

MARIA O'BRIEN*

Boston University School of Law
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CURRENT EMPLOYMENT

Professor of Law, Paul M. Siskind Research Scholar, Boston University

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

EDUCATION

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

PUBLICATIONS

Articles

- “Understanding University Fee Litigation: A Few Lessons About the Perils of Imprudence for Higher Ed Plan Sponsors,” 90 Miss. L. J. 441 (2021) (with Calvin Utter).

*MANY OF THE PUBLICATIONS LISTED HERE WERE ORIGINALLY AUTHORED UNDER THE NAME MARIA O'BRIEN HYLTON

- "A Common Sense Defense of Janus: Forthcoming Changes in the Public Sector," 6 Belmont L. Rev. 41 (2019).
- "A Few Observations About the Curious State of MA Labor Law: Public Sector Unions After Janus," 22 J. of Empl. Rights and Empl. Pol., issue 2, (2018).
- "The Future of ERISA's Church Plan Exemption After *Health Advocates*: Abolition or Robust State Law Contract Remedies?" NYU Review of Employee Benefits & Executive Compensation, Chapter 1, (2018) (co-authored with Sophie Esquier).
- "Recoupment of Pension Overpayments: Equitable Liens and Meaningful Reform After Montanile," 26 U. of Kansas J. Law & Pub. 195 (Spring 2017) (with Jeanne Medeiros).
- "*Friedrichs* and the Move Toward Private Ordering of Public Employee Wages and Benefits," 23 CT Ins. L. J. 177 (Spring 2017).
- "Introduction to Thinking About a Post-ACA World: Litigation, Cost Shifting and Enforcement of Statutory Rights", 20 Emp. Rights & Emp. Pol. J. 129 (2016).
- "After Tackett: Incomplete Contracts for Post-Employment Healthcare" forthcoming, 36 Pace L. Rev. 317 (2016).
- "The Case for Public Pension Reform: Early Evidence from Kentucky," 47 Creighton Law Review 585 (2014).
- "Central Falls Retirees v. Bondholders: Assessing Fear of Contagion in Chapter 9 Proceedings," 59 Wayne L. Rev. 525 (2013).
- "Disclosure to the Rescue: A Conceptual Framework for Retained Asset Accounts," 80 Tennessee L. Rev. 69 (2012-2013).
- "Combating Moral Hazard: The Case for Rationalizing Public Employee Benefits," 45 Ind. L. Rev. 413 (2011-2012).
- "The Other Situation in New Jersey: The State of Public Pension and Retiree Health Plans and Prospects for Reform," Employee Benefits Committee Newsletter, ABA Section of Labor and Employment Law, Winter 2011.
- "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 21st 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 Employee Retirement Income Security Act of 1974 - A political history.” 53 Buffalo Law Review (No. 4, Sep. 2005) 1193-1213.
- “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 Rev. 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).
- “Recent Developments in ERISA Law” 49 Labor Law Journal 1065 (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 Rev. 821 (1990) (with Keith Hylton).
- “Rational Decisions and Regulation of Union Entry,” 34 Vill. L. Rev. 145 (1989) (with Keith Hylton).

BOOKS AND BRIEFS

- “Fraternity and Sorority Insurance Liability Issues (book chapter), forthcoming Carolina Academic Press 2023
- Brief of Amici Curiae of Employee Benefits Scholars in *BCBSMA v. Laborers Fund* 1st Cir. No.
- The Jurisprudential Legacy of Ruth Bader Ginsburg, (ERISA Chapter), NYU Press, forthcoming 2023

- 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 (2004-2005)
- 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 TAUGHT

- Employment Law
- 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)
- Professional Responsibility
- Contracts
- Employment Discrimination

OTHER TEACHING

- Contracts for LL.Ms, B.U. Law Executive LL.M Program (online) (2018 - present).
- Mason Judicial Education Program, June 9 to June 13, 2018, "The Law and Economics of Insurance Law."
- Instructor, B.U. "Summer Challenge" course Introduction to Law (Summer 2016, Summer 2017).
- Instructor, ilaw Ventures Insurance Law course (online) (2015-present).

PRESENTATIONS:

- "Multiemployer Plans and Moral Hazard," 12th Annual Employee Benefits and Social Insurance Conference, November 2022.
- "Understanding University Fee Litigation," Annual Employee Benefits Conference, Boston College Law School, October 2019.
- "The Future of Public Employee Unions After *Janus*. The Modern Workplace: Contemporary Legal Issues in Employment & Labor Law, Belmont University College of Law, Nashville, TN, October 2018.
- "The Case for Abolishing ERISA Church Plans," 7th Annual Employee Benefits Conference, Norman, OK, April 2018.

- Commentator on ERISA paper at Liberty Mutual New Scholars Workshop on Insurance and Risk, Boston College Law School, June, 2016.
- “*Friedrichs* and the Move Toward Private Ordering of Public Employee Wages and Benefits,” 5th Annual Employee Benefits Conference, Hartford, CT, April 2016.
- “Understanding the Moral Hazard of Public Pensions,” Creighton Law Review Symposium, March 2014.
- “The Future of Public Pension Plans,” AALS Meeting, New Orleans, Jan. 2013.
- “Employee Benefits in Turmoil,” Law & Society Meeting, Honolulu, June 2012.
- Public Pensions and Retiree Health in the U.S., “Re-organizing Work” Conf., Gold Coast, Australia, Feb. 2012.
- “Public and Private Pension and Welfare Plans – a Forecast,” Institute for Law and the Workplace, Chicago-Kent Law School, October 13, 2011.
- “Creeping Impoverization: Material Conditions, Income Inequality, and ERISA Pedagogy Early in the 21st 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.
- 25th 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,” IRRA 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

- Admitted**
- Massachusetts Bar
 - District of Columbia Bar

- Member**
 - Massachusetts Division of Labor Relations Advisory Council (appointed by Governor Charles D. Baker, September 2, 2021)
 - MLK Fellowship and Whitney Young Fellowship Committee at B.U
 - Advisory Board, Pension Assistance Project (U. Massachusetts, Boston)
 - Labor and Employment Relations Association (LERA)
 - American Law Institute (ALI)
 - Society of American Law Teachers
 - Law & Society Association
 - American Bar Association (ABA)
 - American Law and Economics Association (ALEA)
 - Industrial Relations Research Association (IRRA)
 - Insurance Law & Society Working Group (at Harvard Business School)

- Moderator**
 - MA Bar Assoc. Annual Fuchs Labor Law Conference (Feb. 10, 2022)

- Secretary**
 - AALS, Employee Benefits Section Chair-Elect (2014, 2003)
 - ABA, Labor and Employment Law Council (2002-2003)

- Fellow**
 - American Bar Foundation
 - American College of Employee Benefits Counsel

- Director**
 - Institute of Genetics Law & Ethics (IGLE) (until 1995)
 - Radcliffe Club of Chicago (until 1994)
 - The Family Center (until 1999)
 - Labor and Employment Law Section, IRRA (Section Chair, 1999-2000)

- Editor**
 - Employee Rights and Employment Policy Journal

- Chair**
 - AALS Section on Employee Benefits and Social Insurance (2022-2024)
 - Labor and Employment Law Section, IRRA (1999-2000)
 - AALS Employee Benefits Section (2015, 2004)

- Faculty**
 - Massachusetts Bar Institute of the Massachusetts Bar Association “Study Skills for Success” Program
 - ilawventures, developed and taught online Insurance Law course, summer 2016 to present.

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.

MISCELLANEOUS

- Presentation of *Jacque v. Steenburg Homes* (1997) to Boston Lawyers Group summer intern program and Match Charter High School. 2009-Present.
- Counsel to Leticia Figueroa in benefits credit/wage and hour dispute with Massachusetts General Hospital. October, 2009.
- Of Counsel, amicus brief to the U.S. Supreme Court, ERISA issues, in *Metlife v. Glenn*, No. 06-023.