*, 49 VILL. L. REV. 77 (2004).

Alex C. Hallett, Note, *An Argument for the Denial of Collective-Bargaining Rights of Federal Airport Security Screeners*, 72 GEO. WASH. L. REV. 834 (2004).

J. Benjamin Staherski, Comment, *Contraction in Major League Baseball: Do Owners Have a Duty To Bargain in Good Faith with the Union Before Shutting Down or Relocating a Team?*, 108 PENN ST. L. REV. 881 (2004).

### ***Diversity***

Bryan W. Leach, Note, *Race as Mission Critical: The Occupational Need Rationale in Military Affirmative Action and Beyond*, 113 YALE L.J. 1093 (2004).

Cyrus Mehri et al., *One Nation, Indivisible: The Use of Diversity Report Cards to Promote Transparency, Accountability, and Workplace Fairness*, 9 FORDHAM J. CORP. & FIN. L. 395 (2004).

Rebecca Hanner White, *Affirmative Action in the Workplace: The Significance of Grutter?*, 92 KY. L.J. 263 (2003/2004).

David B. Wilkins, *From "Separate is Inherently Unequal" to "Diversity is Good for Business": The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548 (2004).

**ERISA**

Roger M. Baron, *Public Policy Considerations Warranting Denial of Reimbursement to ERISA Plans: It's Time to Recognize the Elephant in the Courtroom*, 55 MERCER L. REV. 595, (2004).

Robert B. Chapman, *A Matter of Trust, or why "ERISA-Qualified" is "Nonsense Upon Stilts": The Tax and Bankruptcy Treatment of Section 457 Deferred Compensation Plans as Exemplar*, 40 WILLAMETTE L. REV. 1 (2004).

Jennifer Howard, Note, *ERISA Preemption: Whether State Common Law Doctrines of Substantial Compliance Fall Under the Purview of ERISA*, 92 KY. L.J. 551 (2004).

Elaine Gareri Kennedy, Comment, *For the Sake of Your Health: ERISA's Preemption Provisions, HMO Accountability, and Consumer Access to State Law Remedies*, 38 U.S.F. L. REV. 361 (2004).

Stephanie Reinhart, Note, *Rush Prudential HMO, Inc. v. Moran: 21 or Bust! Does ERISA Preemption Give HMOs the Power to Gamble with our Health?*, 19 AKRON TAX J. 99 (2004).

**Employee Benefits**

Michael J. Borden, *PSLRA, SLUSA, and Variable Annuities: Overlooked Side Effects of a Potent Legislative Medicine*, 55 MERCER L. REV. 681 (2004).

Richard L. Kaplan, *Enron, Pension Policy, and Social Security Privatization*, 46 ARIZ. L. REV. 53 (2004).

Janice Kay Lawrence, *Pension Reform in the Aftermath of Enron: Congress' Failure to Deliver the Promise of Secure Retirement to 401(k) Plan Participants*, 92 KY. L.J. 1 (2003).

Charles Luftig, Note, *Considered Action, Unconsidered Result: Why the Tax Relief Act of 2003 Could Put Retirement Savings at Greater Risk*, 23 VA. TAX REV. 701 (2004).

Amy B. Monahan, *Addressing the Problem of Impatients, Impulsives and Other Imperfect Actors in 401(k) Plans*, 23 VA. TAX REV. 471 (2004).

Salvatore J. Papa, Note, *The Current Crisis of I.R.C. 401(k): Is Providing Investment Advice the Proper Solution? The Misguided Focus on Investment Advice Instead of Investment Education*, 38 NEW ENG. L. REV. 371 (2004).

### ***Employee Rights***

David E. Bernstein, *Hostile Environment Law and the Threat to Freedom of Expression in the Workplace*, 30 OHIO N.U. L. REV. 1 (2004).

Leroy D. Clark, *A Civil Rights Task: Removing Barriers to Employment of Ex-convicts*, 38 U.S.F. L. REV. 193 (2004).

Eleanore R. Godfrey, *Inevitable Disclosure of Trade Secrets: Employee Mobility v. Employer's Rights*, 3 J. HIGH TECH. L. 161 (2004).

Noah P. Peeters, note, *Don't Raise that Hand: Why, Under Georgia's Anti-SLAPP Statute, Whistleblowers Should Find Protection from Reprisals for Reporting Employer Misconduct*, 38 GA. L. REV. 769 (2004).

Jed Scully, *The Virtual Professorship: Intellectual Property Ownership of Academic Work in a Digital Era*, 35 MCGEORGE L. REV. 227 (2004).

William J. Sonnenstuhl, *Book Review: Economic and Social Security and Substandard Working Condition: Company Doctor: Risk, Responsibility, and Corporate Professionalism. By Elaine Draper*, 57 INDUS. & LAB. REL. REV. 470 (2004).

Sonia M. Suter, *Disentangling Privacy from Property: Toward a Deeper Understanding of Genetic Privacy*, 72 GEO. WASH. L. REV. 737 (2004).

### ***General Topics in Labor and Employment Law***

John Ashby, Note, *Employment References: Should Employers Have an Affirmative Duty to Report Employee Misconduct to Inquiring Prospective Employers?*, 6 ARIZ. L. REV. 117 (2004).

Chad Bayse, Note/Comment, *Pulling the Lilly From the Pond? Minneapolis Wades into Domestic Partner Benefits Legislation Once Again*, 30 WM. MITCHELL L. REV. 931 (2004).

Marc Ellenbogen, Note, *Can the Tariff Act Combat Endemic Child Labor Abuses? The Case of Cote d'Ivoire*, 82 TEX. L. REV. 1315 (2004).

Margaret M. Harding, *The Limits of the Due Process Protocols*, 38 OHIO ST. J. ON DISP. RESOL. 369 (2004).

Allison K. Verderber Herriott, Comment, *Toward an Understanding of the Dialectical Tensions Inherent in CEO and Key Employee Retention Plans During Bankruptcy*, 98 NW. U. L. REV. 579 (2004).

Lynne Marie Kohm, *Does Marriage Make Good Business? Examining the Notion of Employer Endorsement of Marriage*, 25 WHITTIER L. REV. 563 (2004).

Jason P. Lemons, Comment, *For Any Reason or No Reason at All: Reconciling Employment-at-will with the Rights of Texas Workers After Mission Petroleum Carriers, Inc. v. Solomon*, 35 ST. MARY'S L.J. 741 (2004).

Andrew P. Morriss & Book Review: *Coercion, Contract, and Free Labor in the Nineteenth Century. By Robert J. Steinfeld*, 57 INDUS. & LAB. REL. REV. 481 (2004).

Katie Nester, Note, *Norfolk & Western Railway Company v. Ayers: Asbestosis-Inflicted Plaintiffs & Fear of Cancer Claims*, 23 ST. LOUIS U. PUB. L. REV. 367 (2004).

Amy J. Schmitz, *Refreshing Contractual Analysis of ADR Agreements By Curing Bipolar Avoidance of Modern Common Law*, 9 HARV. NEGOT. L. REV. 1 (2004).

Jana L. Tibben, Comment, *Family Leave Policies Trump States' Rights: Nevada Department of Human Resources v. Hibbs and its Impact on Sovereign Immunity Jurisprudence*, 37 J. MARSHALL L. REV. 599 (2004).

Samuel E. Trosow, *The Database and the Fields of Law: Are There New Divisions of Labor?*, 96 LAW LIBR. J. 63, (2004).

Ryan Wedlund, *Citizen Soldiers Fighting Terrorism: Reservists' Reemployment Rights*, 30 WM. MITCHELL L. REV. 797 (2004).

### **Mediation**

Emily M. Calhoun, *Workplace Mediation: The First-Phase, Private Caucus in Individual Discrimination Disputes*, 9 HARV. NEGOTIATION L. REV. 187 (2004).

E. Patrick McDermott & Ruth Obar, "What's Going On" in Mediation: An Empirical Analysis of the Influence of a Mediator's Style on Party Satisfaction and Monetary Benefit, 9 HARV. NEGOT. L. REV. 75 (2004).

### **Sexual Harassment**

Heather Antecol & Deborah Cobb-Clark, *The Changing Nature of Employment-Related Sexual Harassment: Evidence from the U.S. Federal Government, 1978-1994*, 57 INDUS. & LAB. REL. REV. 443 (2004).

Laura D. Francis, Note, *What Part of "Hostile Environment" Don't You Understand? The Need for an Entire-Environment Approach in Sexual Harassment Cases*, 72 GEO. WASH. L. REV. 815 (2004).

Martin J. Katz, *Reconsidering Attraction in Sexual Harassment*, 79 INDUS. L.J. 101, (2004).

### **Sports Law**

Rodney L. Caughron & Justin Fargher, *Independent Contractor and Employee Status: What Every Employer in Sport and Recreation Should Know*, 14 J. LEGAL ASPECTS OF SPORT 47, (2004).

Marc Edelman, *Has Collusion Returned to Baseball? Analyzing Whether a Concerted Increase in Free Agent Player Supply Would Violate Baseball's "Collusion Clause,"* 24 LOY. L.A. ENT. L. REV. 159 (2004).

### **Unions**

Michael Ash & Jean Ann Seago, *The Effect of Registered Nurses' Unions on Heart-Attack Mortality*, 57 INDUS. & LAB. REL. REV. 422 (2004).

Alison L. Booth & Mark L. Bryan, *The Union Membership Wage-Premium Puzzle: Is There a Free Rider Problem?*, 57 INDUS. & LAB. REL. REV. 402 (2004).

Jared Dwyer, Note, *Town of Groton v. United Steelworkers of America: What's So Illegal About a Nolo Plea?*, 22 QUINNIPIAC L. REV. 569 (2004).

Neal H. Hutchens & Melissa B. Hutchens, *Catching the Union Bug: Graduate Student Employees and Unionization*, 39 GONZ. L. REV. 105 (2003/2004).

Robert M. Worster, III, Note, *If it's Hardly Worth Doing, it's Hardly Worth Doing Right: How the NLRA's Goals are Defeated Through Inadequate Remedies*, 38 U. RICH. L. REV. 1073 (2004).