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8th Annual Colloquium on Current Scholarship  
in Labor & Employment Law

Conferences, Colloquia, Symposia, and Events

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9-27-2013

### Conference Program: 8th Annual Colloquium on Current Scholarship in Labor & Employment Law

University of Nevada, Las Vegas – William S. Boyd School of Law

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UNLV William S. Boyd School of Law presents the

8<sup>TH</sup> ANNUAL COLLOQUIUM ON  
CURRENT SCHOLARSHIP  
IN LABOR &  
EMPLOYMENT LAW



SEPTEMBER 27 & 28, 2013

[law.unlv.edu/LaborLaw2013](http://law.unlv.edu/LaborLaw2013)

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SCHOOL OF LAW

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# 8TH ANNUAL COLLOQUIUM ON CURRENT SCHOLARSHIP IN LABOR AND EMPLOYMENT LAW

The Colloquium on Current Scholarship in Labor and Employment Law provides an opportunity for labor and employment law scholars to present works-in-progress and receive feedback from their colleagues in the field. This year, with the Colloquium set in Las Vegas, participants will have the opportunity to discuss developments in labor and employment law with the unique workplace law landscape of Las Vegas as the setting. Las Vegas is often thought of as a global playground, but this image obscures the hard work and difficult issues that exist “behind the curtain.”

## AGENDA

**Friday, September 27, 2013**

**8:00 a.m.** Shuttle buses to Boyd School of Law pick up at ELARA Hilton

**8:15 - 8:45 a.m.** Breakfast (Tam Alumni Center)

**8:30 a.m.** Shuttle buses to Boyd School of Law pick up at ELARA Hilton

**8:45 - 9:00 a.m.** Welcome from Dean Daniel W. Hamilton, Professors Ann McGinley and Ruben Garcia (Tam Alumni Center)

**9:15 - 10:45 a.m.** **Concurrent Panels - Session 1**

**A. Labor History and Pedagogy: Protecting Employee Voice and Rights to Organize** (Boyd School of Law, Room 105)

Kenneth Casebeer

*“Public...Since Time Immemorial:” The Labor History of Hague v. CIO*

Jeff Hirsch

*Cooperation or Conflict? Giving Employees a Voice in the Modern Economy*

Joseph Slater

*Teaching Public-Sector and Private Sector Labor Law Together in One Course*

Rebecca E. Zietlow

*Is There a Constitutional Right to Organize?*

**B. Identity and Discrimination Models** (Boyd School of Law, Room 110)

Jessica Clarke

*Identity and Form*

Leora Eisenstadt

*Identity Discrimination*

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Marcia L. McCormick  
*Harassment and the Social Model of Discrimination*

Ann Tweedy  
*Employment Discrimination Against Bisexuals and Others with Fluid Identities*

**C. Disability Law After the ADAAA** (Boyd School of Law, Room 112)

Kevin Barry & Marcy Karin  
*Pleading Disability After the ADAAA*

Nicole Buonocore Porter  
*The Next Backlash? The Reasonable Accommodations Provision after the ADA Amendments Act*

Michelle Travis  
*Disqualifying Universality After the Americans With Disabilities Act Amendments Act*

Kate Webber  
*Correcting the Supreme Court – Will It Listen: Using the Models of Judicial Decision-Making to Predict the Future of the ADA Amendments Act*

**10:45 - 11:00 a.m.** Refreshments (Boyd School of Law, Room 106)

**11:00 a.m. - 12:30 p.m. Concurrent Panels - Session 2**

**A. Reforming Work and Labor Law** (Boyd School of Law, Room 105)

Charlotte Alexander  
*Stabilizing Low Wage Work: Legal Remedies for Unpredictable Work Hours and Income Instability*

Zev J. Eigen  
*How to Reduce Mass FLSA Violations Using Cheap, Available Technology*

Natasha Martin  
*Virtual Workplace Culture: Promise or Peril?*

**B. Antidiscrimination and the Equal Opportunity Principle** (Boyd School of Law, Room 110)

Arianne Renan Barzilay  
*Parenting Title VII*

Katlyn Farnum & Richard Wiener  
*“But For” and “Motivating Factor” Instructions in Age Discrimination Cases*

Joseph Fishkin  
*Bottlenecks: A New Theory of Equal Opportunity*

Tammy R. Pettinato  
*Employment Discrimination Against Ex-Offenders: The Promise and Limits of Title VII Disparate Impact Theory*

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**C. Labor Concepts in Antidiscrimination Law in the Changing Economic Environment** (Boyd School of Law, Room 112)

Stephanie Bornstein

*Rights in Recession: Reviving Administrative Antidiscrimination Law*

Susan D. Carle

*Angry Employees*

Michael Z. Green

*How the NLRB Still Plays a Major Role in Anti-Discrimination Law*

Angela D. Morrison

*Executive Estoppel & Separation of Powers: Tools to Protect Undocumented Workers from Workplace Exploitation*

**12:30 - 2:30 p.m.**

**Lunch Panel** (Tiberti Grand Hall, Tam Alumni Center)

**Title VII at Its 50th Anniversary and Its Importance to Labor and Work Law,**  
moderated by Professor Ann McGinley

Paul Frymer

*The Next Fifty Years: Regulatory Lessons for Promoting Workers' Rights*

Tanya Hernandez

*The Judicial Understanding of Unconscious Racism in Employment Discrimination Cases: A Tale of the 'Good, the Bad and the Ugly'*

Vicki Schultz

*Rationalizing the Workplace: Title VII's Lasting Contribution after 50 Years*

**2:45 - 4:15 p.m.**

**Concurrent Panels - Session 3**

**A. Politics at Work: Dissent, Tenure and Judicial Roles** (Boyd School of Law, Room 105)

Scott Bauries

*Tenure Outside the Research University*

Ruben J. Garcia

*Politics at Work After Citizens United*

Charlotte Garden

*Facilitating Dissent*

Rebecca Lee

*Reconceptualizing the Judge as Public Leader*

**B. Comparative Labor, Employment and Antidiscrimination Law**  
(Boyd School of Law, Room 110)

Susan Bisom-Rapp & Malcolm Sargeant

*It's Complicated: Age, Gender and Lifetime Discrimination against Working Women – the U.S. and the U.K. as Examples*

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Daniel H. Erskine  
*Reassessing the At-Will Employment Rule by Comparison with  
Statutory Protections Afforded To Employees in Ireland and  
England*

César Rosado Marzán  
*Protecting Workers as a Matter of Principle: A South American  
View of U.S. Work Law*

Fiona McQuarrie & Lorena (Lori) Poljancic  
*A Comparative Analysis of Canadian Newspaper Coverage of Labor  
Disputes in Professional Sport*

**C. Empirical Perspectives on Employee Privacy, Safety and  
Employment Law** (Boyd School of Law, Room 112)

Jason Bent  
*Reframing Feasibility Analysis*

Brian Clarke  
*Judicial Nominations and Remaking a Conservative Court: Tracking  
the Moderation of the Fourth Circuit Via Its Labor & Employment  
Jurisprudence from 2003 to 2013*

Jessica Fink  
*Why Smart Employers Snoop*

Jeremy D. Horowitz  
*The Evolution of Workplace Privacy: An Empirical Approach*

- 4:45 p.m.** Buses pick up for return to ELARA Hilton
- 6:00 p.m.** Buses pick up at ELARA Hilton for trip to  
Culinary Workers Union Hall
- 7:00 p.m.** **Dinner program** (Culinary Workers Union Big  
Hall)  
**“Labor’s History and Future in Nevada: From  
the Mines to the Casinos,”** moderated  
by Professor Ruben Garcia and featuring  
Professor Michael Green, College of Southern  
Nevada; Secretary-Treasurer Geoconda Arguello-  
Kline; and members of Culinary Workers Union  
Local 226, UNITEHERE, and AFL-CIO
- 9:00 p.m.** Last bus leaves Culinary Union Hall for return to  
ELARA Hilton
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**Saturday, September 28, 2013**

- 8:00 a.m.** Buses to Boyd School of Law pick up at  
ELARA Hilton
- 8:15 - 8:45 a.m.** Breakfast (Boyd School of Law, Room 102)
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**8:30 a.m.** Buses to Boyd School of Law pick up at ELARA Hilton

**9:00 - 10:30 a.m. Concurrent Panels - Session 4**

**A. Proving Employment Discrimination in the 21st Century** (Boyd School of Law, Room 105)

Gowri Ramachandran  
*Bayesian Statistics and Discrimination*

Stephen M. Rich  
*One Law of Race*

Mike Selmi  
*Employment Discrimination for the Next Generation*

Marley Weiss  
*Values and Assumptions in Title VII Law: A Fiftieth Anniversary Perspective*

**B. Work Law, Employment Status, Class and Gender** (Boyd School of Law, Room 110)

Veena Dubal  
*The Last Cowboy: Freedom, Flexibility and Myths of Legal Identity in the San Francisco Taxi Industry*

Sanjukta M. Paul  
*Antitrust Liability for Concerted Action by Workers Classified as Independent Contractors*

Peggie Smith  
*Love and Money: Compensating Family Members to Care for Elderly Relatives*

Julia Tomasetti  
*Employment Status Decisions and the Prerogatives of Capital*

**C. Analyzing the Intersection of Work and Family Law** (Boyd School of Law, Room 112)

Brad Areheart  
*Framing Pregnancy Accommodations*

Keith Cunningham-Parmeter  
*Constitutional Discrimination: Equal Protection and the Case for Favoring Fathers in Parental Leave Policies*

Laura Kessler  
*Negotiating Identities at Work: Work and Family Conflict in American Law Schools*

Elizabeth Tippet  
*Gatekeepers of Last Resort: The Role of Employers in Mitigating Child Abuse*

**10:30 - 10:45 a.m.** Refreshments (Boyd School of Law, Room 106)

**10:45 a.m. - 12:15 p.m. Concurrent Panels - Session 5**

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**A. Employee Benefits and Detriments** (Boyd School of Law, Room 105)

Susan E. Cancelosi  
*Lessons from Detroit: Retiree Rights in the Shadow of Municipal Bankruptcy*

Jonathan Barry Forman ("Jon")  
*Supporting the Oldest of the Old: The Role of Social Insurance, Pensions and Financial Products*

Paul M. Secunda  
*The Treatment of Pensions and other Employee Benefits in Bankruptcy: A Comparative International Perspective*

Steven Wilborn  
*Garnishment*

**B. At-Will, Class and the Regulation of Employee Capital** (Boyd School of Law, Room 110)

Rick Bales  
*At-Will Employment and the Rule of Law*

Norm Bishara  
*The Growth of Employee Restrictive Covenant Legislation: Haphazard Evolution or Coherent Policy Development?*

Orly Lobel  
*The Talent Commons*

Ann McGinley  
*The End of Men? Labor Masculinity, Class and Sexual Power*

**C. Examining the 2012-2013 Supreme Court Decisions** (Boyd School of Law, Room 112)

Samuel Bagenstos  
*Formalism and Employer Liability for Discriminatory Harassment*

Jamie Darin Prenkert & Abby Stemler  
*Cat's Paw Liability in Title VII Sexual Harassment Cases After Vance v. Ball State University: The Key to Vicarious Liability when a Non-Supervisor is a "Supervisor?"*

Michael J. Zimmer  
*Hiding the Statute in Plain View: University of Texas Southwestern Medical Center v Nassar*

**12:30 - 2:00 p.m.**

**Closing luncheon and presentation of the Paul Steven Miller Scholarship Award**  
(Wiener-Rogers Law Library Reserve Room, Boyd School of Law)

Honoring Professor Marley S. Weiss, Francis King Carey School of Law, University of Maryland

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