

## MARIA O'BRIEN HYLTON

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**Boston University School of Law  
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### CURRENT EMPLOYMENT

Professor of Law, Boston University

Research and teaching interests: ERISA, employment law and insurance law

### EDUCATION

- J.D., Yale Law School (1982-1985)
  - \* Editor, Yale Law & Policy Review
  - \* Teaching Assistant, Yale Economics Department
  - \* Magg Scholarship
  - \* Beinecke Fellowship
  
- A.B., Harvard University (1978-1982)
  - \* magna cum laude, Economics
  - \* John Harvard Memorial Scholarship
  - \* Elizabeth Cary Agassiz Scholarship
  - \* Managing Editor, Harvard Economist

### PUBLICATIONS

#### Articles

- “Post-*Firestone* Skirmishes: The Patient Protection and Affordable Care Act, Discretionary Clauses, and Judicial review of ERISA Plan Administrator Decisions,” 2 William & Mary Pol. Rev. 1 (2011).

- “The Future of ERISA DB Plans” (Book Review) 12 *Emp. Rights and Emp. Policy Journal* 383 (2008).
- “Creeping Impoverization: Material Conditions, Income Inequality and ERISA Pedagogy Early in the 21<sup>st</sup> Century,” 34 *Fordham Urban Law Journal* (No. 4, May 2007) 2355-1362.
- “Insecure Retirement Income, Wrong Plan Administration and Other Employee Benefit Woes—Evaluating ERISA at Age Thirty,” 53 *Fordham Urban Law Journal* (No. 4, May 2007) 1355-1362.
- “The Supreme Court’s Labor and Employment Decisions: 2002-2003 Term,” 19 *The Labor Lawyer* (No. 2, Winter, 2004).
- “The Changing World of Employee Benefits,” 79 *Chicago-Kent Law Review* 625 (2004).
- “Y2K ERISA Update: Key Issues and Trends Facing Employers and Plan Participants,” *Labor Law Journal* 96-105 (Summer 2000).
- “ERISA in the Larger EEO Context,” in *Proceedings of the 1999 Annual Meeting AALS Section on Employment Discrimination Law: Is There a Disconnect Between EEO Law and the Workplace?* 3 *Emp. Rights & Emp. Pol. J.* 131 (1999).
- “Evaluating the Case for Social Security Reform: Elderly Poverty, Paternalism and Private Pensions,” 64 *Brooklyn L. Rev.* 749 (1998).
- “Some Preliminary Thoughts on the Deregulation of Insurance to Advantage the Working Poor,” 24 *Fordham Urb. L.J.* 687 (1997).
- “Discussant’s Notes,” *Industrial Relations Research Association Series, Proceedings of the Forty-Ninth Annual Meeting*, pp. 226-229 (Jan. 1997).
- “Legal and Policy Implications of the Flexible Employment Relationship,” 17 *Journal of Labor Research* 589 (1996).
- “Insurance Risk Classification After McGann: Managing Risk Efficiently in the Shadow of the ADA,” 47 *Baylor L. Rev.* 59 (1995).

- “The Case Against Regulating the Market for Contingent Employment,” 52 Wash. & Lee L. Rev. 849 (1995).
- “Working and Poor: The Increasingly Popular Practice of Excluding Disabled Employees From Health Care Coverage,” 3 Kan. J. of Law and Pub. Pol. 92 (1994).
- “Personal Narratives and Racial Distinctiveness in the Legal Academy: A Review of The Alchemy of Race and Rights (Book Review),” 41 DePaul L. Rev. 1407 (1992).
- “Socially Responsible Investing in an Inefficient Market: Doing Good Versus Doing Well,” 42 Am. U. L. Rev. 1 (1992).\
- “The Economics and Politics of Emergency Health Care for the Poor: The Patient Dumping Dilemma,” B.Y.U. L. Rev. 971 (1992).
- “‘Parental Leaves’ and Poor women: Paying the Price for Time Off,” 52 U. Pitt. L. Rev. 275 (1991).
- “Rent Appropriation and the Labor Law Doctrine of Successorship,” Boston U. Law Review 821 (1990) (with Keith Hylton).
- “Rational Decisions and Regulation of Union Entry,” 34 Vill. L. Rev. 145 (1989) (with Keith Hylton).

#### Books and Briefs

- Brief Amici Curiae of Trust Law and ERISA Law Professors in Met.-Life v. Glenn, U.S. Sup. Ct. No. 06-923, March 31, 2008.
- *Cases and Materials on Employee Benefits Law*, West Publishing , 1998 (with Lorraine Schmall).
- Using Civil Remedies for Criminal Behavior: Rational Case Studies and Constitutional Issues, National Institute of Justice, October 1994, (Issues and Practices Manual) (with P. Finn).

#### **PRIOR ACADEMIC AND OTHER EMPLOYMENT**

- Visiting Professor of Law, Boston College Law School (2004-5)
- Associate Professor of Law, DePaul University (1991-1995)
- Visiting Associate Professor of Law, University of Chicago Law School (1993)
- Assistant Professor of Law, DePaul University (1989-1991)
- Associate Professor of Law, Boston University (1988-1989)
- Associate, Hale & Dorr (1986-1988)
- Law Clerk, Judge Gilbert S. Merritt, United States Court of Appeals, 6th Circuit (1985-1986)

#### **COURSES**

- Labor Law
- Employee Benefits (ERISA)
- Selected Problems in Labor and Employment Law (Seminar)
- Legislation
- Criminal Law
- Criminal Procedure
- Critical Race Theory (Seminar)
- Public Sector Labor Law (Seminar)
- Insurance Law
- Law, Work and Poverty (Seminar)

#### **PRESENTATIONS**

- “Creeping Impoverization: Material Conditions, Income Inequality, and ERISA Pedagogy Early in the 21<sup>st</sup> Century,” Fordham Law School, March 5, 2007.

- “ERISA, Insurance Mandates and Vaccine Policy” National Vaccine Advisory Board, HHS, February 7, 2006, Washington, D.C.
- “Supreme Court Review of Labor and Employment Law Cases,” LA County Bar Association, June 24, 2003.
- “Supreme Court Review of Labor and Employment Law Cases,” Carl A. Warns, Jr. Labor and Employment Law Institute, Louisville, Kentucky, June 12, 2003.
- 25<sup>th</sup> Annual Kenneth M. Piper Lecture, “The Case for Sweeping Reforms of Employee Benefits: What We Should Demand of Employees, Unions and Government,” Chicago-Kent College of Law, Chicago April, 2003.
- “The Impact of *Pall* on Bargaining: A Circuit by Circuit Analysis,” ABA, Committee on the Development of the Law Under the NLRA, Puerto Vallarta, Mexico, February, 2003.
- “The Enforcement of Contractual Subrogation Rights by ERISA and non-ERISA plans,” NHTLA, New Hampshire, June, 2002.
- “Independent Contractors and Contingent Worker Litigation,” ABA ERISA Basics Program, New York, NY, June 2001.
- “Downsizing Litigation,” ABA ERISA Basics Program, New York, NY, June 2001.
- “ERISA Section 510 and Downsizing Litigation”, ABA ERISA Basics Program, New York, N.Y., June 2000.
- “ERISA Update,” Stetson Annual Labor and Employment Law Conference, St. Petersburg, March 2000.
- “Some Thoughts on Arbitration in the New Millennium,” IRRRA Annual Meeting, Boston, January 2000.
- “Notes on the Class Action Device at The End of the Century,” ABA Annual Meeting, Section of Labor and Employment Law, Atlanta, August, 1999.

- “Microsoft and the Illusion of Lost Employer Control,” 1999 AALS Annual Meeting, Employment Discrimination Law Section, New Orleans, January, 1999.
- “EEO Update–Plaintiff’s Issues,” ABA Annual Meeting, Section of Labor and Employment Law, Toronto, Canada, August 1998.
- “ERISA Section 510 and Downsizing Litigation,” ABA ERISA Basics Program, New York, N.Y., June 1998.
- “Recent Developments in ERISA,” Stetson Law School, Annual Labor and Employment Conference, Orlando, Florida, May, 1998.
- “Inter-Modal and ERISA Section 510: Toward A Theory of Benefits Discrimination,” George Mason University School of Law, February, 1998.
- “Inter-Modal's Implications for Subcontracting,” IRRA Labor and Employment Section, Chicago, January, 1998.
- “Sexual Harassment and the Arbitration Finality Doctrine,” Boston University School of Law Alumni Luncheon, D.C., March, 1997.
- “Reconciling the Tension in Insurance Between Efficiency and Risk Spreading Functions: The Case of Racial Classifications,” Urban Bioethics: A Symposium of Health Care Poverty and Autonomy, New York, February, 1997.
- “The Case Against Permitting Individual Liability Under Title VII and MGL. C. 151B,” Boston Bar Association, January, 1997.
- “Discussant's Notes and Comments on Arbitration and Empirical Papers,” IRRA Annual Meeting, January, 1997.
- “Legal and Policy Implications of the Flexible Employment Relationship,” Symposium on Flexible Employment and Alternative Work Arrangements; The John M. Olin Institute for Employment Practice and Policy, Washington, D.C., November, 1995.

- “The Legitimacy of Insurance Risk Classifications After the ADA,” Northwestern University School of Law, October, 1995.
- “A Review of Several Sure-Fire Ways to Join the Ranks of the Working Poor After McGann,” The Center for African-American Research, Chicago, March, 1994.
- “What Does A Feminist, Pragmatic View of Health Insurance Look Like?” IIT/Chicago-Kent Law School, March, 1994.
- “Working and Poor: The Increasingly Popular Practice of Excluding Disabled Employees from Coverage,” University of Kansas Symposium, March, 1994.
- “The Americans With Disabilities Act: Insurance Issues and Genetic Discrimination,” IGLE Conference, November, 1993.

**PROFESSIONAL AFFILIATIONS**

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| <b>Admitted</b>  | Massachusetts Bar<br>District of Columbia Bar   |
| <b>Member</b>    | Advisory Board, Pension Assistance Project (U. Massachusetts, Boston).<br>Labor and Employment Relations Association (LERA)<br>American Law Institute (ALI)<br>Society of American Law Teachers<br>Law & Society Association<br>American Bar Association (ABA)<br>American Law and Economics Association (ALEA)<br>Industrial Relations Research Association (IRRA)<br>Insurance Law & Society Working Group (at Harvard Business School) |
| <b>Secretary</b> | ABA, Labor and Employment Law Council (2002-2003)   |
| <b>Fellow</b>    | American Bar Foundation   |
| <b>Director</b>  | Institute of Genetics Law & Ethics (IGLE) (until 1995)<br>Radcliffe Club of Chicago (until 1994)<br>The Family Center (until 1999)<br>Labor and Employment Law Section, IRRA (Section Chair, 1999-2000)   |

**Editor** Employee Rights and Employment Policy Journal

**Chair** Labor and Employment Law Section, IRRA (1999-2000)  
AALS Employee Benefits Section (2004)

**Faculty** Massachusetts Bar Institute of the Massachusetts Bar Association “Study Skills for Success” Program

#### CONSULTING

- **Fulbright Specialist:** Joined Fulbright Roster in the areas of insurance law and employee benefits (April 2011).
- Expert Witness in *Smithfield v. National Medical Health Card Systems Inc.*, No. 3:07-CU-00625 (E.D. VA). Expert witness report prepared.
- Expert witness on ERISA issues in *H & R Block Inc. v. Fitzgerald*, FINRA dispute resolution Arbitration No. 05-02411. Michigan, November 2007.
- Of counsel, amicus brief to the U.S. Supreme Court, ERISA issues, in *Metlife v. Glenn*, No. 06-023.

#### MISCELLANEOUS

- Counsel to Leticia Figueroa in benefits credit/wage and hour dispute with Massachusetts General Hospital. October, 2009.
- Presentation of *Jacque v. Steenburg Homes* (1997) to Boston Lawyers Group (Minority students considering law school.) May 2009.