Three Key Topics in Employment Law: FLSA; Dukes; & NLRA
(including Social Media, & DOL's new view on 'Advice Exemption')

January 31, 2012
Telephone Seminar/Audio Webcast

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Why Attend?
If you counsel business, labor unions, or individuals on employment or labor law, you need to stay abreast of new developments in case law, pending litigation, and new activity at the NLRB and at the Department of Justice.

This is the first of a new series of seminars to be offered via audio webcast or phone (your choice) three times a year. Each program will focus on three or four items of topical interest, allowing for in-depth treatment.

What You Will Learn

- **FLSA**
  - What’s new?
  - Tip credit cases
  - Significant exemption decisions (contract 4th and 11th in Family Dollar cases)
  - Fluctuating workweek (can it be used to compute damages in a misclassification case)

- **Class Actions after Wal-Mart v. Dukes**
  - Its daily impact on practitioners

- **NLRA & NLRB**
  - What is the Dept. of Labor re-interpretation of the "Advice Exemption?"
  - What's next for the "Advice Exemption" to persuader activity reporting requirements for law firms and labor consultants under the LMRDA?
  - Social Media: What is the NLRB's approach to Facebook and other social media policies?
  - Additional new developments

**Program Schedule**
*All times eastern*

3:00 p.m. **Three Key Topics in Employment Law:**
  - FLSA
  - Class Actions after *Wal-Mart v. Dukes*
  - NLRA & NLRB

4:30 p.m. **Adjournment**
Total 60-minute hours of instruction: **1.5**; Total 50-minute Hours of instruction **1.8**

**Suggested Prerequisite:** Registrants should have significant experience in counseling individuals or businesses or unions on employment law and labor law matters, or have experience in litigating employment or labor law matters.

**Educational Objective:** Acquisition of knowledge and skills to develop proficiency as a practitioner; maintenance of professional competence as a practitioner; provision of information on recent legal developments.

**Level of Instruction:** Intermediate

Nothing in this program, the program materials, or communications stemming from the program (including questions and answers) should be considered as the rendering of legal advice. Non-lawyers should seek the advice of a licensed attorney in all legal matters. Registrants/readers should assure themselves that these presentations/materials/communications are still current and applicable at the time they are delivered or read. Neither ALI-ABA nor the speakers/authors can warrant that these presentations/materials/communications will continue to be accurate, nor do they warrant them to be completely free of errors when delivered/published. Registrants/readers should verify statements before relying on them. These presentations/materials/communications reflect the viewpoints of their speakers/authors and do not necessarily express the opinions of ALI-ABA Continuing Professional Education or its sponsors. The members of this program’s faculty are contributing their services to further the continuing legal education of their fellow members of the Bar.
ALI-ABA Topical Courses

Three Key Topics in Employment Law: FLSA; Dukes; & NLRA
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Robert B. Fitzpatrick
Robert B. Fitzpatrick PLLC, Washington, D.C.

Robert Brian Fitzpatrick is the principal in the law firm of Robert B. Fitzpatrick PLLC in Washington, D.C. where he represents clients in employment law and employee benefits matters. Mr. Fitzpatrick has concentrated his practice in employment law disputes for over forty years. He has represented clients in individual and class actions. He has represented clients in employment discrimination, workplace harassment, retaliation, age discrimination, FMLA, ADA, whistleblower, wrongful termination, non-compete, trade secrets, Computer Fraud and Abuse Act, and wage and hour claims among others. He counsels numerous executive clients regarding employment agreements and compensation issues. He has negotiated literally thousands of severance agreements. He has represented clients in practically every industry and profession, including government employees, employees in the hospitality industry, the high tech/computer, government contractors, transportation, entertainment, sports, financial services, trade associations, and academia.

Prior to entering private practice, Mr. Fitzpatrick served as a staff attorney in the Jackson, Mississippi office of the Lawyers Committee for Civil Rights Under Law in the late 1960's; as a staff attorney in the Office of General Counsel of the Equal Employment Opportunity Commission in the early 1970's; and with the Washington Research Project (now the Children's Defense Fund) training minority attorneys in the Deep South to litigate employment discrimination cases.

He has been in private practice in Washington, D.C. since 1970, having been born in Washington, D.C., and raised in neighboring Chevy Chase, Maryland. He attended Georgetown Preparatory School in North Bethesda, and received his undergraduate degree from the George Washington University. He is the father of three. He is an avid alpine mountaineer.

He is a Fellow of the College of Labor & Employment Lawyers, having been inducted as a Fellow at the first annual induction ceremony in 1996. He has been listed as one of The Best Lawyers in America® for 25 continuous years.

He is admitted to practice in all courts of the District of Columbia (Superior Court, D.C. Court of Appeals, and the Federal District Court of the District of Columbia), the Federal
District Court for Maryland, the Federal District Court for the Northern District of Mississippi, the Supreme Court of the United States, and the United States Courts of Appeal for the District of Columbia as well as the Fourth and Sixth Circuits.

Mr. Fitzpatrick is an active member of the American Bar Association (ABA) and the District of Columbia Bar, being a frequent speaker at Bar meetings and a participant in the activities of several sections of the ABA and the D.C. Bar. He has been Co-Chairman of the ABA's Committee on Individual Employee Rights and Responsibilities of the Labor and Employment Law Section; Co-Chairman of the Steering Committee of the Labor Relations Section of the D.C. Bar; Chairman and founder of the D.C. Bar's Committee on Individual Employee Rights and Responsibilities; Chairman of the Federal Bar Association's Labor Law and Labor Relations Section; Chairman of the FBA's Committee on Equal Employment Opportunity; Chair of the Alternative Dispute Resolution Committee of the ABA's Section of Individual Rights; and Chair of the Employer-Employee Relations Committee of the Torts and Insurance Practice Section of the ABA. He has been a member of the Class Action Task Force of the Torts & Insurance Practice Section of the ABA and served as a member of the Long Range Planning Committee of ABA's Torts and Insurance Practice Section.

He has organized and chaired numerous CLE programs relating to employment law, including Current Developments in Employment Law sponsored by ALI-ABA for sixteen years, Advanced Employment Law sponsored by ALI-ABA which he has co-chaired with Peter Panken for nearly twenty years, Damages in Employment Cases sponsored by ALI-ABA, Litigating Employment Cases sponsored by Georgetown University Law School CLE, and Evidence Issues in Employment Cases co-sponsored by Georgetown University Law School CLE and ALI-ABA as well as numerous other CLE programs.

Mr. Fitzpatrick is a prolific author in the field of employment law. Most recently his concentration has been on conflict resolution in the workplace. In that regard, he has written and lectured widely on mediation. Lists of some of his publications, including some unpublished ones, are attached.

Mr. Fitzpatrick is one of the numerous co-authors of Settlement Agreements in Commercial Disputes published by Aspen Law & Business; one of the numerous co-authors of Drafting Employment Documents in Massachusetts published by Massachusetts Continuing Legal Education, Inc. Mr. Fitzpatrick is one of numerous co-authors of Litigating Wrongful Discharge Claims published by Callaghan & Co., whose principal author is Paul Tobias, Esq. of the Ohio bar and of Disability Discrimination in the Workplace published by Clark Boardman Callaghan, whose principal author is Gary Phelan, Esq. of the Connecticut bar.

He has been a member of the editorial board of The Practical Lawyer published by The American Law Institute-American Bar Association Committee on Continuing Professional Education; of Employment Law Strategist published by Lender Publications; of the board of advisors for National Disability Law Reporter Highlights published by LRP Publications, an Axon Group Company, formerly ADA Policy & Law formerly published by Buraff Publications; of the board of editorial advisers of Sexual xiv
Harassment & Discrimination Reporter published by James Publishing, Inc.; of the board
of editorial advisers of Employment Law Counselor published by Business Laws, Inc.; of
the board of advisors of Corporate Counsel's Guide to the Americans with Disabilities
Act published by Business Law, Inc., and of the advisory board of Federal Discovery
News published by LRP Publications.

Mr. Fitzpatrick has been a trustee of the Dalkon Shield Other Claimants Trust appointed
by the late Hon. Robert R. Merhige, Jr. of the United States District Court for the Eastern
District of Virginia. He has been a member of the Committee on Pro Se Litigation of the
United States District Court for the District of Columbia.

Mr. Fitzpatrick received his J.D. Degree with honors from the George Washington
University's National Law Center in 1967. He has been a member of the Bar of the
District of Columbia since 1968.

![Image of Harold P. Coxson, Jr.]

**Harold P. Coxson, Jr.**

Hal Coxson is a nationally recognized lawyer with over 35 years experience in all aspects
of labor and employment law in Washington, DC. He is highly respected for his
experience and expertise in government relations and as an advocate on behalf of
business clients before Congress, the Executive Branch and independent federal
regulatory agencies. He chairs the Firm’s Government Relations Practice Group and is a
Principal in Ogletree Governmental Affairs, Inc., the Firm’s wholly-owned subsidiary.

Mr. Coxson concentrates on traditional labor law and international labor relations. He
has helped shape national labor policy through oral arguments and the filing of amicus
curiae briefs on behalf of business clients in numerous landmark cases before the
National Labor Relations Board and federal courts of appeals, including the U.S.
Supreme Court. In addition, he has represented the U.S. Employer community before the
International Labor Organization, and has defended clients in global corporate campaigns.

**Experience**
In his government relations practice, Mr. Coxson represents individual corporations and
national trade associations, as well as business coalitions which he has been responsible
for organizing on a variety of the most important workplace issues over the past quarter
century. He has testified on behalf of business clients and as an expert witness before federal administrative agencies and both Houses of Congress.

In addition, Hal has a close working relationship with many of the national trade associations in Washington. He is Executive Director of the First Tuesday Group, an informal organization of thirty-five national trade associations and professional organizations involved in workplace issues. He serves on the Boards and committees of many trade associations, including the Labor Relations Committee of the U.S. Chamber of Commerce where he co-chairs its International Perspectives Subcommittee.

Hal is a frequent speaker on labor and employment topics. He appears as a guest on radio and television talk shows and panels. In addition, he has written several noteworthy publications on workplace law, including most recently “The National Labor Relations Board in the Obama Administration: What Changes to Expect” (U.S. Chamber of Commerce, 2009) which has become required reading in several law schools throughout the country. Currently, he is co-editor of “NLRB Insight,” published bi-monthly by the U.S. Chamber of Commerce and is on the Board of Trustees of HR Advisor.

**Admitted to Practice:**
- New Jersey
- District of Columbia

**Education:**
- J.D., American University Law School, 1972
- B.A., Franklin & Marshall College, 1969

**Honors and Awards:**
- Law Review Managing Editor
- College of Labor and Employment Lawyers
- Best Lawyers in America
- Super Lawyers of Washington

**Professional Activities:**
- American Bar Association (Labor and Employment Law Section; International Law Section)

**Speeches:**
Not Your Father's NLRB - "A One-Two Punch - Two Dramatic Regulations That Will Mark a Sea Change in Union Organizing" - New Orleans - October 27, 2011
Laura L. Ho
Goldstein, Demchak, Baller, Borgen & Dardarian, Oakland, California

Laura L. Ho joined Goldstein, Demchak, Baller, Borgen & Dardarian in 1998 and has been a partner since 2005. Her current practice focuses on California and federal wage and hour class and collective actions. Ms. Ho has also represented non-profit organizations as amici curiae in a number of cases affecting California employees in the California Court of Appeal and Supreme Court, and Ninth Circuit Court of Appeals. She also regularly gives presentations on the subjects of California and federal wage and hour class and collective actions. Ms. Ho speaks Mandarin Chinese.

Ms. Ho received California Lawyer magazine's California Lawyer of the Year Award (CLAY) in 2009 for her achievements in employment law.

Education
- J.D., Yale University
- B.A. (cum laude), University of Washington

Bar and Court Admissions
- California, 1994
- U.S. District Courts: Northern and Central Districts of California
- U.S. Court of Appeals: Ninth and Tenth Circuits

Professional Associations and Memberships
- ABA Section of Labor and Employment
- Asian Law Caucus Board Member

Prior Employment
- Asian Law Caucus, Staff Attorney
- ACLU Foundation National Immigrants’ Rights Project as a Staff Attorney
- Law clerk for the Honorable John C. Coughenour, Chief Judge of the Federal District Court of the Western District of Washington in Seattle, Washington