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A PROPOSAL TO IMPROVE THE WORKPLACE LAW CURRICULUM FROM A CORPORATE COMPLIANCE PERSPECTIVE

NICOLE BUONOCORE PORTER*

INTRODUCTION

Before I began teaching law school, I represented employers on labor and employment matters. I practiced employment and labor law at a large law firm and then I worked as in-house counsel for a large manufacturing company, handling the labor and employment work for approximately thirty plants across the country. It is my sense that in the world of legal academia, it is more common for workplace law¹ professors to have represented plaintiffs or worked for government agencies than to have practiced on the defense side.² Thus, as a liberal academic, I have often felt the need to defend my past career representing employers. But I believe it is possible to practice defense-side workplace law from the perspective of conscientious compliance with our labor and employment laws. When representing employers, my goal was not simply to find a way out of liability for my client. Rather, my goal was to make sure my client understood and complied with the myriad of workplace laws.³ When I was called upon to give advice, that advice was not just legal advice

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1. “Workplace law” is basically synonymous with “labor and employment law.” In fact, I find it to be a more inclusive and less cumbersome term. In this paper, I will use both terms interchangeably.

2. See Rachel S. Arnow-Richman et al., *Teaching Transactional Skills in Upper-Level Doctrinal Courses: Three Exemplars*, 2009 *TRANSACTIONS: TENN. J. BUS. L.* (SPECIAL ISSUE) 367, 367 (2009) (noting that not many workplace law faculty have represented corporate clients, especially doing transactional work).

3. Similarly, Professor Arnow-Richman has discussed teaching transactional skills in the employment setting, pointing out that defense-side lawyers’ practice is not just about avoiding liability but is also about compliance, which benefits employers and employees. Rachel S. Arnow-Richman, *Employment as Transaction*, 39 *SETON HALL L. REV.* 447, 481 (2009).

but also business advice.⁴ Instead of simply instructing my client on how to avoid legal liability, we also discussed how the employer could and should treat its employees to create an environment where employees felt comfortable and appreciated. Some scholars have argued that the best way to effectuate employment change in corporations is to convince in-house counsel that the policy is a good one.⁵ I believe that those attorneys advising employers (whether they are in-house or outside counsel) have the ability to make workplaces better for employees, which will in turn, benefit employers too.

When practicing workplace law from the corporate compliance perspective (as opposed to litigation), even though I believe that I received a great education in the labor and employment field,⁶ I had two realizations regarding how workplace law is generally taught at most law schools. The first is that consulting work brings together many different legal issues in a way that students do not usually learn in law school. Most law schools teach the body of workplace law in three traditional courses: Employment Discrimination, Labor Law, and Employment Law⁷ (sometimes referred to as a survey or given other names).⁸ But practicing workplace law from a corporate compliance perspective does not fit so neatly into those three categories. Many issues that arise involve a combination of various aspects of workplace law.⁹ My second realization was that the skills necessary for consulting were not skills I had learned in law school. From learning how to give negative advice to clients, to conducting training sessions for non-lawyers, to overseeing investigations, to mediating workplace disputes, I learned most of this on the job. Although this lack of training did not hurt me personally (perhaps because I learned from great partners), I believe students would benefit from having experience learning and practicing some of these skills.¹⁰

Thus, the goal of this Article is to explore and propose a course that I believe will be very valuable for law students. The goal of the course will be two-fold. The first goal will be to integrate the three areas of workplace law

4. *Id.* at 477.

5. *See, e.g.*, Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job*, 26 HARV. WOMEN'S L.J. 77, 120–21 (2003).

6. I must commend and thank my two labor and employment law professors and mentors at Michigan Law School, Professor Theodore J. St. Antoine (now emeritus professor) and Professor Deborah Malamud, who is now at NYU School of Law.

7. *See infra* Appendix A: Survey of Workplace Law Curriculum.

8. For instance, when I was at Michigan Law School, this course was called “Individual Employee Relations.”

9. *See infra* Part II.B.

10. It is certainly well known that law schools have been criticized for not providing enough skills training. Arnow-Richman, *supra* note 3, at 453 (“Schools do well preparing students to think like lawyers, but they do little to assist them in being lawyers.”).

into one course, exploring the ways that these areas of the law intersect and interact with one another. The second goal will be to teach non-litigation practical skills¹¹ that will benefit students when eventually called upon to advise employers on the compliance of our workplace laws.¹²

Part II of this Article will assess the labor and employment curriculum in law schools across the country. I will first discuss my study of how most law schools teach the workplace law curriculum. Second, I will give a few examples of some common workplace issues that bring together aspects of the law that are traditionally taught in separate courses. In Part III, I will discuss my proposal for a non-litigation skills course that integrates the workplace law curriculum. Finally, in Part IV, I will discuss the primary anticipated criticisms of my proposed course. Part V will conclude.

I. ASSESSING THE LABOR AND EMPLOYMENT LAW CURRICULUM

A. *Law Schools' Workplace Law Curriculum*

Because I am suggesting that law schools' curriculum fails to adequately prepare students for advising employers regarding corporate compliance with workplace laws, I first needed to explore how law schools were teaching the workplace law curriculum. Accordingly, I asked a research assistant to research how law schools across the country were structuring their workplace law curriculum. She began by using the list of law schools on the Law School Admission Counsel (LSAC) website.¹³ She then visited each law school's website and searched the course catalog and/or a current course schedule. I had asked her to determine whether schools were teaching the three primary workplace law courses: Employment Discrimination, Labor Law, and Employment Law. She also looked for any other workplace law courses that law schools teach or have taught, to the extent that information could be ascertained by the course titles. The result of this research is discussed below and summarized in Appendix A.

While the information presented here is meant to be informative, it is not intended to be exhaustive or in all cases, even correct. There are many reasons for this disclaimer. First, many law schools do not regularly update their list of courses. Thus, the list might contain some courses that are no longer taught or are taught very rarely. The list might not contain some recent courses that have not made their way on to the list. Furthermore, the course descriptions or

11. *Id.* at 448 (stating that most law schools have courses that focus on litigation and there are not enough courses that focus on transaction skills).

12. As emphasized by Arnov-Richman, the Carnegie Report emphasizes the value of integrating skills within traditional doctrinal courses. *Id.* at 455.

13. *Choosing a Law School*, L. SCH. ADMISSION COUNCIL, <http://www.lsac.org/jd/choosing-a-law-school/law-school-links> (last visited Oct. 12, 2013).

names in the course catalog might not be accurate. Second, most schools only have the most current course schedule available online or, at most, two semesters of course schedules (either the prior or the upcoming semester in addition to the current semester). Thus, reviewing the course schedules will not capture courses that are not being currently taught. Third, some law schools did not have course schedule information publicly available. With those disclaimers in mind, below is the information we found.

Virtually all of the 195 law schools offer some employment and labor courses. There was only one school for which we could not find any labor or employment courses listed.¹⁴ Most law schools offered all three of the primary workplace law classes: Employment Law, Employment Discrimination, and Labor Law. Twenty-six schools did not offer Employment Law;¹⁵ thirty-six did not offer Employment Discrimination;¹⁶ and forty-six did not offer Labor Law.¹⁷ There were thirteen schools for which the only class offered (of the three primary courses) was the Employment Law course.¹⁸ Of those thirteen schools, it appears from the course descriptions that four of them teach a true survey workplace law course, which includes aspects of employment law, employment discrimination, and labor law.¹⁹ Six of those thirteen schools apparently cover employment law and employment discrimination, but not labor law.²⁰

Several schools have robust workplace law programs. Twenty-three schools appear to have labor and employment “programs,”²¹ and eleven of those schools offer a certificate in employment and labor law.²² Of course,

14. We could not find any labor or employment courses listed for Chapman University School of Law, as of March 16, 2013. *Course Catalog and Course Description*, CHAP. UNIV. SCH. OF L., <http://www.chapman.edu/law/academic-programs/course-descriptions/> (last visited Aug. 22, 2013).

15. *See infra* Appendix A.

16. *See infra* Appendix A.

17. *See infra* Appendix A.

18. Appalachian School of Law; University of Detroit Mercy School of Law; Elon University School of Law; Faulkner University, Thomas Goode Jones School of Law; University of Houston Law Center; University of Idaho College of Law; Liberty University School of Law; University of Montana School of Law; University of New Hampshire School of Law; University of Oklahoma College of Law; SMU Dedman School of Law; The University of South Dakota School of Law; Western State College of Law. *See infra* Appendix A.

19. Elon University School of Law; University of Idaho College of Law; University of Montana School of Law; The University of South Dakota School of Law. *See infra* Appendix A.

20. Appalachian School of Law; University of Detroit Mercy School of Law; Faulkner University, Thomas Goode Jones School of Law; University of Houston Law Center; University of New Hampshire School of Law; SMU Dedman School of Law. *See infra* Appendix A.

21. “Programs” include schools that have concentrations, focus areas, and/or certificates in workplace law. *See infra* Appendix A.

22. California Western School of Law; Capital University Law School; Chicago-Kent College of Law, Illinois Institute of Technology; University of Denver, Sturm College of Law;

many schools offer a broader array of courses beyond the three traditional workplace courses. Seventy-three schools offer a course in workers' compensation;²³ eighty-five schools offer a course in employee benefits (ERISA);²⁴ eighteen schools offer a course in public sector labor and/or employment law;²⁵ forty-five schools offer a course in labor arbitration, ADR in the workplace, negotiation and/or mediation;²⁶ nineteen schools offer a course related to gender or sex (including sex discrimination, sexual harassment, and work/family issues);²⁷ seventy-four schools offer a course in disability law,²⁸ which most likely would include an in-depth study of disability discrimination in the workplace;²⁹ and thirty-one schools offer one or more courses related to international or comparative workplace law.³⁰

Especially relevant to this project, there were seventy-six courses (sometimes more than one course per school) that were practical in nature, such as skills, externships, clinics, practicums, simulations, courses that included significant drafting, and capstone courses.³¹ Of these seventy-six courses, twenty-five were clinics,³² where students represent live clients. Given that there are many employees who are unable to find or afford an attorney when they believe they have been unlawfully terminated, these clinics provide a valuable service to the populations they serve, and provide a valuable education to students, teaching them the skills, strategies, and the law surrounding the litigation of workplace law cases. Some schools also place students in externships working on workplace law issues,³³ although finding these placements is made more difficult for schools whose externships can only be in non-profit settings because many, if not most, workplace law issues are handled by private law firms.

Golden Gate University School of Law; University of Miami School of Law; University of Minnesota Law School; Northern Kentucky University, Salmon P. Chase College of Law; Saint Louis University School of Law; SUNY Buffalo Law School; The University of Toledo College of Law. *See infra* Appendix A.

23. *See infra* Appendix A.

24. *See infra* Appendix A.

25. *See infra* Appendix C.

26. *See infra* Appendix C.

27. *See infra* Appendix C.

28. *See infra* Appendix C.

29. For instance, I teach a course in disability law and I spend about six of the fourteen weeks of the semester covering disability discrimination in the workplace.

30. *See infra* Appendix C.

31. *See infra* Appendix B (listing workplace law practical/skills courses).

32. *See infra* Appendix B.

33. University of California, Davis School of Law (King Hall); Chicago-Kent College of Law, Illinois Institute of Technology; Drake University Law School; Loyola Law School, Loyola Marymount University; St. Johns University School of Law; Stetson University College of Law; Villanova University School of Law. *See infra* Appendix B.

In addition to clinics and externships, schools offer a wide variety of practical simulation courses, where students are not representing live clients but are getting practical experience through working on simulated problems or cases. Many of these are exclusively or primarily focused on litigation, using one or more simulated cases to teach students how to litigate cases from either the plaintiff's or defendant-employer's perspective or both.³⁴

Of special interest to me are the courses that focus on the non-litigation or transactional skills required in employment and labor practice.³⁵ I was able to find several such courses. Some were focused primarily or exclusively on drafting, including drafting employment agreements, policies, severance agreements, as well as other documents.³⁶ There were a few courses that appear (based on the course descriptions available online) to adopt a model similar to the one I propose here.³⁷ For instance, Loyola University Chicago School of Law has a course titled "Employment Law Counseling." While the description briefly mentions representation of employees, the rest of the description seems to focus on tasks required when representing employers:

34. See, e.g., University of California, Hastings College of the Law (Representing Spanish-Speaking Workers in Employment and Labor Litigation); Chicago-Kent College of Law, Illinois Institute of Technology (Employment Litigation); The University of Michigan Law School (Employment Litigation); University of Pennsylvania Law School (Litigating Employment Class and Collective Actions); Stetson University College of Law (Employee Benefits (ERISA) Litigation Skills); Texas Southern University, Thurgood Marshall School of Law (Title VII Litigation); Thomas Jefferson School of Law (Employment Litigation). See *infra* Appendix B. Although I do not deny the importance of teaching litigation and advocacy skills to students, I also believe that students benefit from learning employment-related transactional skills. See also Arnov-Richman, *supra* note 3, at 456–57 (arguing that schools do little to teach students to be counselors from a planning and compliance-oriented perspective).

35. There were also some courses that seemed to incorporate litigation and non-litigation skills. For instance, University of Colorado Law School has a course titled "The Practice of Labor and Employment Law," with this course description:

The course focuses on aspects of the practice of employment law, rather than the examination of legal doctrines. The instructors are both members of the Labor and Employment Department at Sherman & Howard L.L.C. Focusing on examples from their practice, the course discusses typical issues presented in advising and litigating on behalf of employers and employees. Each topic includes special attention to ethical issues.

Course Description, U. COLO. L. SCH., <http://lawweb.colorado.edu/courses/courseSection.jsp?id=LAWS6501> (last visited March 18, 2013).

36. See, e.g., Legal Drafting: Issues in Employment Law (Cleveland-Marshall College of Law; Cleveland State University); Employment Agreement and Covenant Not to Compete Drafting (Charlotte School of Law); Employment Law: A Drafting Approach (Earle Mack School of Law, Drexel University); Labor and Employment Law Drafting (Fordham University School of Law); Legal Drafting/Employment (Hamline University School of Law); Drafting: Employment Law (Valparaiso University Law School).

37. Some courses were transactional (non-litigation in nature) but were focused on the perspectives of all parties involved in the workplace: employers, employees, and unions. See, e.g., A Practitioners Guide to Labor Law and Employment (Duke University School of Law).

This will be a practical class designed to develop counseling skills in the representation of employees and employers, with an emphasis on assisting employers in complying with the major state and federal laws governing the workplace. The goal is to prepare you to provide clear and considered advice to clients in an effort to minimize the personal and business risks and costs associated with employment litigation. Topics covered include: (1) interviewing and counseling employment law clients; (2) recognizing the legal and practical aspects of employment issues to help clients make appropriate decisions; (3) identifying alternative solutions to workplace problems; (4) reviewing and drafting key employment documents, including handbooks, contracts, and personnel records; (5) handling discipline and termination cases; (6) managing the workplace crisis, including counseling employers on how to investigate and respond to whistle-blower complaints or complaints of harassment or discrimination; (7) training employees and managers on employment law compliance issues; and (8) strategies for dealing with common issues under state and federal worker protection laws such as the ADA, FMLA, and FLSA.³⁸

University of Richmond School of Law has a course titled “Employment Lawyering,” with this course description: “Experience a labor and employment lawyer’s typical caseload: drafting and/or revising employment policies, drafting employment contracts, and advising clients on how to handle particular problems that have arisen with employees. Includes substantive labor and employment law.”³⁹ Finally, Suffolk University Law School has a course titled “Employment Law Practice,” with this course description:

This seminar will review the practical issues that confront the employment lawyer practicing in the kaleidoscope of today’s numerous state and federal laws. The seminar will examine practical issues arising in the hiring process, wage and hour law requirements, discrimination and disability issues, workplace privacy questions, employee discipline and termination concerns and alternative dispute resolution. We will have several guest speakers who will discuss their specialties. Exercises such as writing of advisory and counseling memoranda to clients will occur throughout the course.⁴⁰

These three courses are the most similar to the type of course I envision and may provide the reader with a few other examples, if interested in developing a skills-based, non-litigation course, focused on making sure employers are in compliance with workplace laws. Because many attorneys

38. *500 Level Courses*, LOY. U. CHI. SCH. OF L., <http://www.luc.edu/law/registrar/registration/courses/500s.html#577> (last visited Mar. 18, 2013).

39. *Courses & Requirements*, U. RICH. SCH. L., <http://law.richmond.edu/academics/curriculum/index.html> (last visited Mar. 18, 2013).

40. *Course Description: Employment Law Practice*, SUFFOLK UNIVERSITY LAW SCHOOL, <http://www.suffolk.edu/law/academics/degrees/jd/23600.php?CourseID=327> (last visited Oct. 12, 2013).

who practice workplace law will advise employers on compliance with our workplace laws, I believe there is a real need for the type of course I am proposing here: one that addresses how the workplace laws interact with each other in real-life workplace issues and also teaches students the skills and strategies needed when representing employers in compliance matters.⁴¹

B. Issues that Span the Workplace Law Curriculum

In addition to my argument that the workplace law curriculum would benefit from more transaction and consulting-based practical courses, I am also arguing that the way we structure the workplace law curriculum as separate courses in employment law, employment discrimination, and labor law makes it difficult to learn how these issues intersect and interact with each other. To be sure, some professors are teaching courses that involve an advanced study of various workplace law issues and how these issues might converge in the workplace. Capstone courses are one example.⁴² This sub-part will address some of the most common workplace issues that arise that implicate more than one area of workplace law, as it is traditionally taught.

41. Others have also argued that there needs to be a focus in our law school curriculum on teaching transaction skills rather than just litigation skills. As noted by Arnow-Richman: “The problem with the advocacy perspective is not, as some have put it, that most cases are not litigated, but rather that most ‘cases’ are not cases.” Arnow-Richman, *supra* note 3, at 456. And even though there are some transactional courses focused on corporate law (negotiating and putting together deals), there is also a need for transactional courses focused on preventive law practice. *Id.* at 449–50; *see also id.* at 460 (stating that what is missing from the curriculum is exposure to a “transactional mindset—a framework for viewing the law as a factor in planning interactions and managing risk, rather than in resolving disputes and crafting arguments”).

42. *See, e.g.*, Southwestern Law School (Employment Law Capstone); University of Minnesota Law School (Labor & Employment Law Capstone). *See infra* Appendix B. The University of Minnesota’s course is a very unique one, taught by Professor Laura Cooper. Here is the course description:

The course is largely simulation-based. It will provide students with direct experience integrating diverse areas of workplace law with practice skills and professional ethics. Students will be assigned to work with a team of other students representing a particular client. The roles of clients and witnesses will be played by a combination of actors and volunteers. Real arbitrators and mediators will play those roles and claims may be brought to certain actual federal administrative agencies. The client’s student attorney team will decide what and how to pursue potential claims or how to defend claims brought against the client. Claims may include unfair labor practice proceedings before the National Labor Relations Board, employment discrimination and sexual harassment charges before the Equal Employment Opportunity Commission and in litigation, arbitration of employee discipline under a collective bargaining agreement, arbitration under non-union employment contracts, defamation, and claims under the Family and Medical Leave Act.

Course Details: Labor & Employment Law Capstone, UNIV. MINN. L. SCH., [HTTP://WWW.LAW.UMN.EDU/CURRENT/ALPHABETICAL-COURSE-LIST/DETAILS.HTML?COURSEID=MOY-P1DTSV671SEP35QZQ](http://www.law.umn.edu/current/alphabetical-course-list/details.html?courseid=MOY-P1DTSV671SEP35QZQ) (last visited Feb. 13, 2013).

1. Medical and Leave Issues

As in-house counsel for a manufacturing corporation, I spent virtually 100% of my time in the consulting and advising role. In that role, the most common issue I handled involved questions regarding employees' requests related to health and/or medical issues. This included both requests for time off and requests for some type of modified schedule or modified duties. Medical and leave issues were so prevalent that I estimate I spent about forty percent of my working hours dealing with these issues. Interestingly, that figure is much higher than it was when I was working at the law firm, which suggests that many of these leave and medical issues are resolved informally, without litigation.

These leave and medical issues often involved the analysis of several laws, including the Family and Medical Leave Act (FMLA),⁴³ the Americans with Disabilities Act (ADA),⁴⁴ sometimes workers' compensation, and sometimes the Pregnancy Discrimination Act (PDA).⁴⁵ While not technically a law, these issues also involved consideration of the company's short-term and long-term disability policies. The PDA and the ADA are covered in most employment discrimination classes.⁴⁶ The FMLA is covered fairly quickly in most employment discrimination casebooks,⁴⁷ and not much more in employment law casebooks.⁴⁸ But most courses do not devote significant time to discussing how these statutes work together when dealing with the very prevalent medical and leave issues.

For instance, if a pregnant employee cannot continue her normal duties and needs light duty work, this involves issues of the PDA,⁴⁹ possibly workers'

43. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2611–54 (2006).

44. Americans with Disabilities Act, 42 U.S.C. §§ 12101–213 (2006).

45. Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) (2006).

46. As an aside, although I cover disability law when I teach employment discrimination, I find that the time I am able to devote to disability discrimination falls far short of the time needed to adequately cover it. I may have this impression because I also teach a full course in disability law.

47. *See, e.g.*, MICHAEL J. ZIMMER, CHARLES A. SULLIVAN & REBECCA HANNER WHITE, *CASES AND MATERIALS ON EMPLOYMENT DISCRIMINATION* 369 (7th ed. 2008); SUSAN GROVER, SANDRA F. SPERINO & JAROD S. GONZALEZ, *EMPLOYMENT DISCRIMINATION: A CONTEXT AND PRACTICE CASEBOOK* 346–58 (2011).

48. *See, e.g.*, TIMOTHY P. GLYNN, RACHEL S. ARNOW-RICHMAN & CHARLES A. SULLIVAN, *EMPLOYMENT LAW PRIVATE ORDERING AND ITS LIMITATIONS* 752–55 (2d ed. 2011); STEVEN L. WILLBORN ET AL., *EMPLOYMENT LAW: CASES AND MATERIALS* 675–88 (4th ed. 2007).

49. The Pregnancy Discrimination Act requires an employer to treat pregnant employees the same as it treats non-pregnant employees similar in their ability or inability to work. 42 U.S.C. § 2000e(k) (2006). But the PDA does not require an employer to provide a light duty assignment to an employee unless the employer would do so for other employees who are temporarily unable to perform all of their job duties. *Tysinger v. Police Dep't of Zanesville*, 463 F.3d 569, 575 (6th Cir. 2006).

compensation,⁵⁰ and the FMLA if the employer cannot accommodate the pregnant employee (or does not want to) and therefore the employee would need a leave of absence.⁵¹ After the ADA was recently amended in 2008, it is possible that pregnancy could be considered a disability under the ADA.⁵²

As another example, almost every time an employee needs a leave of absence for a medical reason, both the FMLA and the ADA are implicated or should at least be considered. If the employee runs out of FMLA leave or is not eligible for leave, the ADA may require a leave of absence be provided or extended.⁵³

Or consider a real-life example⁵⁴ of a diabetic employee who did not adequately control his blood sugar and therefore fainted while handling a large piece of glass. The glass broke, causing a severe and life-threatening injury to the employee. This event raised ADA issues, including whether the employee was a direct threat to himself or others⁵⁵ and could therefore be terminated, or if not, whether the employer is obligated to provide the employee an accommodation that would help to prevent similar events in the future.⁵⁶ The employee needed a leave of absence so the FMLA was implicated,⁵⁷ and if he was not entitled to leave under the FMLA, we needed to consider whether the ADA would require a leave of absence to allow him to recover from his

50. Workers' compensation is only implicated to the extent that an employer often has reserved light duty assignments for its employees who are injured on the job. Although some will argue that an employer should be required to allow pregnant employees who need light duty to work in those jobs, courts have consistently held that an employer is allowed to reserve light duty exclusively for those employees who suffer workplace injuries. *See, e.g.,* *Sermons v. Fleetwood Homes of Ga.*, 227 F. Supp. 2d 1368, 1377 (S.D. Ga. 2002); *Spivey v. Beverly Enters., Inc.*, 196 F.3d 1309, 1312–13 (11th Cir. 1999).

51. The FMLA provides up to twelve weeks of unpaid leave per year for those conditions related to pregnancy and childbirth (among other reasons) if an employee is eligible for leave. 29 U.S.C. § 2612(a)(1) (2006). In order to be eligible for leave, the employee must work for an employer with 50 or more employees within a 75-mile radius and the employee must have worked for the employer for more than one year and a minimum of 1,250 hours in the prior year. 29 U.S.C. § 2611(2) (2006).

52. 42 U.S.C. § 12102 (Supp. 2009). Jeannette Cox, *Pregnancy as "Disability" and the Amended Americans with Disabilities Act*, 53 B.C. L. REV. 443, 443 (2012).

53. *Fact Sheet: The Family and Medical Leave Act, the Americans With Disabilities Act, and Title VII of the Civil Rights Act of 1964*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <http://www.eeoc.gov/policy/docs/fmlaada.html>. (last modified July 6, 2000) [hereinafter *EEOC Fact Sheet*].

54. This is an issue I encountered when I was a practicing attorney. For obvious reasons, the names of the parties will be kept confidential.

55. 42 U.S.C. § 12113(b) (Supp. I 2012).

56. *Desmond v. Yale–New Haven Hosp., Inc.*, 738 F. Supp. 2d 331, 350 (D. Conn. 2010).

57. The FMLA allows for up to 12 weeks of paid leave because of an employee's own serious health condition. 29 U.S.C. § 2612(a)(1)(D) (2006).

injuries.⁵⁸ The accident occurred at work, so workers' compensation is implicated, and at least a cursory look at Occupational Safety & Health Act (OSHA)⁵⁹ may have been warranted.

2. Termination and Severance Advice

Unfortunately, employment lawyers are often called upon to consult with their clients when the client wishes to terminate an under-performing employee.⁶⁰ It is common (and prudent) for human resources managers to consult with the in-house legal department or an outside lawyer before they terminate an employee. Thus, between my job as a firm lawyer and my in-house job, I have consulted on countless⁶¹ terminations. The first few times I worked through these issues, I was struck by the realization that I was involved in one massive issue spotter, but instead of just spotting the issues from the facts given to me as they would be on a law school exam, I had to learn to ask the right questions to ascertain the relevant facts.

Termination issues encompass the law learned in all three traditional workplace law classes. The attorney would inquire about possible discrimination claims by asking questions related to the employee's demographics, such as race, sex, national origin, religion,⁶² pregnancy,⁶³ age,⁶⁴

58. EEOC *Fact Sheet*, *supra* note 53.

59. Occupational Safety & Health Act of 1970, Pub. L. No. 91-596, 84 Stat. 1590, 1590 ("To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.").

60. Of course, many employers allege that an employee is under-performing when there are other reasons or motivations at play, including discrimination, retaliation, or violations of some other law. As discussed in this sub-part, one of the more difficult tasks for employment lawyers is to make a judgment as to whether the employer (through its representatives) is telling the truth about the reason for termination.

61. I suppose if I had actually kept track, I could "count" the number of termination issues on which I consulted, but not surprisingly, keeping track of such a number was never a priority.

62. These first four categories are protected under Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e-2(a)(1) (2006) ("It shall be an unlawful employment practice for an employer—to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.").

63. Discrimination based on pregnancy is covered by an amendment to Title VII, the Pregnancy Discrimination Act (PDA). The PDA simply added to the definition section of Title VII stating that: "The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as

disability,⁶⁵ and sexual orientation,⁶⁶ as well as inquire into any evidence of bias based on these categories. Because all these statutes prohibit retaliation against an employee who complains of discrimination,⁶⁷ the attorney would need to know whether the employee had complained about discrimination or anything that could be reasonably perceived as discrimination. The attorney would also ask about any complaints of harassment based on any of the protected categories. Furthermore, the attorney should inquire into issues that are not ordinarily taught or emphasized in the traditional employment discrimination class, such as whether the employee had taken a leave of absence,⁶⁸ whether the employee has been injured on the job or recently filed a workers' compensation claim,⁶⁹ or whether the employee had complained about any issue of workplace safety.⁷⁰ Of course, the attorney would also want to see all handbooks or other documents given to the employees to check for

other persons not so affected but similar in their ability or inability to work" 42 U.S.C. § 2000e(k) (2006).

64. Discrimination based on age is covered by the Age Discrimination in Employment Act. 29 U.S.C. § 623(a)(1) (2006) ("It shall be unlawful for an employer—to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age.").

65. Discrimination based on disability is prohibited under the Americans with Disabilities Act, 42 U.S.C. § 12112(a) (Supp. I 2012) ("No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.").

66. Sexual orientation is not explicitly prohibited under federal law, although federal legislation has been proposed in Congress several times in recent years. GROVER, SPERINO & GONZALEZ, *supra* note 47, at 379. Furthermore, it is possible, although difficult, for an employee to bring a claim under Title VII's prohibition on sex discrimination by arguing that discrimination based on sexual orientation violates Title VII's prohibition against stereotyping by assuming that men and women will behave in sex-stereotypical ways. *Id.* at 371, 379. Finally, some states and local governments prohibit discrimination based on sexual orientation. *Id.* at 366, 369.

67. 42 U.S.C. § 2000e-3(a) (Supp. IV 2011) ("Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings"); 29 U.S.C. § 623(d) ("Opposition to unlawful practices; participation in investigations, proceedings, or litigation"); 42 U.S.C. § 12203 ("Prohibition against retaliation and coercion").

68. The Family and Medical Leave Act (FMLA) prohibits an employer from retaliating against an employee for taking a leave of absence permitted by the FMLA. 29 U.S.C. § 2615 (2006).

69. "The great majority of jurisdictions have by judicial decision, statute, or both, recognized the tort of retaliatory discharge for filing a workers' compensation claim." Richard J. Kollman, *Discharge from Employment in Retaliation for Filing Workers' Compensation Claim*, in 50 AM. JURIS. PROOF OF FACTS 2D 187, 194 (1988).

70. 29 U.S.C. § 660(e) (2006).

any contractual obligations.⁷¹ If the employer were unionized, the collective bargaining agreement would need to be consulted. But even if not, the lawyer needs to look into whether there is any other violation of section 7 rights, such as policies that prohibit employees from discussing wages or having overly broad social media policies.⁷²

Part of assessing risk is to not just assess whether the employee could have a possible cause of action, but also how well the employer would defend such an action. In other words, would the employer's reason for termination hold up if challenged? This inquiry involves judging the strength of the employer's reason, the credibility of the employees who would testify to the reason for the termination, and how well that reason was documented. We teach our students that most employees are at-will employees⁷³ and that is for the most part true,⁷⁴ but the reality of practicing workplace law for a risk-averse company is that the attorney should not rely on the default of at-will employment. If the employee can allege a colorable claim of discrimination or violation of some other labor or employment law, and the evidence demonstrating the employee's incompetence or misconduct is not really strong, risk-averse employers will likely want to offer a severance to the employee in exchange for a waiver not to sue.

3. Workplace Violence Issues

I believe that the workplace law curriculum generally gives inadequate attention to workplace violence issues. When I was in-house counsel, the employer for which I worked had a workplace violence committee, which included lawyers, human resource professionals, individuals in charge of security, individuals from the risk assessment group (who dealt with insurance and workers' compensation issues), and a forensic psychologist on retainer. Plant and human resource managers were instructed to contact the workplace violence committee if they learned of any threat at all to the safety of the workplace. An off-premises fight or domestic violence⁷⁵ incident was reported, as well as IT discovering that an employee had a computer password such as

71. Although most employers have inserted explicit disclaimers in their handbooks to protect them against a finding that they have created an implied contract of just cause termination with their employees, some courts have found that promises in handbooks can be binding even with disclaimers. Arnow-Richman, *supra* note 3, at 469, 483.

72. National Labor Relations Act, 29 U.S.C. § 157–58. (2006).

73. GLYNN, ARNOW-RICHMAN & SULLIVAN, *supra* note 48, at 61 (“[E]mployment in the United States is ‘at will,’ meaning that both the employer and the employee may terminate the relationship at any time and for any reason in the absence of a special exception.”).

74. This is especially true given the decline in union density.

75. In prior work, I discussed the issues that arise when domestic violence affects the workplace. See Nicole Buonocore Porter, *Victimizing the Abused? Is Termination the Solution When Domestic Violence Comes to Work?*, 12 MICH. J. GENDER & L. 275 (2006).

“everyonemustdie.” With the increasing prevalence of workplace violence,⁷⁶ I am shocked at how poorly many companies handle threats of violence that could affect their workplaces. And when someone does make a threat, many employers have a policy of immediately terminating the employee. Of course, this is the worst thing an employer can do, because once terminated, the employer has no control of the employee and is therefore unable to enforce any rules on the employee (such as staying away from the workplace), not to mention that termination is often the precursor to many workplace violence incidents. Taking away someone’s livelihood can make an emotionally unstable person snap.

The legal issues surrounding workplace violence issues encompass several areas of workplace law. First, the lawyer should consider the ADA to determine whether the threatening person has a mental disability and if so, whether the person poses a direct threat to the workplace.⁷⁷ Workplace violence issues might also implicate workers’ compensation issues if the violence occurs in the workplace,⁷⁸ possible harassment claims by other employees, violation of public policy claims if the threatened person is terminated,⁷⁹ and consideration of all of the other issues a workplace law attorney would consider when terminating any employee (if termination of the threatening employee is contemplated).

4. Audits

Most in-house lawyers and some law firm lawyers will, on occasion, be called upon to perform a thorough audit of all of an employer’s workplace policies and practices. This might occur when a company has hired a lawyer for the first time (perhaps in response to litigation) or has hired a new lawyer. In-house counsel would traditionally perform such an audit when a new employment attorney joins the in-house legal department or periodically at set intervals, perhaps every five years, although some policies should be updated more frequently.⁸⁰

7576. For a discussion of workplace violence issues more generally, *see id.* and the sources cited therein.

77. 42 U.S.C. § 12111(3) (2000). *See also* Porter, *supra* note 75, at 308–09, 328–30.

78. For a discussion of liability issues that might arise if an employee is injured on the job because of violence, *see* Porter, *supra* note 75, at 312–19.

79. *Id.* at 298–301.

80. Marc S. Casarino, *Best Practices for Preventing and Dealing with Employment Discrimination Claims*, in STRATEGIES FOR EMPLOYMENT DISCRIMINATION CASES: LEADING LAWYERS ON ANALYZING RECENT CASES, IMPLEMENTING EFFECTIVE EMPLOYEE TRAINING PROGRAMS, AND LEVERAGING ALTERNATIVE DISPUTE RESOLUTION 18 (Melissa Silvanic ed., 2011) (arguing that an employer should be certain that it is in compliance with current employment law requirements by conducting periodic employment law audits with a lawyer).

These audits involve all aspects of labor and employment law. The lawyer would review all hiring processes, including the placement of advertisements, job descriptions, how the employer conducts interviews, and who is responsible for hiring. The lawyer would also review handbooks, both for at-will disclaimers⁸¹ as well as any statement in the handbook that might violate employment discrimination laws, workers' compensation laws, or labor laws. The lawyer would review all policies that are given to employees. Some policies only implicate employment discrimination topics, such as the anti-harassment and discrimination policy.⁸² But the employer might also have non-compete policies, technology or social media policies that could implicate section 7 rights under the NLRA, confidentiality policies that might also violate the NLRA, and many others.⁸³ An audit should also involve an evaluation of the employers' record keeping, which can involve statutes such as HIPAA (if the employer is self-insured), the ADA, the FMLA, the FLSA, and others. A thorough audit would include inquiries into how human resources professionals handle various workplace issues, such as complaints of various kinds, requests for time off or modification of workplace duties because of a medical issue or caregiving obligation, union activity in a non-unionized workforce, termination practices, etc.

These are just a few of the issues that involve interaction of many different laws that are not, as a general matter, adequately covered in law schools' workplace law curriculum. Although it is true that a student interested in workplace law might take all three courses and therefore learn about many, if not most, of these issues, how the issues interact with one another is not generally covered. My proposed course would seek to remedy that gap in the curriculum.

II. AN INTEGRATED WORKPLACE LAW, SKILLS-BASED COURSE: CORPORATE COMPLIANCE IN THE WORKPLACE

A. *The Substantive Law*

One way to organize this course would be to structure it as mostly a skills course, and require prerequisites, including Employment Discrimination and Employment Law. Labor Law would be helpful, but not necessary.⁸⁴ If

81. See Porter, *supra* note 75, at 302.

82. See, e.g., Arnow-Richman, *supra* note 3, at 470–71 (stating that defending sexual harassment claims is largely based on an employer's policies and practices).

83. 29 U.S.C. § 157–58 (2006); see also Lafayette Park Hotel, 326 N.L.R.B. 824, 825 (1998) (stating that it violates employees' section 7 rights to have workplace policies that chill employees' speech in the workplace).

84. This is because only seven percent of the private sector workforce is unionized and therefore covered by the NLRA, which is the main statute taught in Labor Law. If anything, because the union density rate is much higher in the public sector, students would be well-served

organized this way, the professor could quickly review the law relevant to the various skills exercises.⁸⁵

The course could also be organized as a true survey course, where the substantive law is integrated into the discussion of the skills to be taught.⁸⁶ For instance, if one of the skills exercises is drafting a harassment and discrimination policy, and handling the investigation of a harassment complaint, the students would first study the primary sexual harassment case law. In order to assess the risk involved in terminating an employee, the student would need to understand the wide array of causes of action an employee might bring. This would include teaching the material from all three traditional workplace law courses: Employment Discrimination (Title VII, ADA, ADEA, PDA); Labor Law (NLRA, public-sector labor laws, collective bargaining agreements); and Employment Law (FMLA, FLSA, OSHA, Workers' Compensation laws, implied contract, public policy, and other exceptions to employment at will, whistleblower statutes, etc.). Although this sounds like an incredibly large body of materials, if the focus is not on litigation, the material could be taught in a much more cursory fashion. For example, to teach the basic coverage and areas of liability under Title VII, it would not be necessary to teach students the intricacies of the frameworks of proof using direct or circumstantial evidence. Obviously, determining the appropriate number of credits⁸⁷ needed to structure the course this way would not be easy.⁸⁸

to take public-sector labor law, or, as organized in a new casebook by my colleague and others, a course that combines public sector and private sector labor law. SETH D. HARRIS, JOSEPH E. SLATER, ANNE MARIE LOFASO & DAVID L. GREGORY, *MODERN LABOR LAW IN THE PRIVATE AND PUBLIC SECTORS* xxxi (2013). *See also* Arnow-Richman, *supra* note 3, at 464–65 (discussing the diminishing importance of the traditional labor law course because most employment attorneys will never handle a labor law issue).

85. For instance, before engaging in a consult with a mock client about a possible termination, the students would review all of the exceptions to employment at-will, both statutory and common law exceptions.

86. Arnow-Richman, *supra* note 3, at 455, 458 (discussing the Carnegie Report's emphasis on the importance of integrating skills into doctrinal courses). *But see id.* at 466–67 (noting the practical problems with a work law survey course).

87. *Id.* at 501–03 (making the case for a four to five credit transactional-based hybrid course).

88. Another decision that would have to be made is whether taking a course such as this, where the substantive law is integrated with the skills exercises, would preclude taking the traditional substantive workplace law classes. My response would be no, because students would not learn the laws in enough depth to understand how these laws operate in litigation.

B. Corporate Compliance Skills

Although there are clinics and other types of skills courses that focus on litigation,⁸⁹ the exclusive focus of this course would be to teach soon-to-be lawyers the skills required to help employers comply with the myriad of labor and employment laws.⁹⁰ The list of skills that a professor might find valuable to teach is endless and would likely vary depending on the proclivities of the professor. The following proposed list of skills exercises is based on my experience regarding which skills would be the most valuable to lawyers representing employers in non-litigation corporate compliance matters. Obviously, professors wishing to adopt a similar course would need to decide on coverage issues, structure, and how to assess their students. Finally, inherent in teaching all of these skills is teaching students basic client-communication skills—knowing their audience, managing expectations, and encouraging trust and honesty.

1. Counseling Clients When Termination Is Contemplated

Most in-house attorneys specializing in workplace law will spend a significant portion of their time consulting with their clients when the clients are contemplating terminating an employee. I refer to this exercise as the “the giant issue spotter” because it requires students to identify all of the possible bases for liability when an employer terminates an employee. If prerequisites were required for the course, this would be a great opening assignment, because it would basically require a review of all of the workplace laws. Students could pair up or work in groups, and create both a checklist of every statute or common law cause of action that could possibly be implicated when an employer is contemplating terminating an employee and a corresponding list of questions to make sure the student/attorney explores every avenue of liability.

Once students have prepared the list of questions, they could role-play the interview with students who have volunteered to play hypothetical clients. Many clients will not be completely forthcoming about the real reason for termination, so students need to learn how to probe clients so they admit the real reason for the termination, which might be discriminatory or in violation of some other workplace law. As discussed earlier, part of assessing risk is not simply assessing whether the employee could have a possible cause of action, but also how successfully the employer could defend such a cause of action. Students should learn to judge the strength of the employer’s reason, the

89. *See supra* Part II.A.

90. Arnov-Richman, *supra* note 3, at 471 (discussing the importance of employer’s prevention efforts); *id.* at 482 (stating that we need to teach law students to “run a management-side practice responsibly”).

credibility of the employees who would testify regarding the reason for the termination, and how well that reason was documented.

Depending on the information revealed, students would either: (1) counsel against termination, if it seems clear that the termination would be unlawful; (2) suggest and discuss a severance payment and release agreement, if the risk assessment reveals a likelihood of being sued, but the student does not think that the termination would actually be unlawful; or (3) advise the client that terminating the employee is unlikely to lead to legal liability, but discussing whether a small severance payment is worth the peace of mind of a release agreement. Ideally, the class should debrief after the mock interviews. Finally, students should draft the severance and release agreement.

2. Opinion Letters to Clients

Law firm lawyers will frequently be called upon to write opinion letters. And although most in-house attorneys do not write opinion letters very often, they will frequently express legal opinions in emails or in person. When I have taught Employment Discrimination in the past, I have used a fact scenario where the student is the lawyer speaking to the client, a plant manager, when the client makes statements and expresses opinions that indicate he harbors some bias against women and because he indicates he has made these statements in front of other employees, he is a liability risk to the company. When I have given this opinion letter assignment in the past, I have used it mostly as a way to test the legal issues it raises. Yet, the most interesting aspect of the problem is how to advise the client of the potential liability caused by his statements without angering or insulting him, which might lead the client to fire the lawyer. Obviously, this is more important for outside counsel but even an in-house lawyer has to worry about “losing” a client. Although it is less likely that one plant manager could cause an in-house lawyer to be fired, it is very possible that the plant manager could stop using the services of the in-house lawyer, which could lead to employment difficulties for the attorney and legal liability for the company if the plant makes employment decisions without consulting the in-house attorney. Thus, having students practice the fine art of advising a client of the error of his ways without angering him is a valuable exercise.

In addition to giving bad news or difficult advice to a client, a workplace law attorney also needs to be able to explain the law in terms that a non-lawyer can understand. When writing exams or papers in law school, students learn to demonstrate their legal knowledge to their professors, who are obviously well versed in the law. It is a different skill entirely to be able to explain the law in laymen’s terms. Based on the frequency with which medical issues and requests for leave arise, and based on the complexity of the interplay of the

FMLA, the ADA, and sometimes the PDA or workers' compensation,⁹¹ it would be a valuable exercise for students to write an opinion letter about a simulated medical issue that an employer would have to address. The ability to explain this complex body of law in laymen's terms is an important skill for the employment lawyer to master.

3. Conducting an Investigation

Employment lawyers are often called upon to handle directly or oversee an investigation for an employer, often because of a harassment complaint or a complaint implicating other workplace laws. Lawyers might also have to teach or train human resources personnel how to conduct an investigation properly and a lawyer will be much more prepared to teach the client if the lawyer has actually conducted an investigation herself. This proposed exercise would involve a hypothetical harassment complaint that will be investigated from start to finish. The students will interview the complaining witness, the alleged harasser, and any other witnesses who might have information about the alleged harassment. The student will then write up a report summarizing his findings and will consult with human resources personnel regarding the proper course of action, including any possible discipline. Proper harassment record-keeping techniques and procedures will also be explored.⁹²

4. Training Supervisors

Lawyers representing employers will inevitably be called upon to do training at their clients' workplaces. This trend began with the Supreme Court's decisions in *Ellerth* and *Faragher* regarding an affirmative defense to an employer being vicariously liable for the harassment of its supervising employees.⁹³ What began as training specifically on harassment issues has

91. *See supra* Part II.B.1.

92. Record keeping of harassment complaints is important if an employer hopes to avoid being held vicariously liable for the harassment. If the harasser is a co-employee without supervisory authority, the employer is only vicariously liable if it knew or should have known about the harassment and failed to appropriately remedy it. *See, e.g.,* *Zimmerman v. Cook County Sheriff's Dept.*, 96 F.3d 1017, 1018–19 (7th Cir. 1996). Because the defense looks at whether an employer has taken appropriate measures to prevent harassment, one issue that arises is whether the alleged harasser has harassed before, and if so, how the employer handled the prior harassment complaint. However, in large workplaces, several employees might complain about relatively minor incidents of harassment to different supervisors and each supervisor might talk to the alleged harasser but not implement any more serious discipline because the supervisor believes that the incident was the first incident. Without proper record keeping, it is possible that an employee could be a serial harasser and no one is aware of that fact until it arises in litigation. Thus, teaching students the nuances of how an employer should handle harassment complaints is important.

93. *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765 (1998) ("The defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct

expanded into training that covers several topics. Supervisors should understand all of the anti-discrimination laws, including protected categories, the difference between disparate treatment and disparate impact claims, as well as pattern and practice claims. Supervisors also need to be trained on interviewing techniques, including which questions to avoid asking in order to avoid liability.⁹⁴ The attorney should also cover how to handle various medical issues, requests for time off, modifications of the workplace, or job duties. This would include a discussion of the complex interaction of the ADA, the FMLA, and possibly the PDA and workers' compensation. If the workplace is unionized, supervisors would need to be specially trained on adhering to the collective bargaining agreement as well as not violating the National Labor Relations Act (NLRA). But even in non-unionized workforces, supervisors should be trained regarding violations of the NLRA that apply to non-union workers, such as making sure the supervisors do not violate the employees' section 7 rights.⁹⁵

In order to learn how to train non-lawyers, I recommend that students work in teams or groups to develop a list of topics that should be covered and to discuss how those topics could be discussed in a way that would be coherent to non-lawyers.⁹⁶ The students should then develop a PowerPoint presentation to explain all of the legal concepts they hope to teach. The students could also be asked to actually give the presentation to a group of non-lawyers. Perhaps undergraduate students could be recruited as the audience and they could be

promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.”); *Faragher v. City of Boca Raton*, 524 U.S. 775, 806–07 (1998) (“If the plaintiff unreasonably failed to avail herself of the employer’s preventive or remedial apparatus, she should not recover damages that could have been avoided if she had done so.”).

94. For instance, if a manager asks a female applicant if she has young children and when she responds in the affirmative, he follows it up by asking how the applicant plans on handling working and taking care of her children, this could lead this applicant to believe (assuming she is not hired) that she was being discriminated against because the manager believes that women with young children are not competent. *See, e.g., EEOC Notice Number 915.002, Enforcement Guidance: Unlawful Disparate Treatment of Workers With Caregiving Responsibilities*, EQUAL EMP. OPPORTUNITY COMM’N (May 23, 2007), <http://www.eeoc.gov/policy/docs/caregiving.html> (describing one type of evidence of disparate treatment as “whether the respondent asked female applicants, but not male applicants, whether they were married or had young children, or about their childcare and other caregiving responsibilities”).

95. 29 U.S.C. § 157 (2006) (“Employees shall have the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment . . .”).

96. In my experience, many supervisors in manufacturing environments have no more than a high school education.

questioned after the presentation to ascertain how comprehensible they found the material.

5. The Audit

Most in-house lawyers and some law firm lawyers will, on occasion, be called upon to do a thorough audit of all of an employer's workplace policies and practices. In order to give students experience with this skill, the students would work in pairs or groups to first draft a checklist of everything the audit should include. Although it is not practical for the students to actually do a complete audit, the students will be given many documents and will be expected to identify mistakes and problems with the documents. The students would review all advertisements and job descriptions. The students would also review handbooks, both for at-will disclaimers, as well as any statement in the handbook that could violate employment discrimination laws, workers' compensation laws, or labor laws. The student would review all policies that are given to employees, including an anti-harassment policy, technology and communications policy, confidentiality policy, non-compete or non-solicitation agreement, etc.⁹⁷ An audit should also involve an evaluation of the employer's record keeping, including compliance with the EEO requirements, the ADA, the FMLA, the FLSA,⁹⁸ and the employer's record-keeping of harassment complaints. Finally, an audit should also involve inquiries into how human resources professionals handle various workplace issues, such as complaints of various kinds, requests for time off or modification of workplace duties because of a physical issue or caregiving issue, union activity in a non-unionized workforce, workplace violence issues, termination practices, etc. This last part of the audit exercise might best be implemented by having students role-play with the professor, who would be playing the role of the human resources professional.

97. See, e.g., Arnow-Richman, *supra* note 3, at 472 (mentioning all of the various policies that employees sign that management lawyers either draft or review).

98. Specifically, with respect to FLSA, lawyers should audit how the employer classifies their employees as exempt from overtime or non-exempt from overtime. Class action lawsuits in this area have become very common. Paul Davidson, *Overworked and Underpaid?*, USA TODAY (Apr. 16, 2012, 12:15 AM), http://usatoday30.usatoday.com/NEWS/usaedition/2012-04-16-Productivity-backlash_CV_U.htm. Lawyers should also audit whether there are any issues with respect to the employer not paying its employees for the time spent "donning and doffing" special clothing or safety equipment. Sometimes this donning and doffing time is compensable and employers are not compensating their employees for that time, which can lead to significant liability. See, e.g., *Sandifer v. U.S. Steel Corp.*, 678 F.3d 590, 596 (7th Cir. 2012), *cert. granted* 133 S. Ct. 1240 (2013).

III. ADDRESSING THE CRITICISMS

In proposing this course, both for my own school and as a model for other professors to use, I am cognizant of the fact that some might criticize this type of course for two reasons. First, some might criticize the course because it is non-neutral, in that it would only study how lawyers represent employers. The other criticism is that such a course is directed primarily at those who are planning on working in large law firms practicing defense-side workplace law or working as in-house counsel, yet both of these positions are difficult to land. I will address each of these criticisms in turn.

A. *Non-Neutral Perspective*

Regarding the criticism that law schools should not be offering a course that is devoted primarily or exclusively to the representation of employers,⁹⁹ my initial response is that it is very common for schools to have courses where students only learn about representing one type of client. Most law school clinics, for instance, only represent lower income individuals who are likely to be plaintiffs in most cases (or criminal defendants).¹⁰⁰

Furthermore, from many students' perspectives, the courses we offer are often taught with a liberal or progressive tilt. While many or most of us try to be very neutral when we are teaching most classes, our students are still able to accurately predict the political leanings of most of their professors. And for certain courses, we might not even try to be neutral.¹⁰¹ Thus, some students might see a course that is directed at representing only employers as an attempt to even out the liberal bias inherent in legal academia.

B. *Course Irrelevant to Solo or Small Firm Lawyers*

The second major criticism is that this proposed course, with its emphasis on corporate compliance, is only valuable to those students who plan on

99. It certainly is possible to teach transactional skills that plaintiffs' attorneys would use, *see* Arnow-Richman, *supra* note 3, at 480, but that is not the focus of this course.

100. Family law is an exception to this, because clinics that handle family law cases (divorce, custody, etc) will represent both plaintiffs and defendants in divorce and custody proceedings and both men and women. *See also* Arnow-Richman, *supra* note 3, at 457 (mentioning the fact that most legal clinics are not neutral and only represent the indigent in disputes).

101. Feminist legal theory, which I teach, is one such class that comes to mind. I tell the students on the first day that we are not studying "gender and the law" or "women and the law." We are studying feminist legal theory, which is unapologetically critical of the status quo. It starts with the premise that there is still gender bias in our society and we need to work to eliminate it. *See, e.g.*, MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 1 (3rd ed. 2013) ("Most . . . who identify themselves as feminists are critical of the status quo . . . [F]eminists tend to start with the assumption that the law's treatment of women has not been fair or equal and that change is desirable. This stance separates feminists from researchers who study gender and law . . .").

becoming in-house counsel or practicing large firm defense-side workplace law. I recognize that in-house jobs are very hard to come by, and are usually not entry-level positions.¹⁰² Large-firm jobs are also difficult to land, especially for those students who are not at top law schools or at the top of their class at their lower-ranked law schools.¹⁰³ This is even more of a problem in areas of depressed legal markets, such as much of the Midwest.

Having said that, I think that this course could have value to even those lawyers who are solo practitioners or working in smaller law firms. First of all, firms of all sizes can and do represent employers. Second, these skills would be valuable to even those lawyers who are trying to break into defense-side workplace law and those attorneys who are currently practicing plaintiff-side workplace law. This is because many small companies do not usually hire lawyers for workplace law issues (until and unless the company gets sued) in large part because small companies usually cannot afford large firm fees (and certainly cannot afford having their own in-house lawyer). If a solo or small firm practitioner learns these skills, it would place that lawyer in a better position to market their services to smaller employers. I envision that an ambitious solo-practice or small-firm attorney could put together marketing materials explaining why employers of all sizes should have an audit completed on all of their workplace practices and explaining what the audit would entail. This audit could, of course, lead to future work for the lawyer. Thus, I do think the skills that would be taught in this course would be of value to more than just in-house or large-firm lawyers. At a minimum, learning how to communicate with clients verbally and in writing would benefit every attorney.

CONCLUSION

The purpose of this paper was two-fold. The first purpose was to demonstrate the need for a skills-based course that focuses on learning the necessary skills and integration of workplace laws to assist employers in their compliance with the myriad of workplace laws. The second goal was to propose what that course would look like. I hope I have given the reader some ideas regarding how to structure a skills-based *Corporate Compliance in the Workplace* course. But more importantly, I hope I have emphasized the importance of transactional skills training in the workplace setting. In other words, regardless of how it is structured, any attempt at teaching workplace transactional skills is valuable for the workplace lawyers of tomorrow. As Professor Arnow-Richman aptly stated: transactional work when representing

102. *In-House Counsel*, GEO. L., <http://www.law.georgetown.edu/careers/career-planning/career-paths/in-house.cfm> (last visited Aug. 13, 2013).

103. *Class of 2011 Has Lowest Employment Rate Since Class of 1994*, NALP (July 2012), <http://www.nalp.org/0712research>.

employers “will require the lawyer to appreciate a range of human and business interests, to identify relational and legal risks, and to forge and execute an appropriate course of action—in short, the full complement of preventive skills. It is time to make that skill set a priority in preparing students to practice employment law.”¹⁰⁴

104. Arnow-Richman, *supra* note 3, at 479.

APPENDIX A: SURVEY OF WORKPLACE LAW CURRICULUM

In the order listed on the LSAC website <http://www.lsac.org/jd/choose/law-school-links.asp> accessed Feb. 3, 2013

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
The University of Akron School of Law		√	√	√	√	
The University of Alabama School of Law		√	√	√	√	√
Albany Law School of Union University	P	√	√	√		√
American University Washington College of Law		√	√			√
Appalachian School of Law		√				
The University of Arizona James E. Rogers College of Law			√			√
Arizona State University - Sandra Day O'Connor College of Law		√	√			
University of Arkansas School of Law		√	√	√	√	√
University of Arkansas at Little Rock, William H. Bowen School of Law		√	√		√	√
Atlanta's John Marshall Law School		√	√		√	

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
Ave Maria School of Law						
University of Baltimore School of Law		√	√	√	√	
Barry University Dwayne O. Andreas School of Law		√	√	√	√	
Baylor University School of Law		√	√			
Boston College Law School		√		√		
Boston University School of Law			√	√		√
Brigham Young University - J. Reuben Clark Law School			√			
Brooklyn Law School		√	√	√		√
University of California, Berkeley, School of Law		√	√	√		√
University of California, Davis School of Law (King Hall)		√	√	√		
University of California, Hastings College of the Law		√	√	√		√
University of California, Irving School of Law		√	√	√		

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
University of California at Los Angeles (UCLA) School of Law		√	√	√		
California Western School of Law	C	√	√	√	√	√
Campbell University, Norman Adrian Wiggins School of Law			√		√	
Capital University Law School	C	√	√	√		
Benjamin N. Cardozo School of Law, Yeshiva University		√	√	√		
Case Western Reserve University School of Law						
The Catholic University of America, Columbus School of Law		√	√	√		√
Chapman University School of Law						
Charleston School of Law		√	√		√	
Charlotte School of Law		√	√		√	
The University of Chicago Law School			√	√		
Chicago-Kent College of Law Illinois Institute of Technology	C	√	√	√	√	√

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
University of Cincinnati College of Law		√	√	√		
City University of New York School of Law				√		
Cleveland State University - Cleveland Marshall School of Law	P	√	√	√	√	√
University of Colorado Law School	P	√	√	√	√	√
Columbia University School of Law		√	√	√		
University of Connecticut School of Law		√	√	√	√	
Cornell Law School		√		√		
Creighton University School of Law		√	√	√		
University of Dayton School of Law		√	√			
University of Denver Sturm College of Law	C	√	√	√	√	√
DePaul University School of Law		√	√	√		√
University of Detroit Mercy School of Law		√			√	
University of the District of Columbia - David A. Clarke School of Law			√	√		

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
Drake University Law School			√	√	√	
Duke University School of Law			√	√		
Duquesne University School of Law		√	√	√		√
Earle Mack School of Law, Drexel University		√	√	√		
Elon University School of Law		√				
Emory University School of Law		√	√	√		
Faulkner University, Thomas Goode Jones School of Law		√			√	
Florida A&M University College of Law		√	√	√		
Florida Coastal School of Law		√	√	√	√	
University of Florida, Frederic G. Levin College of Law		√	√	√	√	√
Florida International University College of Law		√	√	√	√	√
The Florida State University College of Law		√	√	√	√	
Fordham University School of Law		√	√	√		

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
George Mason University School of Law		√	√	√		
The George Washington University School of Law		√	√	√		√
Georgetown University Law Center		√	√	√		√
University of Georgia Law School		√	√	√	√	
Georgia State University College of Law		√	√	√	√	√
Golden Gate University School of Law	C	√	√	√		√
Gonzaga University School of Law		√	√	√	√	
Hamline University School of Law		√	√	√	√	
Harvard Law School		√	√	√		√
University of Hawai'i at Manoa / William S. Richardson School of Law		√	√	√		
Hofstra University - Maurice A. Deane School of Law		√	√	√		√
University of Houston Law Center		√				√
Howard University School of Law				√		

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
University of Idaho College of Law		√				
University of Illinois College of Law		√	√	√	√	√
Indiana University Maurer School of Law - Bloomington		√	√	√		
Indiana University Robert H. McKinney School of Law		√		√	√	√
The University of Iowa College of Law		√	√	√		√
The John Marshall Law School				√		√
The University of Kansas School of Law		√	√	√	√	√
University of Kentucky College of Law		√		√		√
University of La Verne College of Law		√				
Lewis & Clark Law School		√	√	√		
Liberty University School of Law		√				
Louisiana State University, Paul M. Herbert Law Center		√	√	√		

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
University of Louisville's Brandeis School of Law		√	√	√	√	
Loyola Law School, Loyola Marymount University		√	√	√	√	√
Loyola University Chicago School of Law		√	√	√		√
Loyola University New Orleans School of Law		√	√	√	√	
University of Maine School of Law			√	√		
Marquette University Law School		√	√	√	√	√
University of Maryland Francis King Carey School of Law		√		√		√
University of Massachusetts School of Law - Dartmouth			√			
The University of Memphis - Cecil C. Humphreys School of Law			√	√	√	√
Mercer University - Walter F. George School of Law		√	√	√	√	
University of Miami School of Law	C	√	√	√	√	√

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
The University of Michigan Law School		√	√	√		√
Michigan State University College of Law		√		√	√	
University of Minnesota Law School	C	√	√	√		√
The University of Mississippi School of Law		√	√		√	√
Mississippi College School of Law		√	√	√	√	√
University of Missouri School of Law		√	√	√		
University of Missouri - Kansas City School of Law		√	√	√		
University of Montana School of Law		√			√	
University of Nebraska College of Law		√	√	√		√
University of Nevada Las Vegas, William S. Boyd School of Law		√	√	√		
New England Law / Boston		√		√	√	√
University of New Hampshire School of Law		√				
The University of New Mexico School of Law		√	√	√	√	

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
New York Law School		√	√	√		
New York University School of Law		√	√	√		√
University of North Carolina School of Law		√	√	√	√	
North Carolina Central University School of Law		√	√		√	
University of North Dakota School of Law			√		√	
Northeastern University School of Law		√	√	√		√
Northern Illinois University College of Law		√	√	√		
Northern Kentucky University - Salmon P. Chase College of Law	C	√	√	√		
Northwestern University School of Law		√	√	√		√
Notre Dame School of Law		√	√			√
Nova Southeastern University - Shepard Broad Law Center		√	√	√	√	√
Ohio Northern University - Claude W. Pettit College of Law			√	√		

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
The Ohio State University Moritz College of Law		√	√	√		√
University of Oklahoma College of Law		√				
Oklahoma City University School of Law		√	√			√
University of Oregon School of Law		√		√		
Pace University School of Law		√	√	√		
University of the Pacific, McGeorge School of Law		√	√	√		
University of Pennsylvania Law School		√	√			√
The Pennsylvania State University, Dickinson School of Law	P	√	√	√	√	√
Pepperdine University School of Law		√	√	√	√	
Phoenix School of Law		√	√	√	√	
University of Pittsburgh School of Law		√	√	√	√	√
Quinnipiac University School of Law		√	√	√	√	√
Regent University School of Law		√		√		

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
University of Richmond School of Law		√	√	√		
Roger Williams University School of Law	P	√	√	√	√	
Rutgers - The State University - School of Law		√	√	√		√
St. John's University School of Law		√	√	√		√
Saint Louis University School of Law	C	√	√	√	√	√
St. Mary's University School of Law			√	√		√
University of St. Thomas School of Law - Minneapolis		√	√		√	√
St. Thomas University School of Law			√	√		
Samford University, Cumberland School of Law		√	√	√	√	√
University of San Diego School of Law			√			
University of San Francisco School of Law		√	√	√		√
Santa Clara University School of Law		√	√	√		√
Seattle University School of Law	P	√	√	√		√
Seton Hall University School of Law		√	√	√		√

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
SMU Dedman School of Law		√				
University of South Carolina School of Law		√	√	√	√	
The University of South Dakota School of Law	P	√				
South Texas College of Law		√	√	√		
University of Southern California, Gould School of Law		√	√	√		
Southern Illinois University School of Law		√	√	√	√	
Southwestern Law School		√	√	√	√	√
Stanford University Law School		√	√			
Stetson University College of Law		√	√	√	√	√
Suffolk University Law School	P	√	√	√	√	√
SUNY Buffalo Law School	C	√	√	√	√	√
Syracuse University College of Law		√		√		
Temple University - James E. Beasley School of Law		√	√	√		√

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
University of Tennessee College of Law		√	√			
The University of Texas School of Law		√	√	√		√
Texas Southern University - Thurgood Marshall School of Law		√	√	√	√	
Texas Tech University School of Law		√	√			
Texas Wesleyan University School of Law		√	√	√		
The Thomas M. Cooley Law School		√		√	√	√
Thomas Jefferson School of Law		√	√	√		
The University of Toledo College of Law	C	√	√	√		√
Touro College - Jacob D. Fuchsberg Law Center		√	√	√		√
Tulane University Law School			√	√		
The University of Tulsa College of Law		√	√		√	
University of Utah S.J. Quinney College of Law			√			√
Valparaiso University Law School	P	√		√	√	√

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
Vanderbilt University Law School		√	√			
Vermont Law School		√	√			
Villanova University School of Law	P		√	√	√	√
University of Virginia School of Law	P	√	√			
Wake Forest University School of Law		√	√	√	√	√
Washburn University School of Law		√	√	√	√	
University of Washington School of Law		√	√	√		√
Washington and Lee University School of Law		√		√		
Washington University School of Law		√	√	√		
Wayne State University Law School		√	√	√	√	√
West Virginia University College of Law		√	√	√	√	
Western New England University School of Law		√	√	√		√
Western State College of Law		√				
Whittier Law School		√	√	√		

<i>Name of Law School</i>	<i>Employment Law Program (P) or Certificate (C)</i>	<i>Employment Law</i>	<i>Employment Discrimination</i>	<i>Labor Law</i>	<i>Workers' Comp.</i>	<i>Employee Benefits</i>
Widener University School of Law		√	√	√	√	√
Willamette University College of Law		√		√	√	
William and Mary Law School		√		√		√
William Mitchell College of Law		√	√	√	√	
University of Wisconsin Law School	P	√	√	√	√	√
University of Wyoming College of Law		√		√		
Yale Law School			√			

APPENDIX B—WORKPLACE LAW PRACTICAL/SKILLS COURSES

<i>Law School</i>	<i>Practical/Skills Courses</i>
American University Washington College of Law	Employment Trial Practice
	Employment Discrimination: A Case Model Approach
Arizona State University – Sandra Day O’Connor College of Law	Civil Justice Clinic – Workplace Flex Unit
Ave Maria School of Law	Labor Law Practicum
Brooklyn Law School	Clinic – Employment Law
	Collective Bargaining Workshop
University of California, Davis School of Law [King Hall]	Employment Relations Externship
University of California, Hastings College of the Law	Representing Spanish-Speaking Workers in Employment and Labor Litigation
	Workers’ Rights Clinic
Benjamin N. Cardozo School of Law, Yeshiva University	Labor and Employment Law Clinic and Seminar
Charlotte School of Law	Access to Justice: Unemployment Insurance Disputes
	Employment Agreement and Covenant Not to Compete Drafting
	Essential Skills for the Employment Lawyer
Chicago-Kent College of Law Illinois Institute of Technology	Labor/Employment Law Externship
	Employment Litigation
Cleveland State University – Cleveland Marshall School of Law	Employment Law Clinic
	Legal Drafting: Issues in Employment
University of Colorado Law School	The Practice of Labor and Employment Law
Cornell Law School	Labor Law Clinic
Drake University Law School	Iowa Workers’ Compensation Internship
Duke University School of Law	A Practitioners Guide to Labor and Employment Law
Duquesne University School of Law	EEOC Clinic
	U.S. Department of Labor Clinic
	Unemployment Compensation Clinic

Earle Mack School of Law, Drexel University	Employment Law: A Drafting Approach
Florida Coastal School of Law	Skills Lab: Florida Unemployment Compensation Claims and Appeals Hearings Law
Fordham University School of Law	Labor and Employment Law Drafting
Golden Gate University School of Law	Women’s Employment Rights Clinic
Hamline University School of Law	Clinic: Employment Discrimination Mediation Representation
	Legal Drafting/Employment
Harvard Law School	Employment Law Clinic
	Employment Law Workshop: Advocacy Skills: Clinical Seminar
	Employment Law Workshop: Strategies for Social Change
University of Illinois College of Law	Research Workshop of the Diffusion of Labor Law
Indiana University Maurer School of Law – Bloomington	Disability Law Clinic
The John Marshall Law School	Drafting Employee Benefits
Loyola Law School, Loyola Marymount University	Employment Retaliation Externship
	Employment Rights Clinic
Loyola University Chicago School of Law	Advanced Mediation Advocacy Practicum: EEOC Mediation Advocacy Project
	Employment Law Counseling
Loyola University New Orleans School of Law	Handling Employee Benefits Claims
University of Maryland Francis King Carey School of Law	Workers’ Rights Clinic
The University of Michigan Law School	Employment Litigation
University of Minnesota Law School	Labor and Employment Law Capstone
	Workers’ Rights Clinic
University of Missouri – Kansas City School of Law	Department of Labor Clinic
University of Nebraska College of Law	Labor and Employment Law: Theory and Practice

New York University School of Law	Employment and Housing Discrimination Clinic
University of North Dakota School of Law	Housing and Employment Clinic
Northeastern University School of Law	Labor Arbitration Workshop
Northeastern University School of Law	California Employment Law Practicum
University of Pennsylvania Law School	Litigating Employment Class and Collective Actions
University of Pittsburgh School of Law	Workers' Compensation Practicum
University of Richmond School of Law	Employment Lawyering
Roger Williams University School of Law	Advanced Appellate Advocacy: Labor and Employment Law
St. Johns University School of Law	Employment Dispute Resolution Externship Placement
	OSHA Whistleblower Mediation Advocacy Clinic
St. Thomas University School of Law	Labor and Employment Arbitration Workshop
	Practice and Procedure before the National Labor Relations Board
University of San Francisco School of Law	Employment Law Clinic
Santa Clara University Law School	KGACLC Workers' Rights Interviewing and Advising
The University of South Dakota School of Law	ADR in Employment Law Workshop
Southwestern Law School	Employment Law Capstone Course
Stetson University College of Law	Employee Benefits (ERISA) Litigation Skills
	Equal Employment Opportunity Commission Internship
	Labor Law Internship
Suffolk University Law School	Employment Law Practice
Texas Southern University – Thurgood Marshall School of Law	Title VII Litigation
Thomas Jefferson School of Law	Employment Litigation
Valparaiso University Law School	Drafting: Employment Law

Villanova University School of Law	Externship: EEOC
	Externship: NLRB
University of Virginia School of Law	Employment Law Clinic
Washington and Lee University School of Law	Labor and Employment Law Practicum
Yale Law School	Advanced Worker and Immigrant Rights Clinic

APPENDIX C: SURVEY OF WORKPLACE LAW CURRICULUM

In the order listed on the LSAC website <http://www.lsac.org/jd/choose/law-school-links.asp> accessed Feb. 3, 2013

<i>Name of Law School</i>	<i>Public Sector Labor and/or Employment Law</i>	<i>Labor Arbitration, ADR in the Workplace, Negotiation and/or Mediation</i>	<i>Gender or Sex</i>	<i>Disability Law</i>	<i>International or Comparative Law</i>
The University of Alabama School of Law				X	X
Albany Law School of Union University	X	X	X		
American University Washington College of Law			X		X
The University of Arizona James E. Rogers College of Law		X			
University of Arkansas at Little Rock, William H. Bowen School of Law			X	X	
University of Baltimore School of Law				X	
Barry University Dwayne O. Andreas School of Law				X	
Boston College Law School		X			X
Boston University School of Law				X	
Brooklyn Law School		X			
University of California, Berkeley, School of Law		X	X	X	X
University of California, Davis School of Law (King Hall)				X	

<i>Name of Law School</i>	<i>Public Sector Labor and/or Employment Law</i>	<i>Labor Arbitration, ADR in the Workplace, Negotiation and/or Mediation</i>	<i>Gender or Sex</i>	<i>Disability Law</i>	<i>International or Comparative Law</i>
University of California, Hastings College of the Law			X	X	X
University of California at Los Angeles (UCLA) School of Law			X	X	
California Western School of Law					X
Campbell University, Norman Adrian Wiggins School of Law				X	
Capital University School of Law		X	X		
Benjamin N. Cardozo School of Law, Yeshiva University	X	X			X
Case Western University School of Law				X	
The Catholic University of America, Columbus School of Law	X				
The University of Chicago Law School			X		
Chicago-Kent College of Law Illinois Institute of Technology	X	X	X	X	X
University of Cincinnati College of Law				X	
Cleveland State University – Cleveland Marshall School of Law	X				
University of Colorado Law School					X
Columbia University School of Law					X

<i>Name of Law School</i>	<i>Public Sector Labor and/or Employment Law</i>	<i>Labor Arbitration, ADR in the Workplace, Negotiation and/or Mediation</i>	<i>Gender or Sex</i>	<i>Disability Law</i>	<i>International or Comparative Law</i>
University of Connecticut School of Law					X
Cornell Law School		X			X
University of Denver Sturm College of Law		X		X	
DePaul University School of Law	X			X	
Duquesne University School of Law	X			X	
Emory University School of Law		X			
Florida International University College of Law				X	
The Florida State University College of Law				X	
Fordham University School of Law	X	X		X	X
George Mason University School of Law				X	
The George Washington University School of Law				X	
Georgetown University Law Center		X		X	X
Georgia State University College of Law		X		X	X
Golden Gate University School of Law			X		
Hamline University School of Law	X	X			

<i>Name of Law School</i>	<i>Public Sector Labor and/or Employment Law</i>	<i>Labor Arbitration, ADR in the Workplace, Negotiation and/or Mediation</i>	<i>Gender or Sex</i>	<i>Disability Law</i>	<i>International or Comparative Law</i>
Hofstra University - Maurice A. Deane School of Law	X	X	X		
University of Houston Law Center				X	
University of Illinois College of Law		X			X
Indiana University Maurer School of Law - Bloomington		X	X		
Indiana University Robert H. McKinney School of Law		X	X		
The University of Iowa College of Law			X		
The John Marshall Law School				X	
University of La Verne College of Law				X	
Louisiana State University, Paul M. Herbert Law Center					X
University of Louisville's Brandeis School of Law				X	
Loyola Law School, Loyola Marymount University				X	
Loyola University Chicago School of Law		X	X		X
Marquette University Law School				X	X
University of Maryland Francis King Carey School of Law		X			
The University of Memphis - Cecil C. Humphreys School of Law		X		X	

<i>Name of Law School</i>	<i>Public Sector Labor and/or Employment Law</i>	<i>Labor Arbitration, ADR in the Workplace, Negotiation and/or Mediation</i>	<i>Gender or Sex</i>	<i>Disability Law</i>	<i>International or Comparative Law</i>
Mercer University - Walter F. George School of Law		X			
University of Miami School of Law	X	X			
The University of Michigan Law School		X		X	
Michigan State University College of Law		X		X	X
University of Minnesota Law School				X	
The University of Mississippi School of Law				X	
University of Missouri - Kansas City School of Law				X	
University of Nevada Las Vegas, William S. Boyd School of Law				X	
New England Law / Boston		X		X	
The University of New Mexico School of Law				X	X
New York University School of Law		X	X		X
University of North Carolina School of Law				X	
North Carolina Central University School of Law				X	
Northeastern University School of Law		X		X	
Northern Illinois University College of Law	X				

<i>Name of Law School</i>	<i>Public Sector Labor and/or Employment Law</i>	<i>Labor Arbitration, ADR in the Workplace, Negotiation and/or Mediation</i>	<i>Gender or Sex</i>	<i>Disability Law</i>	<i>International or Comparative Law</i>
Northwestern University School of Law				X	
Notre Dame School of Law				X	X
The Ohio State University Moritz College of Law				X	
University of Oklahoma College of Law				X	
University of Oregon School of Law				X	
Pace University School of Law		X			
University of the Pacific, McGeorge School of Law					X
University of Pennsylvania Law School				X	
The Pennsylvania State University, Dickinson School of Law				X	
Pepperdine University School of Law				X	
University of Pittsburgh School of Law		X	X	X	
University of Richmond School of Law		X			
Rutgers - The State University - School of Law				X	X
St. John's University School of Law	X	X			
Saint Louis University School of Law		X		X	

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St. Mary's University School of Law				X	X
University of St. Thomas School of Law - Minneapolis				X	
St. Thomas University School of Law		X		X	
University of San Francisco School of Law			X		
Santa Clara University School of Law	X			X	
Seattle University School of Law	X	X		X	
Seton Hall University School of Law				X	
SMU Dedman School of Law		X			
University of South Carolina School of Law		X			X
Southern Illinois University School of Law				X	
Southwestern Law School				X	X
Stanford University Law School				X	
Stetson University College of Law				X	
Suffolk University Law School		X		X	
SUNY Buffalo Law School		X	X		X
Syracuse University College of Law				X	

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Temple University - James E. Beasley School of Law					X
University of Tennessee College of Law				X	
The University of Texas School of Law	X			X	
Texas Southern University - Thurgood Marshall School of Law		X			
Texas Wesleyan University School of Law		X			
The University of Toledo College of Law	X			X	
Touro College - Jacob D. Fuchsberg Law Center				X	
University of Utah S.J. Quinney College of Law				X	
Valparaiso University Law School		X			
University of Washington School of Law				X	
Wayne State University Law School					X
Western New England University School of Law	X	X			
Widener University School of Law				X	
Willamette University College of Law				X	
William and Mary Law School		X			

<i>Name of Law School</i>	<i>Public Sector Labor and/or Employment Law</i>	<i>Labor Arbitration, ADR in the Workplace, Negotiation and/or Mediation</i>	<i>Gender or Sex</i>	<i>Disability Law</i>	<i>International or Comparative Law</i>
William Mitchell College of Law				X	
University of Wisconsin Law School	X			X	

