

RICHARD A. BALES

Employment

- 1998-Present NKU/Chase College of Law. Prof. w/ tenure since 2003, Assoc. Prof. 2001-03, Ass't Prof. 1998-2001. Courses: Employment Law, Employment Discrimination, Labor Law, Civil Procedure I and II, ADR in the Workplace, Arbitration Team competition
- 1993-98 University of Montana Law School, Visiting Assistant Professor (1998); SMU Law School, Visiting Assistant Professor (1996-97); University of Houston Law Center, Adjunct Professor (1994-96); Baker & Hostetler, Associate (1995-96); Baker & Botts, Associate (1993-95).

Education

- 1990-93 Cornell Law School. GPA: 3.53 (3.40=10%), magna cum laude, Order of the Coif, Cornell L. Rev. Editor, Cornell J.L. & Pub. Pol. note contributor.
- 1986-90 Trinity University. GPA: 3.66, cum laude. Major: Political Science.

Licensed in Texas (1993), Kentucky (2001).

Recent Administrative Accomplishments

Institutional Governance

- Interim Dean, 2006.
- Associate Dean for Faculty Development, 2007-09.
- Director, Chase Advocacy Center, 2009-present.
- Chair, self-study committee, 2009.
- Participated in drafting Northern Kentucky University's Ten-Year Plan.
- Co-founder and current Chair of Board, NKU ADR Center.
- Created the Chase Concentration Program; created & co-direct the Chase Concentration in Employment and Labor Law.

Minority Recruiting and Retention

- Spearheaded diversity initiatives directed at Chase entering class of 2007-08.
- Active in Wingspread: creating pipelines to enhance law school diversity.
- BLSA faculty advisor or co-advisor, 2001-present.

Fundraising

- Actively fundraised while Interim Dean.
- Active member, Association of Fundraising Professionals, Greater Cincinnati Chapter.
- Faculty Coordinator for United Way & NKU Campus Campaigns, 2004-06.

Teaching & Scholarship

- Organized 2007-09 speaker series on law school pedagogy, innovative

teaching, and outcomes assessment.

- Active promoter of faculty participation in SSRN. Chase is currently ranked #57 among U.S. law schools in recent SSRN downloads.
- Member, Labor Law Group – ABA Labor & Employment Law Section Capstone Project (creating a third-year course as recommended by the Carnegie Report).
- 2008-09 scholar-in-residence for ABA Section of Labor and Employment Law / ADR.
- Coached Chase Arbitration teams to first and third place in regional tournaments, and third place in national tournament (2007-08); organized Chase Arbitration Board; current coach of Chase Client Counseling teams.

Relationship with Bar

Volunteer Lawyer, Northern Kentucky Volunteer Lawyers Association
Distinguished New Volunteer Award, 2005

Secretary, Kentucky Bar Association Sections on:

- Alternative Dispute Resolution
- Employment and Labor Law

ABA Scholar-in-Residence for the Section of Labor & Employment Law, ADR in Labor & Employment Law Committee (2009).

ABA Section of Labor & Employment Law, law student outreach coordinator.

American Arbitration Association Labor Advisory Council member, 2009-present.

Publications

Books

ARBITRATION LAW, book to be co-authored with Katherine Stone (UCLA), Foundation, expected publication date summer 2009.

LABOR LAW: COLLECTIVE BARGAINING IN A FREE SOCIETY, casebook co-authored with Dennis R. Nolan (South Carolina), West 2009, with Teacher's Manual.

UNDERSTANDING EMPLOYMENT LAW, co-authored with Jeff Hirsch (Tennessee) and Paul Secunda (Mississippi), LexisNexis 2007.

ADR IN THE WORKPLACE, SECOND EDITION, co-authored with Laura J. Cooper (Minnesota) and Dennis R. Nolan (South Carolina), West 2005.

ADR IN THE WORKPLACE, co-authored with Laura J. Cooper and Dennis R. Nolan, West 2000.

COMPULSORY ARBITRATION: THE GRAND EXPERIMENT IN EMPLOYMENT, Cornell University ILR Press 1997. Reviewed by Susan T. Mackenzie, 52 I.L.R. REV. 648 (1999).

Book Chapters

Employer-Sponsored Arbitration of Statutory Claims in the Nonunionized Employment Context, in ELKOURI & ELKOURI, *HOW ARBITRATION WORKS* 25-36 (6th ed. 2003).

Articles

Commentary on Proposed ALR Restatement on Employment Law, Chapter 4 – The Tort of Wrongful Discipline in Violation of Public Policy, ___ *EMPLOYEE RTS. & EMPLOYMENT POL'Y J.* ___ (2009) (with Joseph R. Grodin et al.).

How Congress Can Make a More Equitable Federal Arbitration Act, ___ *PENN. ST. L. REV.* ___ (2009) (co-authored with Sue Irion).

Plus at Pretext: Resolving the Split Regarding the Sufficiency of Temporal Proximity Evidence in Title VII Retaliation Cases, 44 *GONZAGA L. REV.* ___ (forthcoming 2009) (co-authored with Troy Daniels), http://papers.ssrn.com/abstract_id=1286132.

Explaining the Spread of At-Will Employment as an Inter-Jurisdictional Race-to-the-Bottom in Employment Standards, 75 *TENN. L. REV.* 453 (2008), http://papers.ssrn.com/abstract_id=989013.

Federal Question Jurisdiction and the Federal Arbitration Act, 80 *COLORADO L. REV.* 89 (forthcoming 2008) (co-authored with Jamie L. Ireland), http://papers.ssrn.com/abstract_id=1112304.

Compulsory Arbitration as Part of a Broader Employment Dispute Resolution Process: The Anheuser-Busch Example, 26:1 *HOFSTRA LAB. & EMP. L.J.* ___ (forthcoming 2008) (co-authored with Jason N.W. Plowman), http://papers.ssrn.com/abstract_id=1109047.

Naming a Defendant in an ERISA Action, 9 *TRANSACTIONS: TENNESSEE J. BUS. L.* 317 (2008) (co-authored with Candace Budy), http://papers.ssrn.com/abstract_id=1109059.

Transgender Employment Discrimination, 17 *UCLA WOMEN'S L.J.* 243 (2008) (co-authored with Katie Koch), http://papers.ssrn.com/abstract_id=1015548.

Disability Claims for Alcohol-Related Misconduct, 82 *ST. JOHN'S L. REV.* 699 (2008) (co-authored with Dustin Riddle), http://papers.ssrn.com/abstract_id=1011162.

Title II of the Americans With Disabilities Act of 1990 and Its Prohibition of Employment Discrimination, 28 *N. ILL. U. L. REV.* 183 (2008) (co-authored with Jamie L. Ireland), http://papers.ssrn.com/abstract_id=1014092.

Beyond the Protocol: Recent Trends in Employment Arbitration, 11 *EMPLOYEE RIGHTS & EMPLOYMENT POL'Y J.* 301 (2007), http://papers.ssrn.com/abstract_id=978472,

reprinted at 76 DAILY LAB. REP. A-1, B-1, E-1 (Apr. 20, 2007).

Extending OWBPA Notice and Consent Protections to Arbitration Agreements Involving Employees and Consumers, 8 NEV. L.J. 10 (2007) (co-authored with Christopher J. Kippley), http://papers.ssrn.com/abstract_id=956118, to be reprinted at ICFAI CONSUMER LAWS: EMERGING PERSPECTIVES (forthcoming 2008).

A Normative Consideration of Employment Arbitration at Gilmer's Quinceanera, 81 TULANE L. REV. 331 (2006) http://papers.ssrn.com/abstract_id=863804.

Unilateral-Modification Provisions in Employment Arbitration Agreements, 24 HOFSTRA LAB. & EMPLOY. L. J. 63 (2006) (co-authored with Michael L. DeMichele), http://papers.ssrn.com/abstract_id=948715, reprinted at 6 ICFAI Journal for Alternative Dispute Resolution 29 (July 2007).

HIPAA As a Political Football: Its Impact on Informal Discovery in Employment Law Litigation, 111 PENN ST. L. REV. 137 (2006) (co-authored with Brian K. Powell), http://papers.ssrn.com/abstract_id=895684.

Contract Formation Issues in Employment Arbitration, 44 BRANDEIS L.J. 415 (2006), http://papers.ssrn.com/abstract_id=886103.

German and European Employment Discrimination Policy, 9 OREGON REV. INT'L L. 261 (2006) (co-authored with Raphael Won-Pil Suh), http://papers.ssrn.com/abstract_id=881040.

The Employment Due Process Protocol at Ten: Twenty Unresolved Issues, and a Focus on Conflicts of Interest, 21 OHIO STATE J. DISPUTE RESOLUTION 165 (2005), http://papers.ssrn.com/abstract_id=887553, reprinted at ICFAI J. EMPLOYMENT L., vol. 4 no. 4, at 34 (Oct. 2006).

Family Medical Leave Act Standards of Proof and the Impact of Desert Palace on Retaliation Claims, 28 N.C. CENT. L. REV. 32 (2005) (co-authored with Carol L. Risk).

Adverse Employment Action in Retaliation Cases, 34 U. BALTIMORE L. REV. 313 (2005) (co-authored with Brian Riddell).

Employer Liability for Emotional Distress Arising from Investigation of a Title VII Harassment Complaint, 23 QUINNIPIAC L. REV. 1027 (2005) (co-authored with Amanda Jay Mullins).

The Laissez-Faire Arbitration Market and the Need for a Uniform Federal Standard Governing Employment and Consumer Arbitration, 52 KANSAS L. REV. 583 (2004).

Why a Written Request for Plan Documents by an Attorney Representing a Plan Participant or Beneficiary Should Trigger a Plan Administrator's Duty of Disclosure

Under ERISA, 29 U.S.C. § 1024(b)(4), 32 CAPITAL L. REV. 803 (2004) (co-authored with Shane S. Crase).

The Immunity of Foreign Subsidiaries Under the Foreign Sovereign Immunities Act, 13 MINN. J. GLOBAL TRADE (now published as MINN. J. INT'L L.) 353 (2004) (co-authored with Melissa Lang).

The Inherent Power of the Federal Courts to Compel Participation in Nonbinding Forms of Alternative Dispute Resolution, 42 DUQUESNE L. REV. 1 (2004) (co-authored with Amy M. Pugh) (lead article).

Interest Accrual on Attorney Fee Awards, 23 REV. LITIG. 115 (2004) (co-authored with Nick J. Kempheus).

The Arbitrability of Side and Settlement Agreements in the Collective Bargaining Context, 105 W. VA. L. REV. 575 (2003).

Pro Se Litigants and Summary Judgment, 214 F.R.D. 231 (2003) (co-authored with Hailey L. Scoville).

HIV and the Direct Threat Defense, 91 KY L.J. 859 (co-authored with Katrina Atkins) (2003).

A Survey of Kentucky Employment Law: A Look at Employment Discrimination Claims Brought Under the Kentucky Civil Rights Act, 30 N. KY. L. REV. 71 (2003) (co-authored with Elaine Korb).

A Permanent Stop Sign: Why Courts Should Yield to the Temptation to Impose Heightened Pleading Standards in § 1983 Cases, 41 BRANDEIS L.J. 267 (co-authored with Elaine Korb) (2002).

Employer Notice Requirements Under the Family and Medical Leave Act, 67 MISSOURI L. REV. 883 (co-authored with Sarah Nefzger) (2002) (lead article).

Contracting Around the FAA: The Enforceability of Private Agreements to Expand Judicial Review of Arbitration Awards, 18 OHIO ST. J. DISP. RESOL. 151 (co-authored with Margaret Maggio) (2002).

Enjoining Nonparties, 26 AM. J. TRIAL ADVOC. 79 (co-authored with Ryan Allison) (2002).

Insuring Title VII Violations, 27 S. ILL. U. L. REV. 71 (co-authored with Julie McGhghy) (2002).

No Harm, No Foul: The OSHRC's Authority to Label an OSH Act Violation de Minimis and to Require No Abatement, 22 N. ILL. U. L. REV. 383 (co-authored with Samuel D.

Elswick) (2002) (lead article).

Workplace Investigations in Ohio, 31 CAP. U. L. REV. 29 (2001) (co-authored with Jeffrey A. McCormick) (2002).

A Constitutional Defense of Qui Tam, 2001 WISCONSIN L. REV. 381.

Internet Web Site Jurisdiction, 20 JOHN MARSHALL J. COMPUTER & INFORMATION L. 21 (co-authored with Suzanne Van Wert) (2001).

Arbitral Discovery of Non-Parties, 2001 J. DISPUTE RESOL. 321 (co-authored with Jason F. Darnall).

Personal Jurisdiction and the Web, 53 MAINE L. REV. 29 (2001) (co-authored with Joseph S. Burns).

Survey of Kentucky Employment Law, 28 N. KY. L. REV. 219 (co-authored with Joseph S. Burns; lead article) (2001).

Reconciling Labor and Bankruptcy Law: The Application of 11 U.S.C. § 1113, 2001 MSU L. REV. 1145 (co-authored with Donald B. Smith).

Electronically Submitting Manuscripts to Law Reviews, 30 STETSON L. REV. 577 (2000).

The Discoverability of Surveillance Videotapes Under the Federal Rules, 53 BAYLOR L. REV. 753 (co-authored with Donna Denham) (2000).

ADEA Disparate Impact in the Sixth Circuit, 26 OHIO N. U. L. REV. 1 (co-authored with Jennifer Clemons) (2000) (lead article).

Workplace Investigations in Kentucky, 27 N. KY. L. REV. 201 (co-authored with Richard O. Hamilton, Jr.) (2000).

Using Mitigating Measures to Determine Disability Under the Americans With Disabilities Act, 45 S. DAKOTA L. REV. 33 (co-authored with Perry Meadows, M.D.) (2000).

Compulsory Employment Arbitration and the EEOC, 27 PEPPERDINE L. REV. 1 (1999) (lead article).

Using the Same Actor "Inference" in Employment Discrimination Cases, 1999 UTAH L. REV. 255 (co-authored with Anna Laurie Bryant).

Creating and Challenging Compulsory Arbitration Agreements, 13 LABOR LAW. 511 (1998).

The Presence of Third Parties at Rule 35 Examinations, 71 TEMPLE L. REV. 103 (1998) (co-authored with William Scott Wyatt).

The Discord Between Collective Bargaining and Individual Employment Rights: Theoretical Origins and a Proposed Solution, 77 BOSTON U. L. REV. 687 (1997) (lead article).

The Availability of Rule 35 Mental Examinations in Employment Discrimination Cases (co-authored with Priscilla Ray, M.D.), 16 REV. LITIG. 1 (1997) (lead article).

Compulsory Arbitration of Employment Claims: A Practical Guide to Designing and Implementing Enforceable Agreements, 47 BAYLOR L. REV. 591 (1995) (lead article).

The Nonappealability of Disqualification Orders in Bankruptcy Proceedings, 4 J. BANKR. L. & PRAC. 543 (1995).

A New Direction for American Labor Law: Individual Autonomy and the Compulsory Arbitration of Individual Employment Rights, 31 HOUS. L. REV. 1864 (1994).

A New Standard for Title VII Opposition Cases: Fitting the Personnel Manager Double Standard Into a Cognizable Framework, 35 S. TEX. L. REV. (1994).

Investigating Employee Misconduct: A Private Sector, Nonunion Employer's Guide to Controlling the Workplace Without Getting Sued, 13 CORP. COUNSEL REV. 219 (1994).

The Future of Employment Arbitration in the Nonunion Sector, 45 LAB. L.J. 627 (1994) (co-authored with Reagan Burch).

Libertarianism, Environmentalism, and Utilitarianism: An Examination of Theoretical Frameworks for Enforcing Title I of the Americans with Disabilities Act, 1993 DET. C.L. REV. 1163 (1993).

Once Is Enough: Evaluating When a Person Is Substantially Limited in Her Ability to Work, 11 HOFSTRA LAB. L.J. 203 (1993).

Note, *Title I of the Americans with Disabilities Act: Conflicts Between Reasonable Accommodation and Collective Bargaining*, 2 CORNELL J. LAW & PUB. POL 161 (1992).

Essays

Employment Discrimination Under Title II of the Americans with Disabilities Act, 33 ADMIN. & REG. L. NEWS 12 (Summer 2008) (co-authored with Jamie L. Ireland).

An Introduction to Arbitration, KENTUCKY BENCH & BAR (March 2006), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=888545.

Thinking About Scholarship, in AALS New Law Professors Section Newsletter (2005).

Why Write?, 32 STUDENT LAWYER 14 (Oct. 2003), reviewing EUGENE VOLOKH, ACADEMIC LEGAL WRITING (2003).

Sentences, KENTUCKY BENCH & BAR (July 2004).

Graphics, KENTUCKY BENCH & BAR (May 2004).

Footnotes, KENTUCKY BENCH & BAR (March 2004).

Cultured Writing, KENTUCKY BENCH & BAR (Jan. 2004), reprinted in 86 MICHIGAN BAR J. 46 (Jan. 2007).

Apostrophes, KENTUCKY BENCH & BAR (Nov. 2003).

Quotations, KENTUCKY BENCH & BAR (Sept. 2003).

Headings, KENTUCKY BENCH & BAR (July 2003).

Balance, KENTUCKY BENCH & BAR (May 2003).

Form & Substance, KENTUCKY BENCH & BAR (March 2003).

Writing for Legal Publication, KENTUCKY BENCH & BAR (Nov. 2002), reprinted in THE SCRIVENER (Winter 2007).

Transitions, KENTUCKY BENCH & BAR (Sept. 2002), reprinted in THE SCRIVENER (Spring 2007).

Telling A Story, KENTUCKY BENCH & BAR (July 2002).

Gender Neutral Language, KENTUCKY BENCH & BAR (May 2002).

Density, KENTUCKY BENCH & BAR (March 2002).

Active Writing, KENTUCKY BENCH & BAR (Jan. 2002).

Independence vs Accountability: Judges' Rulings Differ Depending Upon Whether They're Appointed or Elected, 13 KENTUCKY JOURNAL 8 (Summer 2001).

Publications by Students

Sue Irion, *The [Un]Constitutionality of the NLRA's Religious Accommodation Provision*, 44 GONZAGA L. REV. 325 (2009), http://papers.ssrn.com/abstract_id=1112302.

Lindsay Niehaus, *The Fifth Amendment Disclosure Obligations of Government Employers When Interrogating Public Employees*, 21 REGENT U. L. REV. 59 (2009).

Lindsay Niehaus, *The Title IX Problem: Is it Sufficiently Comprehensive to Subsume §1983 Actions?*, __ QUINNIPIAC L. REV. __ (2009).

Tim Davis, *Beyond the “Cat’s Paw”: An Argument for Adopting a “Substantially Influences” Standard for Antidiscrimination Liability*, 6 PIERCE L. REV. 247 (2007), http://papers.ssrn.com/abstract_id=1020675.

Heather E. DePremio, *The War Within the War: Notice Issues for Veteran Reemployment*, 53 NAVAL L. REV. 31 (2006), http://papers.ssrn.com/abstract_id=899298.

Carrie Fischesser, *Employer Vicarious Liability for Voluntary Relationships Between Supervisors and Employees*, 29 SEATTLE U. L. REV. 637 (2006).

Michael E. Nitardy, *The (R)evolution in ERISA Preemption*, 18 ST. THOMAS L. REV. 139 (2005).

Patrick A. Hartman, *“Interacting with Others” As a Major Life Activity Under the Americans with Disabilities Act*, 2 SETON HALL CIRCUIT REV. 139 (2005).

Sharlott Thompson, *Hostile Work Environment Disability Harassment Under the Americans with Disabilities Act*, 73 U.M.K.C. L. REV. 715 (2005).

Brian A. Riddell, *The Ability of Successor Employers to Enforce Covenants Not to Compete*, 33 CAPITAL L. REV. 499 (2004).

Nikolas Johnson, *Erroneously Conferred Eligibility Under the Family Medical Leave Act*, 26 N.C. CENT. L.J. 88 (2004).

Suzanne Bookser, *Making Gault Meaningful: Access to Counsel and Quality of Representation in Delinquency Proceedings for Indigent Youth*, 3 WHITTIER J. CHILD & FAMILY ADVOC. 297 (2004).

David J. Bross, *The Use of Pattern-and-Practice by Individuals in Non-Class Claims*, 28 NOVA L. REV. 795 (2004).

Lisa Wenzel, *ERISA and the Exhaustion Dilemma: When Must Plaintiffs Exhaust Administrative Remedies Prior to Filing Suit*, 16 REGENT U. L. REV. 417 (2004).

Tara R. Jones, *The Threat-to-Self Defense and the Americans with Disabilities Act*, 27 S. ILL. U. L. REV. 539 (2003).

Deborah Zimmerman, *Civil Contemnors, Due Process, and the Right to a Jury Trial*, 3 WYOMING L. REV. 205 (2003).

Nikolas Johnson, *Enforceability Determination Methods for Arbitration Fee Allocation Clauses in Employment-Related Disputes Requiring Fifty Percent Fee Payment By Employees*, 2 RUTGERS CONFLICT RESOL. L. J. (2003) (available online at <http://www.pegasus.rutgers.edu/~rcrlj/johnson.pdf>).

Thomas E. Fielder, *Keep Your Mouth Shut and Listen: The NFL Player's Right of Free Expression*, 10 U. MIAMI BUS. L. REV. 547 (2002).

Jennifer Clemons, *FLSA Retaliation: A Continuum of Employee Protection*, 53 BAYLOR L. REV. 535 (2001).

Other Public Service

Volunteer Arbitrator, Kentucky Bar Association, Legal Fee Arbitration Program

Volunteer, Highlands Middle School

Recent Major Presentations

- 2009 AALS Mid-Year Meeting, Workshop on Work Law, *Teaching Work Law Through Simulation and Other Skills-Oriented Methods*.
- 2009 Conference on Proposed Restatement of Employment Law, U.C.-Hastings School of Law, *4.02: Wrongful Discharge in Violation of Public Policy*.
- 2009 ABA Section of Labor & Employment Law, ADR in Labor & Employment Law Committee, Midwinter Meeting, *Due Process Issues in Employment Arbitration*.
- 2008 Research Conference on Access to Civil Justice: Empirical Perspectives, NYU Law School, *Pro Bono Practices of Large Law Firms*.
- 2008 Third Annual Colloquium on Current Scholarship in Labor & Employment Law, *The Role of Labor & Employment Law in the Law School Curriculum*.
- 2008 SEALS, *Using Full-Course Simulations in Labor and Employment Cases*
- 2008 Administrative Office of the Courts, *Equal Treatment for All: Pursuing Diversity in Kentucky's Courts*.
- 2007 Kentucky Bar Association Annual Meeting, ADR Section, *Do Lawyers Have a Professional Duty to Inform Clients About ADR?*
- 2007 University of Cincinnati College of Law Summer Scholarship Series, *Explaining the Spread of At-Will Employment*
- 2007 National Academy of Arbitrators conference *Beyond the Protocol: The Future of Due Process in Workplace Dispute Resolution*
- 2007 Symposium, UNLV / Nevada Law Journal, *Revising the Federal Arbitration Act*
- 2006 Labor Law Group Conference, *Empirical Research in Employment Arbitration*
- 2005 Symposium, Ohio State Journal on Dispute Resolution

- 2005 Warns Labor & Employment Law Institute, Brandeis Law School / Law Journal, *Contract Formation Issues in Employment Arbitration*
- 2005 Kentucky Bar Association Annual Meeting, *Recent Trends in Employment Arbitration*
- 2005 Northern Kentucky Bar Association, *ADR Ethics*