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We welcome you to this first issue of the ABA Journal of Labor & Employment Law that has been edited by the faculty and students of Saint Louis University School of Law. We are honored that SLU Law and the William C. Wefel Center for Employment Law will serve as the new editorial home for the Journal.

We will take the editors’ prerogative to introduce SLU Law, the Wefel Center, and the three faculty editors to the section membership and the wider readership. SLU Law is the oldest law school west of the Mississippi River and is proud of its role in serving the St. Louis legal community and the wider national bar. Located in downtown St. Louis, SLU Law offers students access to leading law firms, corporations, government agencies, and non-profit organizations. The City of St. Louis Civil Courts Building and the Thomas F. Eagleton U.S. Courthouse are steps away, giving students a unique opportunity to see the law in action. SLU Law has active and engaged alumni who assist our program of legal education and for whom we are most grateful.

SLU Law has a long commitment to the study and practice of labor and employment law, manifested in the Wefel Center for Employment Law. Founded in 1987 by the late Professor John “Jack” Dunsford, and led for many years by Professors Josef Rohlik and Susan “Tonie” Fitzgibbon, the Wefel Center is one of three centers of excellence at SLU Law. Through the Wefel Center, SLU Law students may earn a concentration in labor and employment law. Fellowships are available for summer positions in labor and employment law, and further study opportunities are available through our Semester in Washington, D.C., program. The Wefel Center regularly holds conferences and meetings and has sponsored the annual meeting of the St. Louis Human Resources Management Association.

And now we want to introduce ourselves to the readership. The new faculty editors are Professors Miriam A. Cherry, Matthew T. Bodie, and Marcia L. McCormick.

Miriam A. Cherry serves as Associate Dean of Research of SLU Law and as Co-Director of the Wefel Center. She teaches Employment Law, Contracts, and a seminar on Virtual Work, among other courses. Her research interests include the intersection of employment law and new technologies, especially as viewed through a global lens. She is the co-author of the books Global Issues in Employment Law (West 2008), and Invisible Labor (University of California Press 2016). She is a recognized authority on legal issues of work in the gig economy and in 2018 served as a visiting scholar at the International Labour Office of the United Nations.
Matthew T. Bodie joined the SLU Law faculty in 2007 after serving as a professor at Hofstra University School of Law and a field attorney at the National Labor Relations Board (NLRB). He serves as Callis Family Professor of Law and is Co-Director of the Wefel Center. He teaches Employment Law, Labor Law, Information Privacy Law, and Employee Benefits, among other courses. His principal scholarly focus is on the role of the worker within the firm, particularly on employee rights in corporate governance and employee privacy issues. Professor Bodie served as a co-reporter of the American Law Institute’s Restatement of Employment Law and has cowritten with Sam Estreicher Labor Law for Foundation Press’s Concepts and Insights Series.

Marcia L. McCormick serves as Associate Dean for Academic Affairs of SLU Law, and she has been a past Director of the Wefel Center for Employment Law. She teaches Employment Discrimination, Labor Law, and International and Comparative Employment Law. Her research primarily focuses on the law and social policy of the workplace and civil rights enforcement. She is a member of the Labor Law Group and co-author of a number of doctrinal resources for students and practitioners.

The editors want to take this opportunity to thank those who have helped us so much along the way. First, we want to offer our tremendous thanks to the former editors, Professors Stephen Befort and Laura Cooper of the University of Minnesota Law School, who have been of incredible assistance as the Journal transitioned to its new home. They have our admiration for their dedication and hard work in editing the Journal during the last nine years. We thank Steve and Laura for their service and aspire to live up to the standards that they have set for the Journal. We also appreciate the considerable support we have received so far from the ABA and the Section of Labor and Employment Law. We offer our special thanks to the members of the Journal of Labor and Employment Law ABA Editorial Board, in particular, member Christine Cooper and Chair Ellen C. Kearns. Looking inward, at SLU Law, we have to begin by thanking our students, who put in time and effort and also receive such a tremendous educational opportunity through the Journal, especially Lauren Herbig, our first Editor-in-Chief, and Rose Tanner, our Lead Managing Editor. We also wish to thank the administration at SLU Law for being supportive of this endeavor, in particular Dean William “Bill” Johnson for his support of the Journal. We appreciate the contributions of our other Wefel Center faculty members, Elizabeth Pendo and John Ammann, and the research librarians who assisted us, David Kullman, Kathleen Casey, and Lynn Hartke. Finally, we appreciate the efforts of our terrific Wefel Center program coordinator, Falethia Hawthorne.

The articles in this issue, summarized in the following, reflect the current depth and breadth of labor and employment law practice. It is
our goal to identify critical current legal problems and offer practical guidance to labor and employment attorneys, along with presenting larger policy issues that may be at stake.

In **Industry Standards: How Does OSHA Use Them to Prove Its Case Under the General Duty Clause?**, management attorney William J. Wahoff provides practical guidance to employers who might otherwise be caught off-guard. Wahoff notes that OSHA frequently uses consensus standards in its enforcement actions, and the article examines recent decisions by the federal courts of appeals, the Review Commission, and the Commission’s administrative law judges to outline the boundaries of the doctrines. The article ends with a call for additional rulemaking that would explain which consensus standards apply to which industry, thus providing clarity for employers and employees alike.

In **Tethered Rights: Liability of American Corporations for Their Foreign Subsidiaries’ Violations of Title VII**, Sam Sedaei considers the possibility of extraterritorial application of U.S. equal employment opportunity laws. Attorney Sedaei’s practice in Chicago encompasses all aspects of employment law, and his cases are often focused on questions of the liability of large, multinational corporations. In this piece, he explains that, as the global economy becomes more integrated, these issues of extraterritorial application will only become more litigated and more common. He specifically focuses on the case of an instance where a U.S. citizen is an employee working for a foreign subsidiary of an American parent corporation, making the case that, in these situations, U.S. law should apply. The article ends with thoughts and practical guidance for employees, employers, and courts that are grappling with jurisdictional issues in international Title VII cases.

Management attorneys John McNichols and Youlin Yuan take a look at the relatively new Skillbridge Program. In their article **Transforming Veteran Hiring: The Legal Implications of the Defense Department’s “Skillbridge” Program and Hiring Active-Duty Servicemembers as Unpaid Interns**, the authors describe the program and its potential benefits and drawbacks. They explore possible legal liabilities both to the Skillbridge interns and to the employers, customers, and other employees. After assessing these issues carefully, however, the authors conclude that there are ways to handle these potential liabilities and that the benefits of the program outweigh the drawbacks. McNichols and Yuan advocate for the program as a way of enhancing the possibilities for meaningful job training in the military, as well as a way that employers can try out job candidates that they might have otherwise have passed over.

Professors Susan R. Fiorentino and Sandra M. Tomkowicz, both faculty members at West Chester University of Pennsylvania, are focused
on social media and new technologies that are transforming the definition of protected concerted activity under the NLRA. In their article **E-Petitions and Protected Concerted Activity: The Millennial Response to Organized Labor?**, the authors focus on e-petitions as one of these new methods for workers to engage in concerted activity. They specifically explore how Starbucks employees used the website Coworker.org to change the company’s policy prohibiting tattoos. After considering alternatives, the authors advance the argument that social media may lessen support for unions because social media use dilutes unions’ perceived necessity.

The rights of transgender employees are discussed in an article authored by Jennifer Cobb, a prosecuting attorney, and Myra McKenzie-Harris, a Senior Associate Counsel II in the Walmart Legal Department. In **“And Justice for All” . . . Maybe: Transgender Employee Rights in America**, the authors discuss the increasing visibility and acceptance of the transgender community and the various and conflicting legal guidance on discrimination law and transgender employees. They then end by discussing practical recommendations for employers to mitigate risk. Although the law is still in flux, the authors suggest that employers take a proactive approach to create more inclusive workplaces. Among their suggestions are that employers build inclusive anti-discrimination policies; create guidelines for workers who are transitioning; and implement effective anti-discrimination training programs.

In her article **Practical Guidance for Employers on Confidentiality Provisions that Survive NLRB Scrutiny**, management attorney Erin Norris Bass describes how the NLRB’s tests for whether handbook policies interfere with employee rights under the NLRA have changed over the years. While the NLRB struck down many handbook policies under the Lutheran Heritage test, standards are changing. In 2017, the newly formed Republican majority of the NLRB articulated a new standard for evaluating work rules in Boeing. Specifically focusing on confidentiality clauses, the article seeks to provide employers with guidance for their confidentiality policies around workplace investigations, proprietary information, severance and settlement agreements, and arbitration contracts.

Annually, the ABA Section of Labor and Employment Law and The College of Labor and Employment Lawyers conduct the National Law Student Writing Competition. For 2018, the first-prize-winning essay is **A Fair Day’s Pay: The Fair Labor Standards Act and Unpaid Internships at Non-Profit Organizations**, written by Amanda M. Wilmsen, a 2019 graduate of New York University School of Law. In the essay, Wilmsen shares her own experience of working at a non-profit internship, an experience held in common with many millennials. The essay continues by examining the applicability of the FLSA
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to non-profit organizations and explores New York State law on the subject. The essay argues that there is no policy reason for exempting non-profit internships from the wage requirements of the FLSA.

Finally, last but not least, a thank you to the ABA Section and to our readers! We wanted to let you know that an index to the Journal is available, to make it more user-friendly. Web-based cumulative indexes to the Journal are available by subject, title, and author. The index is updated after publication of each new issue, with links to electronic copies of specific articles, and can be found at https://www.americanbar.org/groups/labor_law/publications/aba_journal_of_labor_employment_law_home/archive.

Also, please note that we welcome manuscript submissions and encourage you to reach out to us with any comments or suggestions. We are honored to serve as your faculty editors.

Professor Miriam A. Cherry
Professor Matthew T. Bodie
Professor Marcia L. McCormick
Faculty Co-Editors