

Northern Illinois University Law Review

Volume 13 | Issue 2

Article 10

5-1-1993

Vol. 13, no. 2, Spring 1993: Table of Contents

Northern Illinois University Law Review

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Recommended Citation

Northern Illinois University Law Review (1993) "Vol. 13, no. 2, Spring 1993: Table of Contents," *Northern Illinois University Law Review*. Vol. 13: Iss. 2, Article 10.

Available at: <https://huskiecommons.lib.niu.edu/niulr/vol13/iss2/10>

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Northern Illinois University

Law Review

Volume 13

Spring 1993

Number 2

Symposium

Major Issues For Collective Bargaining in the Nineties

Foreword

Lorraine Schmall 201

Potential Conflicts Between Obligations Imposed on Employers And Unions By the National Labor Relations Act And the Americans with Disabilities Act

Jerry M. Hunter 207

In this article, the author outlines the potential conflicts between the requirements of the Americans with Disabilities Act and the National Labor Relations Act. First, a potential conflict arises between the NLRA obligation to bargain and the reasonable accommodation obligation under the ADA. Second, the confidentiality requirement of the ADA and the duty to provide information under the NLRA poses an additional potential conflict. The author discusses the potential for allegations that unions have violated their duty of fair representation under the NLRA from both disabled and nondisabled employees, concluding that resolution of such grievances can be achieved through traditional principles of reasonableness and good faith.

The Courts and Legislature Begin to Adopt ADR Methods to Deal with Growing Number of Employment Discrimination Claims

Cheryl Blackwell Bryson, Esq.
Anurag Gulati, Esq. 221

With the increasing trend in the use of ADR methods to resolve disputes, this article focuses on the Supreme Court and the legislature's growing acceptance of ADR and the manner in which arbitration and mediation can be used in the employment discrimination area. The author outlines the historical use of arbitration in resolving disputes under collective bargaining agreements and analyzes whether that can serve as a model for arbitration of individual employment discrimination claims. The Supreme Court's growing endorsements of binding arbitration of statutory claims is discussed, and the author concludes with a call for a more active governmental stance regarding the use of ADR in employment discrimination disputes.

Filling the Court-Created Gap in the Protection of Concerted Activities the Need for Striker Replacement Collective Bargaining
Harold A. Katz 247

This article discusses the adverse impact of the Mackay doctrine on the effectiveness of concerted activity by allowing the employer to continue production with the use of permanent replacements. Restoration of a protected right to the job after the strike is settled is essential to the preservation and growth of the collective bargaining system in the United States. The author argues that the Mackay doctrine undermines the establishment of stable and enduring labor-management relations which are essential in today's competitive markets. The author concludes with a call for more constructive collective bargaining for the '90's which will improve industry's competitive edge in the world by increasing the power and participation of workers.

Addicted Pregnancy as a Sex Crime
Lorraine Schmall 263

This article examines how controls on addictive pregnancy present a new and dangerous threat to the treatment of women under the law. The author first examines the relationship between the mother and the fetus, concluding that no coherent status attaches to the unborn vis-a-vis its own mother which could justify depriving her of her privacy, autonomy, and the right to make personal family decisions. The article continues with a historical discussion of disparate legal treatment of women throughout history, and the discriminatory effect of state intervention into cases of addicted pregnancy on poor people and people of color. This article concludes with an analysis of the constitutionality of state intervention to control addicted pregnant women.

Comments

En Banc Ruling Bursts More than Bubbles in Patent Litigation: A.C. Aukerman Co. v. RL Chaides Construction Co. and its Impact
Russell D. Slifer 335

This comment explains the development and application of both laches and equitable estoppel defenses in patent litigation. The comment focuses on the recent Court of Appeals for the Federal Circuit decision changing the evidentiary requirements needed to overcome a presumption of laches. In addition to the changes made to laches, the reduction in elements needed to establish equitable estoppel are reviewed. The author concludes that the changes to laches fail to provide additional protection where additional protection is justified, while the reduced elements of estoppel decrease protection for patent owners.

The Endangered Species Act Under Attack: Could Conservation Easements Help Save the ESA?

Kimberley K. Winter 371

In this article the author notes that the Endangered Species Act has increasingly come under attack. The attack on the ESA has been brought about primarily due to the substantial adverse economic effects caused by enforcement of the ESA's provision. The author seeks to alleviate the economic burden on the affected parties in order to decrease the push for ESA reform. First, the author examines Fifth Amendment taking theory and concludes that it is insufficient to rectify the problem. Second, the author examines conservation easement theory and concludes that the purchase of conservation easements by environmental organizations would be a viable system for spreading the economic burden of species protection across a greater spectrum of society.

Chapter 11 For Individual Consumer Debtors: Fresh Start or False Start?

Cheri L. Cohen 401

*This commentary examines the implications for consumer debtors filing for bankruptcy relief under chapter 11. This option was made available to all consumer debtors in the Supreme Court decision of *Toibb v. Radloff*. The author contends that the consumer debtor will only obtain a false start, instead of a fresh start, by turning to chapter 11 for the sought-after relief.*

Note

Entrapment and *Jacobson v. United States*: "Doesn't the Government Realize That They Can Destroy a Man's Life?"

Leslie G. Bleifus 431

This note examines the United States Supreme Court decision finding that the criminal defendant had been entrapped by the government as a matter of law. The author contends that the Court's disposition of this case was not consistent with precedent and concludes that the decision was an implicit application of the due process defense.