

Michael Conrad Harper

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Boston University School of Law
765 Commonwealth Avenue
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EMPLOYMENT

2002-Present	Professor of Law and Barreca Labor Relations Scholar, Boston University School of Law (Recent Subjects: Labor Law; Employment Discrimination Law; Employment Law; Civil Procedure; Aggregate Litigation; Law and Sports).
May-June 2018	Exchange Faculty, University of Padova, Italy
Spring 2017	Research Fellow, Institute for Advanced Legal Studies, University of London
Fall 2006	Visiting Professor of Law, New York University (Employment Law; Law & Sports)
2005-2006	Visiting Professor of Law, Harvard University (Law & Entertainment; Employment Law)
1985-Present	Professor of Law, Boston University School of Law
1985-1986	Visiting Professor of Law, University of Michigan
1978-1984	Associate Professor of Law, Boston University School of Law
1975-1978	Staff Attorney and Director of Student Internship Program, Center for Law and Social Policy, Washington, D.C.
1974-1975	Associate Attorney, Baker & Daniels, Indianapolis, IN
1973-1974	Law Clerk to the Honorable J. Skelly Wright, U.S. Court of Appeals, District of Columbia Circuit
2001-2015	Reporter, ALI, Restatement of the Law Third, Employment Law (principal drafter of Chapters 1 (Existence of Employment Relationship), 4 (Principles of Employer Liability for Harm to Employees) and 6 (Defamation, Wrongful Interference, Misrepresentation))

EDUCATION

Law School	Harvard University, 1973 J.D. magna cum laude; Law Review, Volumes 85 and 86, Supreme Court Note and Note Editor, runner-up for Review President; Permanent Class Secretary
College	Harvard, 1970 A.B., Economics, A Average, Phi Beta Kappa

BOOKS

Labor Law, Ninth Edition, with Samuel Estreicher and Kati Griffith, 2021, Wolters Kluwers

Labor Law, Selected Statutes, Forms and Agreements, with Samuel Estreicher and Kati Griffith, (2021) Wolters Kluwer

Sports and the Law, Sixth Edition, with Paul C. Weiler, Gary R. Roberts, Roger I. Abrams, Stephen F. Ross, Jodi S. Balsam and William W. Berry III, 2019, Thomson West

Employment Discrimination and Employment Law, Fifth Edition, with Samuel Estreicher and Elizabeth Tippet, 2016, Thomson West

Employment Discrimination, The Field as Practiced, with Samuel Estreicher and Elizabeth Tippet, 2016, Thomson West

Employment Law, The Field as Practiced, with Samuel Estreicher and Elizabeth Tippet, 2016, Thomson West

Statutory Supplement to Employment Discrimination and Employment Law, with Samuel Estreicher and Elizabeth Tippet, 529 pp. (2016) Thomson West

Restatement of the Law, Employment Law, ALI, 2015, Reporter, Chs. 1, 4, and 6

Labor Law, Eighth Edition, with Samuel Estreicher and Kati Griffith, 2015, Wolters Kluwer

Labor Law, Selected Statutes, Forms and Agreements, with Samuel Estreicher and Kati Griffith, 257 pp. (2015) Wolters Kluwer

Employment Discrimination and Employment Law, Fourth Edition, with Samuel Estreicher, 1215 pp. (2012) Thomson West

Employment Discrimination Law, Fourth Edition, with Samuel Estreicher, 721 pp. (2012) Thomson West

Labor Law, Seventh Edition, with Samuel Estreicher, 1243 pp. (2011) Wolters Kluwer Pub.

Employment Law, Third Edition, with Samuel Estreicher, 627 pp. (2008) Thomson West

Teacher's Manual for Labor Law, Fourth Edition, with Samuel Estreicher, (1996) Little Brown Pub.

The Law Governing the Employment Relationship, Second Edition, with Samuel Estreicher, 962 pp. (1992), West Pub.

LEGAL ARTICLES, ESSAYS AND BOOK CHAPTERS

Escaping the Allure of Joint Employment: Using Fault-Based Principles to Impose Liability for the Denial of Statutory Rights, 35 ABA Journal of Labor and Employment Law (2021)

The *Respondeat Superior* Principle and Interest Alignment, Proceedings of the New York University 70th Annual Conference on Labor, ch. 15 Carolina Academic Press (2021)

Using the Anglo American *Respondeat Superior* Principle to Assign Responsibility for Worker Statutory Benefits and Protections, 18 Washington University Global Studies Law Review 161-212 (2019)

A more fundamental distinction for the contemporary economy between employer and independent contractor status, 107 *Amicus Curiae* 1 *ials Journal*, (Autumn 2017)

The Restatement of Employment Law's "Independent Business Person-Entrepreneurial Control" Test for Employee Status, Proceedings of the New York University 68th annual Conference on Labor, ch 3, Lexis-Nexis (2017)

Confusion on the Court: Distinguishing Disparate Treatment from Disparate Impact, 96 B. U. L. Rev. 541 (2016)

Fashioning A General Common Law of Employment in an Age of Statutes, 100 Cornell Law Rev. 1281-1340 (2015)

Class-Based Adjudication of Title VII Claims in the Age of the Roberts Court, 95 B. U. L. Rev. 1191-1131 (2015)

The Restatement Law Project, 100 Cornell Law Review 1245-1253 (2015) (with Estreicher, Bodie, and Schwab)

Retaliatory Capital Allocation or Defensive Dual Sourcing: the Boeing Dreamliner Case, Proceedings of the New York University 65th Annual Conference on Labor, ch. 6, Mathew Bender (2013)

Reforming the Age Discrimination in Employment Act: Proposals and Prospects, 16 *Emp. Rts and Emp. Pol. J.* 13-49 (2012)

First Amendment Protection for Union Appeals to Consumers, 27 *Wisc. J. of Law, Gen. & Soc.* 176-206 (2012)

Eliminating the Need for Caps on Title VII Damage Awards: The Shield of *Kolstad v. American Dental Association*, 14 *N.Y.U. J. of Legis. & Pub. Pol.* 477-509 (2011)

A Gap in the Agenda: Enhancing the Regulation of Age Discrimination in Employment, Proceedings of the New York University 62nd Annual Conference on Labor, ch. 14, pp. 601-635, Wolters Kluwer (2011) also presented to the United States Commission on Civil Rights, 2010

A New Board Policy on Deferral to Arbitration; Acknowledging and Delimiting Union Waiver of Employee Statutory Rights, 5 F.I.U. L. Rev. 685-715 (2010)

The Causation Standard in Federal Employment Law: *Gross v. FBL Services, Inc.*, and the Unfulfilled Promise of the Civil Rights Act of 1991, 58 Buff. L. Rev. 69-145 (2010)

Judicial Control of the National Labor Relations Board's Lawmaking in the Age of *Chevron* and *Brand X*, 89 B. U. L. Rev. 189-250 (2009)

Burlington and Faragher: Federal Common Lawmaking for the Modern Age, in *Employment Discrimination Stories* (with Joan Flynn) (2006)

A Framework for the Rejuvenation of the American Labor Movement, 76 Ind. L.J. 103-133 (2001), reprinted as Ch. 30 of Proceedings of New York University's 52nd Annual Conference on Labor (2000)

Employer Liability for Harassment Under Title VII, 36 San. D. Law. Rev. 41-86 (1999)

Answering the Title VII Agency Question: A Policy Basis for Faragher and Ellerth, Ch. 10 of Proceedings of New York University 51st Annual Conference on Labor (1999)

The Continuing Relevance of Section 8(a) (2) to the Contemporary Workplace, 97 Mich. L. Rev. 700-761 (1998)

The Provision of Capital and Collective Bargaining Responsibilities, Ch. 4 Proceedings of New York University 50th Annual Conference on Labor (1998)

Defining the Economic Relationship Appropriate for Collective Bargaining, 39 B.C.L. Rev. 329-364 (1998)

Multiemployer Bargaining, Antitrust Law and Team Sports: The Contingent Choice of a Broad Exemption, 38 William and Mary L. Rev. 1663-1728 (1997)

ADEA Doctrinal Impediments to the Fulfillment of the Wirtz Report Agenda, 31 University of Richmond L. Rev. 757-793 (1997)

The Tort/Crime Distinction, Comment, 76 B.U.L. Rev., 23-29 (1996)

Age Based Incentives, Coercion, and the Prospective Waiver of ADEA Rights: The Failure of the Older Worker's Benefit Protection Act, 79 Virginia L. Rev. 1271-1244 (1993)

Limiting Section 301 Preemption; Three Cheers For the Trilogy, Only One For Lingle And Lueck, 66 Chi. Kent L. Rev, Symposium, 685-752 (1990)

Reconciling Collective Bargaining with Employee Supervision of Management, 137 University of Pennsylvania Law Review 1-95 (1988)

The Scope of the Duty to Bargain Concerning Business Transformations, in *Labor Law and Business Change* (Estreicher and Collins, eds.) (1988)

The Case For Limiting Judicial Review of Labor Board Certification Decisions, 55
George Washington Law Review 262-324 (1987)

Fair Representation as Equal Protection (with Ira C. Lupu), 98 Harvard Law Review
1211-1283 (1985)

The Consumer's Emerging Right to Boycott, NAACP v. Clairborne Hardware, and the
Implications for American Labor Law, 93 Yale Law Journal 409-454 (1984)

Leveling the Road from Borg-Warner to First National Maintenance: The Scope of
Mandatory Bargaining, 68 Virginia Law Review 1447-1503 (1982), republished in
Corporate Counsel's Annual-1993, p. 679

The Exercise of Executive Discretion, 34 Administrative Law Review 559-592 (1982)

A Fresh Approach to Board Deferral to Arbitration, 4 Industrial Relations Law
Journal 680-704 (1981)

Union Waiver of Employee Rights Under the NLRA, 4 Industrial Relations Law
Journal 335-389 (1981)

Note, Business Executive's Move for Vietnam Peace v. FCC, 85 Harvard Law Review
689 (1972)

RECENT ONLINE ESSAYS AND PRESENTATIONS

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| 2921 | Applying the Takings Clause to Regulatory Access, Regulatory Review, University of Pennsylvania |
| 2020 | Clarifying the Default for Anti-Discrimination Statutes, Regulatory Review, University of Pennsylvania |
| 2020 | Comments on Recent Supreme Court Decisions on Anti-Discrimination Law, University of Oregon Law Lab |
| 2019 | A Weakening of Overtime Regulation Reform, Harvard Law Review Online |
| 2019 | Trump-Appointed Labor Board's Impatient Agenda to Reformulate Labor Law, Harvard Law Review Online |

REPRESENTATIVE RELATED ACTIVITIES

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|---------------------------------|---|
| 2021 | Webinar, Salary Caps in Professional Team Sports, German-American Lawyers Assn. |
| 2020; 2017; 2015;
2012; 2009 | Lecturer, New York University National Conference on Labor |
| 2019 | Lecturer, MA State Council of Society for Human Resource Management |

2018 Lecturer, University of Padova, Italy

2018 Principal Drafter, Amicus Brief for Thirty Five Labor Law Professors in Restaurant Law Center v City of New York, (Feb. 2018; S.D.N.Y)

2017 Presenter, Labor Law Seminar, Oxford University

2017 Lecturer, Seminars at Institute for Advance Legal Studies, University of London

2016; 2013 Lecturer, National Employment Lawyers Association Convention

2016 Participant, AARP Conference on the Future of Age Discrimination Law

2016 Contributing Author, International Labor Brief, Korean Labor Institute

2015, 2017 Witness, House of Representatives Committee on Education and the Workforce

2015 Lecturer, Annual Conference on Labor and Employment Law Scholarship, Indiana University, Bloomington

2015 - 2019 Research Associate, Interdisciplinary Study of Employment Practices in Franchised Food Industry, funded by Russell Sage Foundation Grant

2015 Witness, Inter-American Development Bank Tribunal

2014 Lecturer, Cornell Law School Conference on Restatement of Employment Law

2013 Lecturer, National Employment Lawyers Association Convention, Denver

2011 Lecturer, Symposium, The Constitutionalization of Labor and Employment Law, University of Wisconsin

2011 Lecturer, Annual Conference of AFL-CIO Lawyers, San Diego

2010-2016 Reviewer, Jotwell, Work Law Blog

2010 Panelist, U. S. Commission on Civil Rights, Session on “Age Discrimination in Employment in the Current Economic Crisis”

2010 Lecturer, Symposium, Whither the Board? The National Labor Relations Board at 75, Florida International University College of Law

2009 Lecturer, Annual Conference on Labor and Employment Law Scholarship, Seton Hall

2007; 2013 Lecturer, NLRB-Department of Labor, New England Bar Associations, Labor Law Conference

2007 Lecturer, National Labor Relations Board, National Conference for Board Attorneys, Washington D.C.

2006 Lecturer, Labor and Employment Law Conference, University of Louisville

2005	Lecturer, Training Conference for State Court Judges, New York University
1985 - 2006	Lecturer, Trade Union Program, Harvard University
2001	Lecturer, Training Conference for Arbitrators and Mediators, New York University
1999	Lecturer, Symposium on Regulating Employment Relationship, Indiana University
1998; 2001	Lecturer, Federal Judicial Center Workshop on Employment Law
1997	Lecturer, Sports in American Society, Brown University
1997; 1998	Lecturer, New York University National Conference on Labor
1997	Lecturer, University of Richmond Conference on Age Discrimination
1992; 2000; 2001	Lecturer, Massachusetts Bar Association, Labor and Employment Law Conference
1983-1984	Massachusetts Governor's Commission on Workmen's Compensation
1980-1984	Research Associate, Boston University Regional Institute on Employment Policy