



**Premiering  
November 5–8, 2014**

**ABA Section of Labor and Employment Law**

# **8th Annual Labor and Employment Law Conference**

**Los Angeles, California**

## **Conference Highlights**

- 2013–2014 Supreme Court Labor and Employment Law Review
- Updates on Recent Cases in Labor-Management Relations, plus Conversations with the NLRB General Counsel and Members
- Discrimination, Harassment and Retaliation Sessions, including Highlights from the EEOC
- In-House Counsel Programs
- Ethics, Fundamentals and Substance Abuse Programs
- Hot Topics in Litigation, Class Action, Wage and Hour and Whistleblowing
- In-Depth Explorations of Workplace Problems and Solutions

## ABA Section of Labor and Employment Law

# 8th Annual Labor and Employment Law Conference

November 5–8, 2014 ♦ Los Angeles, California

We are pleased to share with you this outline of the activities planned for the 8th Annual Labor and Employment Law Conference. The Conference will be held from November 5-8, 2014 at the J.W. Marriott at L.A. Live. As you look through the overview, you will see the broad range of issues that will be covered, addressing all aspects of the labor and employment law arena. Please make plans to attend the Conference and encourage a colleague to join you.

We will have the features that made our previous Annual Conferences so successful, as well as networking options and hands-on help to facilitate your participation in the Conference's technology offerings.

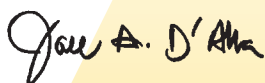
At this year's Conference, you can expect:

- **Prominent speakers participating on exciting and balanced panels**
- **A full year's worth of CLE credit at a price that cannot be beat**
- **A multitracked curriculum covering all aspects of your labor and employment law practice**
- **A multilevel program that will be of value regardless of your degree of experience**
- **Opportunities for you to meet with colleagues representing all perspectives in the labor and employment arena**

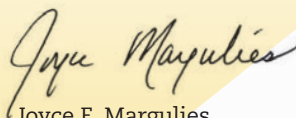
The Section's 8th Annual Labor and Employment Law Conference will enable you to learn about government initiatives from agency representatives and to confer with top practitioners representing employees, employers, unions, government agencies as well as neutrals, in-house counsel and academics. In addition to the substantive programs, our networking receptions will allow you to mingle with colleagues in a relaxed atmosphere.

Complete program details and registration information is available on the Section website at [www.ambar.org/laborconference](http://www.ambar.org/laborconference). Register before September 12, 2014, to take advantage of substantial early registration discounts!

We look forward to seeing you in Los Angeles at the 8th Annual Labor and Employment Law Conference.



Joel A. D'Alba  
Chair, ABA Section of Labor and Employment Law  
Chicago, Illinois



Joyce E. Margulies  
Chair-Elect, ABA Section of Labor and Employment Law  
Memphis, Tennessee

## 8th Annual Labor and Employment Law Conference Planning Committee

### Conference Co-Chairs

J. Randall Coffey, Employer  
Gregg M. Corwin,  
Union and Employee

Virginia "Ginger" Hardwick,  
Employee

J. Lindsay Johnston, Employer

### Conference Vice Chairs

Emily R. Perez,  
Union & Employee

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Adele Rapport, Public

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Joel A. D'Alba, Union & Employee

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Joyce E. Margulies, Employer

### Section Vice Chairs

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Wayne N. Outten, Employee

### Immediate Past Section Chair

Stewart S. Manela, Employer

Program information is available on the Section website at [www.ambar.org/laborconference](http://www.ambar.org/laborconference).

 Follow us on Twitter

 Connect with us on Facebook

Connect with other Conference attendees before, during and after the meeting. Link to the pages from the Conference webpage at [www.ambar.org/laborconference](http://www.ambar.org/laborconference).

# 8th Annual Labor and Employment Law Conference Track Coordinators

Kristen H. Albertson	Tamika Lynch
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Maureen S. Binetti	Donald J. Munro
Katherine Blostein	Maryann Parker
Frank C. Botta	Henry N. Patterson, Jr.
Jeffrey C. Brodin	Gregory T. Presmanes
Heidi R. Burakiewicz	Julie Richard-Spencer
Julia Campins	Robert A. Richardson
Melinda J. Catherine	Mark D. Risk
Lloyd B. Chinn	Jennifer L. Sabourin
George S. Crisci	Barbara Jaffe Sanford
Parker Denaco	Amy F. Shulman
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Susan N. Eisenberg	Hope J. Singer
Molly A. Elkin	Diane I. Smason
Jonathan C. Fritts	Rebecca A. Smith
Rachel Geman	Cassie Springer
Robert S. Giolito	Dane L. Steffenson
Lisa M. Gomez	James J. Sullivan, Jr.
Cara E. Greene	Michelle Sullivan
Jonathan A. Grode	Brenda Sutton-Wills
Amanda Green Hawkins	Richard J. Swanson
Mary "Ana" Hermosillo	Alan A. Symonette
Al Holifield	Tanja L. Thompson
Katherine C. Huibonhoa	Joyce Walker-Jones
Laura L. Ho	Marisa Warren
Aaron Janik	George L. Washington, Jr.
Mary L. Johnson	Gwynne A. Wilcox
Daniel J. Kaspar	Gerlind Wisskirchen
Danny J. Kaufer	Stephen A. Yokich
Robert D. Kraus	Jeffrey N. Young
Christopher Lage	Jason Zuckerman
Esther G. Lander	
Kelly M. Lawson	

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## From the Host Committee

It is our pleasure to invite you to attend the 8th Annual Labor and Employment Law Conference in America's First City of the 21st Century—or, as it was originally known, *La Ciudad de Nuestra Señora de Los Angeles*.

You'll find our Conference headquarters hotel, the J.W. Marriott, conveniently located in the heart of L.A. Live, an entertainment complex in downtown Los Angeles that features restaurants, movies, nightclubs and the Grammy Museum. Staples Center, only a block away, is the venue for great concerts and is the home of three professional sports teams: Lakers, Clippers and Kings.

It has been said that Los Angeles is less a city and more a state of mind. True, "The City of Angels" conjures up images of surfers, sun soaked beaches, Beverly Hills mansions and the glamour of Hollywood movies. Yes, this is LA, but LA is also much, much more!

The Los Angeles of the 21st Century has a vast and diverse wealth of peoples and cultures to be explored through its numerous museums, restaurants, theatrical and dance presentations, and music venues of all sizes, intimate to enormous, offering a range of experiences from classical and jazz to folk, blues, rap, hip-hop and beyond. And its varied geography can take a visitor from beaches to desert to forested canyons and snow-crested ridges all within a two-hour drive—and most often in lovely weather.

Perhaps once regarded as a culinary backwater, Los Angeles now boasts 12 Michelin-Star restaurants and the widest variety of tasty and high-quality food truck cuisine to be found anywhere in the world. Depending on how adventurous your taste, you can explore seafood by the ocean, Chinese food in Monterey Park, tacos and burritos on Olvera Street, or embark on your own fantastic food adventures throughout the many diverse LA neighborhoods.

For traditional family fun, theme park options include Disneyland, Magic Mountain, Knott's Berry Farm and Universal Studios. You can explore the skies at Griffith Observatory in the Hollywood Hills, or stroll the depths of the deep blue sea at the world class Aquarium of the Pacific in Long Beach. Or take a day trip to Palm Springs, Santa Barbara or Lake Arrowhead.

Please visit the Host Committee link on the Conference webpage for additional information on places to visit, a list of events taking place and recommended tours while you are in Los Angeles.

Whatever you choose to do, please feel most welcome to join us in the City of Angels for a fantastic 8th Annual Conference!

## Your Los Angeles Host Committee,

Gordon E. Krischer, Co-chair, Employer	Jason C. Marsili, Union & Employee
Hope J. Singer, Co-chair, Union & Employee	Anna Park, Public
Roberta J. Burnette, Employer	Mori P. Rubin, Public
Olivia Garcia, Public	Brenda E. Sutton-Wills, Union & Employee
Samantha C. Grant, Employer	Steven K. Ury, Union & Employee



# 8th Annual Labor and Employment Law Conference

## Plenary Sessions

### Cutting edge programs of wide general interest

- Ethics in the Age of Technology **(E,T)**, page 10
- Supreme Court Update, page 10
- Workplace Trends in a Transitioning Society, page 4

## Alternative Dispute Resolution

### Programs focusing on developments in the field of alternative dispute resolution in the union and non-union settings

- Class Action Waivers and State Laws: What Happens After *Concepcion*?, page 20
- The Merits and Risks of Corporate ADR Programs, page 17
- Mock Employment Mediation Demonstration **(F)**, page 18
- Vacating Arbitration Awards for the Right Reason, the Wrong Reason or Any Reason, page 11
- What You Need to Know in Preparing for and Representing Your Client in Arbitration, page 18

## Discrimination, Harassment & Retaliation

### Hot topics in the employment and retaliation arena

- Accommodating Mental/Cognitive Disabilities and Chronic Episodic Conditions in the Workplace, page 5
- The Alphabet Junction of Employee Leave and Accommodations, page 22
- Cutting Edge Issues in Age Discrimination and the Aging Workforce, page 19
- Developing Theories of Discrimination, including Associational Discrimination and Retaliation, page 11
- Disparate Impact Discrimination and Validation, page 18
- Discrimination Arising from Dress Code and Grooming Policies, page 5
- Intersection of Race, Ethnicity, Gender and Disability Discrimination, page 4
- Is Off-Duty Use of Marijuana Grounds for Disqualification or Termination?, page 22
- Pay Disparity: Litigation, Enforcement and Remedies, page 8
- Pregnancy Discrimination Issues Take a Front Seat, page 11
- Religious Accommodations and Discrimination in the 21st Century, page 5

- The Rights of LGBT Employees in the Workplace, page 11
- Striking the Balance between Civilian Employment and Veteran and Service Member Rights, including USERRA and Disability Issues, page 18
- The Use of Experts in Title VII Cases, page 7

## Employee Benefits

- The Future of State and Municipal Pensions, page 19
- Patient Protection and Affordable Care Act Update, page 11
- What's Next After *Windsor*?, page 19

## Immigration

### Programs investigating critical issues in immigration law that affect all practice areas

- Mergers and Acquisitions: The Assets and Liabilities of Foreign Workers, page 19
- The Pitfalls of Immigration Compliance, page 19

## International

### Programs devoted to lawyers with an interest in developments in union and non-union workplaces outside the United States

- A Comparative Global Discussion of the Features and Regulation of Flexible Work Forms, page 5
- Alternate Forms of Union Representation: Myth or Reality in North America?, page 12
- Doing Business in the Asia Pacific: Pitfalls and Advantages for Employers and Employees, page 6

## Labor-Management Relations

### Programs exploring developments in traditional labor law, the Railway Labor Act, the public and federal sectors and traps for the unwary in the non-union workplace

- Alternate Forms of Union Representation: Myth or Reality in North America?, page 12
- Alternative Organizing Campaigns and Alternative Employees, page 12
- Can Civil Service Discharge, Teacher Tenure and Public Employee Evaluation Procedures Co-exist?, page 20
- Class Action Waivers and State Laws: What Happens After *Concepcion*?, page 20

- The Continued Battle Over "Right-to-Work," "Paycheck Fairness" and "Employee Rights", page 12
- An Ethical Melodrama in Several Parts, Complete with "Heroes," "Villains" and Even Lawyers, page 8
- Federal Government Litigation: Practice and Procedure, page 20
- The Future of State and Municipal Pensions, page 19
- The Implications of *Harris v. Quinn*, page 20
- Meet the NLRB General Counsel, page 6
- National Labor Relations Act Fundamentals **(F)**, page 6
- NLRB Update, page 6
- Patient Protection and Affordable Care Act Update, page 11
- Priority Cases: Jurisdictional Disputes, Strikes, Pickets, Slow Downs and Threats of Labor Action, page 6
- Protected and Concerted Activity in the Digital Age, page 20
- The Railway Labor Act: You Can't Go Anywhere Without It! **(F)**, page 6
- Spotlight on Labor Law in Entertainment: What Makes It Different?, page 12
- Tips on Practice Before the National Labor Relations Board: Expert Advice for Lawyers at All Levels, page 6
- Vacating Arbitration Awards for the Right Reason, the Wrong Reason or Any Reason, page 11

## Litigation/Class Action

### Programs emphasizing litigation skills, including developments in class actions

- Advanced Issues in Reductions-in-Force, page 17
- Class Action Fundamentals **(F)**, page 7
- Class Action Waivers and State Laws: What Happens After *Concepcion*?, page 20
- Developing Trends in Non-Compete Agreements and Other Restrictive Covenants, page 9
- Developments and Trends in SOX and Dodd-Frank Whistleblower Litigation, page 9
- The Ethics of Fee Arrangements and Settlements **(E)**, page 21
- The Ethics of Inadvertent Disclosure and Informal Discovery **(E)**, page 13
- Federal Government Litigation: Practice and Procedure, page 20
- How to Measure and Prove Damages in Wage and Hour Cases, page 8

# Program Overview

- How Proposed Changes to the Federal Rules of Civil Procedure May Challenge Your Practice, *page 12*
- How to Take and Use a Video Deposition (F), *page 7*
- Intersection of Race, Ethnicity, Gender and Disability Discrimination, *page 4*
- Jury Instructions and Closings, *page 13*
- Litigating Hybrids under FRCP 23 and Section 216: How Do You Certify a Class and a Collective Action?, *page 16*
- Litigation Skills Theatre, *page 7*
- Non-Employment Class Action Developments that Labor and Employment Lawyers Need to Know, *page 7*
- Predictive Coding and Extremely Practical E-Discovery, *page 21*
- Tricky ESI and Other Evidentiary Issues, *page 7*
- The Use of Experts in Title VII Cases, *page 7*
- An Update on Misclassification Litigation, including Joint Employment and Related Issues, *page 16*
- Watch Dog Employees: Lawyers, Compliance Officers and Internal Auditors as Whistleblowers, *page 16*
- Whistleblower Retaliation Claims: Client Intake and Issue Spotting (F), *page 8*
- Whistleblower Rewards: Trends and Emerging Issues in Qui Tam Actions and IRS, SEC and CFTC Whistleblower Rewards Claims, *page 9*
- Why Is Direct Examination So Hard?, *page 13*

## Practice and Professionalism

Programs dealing with ethics issues, technology developments and law firm management

- An Ethical Melodrama in Several Parts, Complete with “Heroes,” “Villains,” “Damsels,” and even Lawyers (E), *page 8*
- Do I Really Need that New App? (T), *page 13*
- Employment Law and Policies for Law Firms, *page 8*
- The Ethics of Fee Arrangements and Settlements (E), *page 21*
- The Ethics of Inadvertent Disclosure and Informal Discovery (E), *page 13*
- Professional and Ethical Obligations in the Face of Drug or Alcohol Abuse by Lawyers (E), *page 16*

**Legend: E = Ethics F = Fundamentals T = Technology**

*Note: Programs may be listed in more than one area of interest.*

## Wage and Hour

With the explosion of wage and hour litigation, these programs will be of interest to all constituencies

- Best Practices for Wage and Hour Compliance, *page 21*
- The Department of Labor Audit Process and How It Has Changed, *page 16*
- How to Measure and Prove Damages in Wage and Hour Cases, *page 8*
- Litigating Hybrids under FRCP 23 and Section 216: How Do You Certify a Class and a Collective Action?, *page 16*
- Pay Disparity: Litigation, Enforcement and Remedies, *page 8*
- An Update on Misclassification Litigation, including Joint Employment and Related Issues, *page 16*
- Wage and Hour Basics (F), *page 8*

## Whistleblower

- Developments and Trends in SOX and Dodd-Frank Whistleblower Litigation, *page 9*
- Watch Dog Employees: Lawyers, Compliance Officers and Internal Auditors as Whistleblowers, *page 16*
- Whistleblower Retaliation Claims: Client Intake and Issue Spotting (F), *page 8*
- Whistleblower Rewards: Trends and Emerging Issues in Qui Tam Actions and IRS, SEC and CFTC Whistleblower Rewards Claims, *page 9*

## Workplace Problems and Solutions

Programs to help lawyers identify workplace problems and how to pursue, manage and find solutions for them

- Advanced Investigations: What am I Missing?, *page 17*
- Advanced Issues in Reductions-in-Force, *page 17*
- The Alphabet Junction of Employee Leave and Accommodations, *page 22*
- Best Practices for Wage and Hour Compliance, *page 21*
- Best Practices in Workplace Training in the Prevention of Human Trafficking, *page 21*

- A Comparative Global Discussion of the Features and Regulation of Flexible Work Forms, *page 5*
- The Department of Labor Wage and Hour Division—Strategic Enforcement and the Changing Workplace, *page 16*
- Developing Trends in Non-Compete Agreements and Other Restrictive Covenants, *page 9*
- Eliminating Bullying and Incivility: Training the Trainer, *page 10*
- Employee Mobility and the Impact on Company Confidential Information, *page 17*
- Evaluation of State Return to Work Programs: Can Workers Safely Return to Work Sooner?, *page 22*
- Fundamental Intellectual Property Law and Related Restrictive Covenants for Labor and Employment Lawyers (F), *page 9*
- Legal Issues and Safeguards Associated with Performance Evaluation Programs, *page 9*
- Mergers and Acquisitions: The Assets and Liabilities of Foreign Workers, *page 19*
- The Merits and Risks of Corporate ADR Programs, *page 17*
- Is Off-Duty Use of Marijuana Grounds for Disqualification or Termination?, *page 22*
- Patient Protection and Affordable Care Act Update, *page 11*
- The Pitfalls of Immigration Compliance, *page 19*
- Protected and Concerted Activity in the Digital Age, *page 20*
- Protecting Workers from Retaliation for Asserting their Right to a Safe and Healthy Workplace, *page 10*
- Religious Accommodations and Discrimination in the 21st Century, *page 5*
- The Rights of LGBT Employees in the Workplace, *page 11*
- Top Five Employment Policies, *page 17*
- Watch Dog Employees: Lawyers, Compliance Officers and Internal Auditors as Whistleblowers, *page 16*
- What Happens When Behavior in the Workplace Freaks Out Co-Workers?, *page 10*
- What's Next After Windsor?, *page 19*



# 8th Annual Labor and Employment Law

## Wednesday, November 5

- 2:30 – 3:30 pm

### Law Student Orientation

This event will offer students a casual introduction to the ins and outs of the Annual Section Conference. Students also will receive tips for making the most out of their Conference experience.

- 3:30 – 4:30 pm

### Pre-Conference Program: Raising the Level of Ethics and Professionalism in the Labor and Employment Bar

This panel of well-respected judges will share their views from the bench about ethics and professionalism in the practice of labor and employment law. The judges will address a broad range of ethical issues that labor and employment lawyers often face and provide guidance on the way courts expect practitioners to handle them. They also will discuss the ways, from a court's perspective, that treating colleagues with respect and professionalism can benefit lawyers and their clients.

#### MODERATORS:

**Barry A. Hartstein**, *Littler Mendelson P.C.*,  
Chicago, IL

**Justin M. Swartz**, *Outten & Golden LLP*,  
New York, NY

#### SPEAKERS:

**Hon. Mark W. Bennett**, *U.S. District Court for the Northern District of Iowa*,  
Sioux City, IA

**Hon. Bernice B. Donald**, *U.S. Court of Appeals for the Sixth Circuit*, Memphis, TN

**Hon. George H. King**, *U.S. District Court for the Central District of California*,  
Los Angeles, CA

- 4:30 – 5:30 pm

### First-Time Attendee/ New Section Member Orientation

- 5:30 – 6:00 pm

### First-Time Attendee/ New Section Member Reception

If you are a new member of the Section of Labor and Employment Law or if you've just never attended a Section meeting before, begin the Conference on the right foot by joining your colleagues at this reception.

- 6:00 – 8:00 pm

### Welcome Reception and Committee Expo

All attendees are invited to meet, greet and network during this opening reception at the JW Marriott at L.A. Live. Section Committees will provide information about publications, services and programs they provide to labor and employment lawyers.

## Thursday, November 6

### ◆ Plenary Session

- 11:00 – 11:15 am

#### Welcome and Introductions

Featuring remarks by Paulette Brown, ABA President-Elect.

- 11:15 am – 12:30 pm

#### Workplace Trends in a Transitioning Society

Since 1982, women have earned 10 million more college degrees than men. The government projects that in five years, those who are currently "minorities" will make up more than half of the children under the age of 18. More than half of senior corporate executives say they would be open to changing employers. These facts paint a picture of a society in transition. Trend analyst Dan McGinn will address these and other notable workplace trends, which will be followed by an interactive discussion with labor and employment law experts regarding the impact of these trends on our profession.

#### MODERATOR:

**Mary K. O'Melveny**, *Communications Workers of America*, Washington, DC

#### SPEAKERS:

**Hon. Stephen R. Reinhardt**, *U.S. Court of Appeals for the Ninth Circuit*,  
Los Angeles, CA

**Kelly M. Dermody**, *Lieff, Cabraser, Heimann & Bernstein, LLP*, San Francisco, CA

**Lynne C. Hermle**, *Orrick, Herrington & Sutcliffe LLP*, San Francisco, CA

**Dan McGinn**, *McGinn and Company*,  
Washington, DC

### ◆ Discrimination, Harassment and Retaliation

- 8:00 – 9:15 am

#### Intersection of Race, Ethnicity, Gender and Disability Discrimination

This panel will address the multiple strategic and practical complications that arise when an employee claims discrimination on multiple bases, including:



# Conference Program Schedule

- Are an employee's claims weakened or enhanced when the employee raises multiple claims?
- What is the status of "sex plus" and similar theories of discrimination?
- Does an employee risk losing on all claims if the jury cannot find that any one type of discrimination was the "but for" cause of the adverse job action?
- Should employers handle these multiple claims any differently?

#### MODERATOR:

**Fausto E. Zapata, Jr.**, *The Law Offices of Fausto E. Zapata, Jr., P.C.*, New York, NY

#### SPEAKERS:

**Tiffanie C. Benfer**, *Hardwick Benfer LLC*, Doylestown, PA

**Gregory M. Sato**, *Kobayashi, Sugita & Goda LLP*, Honolulu, HI

**Stephanie Struble**, *U.S. Equal Employment Opportunity Commission*, Denver, CO

- 9:30 – 10:45 am

## Religious Accommodations and Discrimination in the 21st Century

What is the employee's burden when seeking a religious accommodation? (Non-flexibility? Sincerity?) What is a "religious" belief and what is just "cultural"? What triggers an employer's duty to accommodate an employee's religious beliefs? When is hardship "undue"? To what extent may an employer inquire as to an employee's actual religious practices? To what extent may an employee's religious beliefs be grounds for not joining a union? When, if ever, may an employer impose its religious standards on its employees? Our panel will answer these questions and more in the difficult area of religion in the workplace.

#### MODERATOR:

**Melissa S. Woods**, *Meyer, Suozzi, English & Klein, P.C.*, New York, NY

#### SPEAKERS:

**Raheemah Abdulaleem**, *U.S. Department of Justice*, Washington, DC

**Zahra Biloo**, *Council on American-Islamic Relations*, Santa Clara, CA

**Janie F. Schulman**, *Morrison & Foerster LLP*, Los Angeles, CA

**George L. Washington, Jr.**, *Orange Business Services*, Oak Hill, VA

- 2:15 – 3:30 pm

## Accommodating Mental/ Cognitive Disabilities and Chronic Episodic Conditions in the Workplace

Employers and employees are faced with difficult decisions in crafting accommodations for an employee's mental condition or chronic episodic condition. For example, Posttraumatic Stress Disorder (PTSD) has become a more common challenge with the influx into U.S. workplaces of veterans returning home from recent conflicts around the world. What does an employer do when the employee's condition can flare up any day without notice? What can an employee reasonably be expected to do? Are there accommodations other than leave to consider? At what point may undue hardship be reached? Join our panel for a lively discussion of these and other difficult accommodation issues.

#### MODERATOR:

**Melinda C. Burrows**, *Outerwall, Inc.*, Bellevue, WA

#### SPEAKERS:

**Candis W. Bowles**, *Disability Rights California*, Los Angeles, CA

**Melinda J. Catherine**, *Fisher & Phillips LLP*, Portland, ME

**Christopher J. Kuczynski**, *U.S. Equal Employment Opportunity Commission*, Washington, DC

**Gening Liao**, *Schwartz, Steinsapir, Dohrmann & Sommers, LLP*, Los Angeles, CA

- 3:45 – 5:00 pm

## Discrimination Arising from Dress Code and Grooming Policies

Dress codes and appearance standards are important to an employer's image but can result in discrimination and harassment claims. This panel will discuss cutting edge issues that can arise from dress code and grooming policies, which may have different effects based on gender, transgender/transitioning status, race or disability. When may policies be different by gender? When may an employer establish weight-based standards or rules concerning make-up and hair styles that may have different effects based on race or ethnicity?

Are accommodations for religious beliefs available? Come enjoy a spirited discussion of these and other issues related to appearance standards.

#### MODERATOR:

**Louis Lopez**, *Office of Special Counsel*, Washington, DC

#### SPEAKERS:

**Mario L. Barnes**, *University of California Irvine, School of Law*, Irvine, CA

**Jeanne Goldberg**, *U.S. Equal Employment Opportunity Commission*, Washington, DC

**Michelle Hughes**, *Costco Wholesale*, Issaquah, WA

**Jay Jaffe**, *1199 SEIU*, New York, NY

## ♦ International

- 2:15 – 3:30 pm

## A Comparative Global Discussion of the Features and Regulation of Flexible Work Forms

Globalization, the spread of IT and the volatility of markets have created a new economy that demands flexibility in the workplace. The result has been the decline of the standard employment relationship and a dramatic increase in flexible work forms, such as freelancers, temp agency workers, (false) self-employment, on-call work and internationally seconded employees. Unions and NGOs alike oppose these non-standard work forms, arguing that these types of precarious work are often poorly paid, and that employees engaged in it are insecure and unprotected. The panel will examine the regulations regarding contingency work in various global regions and how they have reinforced or lessened the differences between standard and flexible employment. Possible future developments will be discussed as well as discrimination issues, because women often are over-represented in non-standard work forms.

#### MODERATOR:

**Jeffrey E Goodman**, *Hicks Morley Hamilton Stewart Storie LLP*, Toronto, Canada

#### SPEAKERS:

**Mathilde Houet-Weil**, *Weil & Associés*, Paris, France

**Annemarie Muntz**, *Randstad Holdings*, Naarden, Netherlands

**Katherine Stone**, *University of California*, Los Angeles, Los Angeles, CA

**Joan C. Williams**, *Center for Worklife Law*, San Francisco, CA



# 8th Annual Labor and Employment Law Conference

• 3:45 – 5:00 pm

## Doing Business in the Asia Pacific: Pitfalls and Advantages for Employers and Employees

This panel will explore the global effects of the evolving labor and employment laws in the Asia Pacific, focusing on China, Singapore, Australia, New Zealand and other key countries in the region. The discussion will explore the challenges with which cross-border employers, employees and unions are faced with when doing business in these countries and highlight some of the developments in laws affecting contract rights, employee benefits, and worker safety in each country.

### MODERATOR:

**Wendi S. Lazar**, Outten & Golden LLP, New York, NY

### SPEAKERS:

**Matthew Durham**, Winston & Strawn LLP, Shanghai, People's Republic of China

**Maxwell Norman**, Forever 21, Inc., Los Angeles, CA

## ♦ Labor-Management Relations

• 8:00 – 9:15 am

## National Labor Relations Act Fundamentals (F)

Whether you are new to the NLRB or just need a refresher on handling representation cases and unfair labor practice charges at the NLRB, this panel will provide an overview of those procedures and practice pointers from seasoned practitioners inside and outside the agency. The panelists also will discuss the substantive issues that are most likely to be encountered in practicing before the NLRB today.

### MODERATOR:

**Mori Pam Rubin**, National Labor Relations Board, Los Angeles, CA

### SPEAKERS:

**Lisa Demidovich**, United Nurses Associations of California, Los Angeles, CA

**Gerald L. Pauling, II**, Seyfarth Shaw LLP, Chicago, IL

• 8:00 – 9:15 am

## Priority Cases: Jurisdictional Disputes, Strikes, Pickets, Slow Downs and Threats of Labor Action

Over the past three years there have been a variety of priority cases, a few of which (ports and airports) received media attention. Why now? This panel will provide an overview regarding a few of the high profile cases as well as answer procedural questions regarding priority charges. Such questions include: How is a priority charge identified? What should a practitioner expect when seeking to file or defend against a priority charge? What kind of evidence is required? When is it required? What is involved in a 10(k) proceeding? When is the Board likely to seek a 10(l)?

### MODERATOR:

**Olivia Garcia**, National Labor Relations Board, Los Angeles, CA

### SPEAKERS:

**Rob Remar**, Leonard Carder LLP, San Francisco, CA

**Brent L. Wilson**, Elarbee, Thompson, Sapp & Wilson, LLP, Atlanta, GA

• 9:30 – 10:45 am

## NLRB Update

Panelists will discuss recent NLRB decisions of note as well as important issues pending before the NLRB. How will these decisions affect employers, unions, and employees? Do these decisions reflect a fundamental change in the law or merely an adaptation of the law to the modern economy? How will the courts view these issues if the Board's decisions are challenged?

### MODERATOR:

**William B. Cowen**, National Labor Relations Board, Washington, DC

### SPEAKERS:

**James W. Bucking**, Foley Hoag LLP, Boston, MA

**Susan Davis**, Cohen, Weiss and Simon LLP, New York, NY

• 9:30 – 10:45 am

## The Railway Labor Act: You Can't Go Anywhere Without It! (F)

This program will address how the Railway Labor Act, which covers labor relations in the air and rail industries, affects your everyday life—from

ensuring the airlines and commuter rail get you to your destination to ensuring that the freight railroads deliver essential goods. Specific issues to be discussed include “minor disputes,” interpretation or application of collective bargaining agreements, pre-emption, and airline bankruptcy and reorganization issues.

### MODERATOR:

**Mary L. Johnson**, National Mediation Board, Washington, DC

### SPEAKERS:

**Richard S. Edleman**, O'Donnell, Schwartz & Anderson, P.C., Washington, DC

**Deirdre E. Hamilton**, International Brotherhood of Teamsters, Washington, DC

**Aparna B. Joshi**, O'Melveny & Myers LLP, Los Angeles, CA

**Joanna L. Moorhead**, National Rail Labor Conference, Washington, DC

• 2:15 – 3:30 pm

## Tips on Practice Before the National Labor Relations Board: Expert Advice for Lawyers at All Levels

This unique panel will provide insights on all facets of practice before the NLRB, including before the Board, the General Counsel and the Regional Offices. Whether you are an experienced practitioner or relatively new to practice before the NLRB, this panel will give you valuable practice tips from the highest levels of the agency.

### MODERATORS:

**H. Victoria Hedian**, Abato Rubenstein and Abato PA, Towson, MD

**M. Jefferson Starling, III**, Balch & Bingham LLP, Birmingham, AL

### SPEAKERS:

**Hon. Richard F. Griffin, Jr.**, National Labor Relations Board, Washington, DC

**Hon. Harry I. Johnson, III**, National Labor Relations Board, Washington, DC

**Joseph Frankl**, National Labor Relations Board, San Francisco, CA

• 3:45 – 5:00 pm

## Meet the NLRB General Counsel

Join us for a candid discussion of issues faced by the General Counsel over the past year.

### MODERATORS:

**Jonathan C. Fritts**, Morgan, Lewis & Bockius LLP, Washington, DC

**Robert S. Giolito**, Robert S. Giolito P.C., Los Angeles, CA



### SPEAKER:

**Hon. Richard F. Griffin, Jr.**, National Labor Relations Board, Washington, DC

### ♦ Litigation/Class Action

• 8:00 – 9:15 am

#### Tricky ESI and Other Evidentiary Issues

This panel of experienced litigators and a judge discuss thorny evidentiary issues commonly found in employment cases, including ESI evidence. The panel will address the admissibility at trial of social media and electronic communications, including how to establish the requisite foundation to get your important ESI evidence admitted. The panel also will consider issues relating to the admissibility of evidence concerning a plaintiff's prior claims, lawsuits, and medical history; a defendant's financial status and handling of other workplace complaints; and a harasser's prior misconduct. The panel will break down this process so that it's no longer as intimidating as it may seem.

### MODERATOR:

**Beth E. Terrell**, Terrell Marshall & Daudt PLLC, Seattle, WA

### SPEAKERS:

**Hon. Elizabeth D. Laporte**, U.S. District Court for the Northern District of California, San Francisco, CA

**Thomas F. Hurka**, Morgan, Lewis & Bockius LLP, Chicago, IL

**Wesley G. Kennedy**, Allison Slutsky & Kennedy, PC, Chicago, IL

**Christopher J. Yost**, FedEx Corporation, Irvine, CA

• 8:00 – 9:15 am

#### The Use of Experts in Title VII Cases

This advanced-level panel will examine the use of statistics in employment law class actions and multi-plaintiff cases following *Wal-Mart v. Dukes* and will address the role of non-statistical experts, such as I/O psychologists, in the litigation of employment law cases, particularly employment discrimination cases. Panelists also will offer tips on working with labor economists, statisticians and other experts in developing data and preparing experts for deposition and trial.

### MODERATOR:

**Jahan C. Sagafi**, Outten & Golden LLP, San Francisco, CA

### SPEAKERS:

**Amy M. Aukstikalis**, Welch Consulting, Los Angeles, CA

**Heather A. Morgan**, Paul Hastings LLP, Los Angeles, CA

**Ali Saad**, Resolution Economics Group LLC, Beverly Hills, CA

• 9:30 – 10:45 am

#### Non-Employment Class Action Developments that Labor and Employment Lawyers Need to Know

This panel explores developments in class action jurisprudence outside of the employment law area that may impact employment law cases. While many employment law practitioners are familiar with developments in the law of arbitration, practitioners—and courts—also are beginning to grapple with the impact Supreme Court cases from other areas of the law may have on employment cases. This panel will discuss Comcast and related cases for their relevance to damages in employment law class actions, the implications of the Supreme Court's decision potentially to revisit the "presumption of reliance" in securities cases, and the effect of other developments relating to arbitration, the Class Action Fairness Act and due process on employment class actions.

### MODERATOR:

**Jeffery N. Young**, Johnson, Webbert & Young, LLP, Augusta, ME

### SPEAKERS:

**Eric L. Barnum**, Schiff Hardin LLP, Atlanta, GA

**Rachel Geman**, Lieff, Cabraser, Heimann & Bernstein, LLP, New York, NY

• 2:15 – 3:30 pm

#### How to Take and Use a Video Deposition (F)

Litigants increasingly are taking and using video depositions. This session will examine the rules for taking such depositions; how to do it yourself, including equipment needed to do so; whether deposition techniques and practices differ when a video deposition is taken; and the use of such depositions for purposes of summary judgment, mediation and trial.

### MODERATOR:

**Daniel P. Bonnett**, Martin & Bonnett, P.L.L.C., Phoenix, AZ

### SPEAKERS:

**Hon. Virginia Keeney**, Superior Court of Los Angeles County, Los Angeles, CA

**Regina A. Petty**, Fisher & Phillips, LLP, San Diego, CA

**David G. Webbert**, Johnson, Webbert & Young, LLP, Augusta, ME

• 3:45 – 5:00 pm

#### Class Action Fundamentals (F)

This panel will explore the ABCs of class actions, looking at the Rule 23(a) and 23(b) requirements, and the various issue classes under Rule 23(c). The speakers will address such topics as: (1) administrative exhaustion under Title VII in a class context, (2) the investigation of a class and collective action in the discrimination and wage and hour context, (3) class certification pleadings, and (4) the development of the class certification record.

### MODERATOR:

**Aaron L. Agrenbrod**, Jones Day, San Francisco, CA

### SPEAKERS:

**Hon. William F. Highberger**, Superior Court of Los Angeles County, Los Angeles, CA

**George A. Hanson**, Stueve Siegel Hanson LLP, Kansas City, MO

**Shannon Liss-Riordan**, Lichten & Liss-Riordan, P.C., Boston, MA

• 3:45 – 5:00 pm

#### Litigation Skills Theatre

This panel will view and discuss vignettes from Frank Rothchild's "33 Ways to Winning Advocacy" video, which demonstrates various trial issues, problems and techniques in a real courtroom setting, followed by commentary.

### MODERATOR:

**Mark D. Risk**, Mark Risk, P.C., New York, NY

### SPEAKERS:

**Hon. Steve C. Jones**, U.S. District Court for the Northern District of Georgia, Atlanta, GA

**Maureen S. Binetti**, Wilentz, Goldman & Spitzer P.A., Woodbridge, NJ

**Toni M. Jackson**, U.S. Department of Justice, Washington, DC

**Gary T. Lafayette**, Lafayette & Kumagai LLP, San Francisco, CA

**Jules L. Smith**, Blitman & King LLP, Rochester, NY

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## ◆ Practice and Professionalism

• 2:15 – 3:30 pm

### An Ethical Melodrama in Several Parts, Complete with “Heroes,” “Villains” and Even Lawyers (E)

This program contains a cast of “characters,” consisting of representatives of all constituencies in public sector employment disputes. Panelists will be asked to react to a multi-part progressive fact pattern that involves a claim by a bargaining unit employee of workplace harassment against a city’s mayor. In-house counsel for the city, union counsel, the employee’s personal counsel, and neutrals will respond to scenarios with potential ethical pitfalls that are all too familiar. The audience will be encouraged to contribute their insights and experiences. The intent is to discuss important ethical issues with a dose of humor to glide through the rough edges.

#### MODERATOR:

**George S. Crisci**, Zashin & Rich Co, LPA, Cleveland, OH

#### SPEAKERS:

**James A. Allmendinger**, NEA–New Hampshire, Concord, NH

**Alice W. Ballard**, Law Office of Alice W. Ballard, P.C., Philadelphia, PA

**Jerry D. Blakemore**, Northern Illinois University, DeKalb, IL

**Lewis G. Brewer**, Spilman Thomas & Battle, PLLC, Charleston, WV

• 3:45 – 5:00 pm

### Employment Law and Policies for Law Firms

The legal industry faces unique challenges in ensuring equal employment opportunity. Whether dealing with mandatory retirement policies, pregnancy discrimination claims, accommodating lawyers with disabilities, or discrimination complaints of various sorts, legal employers must consider both the relevant law and the ethics rules. Lawyers asserting claims against their firms must also consider both the law and ethics rules, especially as they relate to preserving client confidential information and conflicts of interest. This panel will address both the

substantive law of discrimination, as well as the unique ethical considerations that apply to legal employers.

#### MODERATOR:

**Kathleen M. McKenna**, Proskauer Rose LLP, New York, NY

#### SPEAKERS:

**David Cook**, Cook & Logothetis LLC, Cincinnati, OH

**David A. Lowe**, Rudy, Exelrod, Zieff & Lowe, LLP, San Francisco, CA

**Scott A. Moss**, University of Colorado, Boulder, CO

## ◆ Wage and Hour

• 8:00 – 9:15 am

### Wage and Hour Basics (F)

Learn what the Fair Labor Standards Act requires of employers and how employees can assert their rights under the FLSA. This panel will provide an overview of FLSA coverage, exemptions and how FLSA claims can be brought and resolved as individual cases, opt-in collective actions or Rule 23 hybrids.

#### MODERATOR:

**Hope A. Pordy**, Spivak Lipton LLP, New York, NY

#### SPEAKERS:

**Christine M. Jalbert**, Burr & Smith, LLP, Tampa, FL

**David A. Prather**, Ford & Harrison LLP, Memphis, TN

• 9:30 – 10:45 am

### How to Measure and Prove Damages in Wage and Hour Cases

Liability is not the only issue—every attorney needs to possess a clear understanding of damages calculation issues both to litigate and to assess exposure. This panel will address issues regarding damages calculation, including the regular rate of pay determinations, the applicability of the fluctuating workweek method, the availability of liquidated damages, what happens when HR lacks payroll or time records, as well as strategies for estimating damages in settlement discussions, and how to handle damages issues at trial.

#### MODERATOR:

**Joseph E. Tilson**, Meckler Bulger Tilson Marick & Pearson LLP, Chicago, IL

#### SPEAKERS:

**J. Derek Braziel**, Lee & Braziel, L.L.P., Dallas, TX

**Janet M. Herold**, U.S. Department of Labor, San Francisco, CA

**Beth A. Ross**, Leonard Carder LLP, Oakland, CA

• 2:15 – 3:30 pm

### Pay Disparity: Litigation, Enforcement and Remedies

More than 50 years since the Equal Pay Act was passed, litigation and government enforcement continue to address pay gaps. In addition to EPA litigation, the federal government continues its enforcement efforts with OFCCP’s Directive 307 and the EEOC’s 2013-2016 Strategic Enforcement Plan. States like Texas and New Mexico also are focusing on disparity. Expert panelists will discuss the most recent trends in litigation and enforcement and provide practical tips on how to identify problems/opportunities and fix or exploit disparities, discriminatory or otherwise. The interplay between EPA and FLS litigation and enforcement actions also will be explored.

#### MODERATOR:

**David S. Fortney**, Fortney & Scott, LLC, Washington, DC

#### SPEAKERS:

**Hon. Patricia A. Shiu**, U.S. Department of Labor, Washington, DC

**Hon. Jenny R. Yang**, Equal Employment Opportunity Commission, Washington, DC

**Jon C. Goldfarb**, Wiggins, Childs, Quinn & Pantazis, LLC, Birmingham, AL

## ◆ Whistleblower

• 8:00 – 9:15 am

### Whistleblower Retaliation Claims: Client Intake and Issue Spotting (F)

The proliferation of whistleblower retaliation and reward laws has created a complex maze of claims and remedies. This panel will introduce practitioners to the statutory maze governing the vast universe of whistleblower claims and examine the issues that often arise in assessing them, including the intersection of federal and state remedies, exhaustion of administrative remedies, claim splitting and claim preclusion, claims exempt from mandatory arbitration, the effect of varying causation standards, and assessing damages.



12:30 – 2:00 p.m.

### Diversity Luncheon: The 50-Year Evolution of Title VII

In celebration of the 50th Anniversary of the passage of Title VII, the Diversity Luncheon will feature a discussion of the statute's history and how it has been used to provide protections for migrant and undocumented workers as well as LGBT individuals in the workplace.

#### MODERATOR:

**Raymond E. Morales**, *Raymond E. Morales Law Offices, San Juan, PR*

#### SPEAKERS:

**Jacqueline A. Berrien**, *Chair, U.S. Equal Employment Opportunity Commission, Washington, DC*

**Eric Dreiband**, *Jones Day, Washington, DC*

**Marielena Hincapié**, *Executive Director, National Immigration Law Center, Los Angeles, CA*

**Jennifer Pizer**, *Law and Policy Project Director, Lambda Legal, Los Angeles, CA*

related restrictive covenants designed to protect a company's interests and ownership rights in its valuable IP assets. This panel will provide a necessary understanding of the different types of IP, the "default" ownership rules under applicable laws, and what a company should do to protect its IP from the beginning of the employment relationship to the end.

#### MODERATOR:

**Daniel P. Westman**, *Morrison & Foerster LLP, McLean, VA*

#### SPEAKERS:

**Elizabeth Ganiere**, *Gulf Stream Coach, Inc., Nappanee, IN*

**Anneliese S. Mayer**, *Merchant & Gould P.C., St. Paul, MN*

**Anthony R. Segall**, *Rothner, Segall & Greenstone, Los Angeles, CA*

### 9:30 – 10:45 am Legal Issues and Safeguards Associated with Performance Evaluation Programs

This program will address some of the new legal issues that are being raised with respect to performance evaluations. Employees' counsel will discuss legal arguments that can be made when a company provides its management level employees with complete freedom to evaluate subordinates and make employment decisions based on those performance

#### MODERATOR:

**Debra S. Katz**, *Katz, Marshall & Banks, LLP, Washington, DC*

#### SPEAKERS:

**Nesheba M. Kittling**, *Fisher & Phillips LLP, Chicago, IL*

**Anthony Rosa**, *U.S. Department of Labor, Washington, DC*

**Gerald M. Waites**, *O'Donoghue & O'Donoghue LLP, Washington, DC*

### 9:30 – 10:45 am

#### Whistleblower Rewards: Trends and Emerging Issues in Qui Tam Actions and IRS, SEC and CFTC Whistleblower Rewards Claims

This session will explore the types of claims that qualify for rewards under the False Claims Act and the rewards programs administered by the Securities & Exchange Commission, Commodity Futures Trading Commission, and Internal Revenue Service, the quantity and quality of evidence needed by the DOJ, IRS, SEC, and CFTC to investigate a case successfully, and current trends in the investigation and prosecution of whistleblower disclosures. The panel also will address the interplay between these reward claims and corporate compliance and reporting obligations.

#### MODERATOR:

**Marcia L. Narine**, *St. Thomas University, Fort Lauderdale, FL*

#### SPEAKERS:

**Michael Delikat**, *Orrick, Herrington & Sutcliffe LLP, New York, NY*

**Sean McKessey**, *U.S. Securities and Exchange Commission, Richmond, VA*

**Jordan A. Thomas**, *Labaton Sucharow LLP, New York, NY*

### 2:15 – 3:30 pm

#### Developments and Trends in SOX and Dodd-Frank Whistleblower Litigation

SOX and Dodd-Frank jurisprudence has been rapidly developing over the past few years—from an energized ARB, to notable decisions in the federal appellate courts on the scope of protected conduct, to the Supreme Court's *Lawson* decision on the scope of SOX coverage. Come for our discussion of the latest cutting-edge developments in SOX, Dodd-Frank and similar whistleblower protection laws, as well as the emerging issues we can expect to see in the future.

#### MODERATOR:

**Richard E. Moberly**, *University of Nebraska, Lincoln, NE*

#### SPEAKERS:

**Megan E. Guenther**, *U.S. Department of Labor, Washington, DC*

**Jason C. Schwartz**, *Gibson, Dunn & Crutcher LLP, Washington, DC*

**Jason M. Zuckerman**, *Law Office of Jason M. Zuckerman PLLC, Washington, DC*

### ◆ Workplace Problems and Solutions

### 8:00 – 9:15 am

#### Developing Trends in Non-Compete Agreements and Other Restrictive Covenants

The law surrounding the formation and enforcement of non-compete agreements and other restrictive covenants is constantly evolving. This panel will discuss best practices when negotiating restrictive covenants from both the employer and employee perspectives. What challenges do employers face when enforcing restrictive covenants abroad? What weight is given to choice of law provisions or adequate consideration to the employee in exchange for the covenant? What defenses do employees have when opposing enforcement of a non-compete—employer's first breach, overbroad restrictions, no protectable interest? Finally, this panel will discuss recent developments regarding the use of and defenses against "non-poaching" agreements between potential competitors or business partners who agree not to recruit, solicit or hire one another's employees.

#### MODERATOR:

**Angie C. Davis**, *Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Memphis, TN*

#### SPEAKERS:

**Eric D. Reicin**, *Morgan Franklin Consulting, McLean, VA*

**Marisa Warren**, *Pedowitz & Meister, LLP, New York, NY*

### 9:30 – 10:45 am

#### Fundamental Intellectual Property Law and Related Restrictive Covenants for Labor and Employment Lawyers (F)

Labor and employment lawyers routinely draft or review agreements regarding intellectual property and

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evaluations. They will explain how such a practice can expose a company to potential claims of disparate impact or disparate treatment regarding pay, promotions or job retention. Outside defense counsel and in-house counsel will explain how to defend against such legal theories and provide practical tips for avoiding such complications.

#### **MODERATOR:**

**Jennifer L. Sabourin**, *Miller, Canfield, Paddock and Stone, P.L.C., Detroit, MI*

#### **SPEAKERS:**

**Adam T. Klein**, *Outten & Golden LLP, New York, NY*

**Kathleen K. Lundquist**, *APTMetrics, Inc., Darien, CT*

**C. Geoffrey Weirch**, *Paul Hastings LLP, Atlanta, GA*

**Carolyn Wisenham**, *CVS Caremark Corporation, Woonsocket, RI*

#### **• 2:15 – 3:30 pm**

### **Eliminating Bullying and Incivility: Training the Trainer**

Bullying and incivility in the workplace raise concerns that go beyond whether the behavior is illegal, and affect all aspects of the working environment. This program features an expert in anti-bullying training and is designed to provide practical, hands-on training to participants such that they will be able to train others in the workplace.

#### **MODERATOR:**

**Monique Gougisha Doucette**, *Ogletree, Deakins, Nash, Smoak & Stewart, P.C., New Orleans, LA*

#### **SPEAKERS:**

**Luanne M. Peterpaul**, *Gluck Waltrath, LLP, Red Bank, NJ*

**Adele Rapport**, *Chicago, IL*

#### **• 3:45 – 5:00 pm**

### **Protecting Workers from Retaliation for Asserting their Right to a Safe and Healthy Workplace**

An essential part of the enforcement of occupational safety and health laws is protecting employees from retaliation when they complain about workplace conditions, report their injuries, or seek compensation for their injuries. Many occupational safety and health statutes contain provisions that make it illegal to engage in such retaliation. In addition, some states have recognized common

law tort actions for employees who have suffered retaliation. This program will cover issues such as the type of conduct protected from retaliation, the procedures for asserting a retaliation claim administratively, the relief that an employee may recover and the overlapping remedies that may exist under different federal statutes and state tort law. It also will focus on the impact of the existence of a collective bargaining agreement on these remedies.

#### **MODERATOR:**

**Mary Dryovage**, *California Occupational Safety and Health, San Francisco, CA*

#### **SPEAKERS:**

**Ava Barbour**, *International Union, UAW, Detroit, MI*

**Andrew J. Rolfes**, *Buchanan Ingersoll & Rooney PC, Philadelphia, PA*

#### **• 3:45 – 5:00 pm**

### **What Happens When Behavior in the Workplace Freaks Out Co-Workers?**

Violent workplace incidents continue and media attention tends to heighten fear and concerns among both employers and employees. These fears, concerns and prejudices create additional workplace issues in how an employee who “acts out” is treated. How should employers respond when workplace conduct is not volitional but caused by a diagnosed or undiagnosed psychological disability? What is the union’s obligation in representing and protecting its members on both sides of this issue? Is there a reasonable accommodation that the employer must provide? What happens if an employee commits a violent act in the workplace and there were indications that the behavior was likely to occur? Join our distinguished panel that will provide insight into analyzing real life circumstances and advising on the intersection of law and mental health issues in the workplace.

#### **MODERATOR:**

**Michael C. Subit**, *Frank Freed Subit & Thomas LLP, Seattle, WA*

#### **SPEAKERS:**

**Shallanda D. Ballard**, *3M, Minneapolis, MN*

**Jeffrey R. Boxter**, *Bush Gotlieb, A Law Corporation, Glendale, CA*

**Kenneth L. Wolf**, *Incident Management Team, Inc., Detroit, MI*

## Friday, November 7

### ◆ Plenary Sessions

#### **• 9:30 – 9:45 am**

### **Presentation of the 2014 Section Awards**

#### **• 9:45 – 11:00 am**

### **Supreme Court Update**

The Section Secretary will provide an informative review of the Supreme Court’s 2013-2014 decisions that impact labor and employment law.

#### **SPEAKER:**

**Michael Z. Green**, *Texas A&M University, Fort Worth, TX*

#### **• 3:45 – 5:00 pm**

### **Ethics in the Age of Technology (E,T)**

Technology has become an integral component of every law practice, including labor and employment. The ABA Model Rules of Professional Conduct now dictate that lawyers are expected to “keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.” This can be a daunting task even for tech-savvy lawyers. In this program, experts in legal technology and the labor and employment law field will explore difficult issues such as maintaining client confidentiality in the cloud, electronic discovery and issues created by use of smart devices, and will provide best practices for avoiding ethical violations.

#### **MODERATOR:**

**Adam S. Forman**, *Miller, Canfield, Paddock and Stone, P.L.C., Detroit, MI*





## SPEAKERS:

**Amanda A. Farahany**, *Barrett & Farahany LLP, Atlanta, GA*

**Gavin W. Manes**, *Avansic, Inc., Tulsa, OK*

**Alvin A. Velazquez**, *SEIU, Washington, DC*

## ♦ Alternative Dispute Resolution

• 2:15 – 3:30 pm

### Vacating Arbitration Awards for the Right Reason, the Wrong Reason or Any Reason

It is well known and long recognized that arbitration awards may be set aside if they violate public policy. Does this second look at an arbitration award based on public policy damage the parties' contractual definition of a grievance and the finality of the arbitration clause so arbitration becomes "final and binding" in name only? Have motions to set aside awards increased as the influence of organized labor "waned"? May advocates make arguments in a judicial proceeding that were not argued in the "final and binding" grievance forum? Is this problem more acute in the public sector?

## MODERATOR:

**Irma Rodriguez Moisa**, *Atkinson, Andelson, Loya, Ruud & Romo, PC, Cerritos, CA*

## SPEAKERS:

**Norman Brand**, *Arbitration and Mediation Offices of Norman Brand, San Francisco, CA*

**Brenda D. Pryor**, *Cook County College Teachers Union, Chicago, IL*

## ♦ Discrimination, Harassment and Retaliation

• 8:00 – 9:15 am

### Pregnancy Discrimination Issues Take a Front Seat

The EEOC has announced a renewed interest in pursuing pregnancy discrimination claims. In *Young v. UPS*, the U.S. Supreme Court may decide whether employers must treat pregnancy as favorably as the most favored accommodations provided to a non-pregnant employee (e.g., light duty assignments) who needs accommodations. Numerous cities and states have passed laws banning workplace pregnancy discrimination. The panel will include a discussion

of the recent wave of pregnancy discrimination claims and evolving statutory and case law.

## MODERATOR:

**Judith D. Keyes**, *Davis Wright Tremaine LLP, San Francisco, CA*

## SPEAKERS:

**Ronetta J. Francis**, *Wal-Mart Stores, Inc., Bentonville, AR*

**Peggy R. Mastroianni**, *U.S. Equal Employment Opportunity Commission, Washington, DC*

**Emily Nugent**, *Dickson Geesman LLP, Oakland, CA*

**Richard A. Williams, Jr.**, *Law Offices of Richard A. Williams, Minneapolis, MN*

• 11:00 am – 12:30 pm

### Developing Theories of Discrimination, including Associational Discrimination and Retaliation

Eight years after the Supreme Court's *Burlington Northern & Santa Fe Ry. Co. v. White* decision, this panel will revisit the state of the law and review the latest developments regarding retaliation and similar claims. Topics examined will include post-employment retaliation; associational (or "third-party") retaliation in light of *Thompson v. North American Stainless, LP*; expansion of "opposition" under *Crawford v. Metropolitan Government of Nashville and Davidson County*; and emerging theories, such as ADA "interference" claims and recently-filed EEOC Title VII "pattern or practice" actions challenging certain severance agreements.

## MODERATOR:

**Myra L. McKenzie-Harris**, *Wal-Mart Stores, Inc., Bentonville, AR*

## SPEAKERS:

**Paul W. Mollica**, *Outten & Golden LLP, Chicago, IL*

**Grace E. Speights**, *Morgan, Lewis & Bockius LLP, Washington, DC*

**Daniel T. Vail**, *U.S. Equal Employment Opportunity Commission, Washington, DC*

• 2:15 – 3:30 pm

### The Rights of LGBT Employees in the Workplace

Sometimes members of the LGBT community raise concerns about issues in the workplace that many take for granted. Co-workers may isolate them for religious or other reasons, or may complain about which restroom/

locker room or shower a member of the LGBT community should or should not use. Is there a risk of unlawful discrimination under federal or state law if an accommodation is not made for all concerned? Is the employer obligated to provide a unisex or single bathroom/locker room or shower? Can the employer mandate leave for an employee transitioning and undergoing gender reassignment surgery? Is there a risk of liability for workplace violence, and for whom? Panelists will help us navigate through these sometimes volatile workplace issues by assisting us to understand what violates the law and the obligations on all sides.

## MODERATOR:

**Paula Johnston**, *Teamsters Local 320, Minneapolis, MN*

## SPEAKERS:

**Hon. Chai R. Feldblum**, *Equal Employment Opportunity Commission, Washington, DC*

**Anthony J. Amendola**, *Mitchell Silberberg & Knupp LLP, Los Angeles, CA*

**Annette M. Bernstein**, *American International Group, Inc., New York, NY*

**Matt Wood**, *Transgender Law Center, Oakland, CA*

## ♦ Employee Benefits

• 8:00 – 9:15 am

### Patient Protection and Affordable Care Act Update

The enactment of the Patient Protection and Affordable Care Act continues to profoundly change the benefits landscape, creating numerous collective bargaining issues for employers, unions and multi-employer funds. This presentation will cover tips, "best practices" and bargaining considerations in light of this legislation. The session also will provide an update on the major PPACA provisions that have and will become effective in 2014 and 2015, including how plans and plan sponsors should monitor their grandfathered status, comply with new rules for non-grandfathered plans, prepare for the employer mandate, address worker misclassification, satisfy the various disclosure requirements, and generally manage the many compliance issues of the PPACA.

## MODERATOR:

**Erin M. Sweeney**, *Dickstein Shapiro LLP, Washington, DC*

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## SPEAKERS:

**Ali Khawar**, U. S. Department of Labor,  
Washington, DC

**Peter S. Dickenson**, Bush Gottlieb, A Law  
Corporation, Glendale, CA

**Mary Ellen Signorille**, AARP Foundation  
Litigation, Washington, DC

## ♦ International

- 11:00 am – 12:30 pm

### Alternate Forms of Union Representation: Myth or Reality in North America?

Certain forms of union representation are foreign to North America. Simply put, the notions of what a union is and does in the EU and in North America are completely different. Notwithstanding these fundamental differences, certain forms of these types of union representation are both being discussed and considered in North America. The potential arrival of works councils into North America raises a number of key questions. What do they mean for traditional unions and for North American employers unfamiliar with them? Are works councils compatible with the NLRA? More fundamentally, how do they actually operate in Europe, and how could this form of representation be adopted for use in North America? Our panel of experts will look not only at these questions but also will explore other forms of collective worker activity such as worker centers and hiring halls, and the issues of international framework agreements and neutrality agreements.

## MODERATOR:

**Stephen B. Moldof**, Cohen, Weiss and  
Simon LLP, New York, NY

## SPEAKERS:

**Michael Bride**, United Food & Commercial  
Workers International Union, Washington, DC

**Gerlind Wisskirchen**, CMS Hasche Sigle,  
Cologne, Germany

## ♦ Labor-Management Relations

- 8:00 – 9:15 am

### Alternative Organizing Campaigns and Alternative Employees

This panel will discuss what constitutes concerted activity in the context of an alternative campaign, what role

worker centers play in these campaigns, and whether alternative campaigns require a different response from employers than traditional union organizing campaigns. In addition, the panelists will address issues involving independent contractors, including the potential risks involved if an employer deals with worker organizations that do not meet the definition of “labor organization” because the workers are not technically “employees,” redefining the test for employee status to resolve issues alternative campaigns present, and how much weight remote access to the workplace and constant availability through technology should be given in considering community of interest.

## MODERATOR:

**Jennifer A. Abruzzo**, National Labor  
Relations Board, Washington, DC

## SPEAKERS:

**Johnnda (Jonee) Bentley**, Service Employees  
International Union, Washington, DC

**Ryan Spillers**, Gilbert & Sackman, A Law  
Corporation, Los Angeles, CA

**Steven D. Wheelless**, Steptoe & Johnson LLP,  
Phoenix, AZ

- 8:00 – 9:15 am

### The Continued Battle Over “Right-to-Work,” “Paycheck Fairness” and “Employee Rights”

Starting in 2011 and continuing to the present, we have seen a nationwide wave of proposed legislation, at both the federal and state levels, to enact or to strengthen so-called “right-to-work,” “paycheck fairness” and “employee rights” laws. These proposals have the effect, if not the intent, of reducing financial support for labor unions to conduct both collective bargaining and political/ideological activities. In addition, the courts recently have weighed in on assessments and “fair share” fees, with the U.S. Supreme Court taking the lead. This program will review recent court decisions addressing the limits of fair share fees, assessments, payroll dues deductions, and other revenue-generating functions, and will then consider the reasons and rationale for these legislative efforts, including the identity of the persons and organizations behind these efforts. The panelists will address the effect of these laws and related, ongoing

legislative efforts on the collective bargaining process and how both sides attempt to influence media coverage pertaining to these issues.

## MODERATOR:

**Catherine L. Fisk**, University of California  
at Irvine, Irvine, CA

## SPEAKERS:

**Joel A. D’Alba**, Asher, Gittler & D’Alba, Ltd,  
Chicago, IL

**Daniel DiSalvo**, Manhattan Institute’s  
Center for State and Local Leadership,  
New York, NY

- 2:15 – 3:30 pm

### Spotlight on Labor Law in Entertainment: What Makes It Different?

Keep an eye on the spotlight as our expert cast of characters explores the varied scenes of practicing labor law in the entertainment industry—a practice that brings together traditional labor as well as intellectual property law, along with an element of antitrust law to boot. Where union density is deep, how are tensions resolved? What are the current sources of friction? And, why have the industry’s unions been so successful?

## MODERATOR:

**Allison Beck**, Federal Mediation &  
Conciliation Service, Washington, DC

## SPEAKERS:

**Duncan W. Crabtree-Ireland**, Screen  
Actors Guild – American Federation of  
Television & Radio Artists, Los Angeles, CA

**Howard D. Fabrick**, Barnes & Thornburg LLP,  
Los Angeles, CA

## ♦ Litigation/Class Action

- 8:00 – 9:15 am

### How Proposed Changes to the Federal Rules of Civil Procedure May Challenge Your Practice

Several changes to the Federal Rules of Civil Procedure aimed at reducing the costs and delays associated with civil litigation have been proposed. These changes would limit the scope of discovery, making it more difficult for employees’ attorneys to secure discovery from employers and possibly reducing the cost of discovery for companies. Through the use of hypothetical situations, this panel will address the proposed procedural changes to the Federal Rules, the practical ramifications of the rule



changes and the consequences of a party's failure to preserve discoverable information. Our panel will provide guidance on best practices in litigation under the new proposed rules.

#### MODERATOR:

**Amy F. Shulman**, Broach & Stulberg, LLP, New York, NY

#### SPEAKERS:

**Hon. Vijay "Jay" C. Gandhi**, U.S. District Court for the Central District of California, Los Angeles, CA

**Gary B. Eidelman**, Saul Ewing LLP, Baltimore, MD

**Richard T. Seymour**, Law Office of Richard T. Seymour, P.L.L.C., Washington, DC

#### • 11:00 am – 12:30 pm

### Jury Instructions and Closings

Lawyers haggle about standards of proof and the phrasing of jury instructions and theorize about how to make effective closing arguments, but these two subjects are often considered separately. Does the jury even care about or understand the jury instructions? Experienced trial lawyers will consider whether and to what extent jury instructions matter and how lawyers can effectively deal with the issues in the instructions and the verdict sheet during closing argument.

#### MODERATOR:

**Robert M. Goldich**, Greenberg Traurig, LLP, Philadelphia, PA

#### SPEAKERS:

**Hon. Jon S. Tigar**, U.S. District Court for the Northern District of California, San Francisco, CA

**Rita B. Kittle**, U.S. Equal Employment Opportunity Commission, Denver, CO

#### • 2:15 – 3:30 pm

### Why Is Direct Examination So Hard?

This program will demonstrate best practices and techniques to make your direct examinations of witnesses come alive, to assist witnesses in the process, and to persuade jurors or the fact-finder of the merits of your case. In addition, the panelists will offer tips on what not to do during direct examinations, and they will explain why effective direct examinations are so hard.

#### MODERATOR:

**Christopher T. Hexter**, Schuchat Cook & Werner, St. Louis, MO

#### SPEAKERS:

**Hon. Mark W. Bennett**, U.S. District Court for the Northern District of Iowa, Sioux City, IA

**Nathan Goldberg**, Allred, Maroko & Goldberg, Los Angeles, CA

**Richard G. Moon**, Verrill Dana LLP, Portland, ME

### ♦ Practice and Professionalism

#### • 8:00 – 9:15 am

### Do I Really Need that New App? (T)

Almost every day, we see lawyers using apps or read about how apps have revolutionized the practice of law. Free and low cost apps for lawyers are now ubiquitous. Some lawyers compete with each other to show off the latest and greatest, while others lag further behind each year. How can the savvy practitioner judge whether to app or not to app? And how does one decide among the numerous apps available which ones work best for your practice? This panel will discuss how apps can help (or not) the practitioner to improve efficiency, sort data, and enhance presentations, and make recommendations on some specific apps they have found to be most useful.

#### MODERATOR:

**Doug Dexter**, Farella Braun + Martel LLP, San Francisco, CA

#### SPEAKERS:

**Darci E. Burrell**, Levy Vinick Burrell Hyams LLP, Oakland, CA

**Rachel See**, National Labor Relations Board, Washington, DC

#### • 11:00 am – 12:30 pm

### The Ethics of Inadvertent Disclosure and Informal Discovery (E)

Discovery often includes more than just the documents intentionally produced from one party to another. Privileged documents may be inadvertently disclosed to the other side. The employee may have left the company with documents in his possession. A third party may be willing to provide documents outside the course of ordinary discovery. Panelists will explore an attorney's ethical obligations when encountering informal discovery or inadvertent disclosure, including whether an attorney has an obligation to return documents, whether he or she may use certain documents, and what disclosures must be made to the other side.

#### MODERATOR:

**Lori L. Deem**, Outten & Golden LLP, Chicago, IL

#### SPEAKERS:

**James M. Altman**, Bryan Cave LLP, New York, NY

**Julie Richard-Spencer**, Robein, Urann, Spencer, Picard and Cangemi, APLC, New Orleans, LA

**Diane Smason**, U.S. Equal Employment Opportunity Commission, Chicago, IL

Continued on page 16



# 8th Annual Labor and Employment Law Conference

## Wednesday, November 5

2:00 – 8:00 pm

**Conference Registration**

2:30 – 3:30 pm

**Law Student Orientation**

3:30 – 4:30 pm

**Pre-Conference Program:  
Raising the Level of Ethics  
in Our Profession**

4:30 – 5:30 pm

**First-Time Attendee/New  
Section Member Orientation**

5:30 – 6:00 pm

**First-Time Attendee/New  
Section Member Reception**

6:00 – 8:00 pm

**Welcome Reception  
and Committee Expo**

## Thursday, November 6

7:00 – 8:00 am

**Continental Breakfast  
and Registration**

8:00 – 9:15 am

- **Developing Trends in Non-Compete Agreements and Other Restrictive Covenants**, page 9
- **Intersection of Race, Ethnicity, Gender and Disability Discrimination**, page 4
- **National Labor Relations Act Fundamentals (F)**, page 6
- **Priority Cases: Jurisdictional Disputes, Strikes, Pickets, Slow Downs and Threats of Labor Action**, page 6
- **Tricky ESI and Other Evidentiary Issues**, page 7
- **The Use of Experts in Title VII Cases**, page 7
- **Wage and Hour Basics (F)**, page 8
- **Whistleblower Retaliation Claims: Client Intake and Issue Spotting (F)**, page 8

9:30 – 10:45 am

- **Fundamental Intellectual Property Law and Related Restrictive Covenants for Labor and Employment Lawyers (F)**, page 9
- **How to Measure and Prove Damages in Wage and Hour Cases**, page 8
- **Legal Issues and Safeguards Associated with Performance Evaluation Programs**, page 9
- **NLRB Update**, page 6
- **Non-Employment Class Action Developments that Labor and Employment Lawyers Need to Know**, page 7
- **The Railway Labor Act: You Can't Go Anywhere Without It! (F)**, page 6
- **Religious Accommodations and Discrimination in the 21st Century**, page 5
- **Whistleblower Rewards: Trends and Emerging Issues in Qui Tam Actions and IRS, SEC and CFTC Whistleblower Rewards Claims**, page 9

11:00 am – 12:30 pm

**Plenary Session: Workplace Trends in a Transitioning Society**, page 4

12:30 pm – 2:00 pm

**Diversity Luncheon: The 50-Year Anniversary of Title VII**, page 9

2:15 – 3:30 pm

- **Accommodating Mental/Cognitive Disabilities and Chronic Episodic Conditions in the Workplace**, page 5
- **A Comparative Global Discussion of the Features and Regulation of Flexible Work Forms**, page 5
- **Developments and Trends in SOX and Dodd-Frank Whistleblower Litigation**, page 9
- **Eliminating Bullying and Incivility: Training the Trainer**, page 10
- **An Ethical Melodrama in Several Parts, Complete with "Heroes," "Villains" and Even Lawyers (E)**, page 8
- **How to Take and Use a Video Deposition (F)**, page 7
- **Pay Disparity: Litigation, Enforcement and Remedies**, page 8
- **Tips on Practice Before the National Labor Relations Board: Expert Advice for Lawyers at All Levels**, page 6

3:45 – 5:00 pm

- **Class Action Fundamentals (F)**, page 7
- **Doing Business in the Asia Pacific: Pitfalls and Advantages for Employers and Employees**, page 6
- **Discrimination Arising from Dress Code and Grooming Policies**, page 5
- **Employment Law and Policies for Law Firms**, page 8
- **Litigation Skills Theatre**, page 7
- **Meet the NLRB General Counsel**, page 6
- **Protecting Workers from Retaliation for Asserting their Right to a Safe and Healthy Workplace**, page 10
- **What Happens When Behavior in the Workplace Freaks Out Co-Workers?**, page 10

5:00 – 6:00 pm

**Diversity Reception**

## Friday, November 7

7:00 – 8:00 am

**Continental Breakfast  
and Registration**

8:00 – 9:15 am

- **Advanced Investigations: What am I Missing?**, page 17
- **Alternative Organizing Campaigns and Alternative Employees**, page 12
- **The Continued Battle Over "Right-to-Work," "Paycheck Fairness" and "Employee Rights"**, page 12
- **The Department of Labor Wage and Hour Division—Strategic Enforcement and the Changing Workplace**, page 16
- **Do I Really Need that New App? (T)**, page 13
- **How Proposed Changes to the Federal Rules of Civil Procedure May Challenge Your Practice**, page 12
- **Patient Protection and Affordable Care Act Update**, page 11
- **Pregnancy Discrimination Issues Take a Front Seat**, page 11

9:30 – 9:45 am

**Plenary Session: Presentation  
of 2014 Section Awards**, page 10



# Program At-A-Glance

9:45 – 11:00 am

**Plenary Session:  
Supreme Court Update**, page 10

11:00 am – 12:30 pm

- **Alternate Forms of Union Representation: Myth or Reality in North America?**, page 12
- **Developing Theories of Discrimination, including Associational Discrimination and Retaliation**, page 11
- **Employee Mobility and the Impact on Company Confidential Information**, page 17
- **The Ethics of Inadvertent Disclosure and Informal Discovery (E)**, page 13
- **Jury Instructions and Closings**, page 13
- **Litigating Hybrids under FRCP 23 and Section 216: How Do You Certify a Class and a Collective Action?**, page 16
- **Top Five Employment Policies**, page 17
- **Watch Dog Employees: Lawyers, Compliance Officers and Internal Auditors as Whistleblowers**, page 16

12:30 – 2:00 pm

**Pro Bono Luncheon**

12:30 – 2:00 pm

**In-House Corporate Counsel Luncheon**

(In-House Corporate Counsel only)

2:15 – 3:30 pm

- **Advanced Issues in Reductions-in-Force**, page 17
- **The Merits and Risks of Corporate ADR Programs**, page 17
- **Professional and Ethical Obligations in the Face of Drug or Alcohol Abuse by Lawyers (E)**, page 16
- **The Rights of LGBT Employees in the Workplace**, page 11
- **Spotlight on Labor Law in Entertainment: What Makes It Different?**, page 12
- **An Update on Misclassification Litigation, including Joint Employment and Related Issues**, page 16
- **Vacating Arbitration Awards for the Right Reason, the Wrong Reason or Any Reason**, page 11
- **Why Is Direct Examination So Hard?**, page 13

3:45 – 5:00 pm

**Plenary Session:  
Ethics in the Age of Technology (E,T)**, page 10

5:00 – 6:00 pm

**Standing Committee Business Meetings**

7:00 – 10:00 pm

**Conference Reception at California Science Center**

## Saturday, November 8

7:00 – 8:00 am

**Continental Breakfast and Registration**

8:00 – 9:15 am

- **Best Practices for Wage and Hour Compliance**, page 21
- **Best Practices in Workplace Training in the Prevention of Human Trafficking**, page 21
- **Disparate Impact Discrimination and Validation**, page 18
- **The Ethics of Fee Arrangements and Settlements (E)**, page 21
- **Evaluation of State Return to Work Programs: Can Workers Safely Return to Work Sooner?**, page 22
- **The Future of State and Municipal Pensions**, page 19
- **Striking the Balance between Civilian Employment and Veteran and Service Member Rights, including USERRA and Disability Issues**, page 18

9:30 – 10:45 am

- **The Alphabet Junction of Employee Leave and Accommodations**, page 22
- **Can Civil Service Discharge, Teacher Tenure and Public Employee Evaluation Procedures Co-exist?**, page 20
- **Class Action Waivers and State Laws: What Happens After *Concepcion*?**, page 20
- **Mergers and Acquisitions: The Assets and Liabilities of Foreign Workers**, page 19
- **Mock Employment Mediation Demonstration (F)**, page 18



- **Protected and Concerted Activity in the Digital Age**, page 20
- **What's Next After *Windsor*?**, page 19

11:00 am – 12:15 pm

- **Cutting Edge Issues in Age Discrimination and the Aging Workforce**, page 19
- **Federal Government Litigation: Practice and Procedure**, page 20
- **The Implications of *Harris v. Quinn***, page 20
- **Is Off-Duty Use of Marijuana Grounds for Disqualification or Termination?**, page 22
- **The Pitfalls of Immigration Compliance**, page 19
- **Predictive Coding and Extremely Practical E-Discovery**, page 21
- **What You Need to Know in Preparing for and Representing Your Client in Arbitration**, page 18

12:30 – 2:00 pm

**Careers in Labor and Employment Law: A “How To” Exploration of Options and Advice for Law Students on Finding the Right Job**

12:30 – 2:00 pm

**The College of Labor and Employment Lawyers Program**

# 8th Annual Labor and Employment Law Conference

• 2:15 – 3:30 pm

## Professional and Ethical Obligations in the Face of Drug or Alcohol Abuse by Lawyers (E)

The lives of most lawyers are challenging. In some instances, lawyers we know (including ourselves) turn to drugs and alcohol to help cope with life and work challenges. While this behavior can be self-destructive, it can also have a negative impact on one's ability to provide competent client service. This panel will address the following questions: What are a lawyer's ethical obligations or duties to report drug and/or alcohol abuse by a lawyer? Do I have to self-report? Do I have to report my partner's or associate's abuse? May I? Does substance abuse render one disabled under the ADA? Are there other ADA implications at play? Through interactive dialogue, attendees will grapple with these difficult questions and be offered best practices on how to answer them in their own lives.

### MODERATOR:

**Howard Z. Rosen**, Posner & Rosen, LLP,  
Los Angeles, CA

### SPEAKERS:

**Richard P. Carlton**, State Bar of California  
Lawyers Assistance Program, Sacramento, CA

**Michelle D. Craig**, Adams and Reese LLP,  
New Orleans, LA

## ♦ Wage and Hour

• 8:00 – 9:15 am

## The Department of Labor Wage and Hour Division—Strategic Enforcement and the Changing Workplace

Now that we are into the second term of the Obama Administration, the Wage and Hour Division has its first Senate Confirmed Administrator in nearly 10 years. This session will provide participants with an opportunity to hear from the newly confirmed Administrator about his strategic enforcement initiatives that draw on a variety of tools and outreach methods to increase compliance and improve workplace conditions, and will feature a dialogue with experienced wage and hour practitioners.

### MODERATOR:

**Dennis M. McClelland**, Phelps Dunbar LLP,  
Tampa, FL

### SPEAKERS:

**David Weil**, U.S. Department of Labor,  
Washington, DC

• 11:00 am – 12:30 pm

## Litigating Hybrids under FRCP 23 and Section 216: How Do You Certify a Class and a Collective Action?

Increasingly, wage and hour cases are being brought as hybrid Rule 23 class actions (opt-out) combined with §216(b) collective actions (opt-in). When should plaintiffs move for conditional certification of the §216(b) collective and the Rule 23 certification of the class? How much discovery should defense counsel insist on prior to certification motions? What is the trend now from the bench in terms of certifying hybrids? How is discovery handled after certification? Hear valuable tips from plaintiffs' counsel about these issues and about ways to ensure against abusive class-wide discovery tactics, creating trial plans designed to help the court manage the hybrid, and methods to guarantee your class remains intact following discovery. Learn defense counsel's discovery strategies and ways to attempt to decertify the class in efforts to make the litigation "go away." The panel also will discuss the impact of a decertification ruling on post-decertification litigation.

### MODERATOR:

**Molly A. Elkin**, Woodley & McGillivray,  
Washington, DC

### SPEAKERS:

**Laura L. Ho**, Goldstein, Borgen, Dardarian  
& Ho, PC, Oakland, CA

**Steven W. Moore**, Ogletree, Deakins, Nash,  
Smoak & Stewart, P.C., Denver, CO

• 2:15 – 3:30 pm

## An Update on Misclassification Litigation, including Joint Employment and Related Issues

Class and collective litigation by employees claiming to be misclassified under the Fair Labor Standards Act continues to thrive involving a number of commonly litigated positions, such as entry level management and administrative jobs. Additionally, a line of recent cases regarding volunteers and interns has brought the issue of joint employment and employee status to the forefront, showing that misclassification

continues to present areas of focus for litigation by plaintiffs and potential liability for employers. This program will provide an advanced and in depth look at misclassification issues including the elimination of the health care companion exemption beginning in 2015. Hear from a panel of experienced lawyers about what the courts are doing in the still expanding world of misclassification litigation.

### MODERATOR:

**Jason C. Marsili**, Posner & Rosen, LLP,  
Los Angeles, CA

### SPEAKERS:

**Hon. M. Patricia Smith**, U.S. Department  
of Labor, Washington, DC

**Michele R. Fischer**, Nichols Kaster, PLLP,  
Minneapolis, MN

**Lindbergh Porter**, Littler Mendelson P.C.,  
San Francisco, CA

## ♦ Whistleblower

• 11:00 am – 12:30 pm

## Watch Dog Employees: Lawyers, Compliance Officers and Internal Auditors as Whistleblowers

This program will address the particular questions surrounding whistleblower claims by employees who, by the nature of their job duties, are expected to report and advise regarding potential wrongdoing by their employers. Is merely "doing one's job" enough to qualify as a whistleblower? Can such employees qualify for governmental "bounties" or pursue retaliation claims against their employers as a result of adverse actions? Are there special rules governing claims by these types of employees? Are there ethical prohibitions or limits on the ability of lawyers to pursue whistleblower claims? This panel will review these questions from the perspective of plaintiff and defense counsel, as well as from the point of view of in-house counsel and individuals employed in such positions.

### MODERATOR:

**Jeffery S. Heller**, BP America, Inc.,  
Houston, TX

### SPEAKERS:

**Jonathan Ben-Asher**, Ritz Clark &  
Ben-Asher LLP, New York, NY

**Lloyd B. Chinn**, Proskauer Rose LLP,  
New York, NY

**Nicole M. Walthour**, International Paper,  
Memphis, TN



### ◆ Workplace Problems and Solutions

• 8:00 – 9:15 am

#### Advanced Investigations: What am I Missing?

An advanced presentation on important topics to consider when planning a workplace investigation, but that are often overlooked, including:

- How will the purpose of the investigation be documented? Will there be an investigation charter? What are the essential elements of the engagement letter with an outside investigator?
- What will the investigator tell witnesses about confidentiality?
- Will there be a report? If so, what will it include and to whom should it be addressed? To whom is the investigator obligated to report?
- Who will meet with the employee who raised the issue to close out the investigation and what will he or she be told?

#### MODERATOR:

**Jeffrey C. Brodin**, *Brodin HR Law, Phoenix, AZ*

#### SPEAKERS:

**Kirsten Scheurer Branigan**, *Law Office of Kirsten Scheurer Branigan, P.C., Nutly, NJ*

**Jennifer L. Goldberg**, *Kaiser Foundation Health Plan, Inc., Pasadena, CA*

**Jay Smith**, *Gilbert & Sackman, A Law Corporation, Los Angeles, CA*

• 11:00 am – 12:30 pm

#### Employee Mobility and the Impact on Company Confidential Information

When employees change jobs how can confidential information be protected? How does a new employer protect itself from the “inevitable disclosure” doctrine when hiring an employee who inherently has confidential information from a former employer? What is “confidential information”? How are the rules different in jurisdictions where restrictive covenants are not enforceable? Can computer forensics be used to help prove, or refute, claims of liability and damages in claims regarding improper disclosure of confidential information? This panel will explore the best practices designed to answer these questions and prevent the risk of improper disclosure of trade secrets, as well as company

and customer information through confidentiality agreements, data monitoring and other means, while also ensuring the protection of employees’ privacy rights and fostering employee loyalty and respecting employee rights.

#### MODERATOR:

**Michael L. Rosen**, *Foley Hoag LLP, Boston, MA*

#### SPEAKERS:

**Scott Koch**, *JP Morgan Chase, Chicago, IL*

**Arnold H. Pedowitz**, *Pedowitz & Meister, LLP, New York, NY*

**Mark G. Spencer**, *Arsenal Consulting, Boston, MA*

• 11:00 am – 12:30 pm

#### Top Five Employment Policies

What are the top five most important policies for every employer to have implemented or revised in the past year, what provisions must those policies contain and what training should be given? In-house, outside, employee and union counsel each will present their views on what are the top five most important policies and why.

#### MODERATOR:

**Gwynne A. Wilcox**, *Levy Ratner, PC, New York, NY*

#### SPEAKERS:

**Nancy L. Abell**, *Paul Hastings LLP, Los Angeles, CA*

**Ann Marie Schmidt**, *Hoffmann-La Roche Inc, Little Falls, NJ*

**Nina T. Pirrotti**, *Garrison, Levin-Epstein, Richardson, Fitzgerald & Pirrotti, P.C., New Haven, CT*

• 2:15 – 3:30 pm

#### Advanced Issues in Reductions-in-Force

All too often, poorly planned reductions-in-force become a source of dispute and litigation because they disregard important legal requirements that protect rights and interests of employees. Panelists will discuss key legal issues that must be addressed when structuring a reduction-in-force, and they will examine various legal claims that can arise in the wake of group terminations. The panel will devote special attention to the operation of the WARN Act and other statutes that are implicated in the reduction-in-force setting.

#### MODERATOR:

**Michael Reiss**, *Davis Wright Tremaine LLP, Seattle, WA*



#### SPEAKERS:

**Richard J. Brean**, *United Steelworkers, Pittsburgh, PA*

**Lori D. Ecker**, *Law Office of Lori D. Ecker, Chicago, IL*

**Christopher Lage**, *U.S. Equal Employment Opportunity Commission, Washington, DC*

**Devjani Mishra**, *Alexion Pharmaceuticals Inc, Cheshire, CT*

• 2:15 – 3:30 pm

#### The Merits and Risks of Corporate ADR Programs

Corporate alternative dispute resolution programs can take many different forms, ranging from informal approaches that channel grievances through managers or HR, to more formal mechanisms with peer review or mandatory mediation or arbitration. Regardless of form, successful ADR systems have common elements that are essential for satisfying participants on all sides. This panel of practitioners will discuss recognized best practices for corporate ADR programs and will examine key legal issues that should be addressed in constructing internal ADR systems. The panel also will debate the viability of legal challenges that arise against the use of corporate ADR programs and will explore how such programs have been received by the courts and the EEOC.

#### MODERATOR:

**Donna M. Hughes**, *Actavis, Parsippany, NJ*

#### SPEAKERS:

**Megan A. Bonanni**, *Pitt McGehee Palmer Rivers & Golden P.C., Royal Oak, MI*

**Diane Goldman**, *Pebble Beach Company, San Francisco, CA*

**Beth Trent**, *International Institute for Conflict Prevention and Resolution, New York, NY*

# 8th Annual Labor and Employment Law Conference

## Saturday, November 8

### ♦ Alternative Dispute Resolution

• 9:30 – 10:45 am

#### Mock Employment Mediation Demonstration (F)

Expert plaintiff and defense mediation advocates and an experienced mediator will demonstrate vignettes of the mediation process, focusing on good techniques and common pitfalls to avoid.

##### MODERATOR:

**Ruth V. Glick**, Mediator and Arbitrator,  
Burlingame, CA

##### SPEAKERS:

**Barbara J. D'Aquila**, Norton Rose  
Fulbright LLP, Minneapolis, MN

**Robert D. Kraus**, Kraus and Zuchlewski,  
New York, NY

**Victor Voloshin**, Equal Employment  
Opportunity Commission, Washington, DC

• 11:00 am – 12:15 pm

#### What You Need to Know in Preparing for and Representing Your Client in Arbitration

This skills-enhancement program will focus on how to represent clients in a particularly vexing arbitration involving an employee's discipline for sexual harassment. Experienced advocates and a seasoned arbitrator will discuss issues related to naming the individual harasser as a respondent, delving into claimant's background and personal conduct, discovering the results of the company's investigation, and advancing and defending significant emotional distress damage claims.

##### MODERATOR:

**Frank C. Botta**, Eckert Seamans Cherin  
& Mellott, LLC, Pittsburgh, PA

##### SPEAKERS:

**Sara Adler**, Arbitrator, Los Angeles, CA

**Raquel Fas Bravo**, The Law Office Of  
Raquel Fas Bravo, Boynton Beach, FL

**Jon H. Rosen**, The Rosen Law Firm,  
Seattle, WA

### ♦ Discrimination, Harassment and Retaliation

• 8:00 – 9:15 am

#### Disparate Impact Discrimination and Validation

This panel will feature a discussion of key issues involving disparate impact discrimination and the validity of various assessment tools such as aptitude, personality and intelligence tests. The panel also will address the most recent legislative and case law developments involving background checks, both criminal and credit. Join us for a discussion of what to do when the employer doesn't have applicant flow data that would allow an analysis, by race, of those screened out by the background checks. Will courts accept national statistics to meet the plaintiff's initial burden, thus effectively shifting to the employer the burden of establishing the lack of disparate impact in these cases?

##### MODERATOR:

**Robert J. O'Hara**, United Technologies  
Corporation, Hartford, CT

##### SPEAKERS:

**Hon. P. David Lopez**, U.S. Equal  
Employment Opportunity Commission,  
Washington, DC

**Mary D. Baker**, ERS Group, Tallahassee, FL

**Andrew R. Livingston**, Orrick, Herrington  
& Sutcliffe LLP, San Francisco, CA

**Roberta L. Steele**, National Employment  
Lawyers Association, San Francisco, CA

• 8:00 – 9:15 am

#### Striking the Balance between Civilian Employment and Veteran and Service Member Rights, including USERRA and Disability Issues

USERRA seeks to strike an appropriate balance between the competing needs of employers and service members, and the law in this area is quickly evolving. This panel will discuss employer responsibilities and advocacy for returning service members as well as handling related disability discrimination issues and claims common to returning veterans.

##### MODERATOR:

**David M. Jaffe**, CVS Caremark Corporation,  
Woonsocket, RI





### SPEAKERS:

**Andrew Braniff**, U.S. Department of Justice, Washington, DC

**Kenneth R. Harrison, Sr.**, Sugarman & Susskind, P.A., Fort Lauderdale, FL

**Peter Romer-Friedman**, Cohen Milstein Sellers & Toll PLLC, New York, NY

**George R. Wood**, Littler Mendelson P.C., Minneapolis, MN

#### • 11:00 am – 12:15 pm **Cutting Edge Issues in Age Discrimination and the Aging Workforce**

Employees age 50 and older represent almost a third of the U.S. workforce. By 2018, the number of employees over 55 will increase by almost 30% in just one decade. Many older workers plan to continue working well beyond what used to be considered the “normal” retirement age. This presents a dilemma for some employers who feel the aging workforce blocks the progression of younger workers while other employers are grateful to retain experienced older workers. The number of age charges filed with the EEOC has increased, yet some feel that it is harder to win a case alleging age discrimination than it is for other types of discrimination. This panel will discuss the effect of the changing demographics, cases since the 2009 Supreme Court decision in *Gross v. FBL Financial Services Inc.*, the recent regulations from the EEOC, and best practices in drafting and administering severance agreements and releases.

### MODERATOR:

**Brenda Sutton-Wills**, California Teachers Association, Burlingame, CA

### SPEAKERS:

**Eric S. Dreiband**, Jones Day, Washington, DC

**Daniel B. Kohrman**, AARP Foundation Litigation, Washington, DC

**Stephanie L. Planchich**, NERA Economic Consulting, White Plains, NY

**Cathy Ventrell-Monsees**, U.S. Equal Employment Opportunity Commission, Washington, DC

#### ◆ **Employee Benefits**

##### • 8:00 – 9:15 am **The Future of State and Municipal Pensions**

As state and local governments struggle with funding issues or potential insolvency, public sector

employee pension funds have come under attack in a variety of ways leaving retirees and active participants to wonder what, if anything will be there as they move into the next phase of their lives. While state and local governmental entities seek to reduce current and future benefits, alternatives have been suggested such as moving towards an entirely new system, from a defined benefit plan towards a defined contribution plan. This program will address constitutional arguments for and against the diminishment of pension obligations, the impact bankruptcy proceedings (or the threat of bankruptcy proceedings) on future collective bargaining negotiations, the implications of the situations in Detroit and Illinois regarding reduction of pension benefits, and the trend of state and local governments to move from defined benefit plans to defined contribution plans.

### MODERATOR:

**Teague P. Patterson**, Beeson, Tayer & Bodine, APC, Sacramento, CA

### SPEAKERS:

**Hon. Elizabeth L. Perris**, U.S. Bankruptcy Court, District of Oregon, Portland, OR

**H. Douglas Hinson**, Alston & Bird LLP, Washington, DC

**Michelle Wilde Anderson**, UC Berkeley, Berkeley, CA

##### • 9:30 – 10:45 am **What's Next After Windsor?**

The Supreme Court has decided that Section 3 of the Defense of Marriage Act (DOMA), which provided that “marriage” for purposes of federal law was only between a man and a woman, was a violation of the Equal Protection Clause. What's next? This session will focus on the interplay of tax laws, ERISA and state laws. What pension and welfare plan benefits must ERISA plans provide to state-recognized same-sex spouses? What issues arise in administering a retirement or health plan that does not allow for same-sex spouse benefits? What about domestic partners and civil union partners? As more and more states recognize same-sex marriages or similar relationships, what are the issues and what are best practices for plans?

### MODERATOR:

**Sam Schwartz-Fenwick**, Seyfarth Shaw LLP, Chicago, IL

### SPEAKERS:

**Sharon M. Goodman**, Slevin & Hart, P.C., Washington, DC

**Christopher J. Richmond**, Internal Revenue Service, Washington, DC

**Nina Wasow**, Lewis Feinberg Lee Renaker & Jackson PC, Oakland, CA

#### ◆ **Immigration**

##### • 9:30 – 10:45 am **Mergers and Acquisitions: The Assets and Liabilities of Foreign Workers**

When companies merge or are acquired, the focus is often on dollars and cents of blockbuster deals, but what is often forgotten is what happens to the workers who are now employed by a different entity. This problem is accentuated when the workers in question are foreign nationals. The results can be disastrous—from I-9 issues to wage issues to the loss of valid immigration status. Only by understanding the immigration issues before the deal is finalized can compliance and proper status be maintained.

### MODERATOR:

**Jonathan A. Grode**, Green and Spiegel LLP, Philadelphia, PA

### SPEAKERS:

**Terry Y. Feiertag**, Hughes Socol Piers Resnick & Dym, Ltd, Chicago, IL

**Katchen A. Locke**, SEIU Local 32BJ, New York, NY

**Quynh H. Nguyen, Sr.**, BP Legal, Houston, TX

**Frederick Troncone**, U.S. Department of Homeland Security, Washington, DC

##### • 11:00 am – 12:15 pm **The Pitfalls of Immigration Compliance**

Many employers who hire foreign nationals take all the right steps to get the process started, from retaining an immigration attorney to timely completing Form I-9. What these employers often fail to do, however, is to keep the immigration process and requirements in mind as the employee continues his or her employment. This panel will discuss aspects of E-verify, DOL Wage and Hour actions and USCIS filings in light of promotions, demotions and terminations. The speakers also will provide a “how to” for keeping companies compliant and for bringing private causes of action when compliance fails.

# 8th Annual Labor and Employment Law Conference

## MODERATOR:

**Rebecca A. Smith**, *The National Employment Law Project*, Seattle, WA

## SPEAKERS:

**Rachel Micah-Jones**, *Centro de los Derechos del Migrante, Inc.*, Baltimore, MD

**Todd P. Photopulos**, *Butler Snow LLP*, Memphis, TN

## ♦ Labor-Management Relations

• 9:30 – 10:45 am

### Can Civil Service Discharge, Teacher Tenure and Public Employee Evaluation Procedures Co-exist?

Several state legislatures during the past few years have proposed or enacted laws weakening just cause discharge for classified civil service employees, restricting teacher tenure rights, and/or imposing performance evaluation criteria for public employees. Ohio, for example, enacted such legislation for teachers, focusing on student outcomes in tests, grades or both. In addition, parties have negotiated evaluation procedures in labor contracts, such as the Chicago/CTU labor contract. These legislative enactments raise important legal issues involving both collective bargaining and other aspects of employment law. A California judge recently issued a ruling declaring several of the state's teacher tenure laws unconstitutional, which set off an outcry from teachers' unions nationwide while the anti-tenure groups praised the judge's ruling. This panel will describe these legislative changes and judicial decisions, identify potential bargaining issues that may result from them, and consider their legal consequences and effects, including a possible increase in discrimination lawsuits.

## MODERATOR:

**Joseph E. Slater**, *University of Toledo*, Toledo, OH

## SPEAKERS:

**Omar Castillo**, *Mokena School District 159*, Mokena, IL

**Kimkea L. Harris**, *Illinois Fraternal Order of Police Labor Council*, Western Springs, IL

**Emma Leheny**, *California Teachers Association*, Burlingame, CA

• 9:30 – 10:45 am

### Protected and Concerted Activity in the Digital Age

As the new NLRB increasingly focuses on the rights of non-union employees, this panel will discuss new personal care assistant (PCA) developments including access to the employer's property, both physical and digital, use of email and social media to discuss workplace issues, and the challenges for employers in negotiating, drafting and enforcing appropriate work rules.

## MODERATOR:

**Tanja L. Thompson**, *Littler Mendelson P.C.*, Memphis, TN

## SPEAKERS:

**Cornelle Overstreet**, *National Labor Relations Board*, Phoenix, AZ

**Darryl Uffelmann**, *Anheuser-Busch Companies LLC*, St. Louis, MO

**Steven K. Ury**, *SEIU*, Los Angeles, CA

• 11:00 am – 12:15 pm

### The Implications of *Harris v. Quinn*

In Illinois, home health aides were declared to be state employees and eventually became union employees. Pursuant to the collective bargaining agreement, members paid dues and non-members paid an agency fee to the union. The non-members objected and initiated a lawsuit against the State of Illinois. The 7th Circuit determined there was no First Amendment violation and that some claims were not ripe because the employees were not subject to mandatory fair share fees. The case has implications for developing models so that home health aides can obtain employee status and better wages and benefits. At the same time, the case highlights the "free rider" concept that was prohibited. This panel will discuss how the Supreme Court viewed these important issues.

## MODERATOR:

**Matthew T. Bodie**, *St. Louis University School of Law*, St. Louis, MO

## SPEAKERS:

**Anna Wermuth**, *Meckler Bulger Tilson Marick & Pearson LLP*, Chicago, IL

**John M. West**, *Bredhoff & Kaiser, P.L.L.C.*, Washington, DC

## ♦ Litigation/Class Action

• 9:30 – 10:45 am

### Class Action Waivers and State Laws: What Happens After *Concepcion*?

Panelists will discuss how courts, agencies and legislatures are grappling with *AT&T Mobility LLC v. Concepcion*. For example, the NLRB's decision in *D.R. Horton* (itself largely rejected by the Fifth Circuit and now called into question by the Supreme Court's *Noel Canning v. NLRB* ruling) has spawned mixed decisions from NLRB administrative law judges trying to reconcile *D.R. Horton* and its apparent conflict with U.S. Supreme Court rulings in *Concepcion* and *American Express v. Italian Colors Restaurant*. The panel also will address the interplay of *Concepcion* and state laws, particularly in light of the California Supreme Court's just-rendered decision in *Iskanian v. CLS Transportation*, upholding class waivers in California except as to pre-dispute waivers of California's Private Attorneys General Act (PAGA). Where does this leave California and other states that have special laws permitting class, collective or representative actions with different standards for certification and waivers and the litigants dealing with issues related to such a waiver? Join us for a discussion of these recent case developments surrounding class action waivers and what this all means for practitioners.

## MODERATOR:

**Apalla U. Chopra**, *O'Melveny & Myers LLP*, Los Angeles, CA

## SPEAKERS:

**Carol L. Gillam**, *The Gillam Law Firm, P.C.*, Los Angeles, CA

**Michael Rubin**, *Altshuler Berzon LLP*, San Francisco, CA

**Deborah C. Saxe**, *Saxe Arbitration & Mediation Services*, La Canada, CA

• 11:00 am – 12:15 pm

### Federal Government Litigation: Practice and Procedure

This program will discuss the nuances of lawsuits and administrative hearings involving the Federal Government (e.g., FLSA and EEO discrimination claims) and a discussion regarding when sovereign immunity applies. There has continued to be litigation in the Court of Federal Claims regarding whether the court has jurisdiction over certain claims, including FLSA. The panel will cover such topics



as the pros and cons of filing claims in different forums. For example, some practitioners have chosen to file FLSA cases in District Court for the District of Columbia rather than in the Court of Federal Claims or through negotiated grievance procedures. Other practitioners choose to pursue class actions before the EEOC rather than in federal court because the EEOC's standard for certification varies from Rule 23.

**MODERATOR:**

**Zachary Henige**, Federal Labor Relations Authority, Washington, DC

**SPEAKERS:**

**Heidi R. Burakiewicz**, Mehri & Skalet PLLC, Washington, DC

**Gia Chemsian**, U.S. Department of Veterans Affairs, Washington, DC

**Daniel J. Kaspar**, National Treasury Employees Union, Chicago, IL

• 11:00 am – 12:15 pm  
**Predictive Coding and  
Extremely Practical E-Discovery**

This expert panel will discuss the various formats in which you can obtain your opponent's documents (e.g., native? PDF? TIFF?), the costs involved, whether you may want to hire a vendor to review them and how to cost-effectively organize your own client's review of files for production. The panel also will consider technology-assisted review of documents (sometimes called "predictive coding"), what it is, its costs, and how and when to use it. This will be a practical session for litigators to learn what they really need to know to handle e-discovery.

**MODERATOR:**

**Sean R. Gallagher**, Polsinelli PC, Denver, CO

**SPEAKERS:**

**Hon. Craig B. Shaffer**, U.S. District Court for the District of Colorado, Denver, CO

**Kenneth A. Prine**, BP Legal, Houston, TX

**Todd M. Schneider**, Schneider Wallace Cottrell Konecky LLP, San Francisco, CA

♦ **Practice and  
Professionalism**

• 8:00 – 9:15 am  
**The Ethics of Fee Arrangements  
and Settlements (E)**

What happens when a third party, whether pursuant to an indemnification agreement, insurance policy, or otherwise, is paying the fees? What

happens when more than one firm is splitting fees? Are referral fees ethical? What disclosures must be made to the clients in those situations? Panelists will explore these questions and more related to atypical fee arrangements.

**MODERATOR:**

**Andrew Altschul**, Buchanan Angeli Altschul & Sullivan LLP, Portland, OR

**SPEAKERS:**

**Dennis Duffy**, Baker & Hostetler LLP, Houston, TX

**T. Warren Jackson**, DIRECTV, Los Angeles, CA

**Michael P. Posner**, Posner & Rosen, LLP, Los Angeles, CA

**Richard A. Zitrin**, University of California, Hastings College of the Law, San Francisco, CA

♦ **Wage and Hour**

• 8:00 – 9:15 am  
**Best Practices for Wage  
and Hour Compliance**

Many positions are exempt from the overtime provisions of the Fair Labor Standards Act. Also, many employees working from home are using mobile devices to perform work outside of the workplace. Determining how to appropriately classify a position as exempt and how to avoid other wage and hour noncompliance, such as off-the-clock work, record-keeping and meal and rest break issues can be a complex challenge for many businesses. Hear from a panel of expert plaintiff, employer, union and in-house counsel regarding best practices for assessing

and classifying employee positions, conducting internal reviews and investigations, determining whether and how to reclassify or give employees back pay if a problem is discovered, and other preventive measures such as strong wage and hour policies and training at all levels for a culture of wage and hour compliance.

**MODERATOR:**

**Susan N. Eisenberg**, Akerman LLP, Miami, FL

**SPEAKERS:**

**Kristen H. Albertson**, Wal-Mart Stores Inc, Benville, AK

**Gregory K. McGillivray**, Woodley & McGillivray, Washington, DC

**Rachhana T. Srey**, Nichols Kaster, PLLP, Minneapolis, MN

♦ **Workplace Problems  
and Solutions**

• 8:00 – 9:15 am  
**Best Practices in Workplace  
Training in the Prevention  
of Human Trafficking**

The program will present best practices learned through the Labor and Employment Law Section's Human Trafficking Task Force's study of training modules used by employers to prevent human trafficking in their workplaces and supply chains. Different training protocols will be described, with mini-demonstrations for each. Examples will include (1) training as part of regular employee orientation,



# 8th Annual Labor and Employment Law Conference Program Schedule

## Saturday, November 8

(2) worker-to-worker training, and (3) targeted training for procurement personnel or others in key positions. This program will be useful for in-house counsel, for attorneys advising businesses and unions and for all those involved in the enforcement or implementation of anti-trafficking laws and policies in the workplace.

### MODERATOR:

**Marley S. Weiss**, *University of Maryland, Baltimore, MD*

### SPEAKERS:

**Karen Edwards**, *International Paper, Memphis, TN*

**Steve Hitov**, *Coalition of Immikalee Workers, Hyattsville, MD*

**Kavitha Sreeharsha**, *Global Freedom Center, Cupertino, CA*

**Peter W. Zinober**, *Greenberg Traurig, LLP, Tampa, FL*

### • 8:00 – 9:15 am

#### Evaluation of State Return to Work Programs: Can Workers Safely Return to Work Sooner?

Studies indicate that the likelihood of an injured worker returning to work diminishes the longer an employee is away. As a result, many states have established—by statute, regulation or guidance—policies relating to the return to work of injured employees. This panel will discuss the various state approaches to return injured employees to work and the implications of those alternative approaches.

### MODERATOR:

**Gregory T. Presmanes**, *Bovis, Kyle, Burch & Medlin, LLC, Atlanta, GA*

### SPEAKERS:

**John J. Lazzara**, *Florida Division of Administrative Hearings, Tallahassee, FL*

**Kimberly M. Pfingstag**, *Sedgwick Claims Management Services, Inc., Chicago, IL*

**Robert E. Willyard**, *Law Offices of Robert Willyard, Anaheim, CA*

### • 9:30 – 10:45 am

#### The Alphabet Junction of Employee Leave and Accommodations

Since the Americans with Disabilities Act came into existence 20 years ago, it has been interpreted, and arguably misinterpreted, to deny people with disabilities equal coverage under the statute. Amendments to the ADA sought to change that, yet we

struggle with providing accommodation in the workplace. Do we need more progressive leave policies (e.g. paid-time off or flex-time) allowing employees needed time without fear of job loss? When employees are injured or sick and use up their leave, on or off the job, should they be terminated or given more leave to recover and return to work? And how is leave accounted for under FMLA, Worker's Compensation, ADA, STD or LTD? How should employers/employees/unions navigate the transition from one type of leave to another type of leave? How should employees with performance issues and disabilities be managed? This panel will help us understand when to use which type of leave and how they work for the benefit of the employee and employer.

### MODERATOR:

**Joan G. Hill**, *United Steelworkers International Union, Nashville, TN*

### SPEAKERS:

**Julie M. Capell**, *Winston & Strawn LLP, Los Angeles, CA*

**Brian East**, *Disability Rights Texas, Austin, TX*

**Tamika D. Lynch**, *Siemens Industry, Chicago, IL*

### • 11:00 am – 12:15 pm

#### Is Off-Duty Use of Marijuana Grounds for Disqualification or Termination?

A number of states have enacted legislation that legalizes the use of medical and recreational marijuana. Some states have passed legislation making it harder for employers to take disciplinary action against their employees for off-work conduct or to permit employers to establish whatever policies they feel is appropriate regarding off-work behavior. These ongoing changes in the law make it increasingly difficult for employers and employees to know what type of adverse employment action may be taken against an applicant or employee. Although disciplinary action is virtually unheard of for off-work consumption of alcohol unless the employee's job performance is affected, the same is not true for marijuana, even where its use is legal. This conundrum in the law will be explored by our panel of experts.

### MODERATOR:

**James M. Shore**, *Stoel Rives, LLP, Seattle, WA*

### SPEAKERS:

**Wynter P. Allen**, *Alden Law Group, PLLC, Washington, DC*

**Joseph Elford**, *Americans for Safe Access, San Francisco, CA*

**Monique A. Tuttle**, *Vail Resorts Management Company, Broomfield, CO*

### • 12:30 pm – 2:00 pm

#### The Judges' Perspective: An Inside Scoop on Civility and Professionalism in the Courtroom

*Presented by the College of Labor and Employment Lawyers*

Issues of professionalism and civility within the practice of law continue to be an important matter in the day to day activities of labor and employment attorneys. The College of Labor & Employment Lawyers' Principles of Professionalism and Civility for Advocates was adopted in 2006 with the intention of encouraging widespread adherence to these Principles by all Fellows of the College, as well as other members of the labor and employment law bar. Panel members will focus on issues of professionalism and civility between attorneys and with respect to the courts and administrative agencies before whom they practice, providing a unique insight into protocol and practice from the perspective of arbiters at various levels of our judicial system. This esteemed panel will discuss their expectations of attorneys practicing before them and methods of handling challenges within the standards to which legal professionals aspire and will share their views on how they handled those difficult situations. Join us for this fascinating view from the other side of the gavel.

### MODERATOR:

**Michael P. Posner**, *Posner & Rosen LLP, Los Angeles, CA*

### SPEAKERS:

**Hon. Fernando M. Olguin**, *U.S. District Court for the Central District of California, Los Angeles, CA*

**Hon. Dean D. Pregerson**, *U.S. District Court for the Central District of California, Los Angeles, CA*

**Hon. Christina A. Snyder**, *U.S. District Court for the Central District of California, Los Angeles, CA*

**Hon. Vijay "Jay" C. Gandhi**, *U.S. District Court for the Central District of California, Los Angeles, CA*





# Networking and Social Events

## Wednesday, November 5

- 2:30 – 3:30 p.m.

### Law Student Orientation

This event will offer students a casual introduction to the ins and outs of the Annual Section Conference. Students also will receive tips for making the most out of their Conference experience.

- 4:30 – 5:30 p.m.

### First-Time Attendee/ New Section Member Orientation

If you are a new member of the Section of Labor and Employment Law or if this is your first Section meeting, join your peers for an overview of what you should know about the Section and how to get the most benefit from attending the Conference.

- 5:30 – 6:00 pm

### First-Time Attendee/ New Section Member Reception

- 6:00 – 8:00 pm

### Welcome Reception and Committee Expo

All attendees are invited to meet, greet and network during this opening reception at the JW Marriott at LA Live. Section Standing Committees will provide information about publications, services and programs they provide to labor and employment lawyers.

## Thursday, November 6

- 12:30 – 2:00 pm

### Diversity Luncheon: The 50-Year Evolution of Title VII

In celebration of the 50th Anniversary of the passage of Title VII, the Diversity Luncheon will feature a discussion of the statute's history and how it has been used to provide protections for migrant and undocumented workers as well as LGBT individuals in the workplace.

- 5:00 – 6:00 pm

### Diversity Reception at JW Marriott at LA Live

*Presented by the Diversity in the Legal Profession Committee*

Join us for a social and networking reception for lawyers of color, female lawyers, LGBT lawyers, disabled lawyers, and all those who support the Section's vision of diversity and inclusion.

## Friday, November 7

- 12:30 – 2:00 pm

### Pro Bono Luncheon

The Pro Bono Luncheon will feature a presentation by the 2014 Frances Perkins Award Recipient.

- 12:30 – 2:00 pm

### In-House Corporate Counsel Luncheon (In-House Corporate Counsel only)

- 5:00 – 6:00 pm

### Standing Committee Business Meetings

Section of Labor and Employment Law Standing Committees will conduct business meetings in an informal setting. Refreshments will be provided.

- 7:00 – 10:00 pm

### Conference Reception at California Science Center

Join with old friends and new to celebrate the 8th Annual Labor and Employment Law Conference as you enjoy good food, drinks, entertainment and socializing.

## Saturday, November 8

- 12:30 – 2:00 pm

### Careers in Labor and Employment Law: A “How To” Exploration of Options and Advice for Law Students on Finding the Right Job

If you are considering a career in labor and employment law, come meet, talk and dine with leading labor and employment lawyers who will share their diverse perspectives and their real-life experiences practicing on behalf of management, unions and plaintiffs or serving as government attorneys or neutrals. Not only will you learn about the extremely varied career options open to labor and employment lawyers, you will receive concrete practical advice on how to get into the area that interests you, whether it is a big firm practice, a union legal staff, a boutique management or plaintiff's firm, a federal or state regulatory agency or a corporate in-house position.

## Alternative Dispute Resolution

**Sara Adler**, Arbitrator, Los Angeles, CA  
**Norman Brand**, Arbitration and Mediation Offices of Norman Brand, San Francisco, CA  
**Frank C. Botta**, Eckert Seamans Cherin & Mellott, LLC, Pittsburgh, PA  
**Barbara J. D'Aquila**, Norton Rose Fulbright LLP, Minneapolis, MN  
**Raquel Fas Bravo**, The Law Office Of Raquel Fas Bravo, Boynton Beach, FL  
**Ruth V. Glick**, Mediator and Arbitrator, Burlingame, CA  
**Robert D. Kraus**, Kraus and Zuchlewski, New York, NY  
**Irma Rodriguez Moisa**, Atkinson, Andelson, Loya, Ruud & Romo, PC, Cerritos, CA  
**Brenda D. Pryor**, Cook County College Teachers Union, Chicago, IL  
**Jon H. Rosen**, The Rosen Law Firm, Seattle, WA  
**Victor Voloshin**, Equal Employment Opportunity Commission, Washington, DC

## Discrimination, Harrassment and Retaliation

**Hon. Chai R. Feldblum**, U.S. Equal Employment Opportunity Commission, Washington, DC  
**Hon. P. David Lopez**, U.S. Equal Employment Opportunity Commission, Washington, DC  
**Raheemah Abdulaleem**, U.S. Department of Justice, Washington, DC  
**Anthony J. Amendola**, Mitchell Silberberg & Knupp LLP, Los Angeles, CA  
**Mary D. Baker**, ERS Group, Tallahassee, FL  
**Mario L. Barnes**, University of California Irvine, School of Law, Irvine, CA  
**Tiffanie C. Benfer**, Hardwick Benfer LLC, Doylestown, PA  
**Annette M. Bernstein**, American International Group, Inc., New York, NY  
**Zahra Biloo**, Council on American-Islamic Relations, Santa Clara, CA  
**Candis W. Bowles**, Disability Rights California, Los Angeles, CA  
**Andrew Braniff**, U.S. Department of Justice, Washington, DC  
**Melinda C. Burrows**, Outervall, Inc., Bellevue, WA  
**Melinda J. Caterine**, Fisher & Phillips LLP, Portland, ME  
**Eric S. Dreiband**, Jones Day, Washington, DC  
**Ronetta J. Francis**, Wal-Mart Stores, Inc., Bentonville, AR  
**Jeanne Goldberg**, U.S. Equal Employment Opportunity Commission, Washington, DC

**Kenneth R. Harrison, Sr.**, Sugarman & Susskind, P.A., Fort Lauderdale, FL  
**Michelle Hughes**, Costco Wholesale, Issaquah, WA  
**David M. Jaffe**, CVS Caremark Corporation, Woonsocket, RI  
**Jay Jaffe**, 1199 SEIU, New York, NY  
**Paula Johnston**, Teamsters Local 320, Minneapolis, MN  
**Judith D. Keyes**, Davis Wright Tremaine LLP, San Francisco, CA  
**Daniel B. Kohrman**, AARP Foundation Litigation, Washington, DC  
**Christopher J. Kuczynski**, U.S. Equal Employment Opportunity Commission, Washington, DC  
**Gening Liao**, Schwartz, Steinsapir, Dohrmann & Sommers, LLP, Los Angeles, CA  
**Andrew R. Livingston**, Orrick, Herrington & Sutcliffe LLP, San Francisco, CA  
**Louis Lopez**, Office of Special Counsel, Washington, DC  
**Peggy R. Mastroianni**, U.S. Equal Employment Opportunity Commission, Washington, DC  
**Myra L. McKenzie-Harris**, Wal-Mart Stores, Inc., Bentonville, AR  
**Paul W. Mollica**, Outten & Golden LLP, Chicago, IL  
**Emily Nugent**, Dickson Geesman LLP, Oakland, CA  
**Robert J. O'Hara**, United Technologies Corporation, Hartford, CT  
**Stephanie L. Planch**, NERA Economic Consulting, White Plains, NY  
**Peter Romer-Friedman**, Cohen Milstein Sellers & Toll PLLC, New York, NY  
**Gregory M. Sato**, Kobayashi, Sugita & Goda LLP, Honolulu, HI  
**Janie F. Schulman**, Morrison & Foerster LLP, Los Angeles, CA  
**Grace E. Speights**, Morgan, Lewis & Bockius LLP, Washington, DC  
**Roberta L. Steele**, National Employment Lawyers Association, San Francisco, CA  
**Stephanie Struble**, U.S. Equal Employment Opportunity Commission, Denver, CO  
**Brenda Sutton-Wills**, California Teachers Association, Burlingame, CA  
**Daniel T. Vail**, U.S. Equal Employment Opportunity Commission, Washington, DC  
**Cathy Ventrell-Monsees**, U.S. Equal Employment Opportunity Commission, Washington, DC  
**George L. Washington, Jr.**, Orange Business Services, Oak Hill, VA  
**Richard A. Williams, Jr.**, Law Offices of Richard A. Williams, Minneapolis, MN  
**George R. Wood**, Littler Mendelson P.C., Minneapolis, MN  
**Matt Wood**, Transgender Law Center, Oakland, CA

**Melissa S. Woods**, Meyer, Suozzi, English & Klein, P.C., New York, NY  
**Fausto E. Zapata, Jr.**, The Law Offices of Fausto E. Zapata, Jr., P.C., New York, NY

## Employee Benefits

**Hon. Elizabeth L. Perris**, U.S. Bankruptcy Court, District of Oregon, Portland, OR  
**Peter S. Dickenson**, Bush Gottlieb, A Law Corporation, Glendale, CA  
**Sharon M. Goodman**, Slevin & Hart, P.C., Washington, DC  
**H. Douglas Hinson**, Alston & Bird LLP, Washington, DC  
**Ali Khawar**, U. S. Department of Labor, Washington, DC  
**Christopher J. Richmond**, Internal Revenue Service, Washington, DC  
**Mary Ellen Signorille**, AARP Foundation Litigation, Washington, DC  
**Erin M. Sweeney**, Dickstein Shapiro LLP, Washington, DC  
**Michelle Wilde Anderson**, UC Berkeley, Berkeley, CA  
**Teague P. Patterson**, Beeson, Tayer & Bodine, APC, Sacramento, CA  
**Sam Schwartz-Fenwick**, Seyfarth Shaw LLP, Chicago, IL  
**Nina Wasow**, Lewis Feinberg Lee Renaker & Jackson PC, Oakland, CA

## Immigration

**Terry Y. Feiertag**, Hughes Socol Piers Resnick & Dym, Ltd, Chicago, IL  
**Jonathan A. Grode**, Green and Spiegel LLP, Philadelphia, PA  
**Katchen A. Locke**, SEIU Local 32BJ, New York, NY  
**Michael Hancock**, U.S. Department of Labor, Washington, DC  
**Rachel Micah-Jones**, Centro de los Derechos del Migrante, Baltimore, MD  
**Quynh H. Nguyen, Sr.**, BP Legal, Houston, TX  
**Todd P. Photopoulos**, Butler Snow LLP, Memphis, TN  
**Rebecca A. Smith**, The National Employment Law Project, Seattle, WA  
**Frederick Troncone**, U.S. Department of Homeland Security, Washington, DC

## International

**Michael Bride**, United Food & Commercial Workers International Union, Washington, DC  
**Matthew Durham**, Winston & Strawn LLP, Shanghai, People's Republic of China  
**Jeffrey E. Goodman**, Hicks Morley Hamilton Stewart Storie LLP, Toronto, Canada  
**Wendi S. Lazar**, Outten & Golden LLP, New York, NY  
**Stephen B. Moldof**, Cohen, Weiss and Simon LLP, New York, NY  
**Annemarie Muntz**, Randstad Holdings, Naarden, Netherlands

**Maxwell Norman**, Forever 21, Inc., Los Angeles, CA  
**Katie Quan**, UC Berkeley Labor Center, Berkeley, CA  
**Katherine Stone**, University of California Los Angeles, Los Angeles, CA  
**Mathilde Houet-Weil**, Weil & Associés, Paris, France  
**Joan C. Williams**, Center for Worklife Law, San Francisco, CA  
**Gerlind Wisskirchen**, CMS Hasche Sigle, Cologne, Germany

## Labor-Management Relations

**Hon. Richard F. Griffin, Jr.**, National Labor Relations Board, Washington, DC  
**Hon. Harry I. Johnson, III**, National Labor Relations Board, Washington, DC  
**Jennifer A. Abruzzo**, National Labor Relations Board, Washington, DC  
**Allison Beck**, Federal Mediation & Conciliation Service, Washington, DC  
**Johnda (Jonee) Bentley**, Service Employees International Union, Washington, DC  
**Matthew T. Bodie**, St. Louis University School of Law, St. Louis, MO  
**James W. Bucking**, Foley Hoag LLP, Boston, MA  
**Omar Castillo**, Mokena School District 159, Mokena, IL  
**William B. Cowen**, National Labor Relations Board, Washington, DC  
**Duncan W. Crabtree-Ireland**, Screen Actors Guild – American Federation of Television & Radio Artists, Los Angeles, CA  
**Joel A. D'Alba**, Asher, Gittler & D'Alba, Ltd, Chicago, IL  
**Susan Davis**, Cohen, Weiss and Simon LLP, New York, NY  
**Lisa Demidovich**, United Nurses Associations of California, Los Angeles, CA  
**Daniel DiSalvo**, Manhattan Institute's Center for State and Local Leadership, New York, NY  
**Richard S. Edleman**, O'Donnell, Schwartz & Anderson, P.C., Washington, DC  
**Howard D. Fabrick**, Barnes & Thornburg LLP, Los Angeles, CA  
**Catherine L. Fisk**, University of California at Irvine, Irvine, CA  
**Joseph Frankl**, National Labor Relations Board, San Francisco, CA  
**Jonathan C. Fritts**, Morgan, Lewis & Bockius LLP, Washington, DC  
**Olivia Garcia**, National Labor Relations Board, Los Angeles, CA  
**Robert S. Giolito**, Robert S. Giolito P.C., Los Angeles, CA  
**Deirdre E. Hamilton**, International Brotherhood of Teamsters, Washington, DC



**Kimkea L. Harris**, Illinois Fraternal Order of Police Labor Council, Western Springs, IL

**H. Victoria Hedian**, Abato Rubenstein and Abato PA, Towson, MD

**Mary L. Johnson**, National Mediation Board, Washington, DC

**Aparna B. Joshi**, O'Melveny & Myers LLP, Los Angeles, CA

**Emma Leheny**, California Teachers Association, Burlingame, CA

**Joanna L. Moorhead**, National Rail Labor Conference, Washington, DC

**Cornelle Overstreet**, National Labor Relations Board, Phoenix, AZ

**Gerald L. Pauling, II**, Seyfarth Shaw LLP, Chicago, IL

**Rob Remar**, Leonard Carder LLP, San Francisco, CA

**Mori Pam Rubin**, National Labor Relations Board, Los Angeles, CA

**Joseph E. Slater**, University of Toledo, Toledo, OH

**Ryan Spillers**, Gilbert & Sackman, A Law Corporation, Los Angeles, CA

**M. Jefferson Starling, III**, Balch & Bingham LLP, Birmingham, AL

**Tanja L. Thompson**, Littler Mendelson P.C., Memphis, TN

**Darryl Uffelmann**, Anheuser-Busch Companies LLC, St. Louis, MO

**Steven K. Ury**, SEIU, Los Angeles, CA

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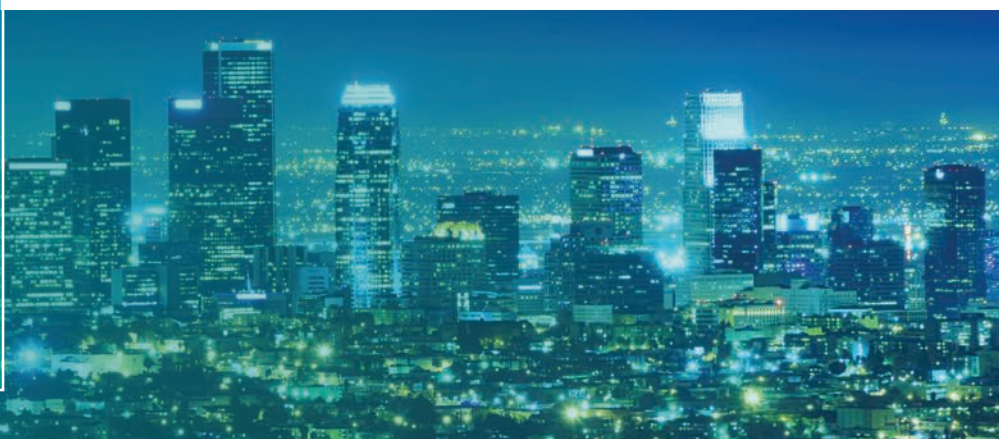
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