



ABA Section of Labor and Employment Law

7th Annual Labor and Employment Law Conference

November 6-9, 2013

Hilton New Orleans Riverside
New Orleans, LA

Program Guide

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Program information is available
on the Section website at
www.ambar.org/laborconference.

 Follow us on Twitter

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

ABA Section of Labor and Employment Law

7th Annual Labor and Employment Law Conference

November 6–9, 2013 🌸 New Orleans, Louisiana

Dear Colleague —

Welcome to New Orleans! We are delighted that you are joining us for the Section of Labor & Employment Law's 7th Annual Conference. An enormous amount of work by many talented and dedicated people has been done to ensure that this will be the preeminent 2013 CLE event covering the broad span of the practice of labor and employment law.

This guide outlines all of the activities that the Section is presenting during the Conference. Given the wide range of programming at this year's meeting, you will have the opportunity to earn a year's worth of CLE credit at this one conference. These programs will focus on the cutting-edge issues in the labor and employment arena and will be presented by a superb faculty.

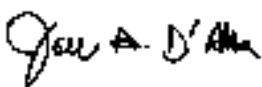
In addition to outstanding CLE, the Conference provides the perfect forum to learn more about the Section and the work of our substantive standing committees as well as that of our administrative committees and task forces. We encourage you to take this opportunity to learn about, and become more involved in, Section activities.

We hope you will attend the social events at the Conference as well, to meet other attendees and the speakers and government officials who are here. Our opening and new member receptions, diversity reception, and Conference reception should be great opportunities to network.

We would be remiss if we did not thank our Conference Planning Committee Co-Chairs and Vice Chairs, CLE/Institutes and Meetings Committee Co-Chairs, and all of the Track Coordinators. These members have been working non-stop for more than a year to put together the Conference.

Again, welcome to the Annual Section Conference and to New Orleans!

Sincerely,



Joel A. D'Alba
Section Chair



Joyce Margulies
Section Chair-Elect

www.ambar.org/laborconference

From the Host Committee

On behalf of all of our Section colleagues in the Crescent City, it is our pleasure to welcome you to the ABA 7th Annual Section of Labor and Employment Law Conference. The site for this year's Conference, the Hilton New Orleans Riverside, is ideally located to take advantage of all that New Orleans, a highly accessible city, has to offer. Everything you need to make your stay memorable is within walking distance or a short ride away. World-class cuisine, music, distinctly different neighborhoods, art, architecture, and a city full of rich history and culture are all a part of the New Orleans experience.

Experience this historic city with walking tours that will enlighten you on this city's colorful past. You can eat your way through the city with a culinary tour where you will indulge in classic New Orleans fare while learning the history of the cuisine. If you prefer, you can sip your way through the city with several tours offering you the history of local cocktail culture and, of course, a chance to taste test. Other tours, including those that will take you through historic cemeteries, will immerse you in the history of the aboveground tombs, stone sarcophagi and massive headstones.

The dozens of neighborhoods in New Orleans all offer a different feel, numerous attractions and sights to see. The French Quarter is home to the nightlife scene, historic landmarks, live music venues and is rich in Louisiana culture. The art scene in New Orleans is one that cannot be missed. Venture over to the Downtown/Art/Warehouse District to enjoy art galleries, museums and free concerts at Lafayette Square. If shopping is your preference, visit Magazine Street where this six-mile street is overflowing with retail shops, restaurants, art galleries and museums. On this street you also can visit the National World War II Museum where the exhibits and displays allow you to experience the war through the eyes of those who lived it. For family fun, you may wish to head over to St. Charles Avenue. Taking a streetcar down St. Charles is a great way to see many different sides of the city. On this avenue you can hop off at Audubon Park and take a shuttle to the Audubon Zoo. This zoo is home to the mysterious white alligators and the Louisiana Swamp and Jaguar Jungle.

If you love music, you have come to the right place. America's original art form, jazz, was born in New Orleans. From zydeco to gospel, no other city loves music more. Whether it's catching a concert at the New Orleans Arena or enjoying the sounds of local musicians in Jackson Square, there is something for everyone to enjoy.

Your New Orleans Host Committee,

Julie Richard-Spencer, *Co-chair, Union and Employee*
Howard Shapiro, *Co-chair, Employer*
Maria Cangemi, *Union and Employee*
Michelle Craig, *Employer*
Monique Gougisha Doucette, *Employer*

Keith T. Hill, *Public*
I. Harold Koretzky, *Employer*
Alexandra Mora, *Employee*
Lynne Rothschild Stern, *Neutral*
Andrea Wilkes, *Public*

Section Council

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Joyce Margulies, *Employer*

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Joseph E. Tilson,
Employer

Wendy L. Kahn,
Union and Employee

C. Geoffrey
Weirich,
Employer

Barry J. Kearney,
Member-at-Large

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7th Annual Labor and Employment Law Conference Track Coordinators

David S. Adelstein	Wendi S. Lazar
James F. Allmendinger	Lindsay Lee
Gary L. Bailey	Heather F. Lindsay
Lisa J. Banks	Louis Lopez
Rachel M. Bien	Tamika D. Lynch
Maureen S. Binetti	Jason C. Marsili
Frank C. Botta	Gregory K. McGilivray
Earl V. Brown, Jr.	Myra L. McKenzie
Heidi R. Burakiewicz	Grace Mora
Melinda C. Burrows	Daniel Nielsen
Melinda J. Catherine	Margo Pave
J. Randall Coffey	Emily R. Perez
George S. Crisci	Nina T. Pirrotti
Kelly D. Bunting	Hope A. Pordy
Lori L. Deem	David D. Powell, Jr.
Monique Gougisha Doucette	Thomas E. Reinert, Jr.
Molly Eastman	Julie Richard-Spencer
Ashley Eddy	Mark D. Risk
Susan Nadler Eisenberg	Jennifer L. Sabourin
James M. Finberg	Jahan C. Sagafi
Adam S. Forman	Barbara Jaffe Sanford
Hal K. Gillespie	Donald L. Sapir
Cara E. Greene	Carla M. Siegel
Jonathan Grode	Hope J. Singer
William A. Herbert	Diane I. Smason
Mary "Ana" Hermosillo	Rebecca Smith
John S. Ho	Cassie M. Springer
Eric E. Hobbs	M. Jefferson Starling
James A. (Al) Holifield	Douglas L. Steele
Elana R. Hollo	Brenda Sutton-Wills
Todd Jackson	Alan A. Symonette
Mary Johnson	Richard J. Swanson
David R. Jury	Eric A. Tate
Danny J. Kaufer	Rayford H. Taylor
T. Scott Kelly	Steven K. Ury
Lori W. Ketcham	Angelia Wade
William M. Kinney	Marisa Warren
Hanan B. Kolko	Anna Wermuth
Brian E. Koncius	Gwynne A. Wilcox
Matthew W. Lampe	Michael J. Wolf
Kelly M. Lawson	Sheree C. Wright
	Stephen A. Yokich

The Section Conference Mobile App provides up-to-the-minute information about the programs and events taking place during the Conference. Download the app to scan through sessions and create your own daily schedules for use with a mobile device or to download and print. Once downloaded, you'll also be able to access lists of attendees and speakers as well as exhibitors and sponsors. For assistance using the App, visit Donovan Vicha in the Cyber Café in Grand Ballroom A.

General Information

Program Locations

All CLE sessions will take place at the Hilton New Orleans Riverside, located at 2 Poydras Street. Meeting room assignments are listed on the schedule of events.

CLE Accreditation Information

States typically decide whether a program qualifies for CLE credit in their jurisdiction 4-8 weeks after the program application is submitted. For many live events, credit approval is not received prior to the program. The ABA will seek CLE accreditation for this Conference in all 60-minute and 50-minute-hour states. Credit hours are estimated and are subject to each state's approval and credit rounding rules.

Please be aware that each state has its own rules and regulations, including its definition of "CLE" as well as "ethics." Therefore, certain sessions may not receive CLE credit in some states. Please check with your state provider for confirmation of general, as well as ethics, approval for any programs. Additional information for each state is located on the *Uniform Certificate of Attendance*.

Program Materials

Each Conference registrant will receive the program materials on a CD-ROM. Registrants who purchased bound copies of the course materials in advance may pick them up in the registration area; note there are no refunds for pre-ordered materials. Those who wish to purchase the bound materials at the Conference may do so for \$250 while supplies last.

Pro Bono Award Recipient

The Frances Perkins Public Service Award recognizes individuals or organizations that demonstrate a significant commitment to providing pro bono legal services primarily in the areas of labor and employment law to persons of limited means or to nonprofit, governmental, civic, community or religious organizations designed primarily to address the needs of individuals with limited means.

The recipient of the 2013 Award is Global Freedom Center. The Award will be presented at 11:00 am on Friday, November 8.

Federal Labor and Employment Attorney of the Year Award Recipient

The Section partners with dedicated civil servants who implement and enforce America's labor and employment laws, rules, regulations, policies and procedures. However, we recognize that our federal partners are often underappreciated and not adequately recognized for their accomplishments. This prestigious award is a salute to federal labor and employment lawyers and their many accomplishments.

The recipient of the 2013 Award is Adele Rapport. The Award will be presented at 11:00 am on Saturday, November 9.

Arvid Anderson Public Sector Labor and Employment Attorney of the Year

This Arvid Anderson Public Sector Labor and Employment Attorney of the Year Award recognizes valuable contributions to public sector labor and employment law. The Award was first presented in 2009. This year, it will be awarded to Mark F. Vetter. The Award will be presented at 11:00 am on Thursday, November 7.

Please join us at the House of Blues on Friday, November 8 from 7:00 – 10:00 pm in celebration of the ABA 7th Annual Section of Labor and Employment Law Conference.



BLOOMBERG BNA CONGRATULATES THE SECTION ON THE 2013 CONFERENCE

Bloomberg BNA is pleased to be the publisher for the Section's many treatises and an emerald sponsor of the conference. Please visit booth 3 in the exhibit hall to enter a drawing to win a free treatise of your choice!

Section treatises on display at the Bloomberg BNA booth:

- Age Discrimination in Employment Law
- Covenants Not to Compete:
A State-by-State Survey
- The Developing Labor Law: The Board, the Courts,
and the National Labor Relations Act
- Discipline and Discharge in Arbitration
- Elkouri & Elkouri: How Arbitration Works
- Employee Benefits Law
- Employee Duty of Loyalty: A State-by-State Survey
- Employment at Will: A State-by-State Survey
- Employment Discrimination Law
- Equal Employment Law Update
- The Fair Labor Standards Act
- The Family and Medical Leave Act
- How ADR Works
- How to Take a Case Before the NLRB
- International Labor and Employment Laws
- Labor Arbitration: A Practical Guide for Advocates
- Labor Arbitration: Cases and Materials for
Advocates
- Labor Arbitrator Development: A Handbook
- Labor Union Law and Regulation
- Occupational Safety and Health Law
- The Railway Labor Act
- Restrictive Covenants and Trade Secrets in
Employment Law: An International Survey
- Tortious Interference in the Employment Context:
A State-by-State Survey
- Trade Secrets: A State-by-State Survey
- The Uniformed Services Employment and
Reemployment Rights Act
- Wage and Hour Laws: A State-by-State Survey
- Workplace Data: Law and Litigation

Stop by for a brief demo of:

- Bloomberg BNA's *Labor & Employment
Law Resource Center*™
- Bloomberg BNA's *Benefits Practice
Resource Center*™
- BNA *Labor PLUS Navigator*™
- News & Analysis from Bloomberg BNA's:
Daily Labor Report®
BNA's Employment Discrimination Report™

VISIT BOOTH 3 TO BROWSE THESE TITLES OR VIEW A BRIEF DEMO.

7th Annual Labor and Employment Law



Legend: E = Ethics F = Fundamentals T = Technology

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

by highlighting both substantive issues and practice development provided through the ABA Section of Labor and Employment Law. A particular focus will be legal ethics and the manner in which collegiality and partnering among practitioners representing employers, employees, unions, the public sector and the judiciary in the context of the Section strengthen the ethical standards of practitioners. The speakers also will address practical pointers and lessons learned over the years.

Wednesday, November 6

- 3:00 – 4:00 pm

Law Student Orientation

Grand Salon 4

All law student attendees are invited to mingle with each other and members of the Outreach to Law Students Committee over coffee, tea and snacks prior to the start of the Conference. This event will offer students a very 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.

- 4:00 – 5:30 pm

The Benefits of Active Involvement in the ABA Section of Labor and Employment Law and Raising the Level of Ethics in Our Profession

Grand Ballroom D

This session will assist practitioners in their professional development

MODERATOR:

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

SPEAKERS:

Hon. Mark W. Bennett,

U.S. District Court for the Northern District of Iowa, Sioux City, IA

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

Louis Lopez, *U.S. Department of Justice*, Civil Rights Division, Washington, DC

Cynthia E. Nance, *Dean Emeritus and Nathan G. Gordon Professor*,
University of Arkansas School of Law, Fayetteville, AR

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

Howard Shapiro, *Proskauer Rose LLP*,
New Orleans, LA

- 5:30 – 6:00 pm

First-Time Attendee/ New Section Member Reception

Grand Ballroom ABC

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

Grand Ballroom ABC

All attendees are invited to meet, greet and network during this opening reception at the Hilton New Orleans Riverside. Section Committees will provide information about publications, services and programs they provide to Section members.

Thursday, November 7

7:00 – 8:00 am

Continental Breakfast

Grand Ballroom A

Thursday's 10:45 – 11:00 am refreshment break is sponsored by Davis Wright Tremaine LLP.

12:30 – 2:00 pm

Diversity Luncheon

Grand Ballroom B

Sponsored by:
Winston & Strawn LLP

Thursday's 3:30 – 3:45 pm refreshment break is sponsored by Jones Day.

- 5:00 – 6:00 pm

Standing Committee Business Meeting

International Labor & Employment Law,
Grand Salons 4 & 7

Conference Program Schedule

✦ Plenary Session

- 11:00 – 11:15 am
Welcome, Introductions and Presentation of the 2013 Arvid Anderson Public Sector Labor and Employment Attorney of the Year Award
Grand Ballroom CD

- 11:15 am – 12:30 pm
The Patient Protection and Affordable Care Act: Current Status and What Is to Come
Grand Ballroom CD
This program is an essential for all labor and employment law practitioners. A panel of experts will provide a general overview of the Patient Protection and Affordable Care Act (PPACA) as of November 2013. The focus will be on upcoming issues and major developments to date.

MODERATOR:

Mary Ellen Signorille, AARP Foundation Litigation, Washington, DC

SPEAKERS:

Phyllis C. Borzi, U.S. Department of Labor, Washington, DC

Judith P. Broach, Broach & Stulberg LLP, New York, NY

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

✦ Alternative Dispute Resolution

- 9:30 – 10:45 am
Ethics and Strategies in Labor and Employment Arbitration (E)
Grand Salons 12 & 15
Many traditional labor practitioners have found themselves presenting matters in employment arbitration and vice versa. In addition, and thanks to *Pyett v. Peinn Plaza*, practitioners in labor arbitration are faced with litigating statutory rights issues as part of the arbitration clause of the collective bargaining agreement. This session will analyze the critical differences and similarities in labor and employment arbitration including but not limited to, arbitrator selection and disclosure under the UAA, AAA Rules and the Code of Professional

Responsibility, the Due Process Protocol, discovery and motion practice, the hearing, and the enforcement of or challenge to arbitration awards.

MODERATOR:

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

SPEAKERS:

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

Pearl Zuchlewski, Kraus & Zuchlewski LLP, New York, NY

Alan A. Symonette, Arbitrator, Philadelphia, PA

- 2:15 – 3:30 pm
Issues and Ethics of Mediation-Arbitration ("Med-Arb")

Grand Ballroom D

Mediation-Arbitration ("Med-Arb") is a dispute resolution technique in which the parties agree in advance that, if mediation fails, the mediator turns arbitrator and issues a final and binding resolution. Learn about this ADR process under the tutelage of practitioners with Med-Arb expertise. Discussion will include: when the process is most effectively utilized by and advantageous to the parties, the pros and cons of using it, techniques to help achieve the best resolution for your client, and ethical issues that arise when the neutral switches hats to resolve a dispute.

MODERATOR:

Donald L. Sapir, Sapir Schragin LLP, White Plains, NY

SPEAKERS:

Anthony J. Carpinello, JAMS, New York, NY

R. Theodore Clark, Jr., Clark Baird Smith LLP, Rosemont, IL

Gregg M. Corwin, Gregg M. Corwin & Associates, Minneapolis, MN

Stephen Goldberg, Northwestern University Law School, Evanston, IL

Jonathan S. Sack, Sack & Sack, Attorneys at Law, New York, NY

- 3:45 – 5:00 pm
Class and Collective Action Arbitration: An Update

Grand Salons 13 & 16

Recent Supreme Court decisions changed the landscape in class and

collective action arbitration. In the wake of *Concepcion*, *In re Amex*, *D.R. Horton* and *Kilgore*, this panel will consider topics including the effect of class action bans in arbitration agreements, substantive rights to collective action under the NLRA and FLSA, whether state or federal statutory rights can be effectively vindicated in individual arbitration, unconscionability and procedural issues such as notice and discovery, court supervision and settlement.

MODERATOR:

Douglas L. Steele, Woodley & McGillivray, Washington, DC

SPEAKERS:

Norman Brand, Arbitrator/Mediator, San Francisco, CA

Thomas H. Christopher, Kilpatrick Townsend & Stockton LLP, Atlanta, GA

Michele R. Fisher, Nichols Kaster, PLLP, Minneapolis, MN

✦ Discrimination and Retaliation

- 9:30 – 10:45 am
Employer Use of Criminal Background Checks
Grand Salons 3, 6 & 9

The EEOC recently has focused on the use of criminal background checks in hiring. Some state and local governments likewise have enacted legislation limiting background checks. On the other hand, many employers continue to believe they need to consider conviction records to protect their businesses, employees and customers. Join our panel for an update and discussion of best practices for employers using criminal background checks.

MODERATOR:

Donald R. Livingston, Akin Gump Strauss Hauer & Feld LLP, Washington, DC

SPEAKERS:

Hon. Victoria A. Lipnic, U.S. Equal Employment Opportunity Commission, Washington, DC

Sharon Dietrich, Community Legal Services, Philadelphia, PA

Devjani Mishra, Alexion Pharmaceuticals, Cheshire, CT

Richard McCracken, Davis Cow and Bowe, San Francisco, CA

7th Annual Labor and Employment Law Conference



• 2:15 – 3:30 pm

Unconscious Bias: Diving Deeper

Cosponsored by the ABA Commission
on Women in the Profession

Grand Salons 12 & 15

Can stereotypes and unconscious bias influence your practice from case assessment to trial? This panel will discuss the use of evidence of unconscious bias in motions, trials, voir dire and jury selection. The panelists also will provide an understanding of how knowledge of unconscious bias can inform attorney best practices and litigation in the area of labor and employment law.

MODERATOR:

Roberta L. Steele, Goldstein, Borgen,
Dardarian & Ho, Oakland, CA

SPEAKERS:

Anthony G. Greenwald, University
of Washington, Seattle, WA

Karen Jo Koonan, NJP Litigation
Consulting, San Francisco, CA

Maurice Wexler, Baker, Donelson,
Bearman, Caldwell & Berkowitz, PC,
Memphis, TN

• 3:45 – 5:00 pm

Gender Pay Disparity: 50 Years after the Equal Pay Act

Cosponsored by the ABA Commission
on Women in the Profession

Grand Salons 3 & 6

Although passage of the Lilly Ledbetter Fair Pay Act in 2009 has renewed a focus on wage discrimination, policymakers are still fighting over the same questions: Does a gender pay disparity even exist? What is the best way to ensure pay equity? Do current laws provide adequate safeguards against pay discrimination, whether based on sex, or other protected categories? Join our panelists who will discuss the challenges associated with pursuing and defending pay discrimination claims, as well as the proposed Paycheck Fairness Act.

MODERATOR:

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

SPEAKERS:

Pamela Coukos, U.S. Department of Labor,
Washington, DC

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

Dr. Stephanie Plancich, NERA Economic
Consulting, Washington DC

Gary R. Siniscalco, Orrick, Herrington
& Sutcliffe LLP, San Francisco, CA

Employee Benefits

• 11:15 am – 12:30 pm

The Patient Protection and Affordable Care Act: Current Status and What Is to Come

Grand Ballroom CD

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Washington, DC

Judith P. Broach, Broach & Stulberg LLP,
New York, NY

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

• 2:15 – 3:30 pm

The Patient Protection and Affordable Care Act: Employer Responses and Litigation Trends

Grand Ballroom C

This panel will discuss potential litigation issues concerning (i) corporate restructurings designed to avoid "pay or play" obligations, including diminishing employee weekly hours to less than 30 and/or decreasing the number of employees to less than 50; (ii) companies' compliance with coverage obligations and mandates; (iii) whistle blower protections; and (iv) key court decisions addressing challenges to independent review organization decisions.

MODERATOR:

Howard Shapiro, Proskauer Rose LLP,
New Orleans, LA

SPEAKERS:

Timothy D. Hauser, U.S. Department
of Labor, Washington, DC

Ellen M. Kelman, Buescher, Goldhammer
& Kelman, P.C., Denver, CO

Teresa Renaker, Lewis Feinberg Lee
Renaker & Jackson, PC, Oakland, CA

• 3:45 – 5:00 pm

The Patient Protection and Affordable Care Act: Compliance

Grand Salons 12 & 15

The Patient Protection and Affordable Care Act (PPACA) requires insurers, plan sponsors and administrators to make significant policy and plan changes in a very short time period. This session will address compliance issues to date, including maintaining grandfathered status, external reviews with Independent Review Organizations ("IRO's"), and use of retiree plans to eliminate PPACA coverage. The panel also will discuss important recent legislative, regulatory and other developments as well as best practices for insuring that your clients are prepared for the required changes leading up to 2014.

MODERATOR:

Kathryn L. Moore, University of Kentucky
College of Law, Lexington, KY

SPEAKERS:

George H. Bostick, Department of the
Treasury, Washington, DC

Bernard T. King, Blitman & King LLP,
Syracuse, NY

Martha Jo (Marty) Wagner, Griffith
& Wheat PLLC, Washington, DC

✦ Ethical, Practical and Technological Issues in Managing a Labor and Employment Law Practice

• 8:00 – 9:15 am

Ethics of Social Media for Lawyers: It's Not Just Clients Who Need to Worry (E)

Grand Salons 21 & 24

Many attorneys are aware of the dangers that lurk for clients who participate in social media. But what about when it is the attorney using social media – whether for advertising, informal discovery or networking? This panel will discuss the ethics rules every lawyer needs to know when using Linked-In, Facebook, Google+, Twitter, and other social media sites.

MODERATOR:

David D. Powell, Jr., *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*, Denver, CO

SPEAKERS:

David M. Cook, *Cook and Logothetis, LLC*, Cincinnati, OH

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

• 2:15 – 3:30 pm

Apps for Labor and Employment Lawyers (T)

Cosponsored by the ABA Law Practice Division

Grand Salons 3 & 6

Apps for mobile devices are one of the technological advances revolutionizing the practice of law. They allow attorneys to be more efficient and effective, even in court, and allow the home to be an easy extension of the office. This program will provide recommendations from the perspectives of the practicing lawyer, law practice management and information systems management professionals in all practice settings, from large law firms to solo practitioners. Bring your tablet or smart phone, and discover the best apps for your practice.

MODERATOR:

James McKenna, *Morrison & Foerster*, San Francisco, CA

SPEAKERS:

Natalie R. Kelly, *Georgia State Bar Law Practice Management Program*, Atlanta, GA

Jeffery E. Richardson, *Adams and Reese LLP*, New Orleans, LA

Jeffery Taylor, *Absolute Legal Services, LLC*, Oklahoma City, OK

• 3:45 – 5:00 pm

Marketing Your Practice to Secure Business and Recognition

Grand Salon 22

Tooting your own horn shouldn't cause the discomfort that it does when the potential rewards are so great. In this program, expert panelists will discuss ways to obtain business and recognition to achieve career advancement. Topics include using social media efficiently, overcoming stereotypes, tips for achieving media recognition for case settlements and victories, effective networking, advertising, and creative marketing ideas.

MODERATOR:

Traci Stuart, *Blattel Communications*, San Francisco, CA

SPEAKERS:

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

Rebecca Grey, *The Grey Law Firm, PC*, San Francisco, CA

Matthew R. Robbins, *The Previant Law Firm, S.C.*, Milwaukee, WI

Catherine A. Yanni, *JAMS*, San Francisco, CA

✦ Immigration

• 8:00 – 9:15 am

The National Labor Relations Board's Entry into Immigration Issues

Grand Salon 19

This panel explores important substantive and procedural immigration related questions: What are the rights of undocumented workers who engage in protected concerted activities? Can they be threatened with deportation or discharge if they engage in protected concerted activity? Can they file charges? Are they protected from deportation during investigation? Do they have to prove lawful status during investigation? What remedies do they have available if terminated

for protected Section 7 rights? Can an employer unilaterally implement E-verify? Should witnesses be required to testify to unlawful statements in their native language or in the language the statement was made?

MODERATOR:

Peter Ohr, *National Labor Relations Board*, Chicago, IL

SPEAKERS:

Katchen Locke, *32BJ SEIU*, New York, NY

Amy J. Zdravecky, *Franczek Radelet*, Chicago, IL

• 9:30 – 10:45 am

Comprehensive Immigration Reform

Grand Salon 19

What are the processes and pitfalls for workers and businesses taking advantage of legalization? How will temporary worker programs change as we design a new "future flow" system? How will professional employees be advantaged? What are the implications for worksite enforcement? How are the various agencies, including the EEOC, dealing with these issues?

MODERATOR:

Jonathan Grode, *Green and Spiegel LLC*, Providence, RI

SPEAKERS:

Ana Avendano, *AFL-CIO*, Washington, DC

Emily Tulli, *National Immigration Law Center*, Washington, DC

Becky L. Monroe, *U.S. Department of Justice*, Washington, DC

Mary E. Pivec, *Williams Mullen*, Washington, DC

• 2:15 – 3:30 pm

Causes of Action for Workplace Abuse of Immigrant Workers

Grand Salons 13 & 16

Immigrant workers, including temporary foreign workers and workers with and without authorization, suffer workplace abuses unique to their status, and barriers to accessing the courts. What special causes of action and administrative claims can be brought on behalf of immigrant workers, including trafficked workers? Panelists will discuss actions under the Trafficking Victims Protection Act, RICO and other federal laws, as well as administrative

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actions under the Unfair Immigration Related Employment Practices Act. Further, the panel will discuss traditional employment actions and how they apply to immigrants present in the U.S. under various work-related visas, as well as without authorization.

MODERATOR:

Rebecca Smith, *National Employment Law Project*, Seattle, WA

SPEAKERS:

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

Brian S. Green, *Murthy Law Firm*, Owings Mills, MD

Yihong “Julie” Mao, *New Orleans Workers’ Center for Racial Justice*, New Orleans, LA

Naomi Ruth Tsu, *Southern Poverty Law Center*, Atlanta, GA

✦ International

• 9:30 – 10:45 am

Latin America on the Rise: The Impact of Legal Reforms and Labor Market Developments in China and Latin America

Grand Salon 22

Many U.S., Canadian and EU companies are looking to Latin America as an alternative labor market in the wake of significant legal developments in the People’s Republic of China (such as labor dispatch, overtime, collective bargaining and unionization, and greater restrictions on non-competes). Employer-friendly reforms in Mexico, Brazil and elsewhere in Latin America make that region more flexible for multinationals. Speakers expert on labor law developments in these areas will explore the most recent changes in PRC and Latin American labor and employment laws (including laws on restrictive covenants and trade secrets) and the implications of this shift.

MODERATOR:

Anne M. Radolinski, *Fredrikson & Byron P.A.*, Minneapolis, MN

SPEAKERS:

Carolina Tavares Rodrigues Davies, *Machado, Meyer, Sendacz e Opice Advogados*, São Paulo, Brazil

Oscar De la Vega, *Little Mendelson*, Mexico City, Mexico

Erin R. Kuzz, *Sherrard Kuzz LLP*, Toronto, Ontario, Canada

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

• 2:15 – 3:30 pm

Next Up for North American Employers and Unions? International Framework Agreements (IFAs) and Corporate Social Responsibility (CSR)

Grand Salons 4 & 7

As unions face dwindling membership, “framework” agreements between multinational companies and global union federations provide an option for setting standards for treatment of employees. Through IFAs, international employers commit to respect certain workplace principles in all of the countries where they operate. Both IFAs and CSR have recently been

adopted by North American employers, including the Ford Motor Company, which signed a detailed IFA that raises a whole host of questions for the company, its suppliers and its employees. This panel will discuss challenges that IFAs and CSRs present for North American employers and unions and what those parties can do to resolve them.

MODERATOR:

Joseph Z. Fleming, *Greenberg Taurig LLP*, Miami, FL

SPEAKERS:

Owen E. Herrnschmidt, *International Association of Machinists and Aerospace Workers*, Upper Marlboro, MD

Christy Hoffman, *UNI Global Union*, Nyon, Switzerland

Danny J. Kaufer, *Heenan Blaikie*, Montréal, Québec, Canada

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

• 3:45 – 5:00 pm

International Perspectives on Managing the Risks of Alternate Workforces

Grand Salons 4 & 7

Employers are expanding their use of alternate workforces as countries face austerity and companies require cost-cutting measures. Such workforces can include temporary employees supplied by third party vendors. What happens when the agency workforce stays months and even years? Despite best intentions, employers may encounter third-party suppliers who fail to make the necessary tax deductions or employer contributions. Who is responsible? Does the employer have to pay again? This panel will discuss how certain countries have answered these questions and what U.S. employers and workers need to do to protect themselves.

MODERATOR:

Juliet Carp, *Speechly Bircham LLP*, London, England

SPEAKERS:

Earl V. Brown, Jr., *American Center for International Labor*, Washington, DC

Benjamin C. Hensler, *Worker Rights Consortium*, Washington, DC

Jeremy M. Mittman, *Proskauer Rose LLP*, Los Angeles, CA

✦ Labor-Management Relations

• 8:00 – 9:15 am

It's Always 1983 in the American Workplace: Constitutional Protections for Public Sector Employees

Grand Salons 12 & 15

Unlike private sector employment, public sector employers, unions and individual employees live under a panoply of constitutional issues, including equal protection, procedural due process/property rights, First Amendment (including speech, religion and petitioning), and warrantless searches. These issues arise in all aspects of employment, including hiring, monitoring employment activities, union membership, dues/fair share fees deductions, discipline/discharge, drug testing, and searches of employees/property. This presentation will cover the major court decisions and legislative changes during the past five years that have shaped (and changed) employee rights and employer responsibilities.

SPEAKERS:

George S. Crisci, *Zashin & Rich Co., L.P.A.*, Cleveland, OH

James W. Henderson, Jr., *Carroll, Burdick & McDonough LLP*, Sacramento, CA

Sheldon H. Nahmod, *IIT Chicago-Kent College of Law*, Chicago, IL

Jennifer K. Poltrock, *Poltrock & Poltrock*, Chicago, IL

• 8:00 – 9:15 am

The National Labor Relations Board's Entry into Immigration Issues

Grand Salon 19

This panel explores important substantive and procedural immigration related questions: What are the rights of undocumented workers who engage in protected concerted activities? Can they be threatened with deportation or discharge if they engage in protected concerted activity? Can they file charges? Are they protected from deportation during investigation? Do they have to prove lawful status during investigation? What remedies do they have available if terminated for protected Section 7 rights? Can

an employer unilaterally implement E-verify? Should witnesses be required to testify to unlawful statements in their native language or in the language the statement was made?

MODERATOR:

Peter Ohr, *National Labor Relations Board*, Chicago, IL

SPEAKERS:

Katchen Locke, *32BJ SEIU*, New York, NY

Amy J. Zdravecky, *Franczek Radelet*, Chicago, IL

• 8:00 – 9:15 am

National Labor Relations Act Fundamentals for the Non-Union Workplace (F)

Cosponsored by the ABA Young Lawyers Division

Grand Salons 10 & 13

This program will focus on employees' Section 7 rights in non-union and organizing settings, and the obligations of employers to recognize these rights. The panel will also emphasize the NLRB's emerging guidance on what constitutes Section 7 activity, and when employees can lose the protection of the Act. Topics to be covered include employer policies regarding confidentiality of compensation, employment-at-will, no solicitation/no distribution, and union access; use of company resources such as e-mail and bulletin boards; employee conduct both on and off duty including employer criticism and the duty of loyalty; employer monitoring of employee conduct; and investigation procedures regarding instructions not to discuss and employee representatives.

MODERATOR:

Karen N. Neilsen, *National Labor Relations Board*, Cleveland, OH

SPEAKERS:

Emily R. Perez, *Hammond and Shinnors, P.C.*, St. Louis, MO

Joseph J. Torres, *Winston & Strawn LLP*, Chicago, IL

• 9:30 – 10:45 am

The Constant Crisis: Public Sector Bargaining in the New Age

Grand Salons 4 & 7

"Crisis in Public Sector Bargaining" is a headline in the tradition of "Congress Fails to Act." It will always be true. And

yet, doesn't it seem different this time around? A panel of experts debates the proposition: "Is public sector collective bargaining broken? Can it be fixed? Should it be fixed?"

MODERATOR:

Marlene A. Gold, *City of New York Office of Collective Bargaining*, New York, NY

SPEAKERS:

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

James C. Franczek, Jr., *Franczek Radelet*, Chicago, IL

David J. Strom, *American Federation of Teachers*, Washington, DC

• 9:30 – 10:45 am

Has Specialty Healthcare Changed the Landscape in Organizing and Representation Proceedings?

Grand Salons 10 & 13

Specialty Healthcare & Rehab. Ctr. Of Mobile, found that a smaller bargaining unit consisting of only certified nursing assistants ("CNAs") was appropriate. *Riverview Health & Rehab. Ctr.*, applying *Specialty Healthcare*, also found that a small unit consisting solely of CNAs was appropriate. What has been the impact of *Specialty Healthcare*? Has the trend shown that it has applied mainly in micro-units or larger units? What impact has it had on unit determinations? What impact has it had on healthcare organizing? What about unit determinations in non-health care industries? Are companies doing anything different in response to *Specialty Healthcare*?

MODERATOR:

Andrea J. Wilkes, *National Labor Relations Board*, New Orleans, LA

SPEAKERS:

William Haller, *International Association of Machinists and Aerospace Workers*, Upper Marlboro, MD

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

• 2:15 – 3:30 pm

Bankruptcy and the Railway Labor Act

Grand Salon 22

The 2012 and 2013 newsworthy events relating to the bankruptcy of American Airlines, renegotiation of labor agreements under Section 1113

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of the Bankruptcy Code, abrogation of the pilots' agreement, and preparations for a US Airways merger provide a case study of the complexity of the legal and labor relations forces on large airlines under the Railway Labor Act.

MODERATOR:

Thomas E. Reinert, *Morgan, Lewis & Bockius LLP*, Washington, DC

SPEAKERS:

Darin M. Dalmat, *James & Hoffman*, Washington, DC

Chris A. Hollinger, *O'Melveny & Myers LLP*, San Francisco, CA

Neal D. Mollen, *Paul Hastings*, Washington, DC

Carmen R. Parcelli, *Guerrieri, Clayman, Bartos & Parcelli, P.C.*, Washington, DC

• 2:15 – 3:30 pm

An Inside View of an NLRB Case: What They Were Thinking

Grand Salons 21 & 24

What does the NLRB look for when deciding if an unfair labor practice case has merit? Our panel will offer a frank and open discussion about what is important in deciding a case.

MODERATOR:

John E. Higgins, Jr., *Catholic University*, Washington, DC

SPEAKERS:

Hon. Celeste J. Mattina, *National Labor Relations Board*, Washington, DC

Hon. Mary Miller Cracraft, *National Labor Relations Board*, San Francisco, CA

Barry J. Kearny, *National Labor Relations Board*, Washington, DC

M. Kathleen McKinney, *National Labor Relations Board*, New Orleans, LA

• 3:45 – 5:00 pm

National Labor Relations Board Update

Grand Ballroom D

Panelists will discuss important issues before the NLRB as well as the potential impact of *Noel Canning*.

MODERATOR:

Christopher David Ruiz Cameron, *Southwestern Law School*, Los Angeles, CA

SPEAKERS:

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

G. Roger King, *Jones Day*, Columbus, OH

✦ Litigation

• 8:00 – 9:15 am

Overcoming New Hurdles for Class Certification

Grand Salons 4 & 7

Panelists will explore cutting edge issues in class action employment litigation and provide useful pointers for practitioners. Topics will include the Supreme Court's *Comcast Corp. v. Behrend* decision, the Sixth Circuit's *Serrano v. Cintas* decision, follow up on *Dukes v. Wal-Mart Stores*, and the impact, if any, of *Genesis Healthcare Corp. v. Symczyk* on Rule 23 class certification motions.

MODERATOR:

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

SPEAKERS:

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

Jocelyn D. Larkin, *Impact Fund*, Berkeley, CA

• 9:30 – 10:45 am

Crafting an Effective Class Action Trial Plan

Grand Salons 21 & 24

A panel of experienced practitioners who have litigated class action cases through trial share tips on planning to take a case through trial and executing

on the plan. Topics will include selection and preparation of witnesses, use of representative evidence, expert testimony, pre-trial motions, jury instructions, and use of exhibits (and how to introduce them).

MODERATOR:

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

SPEAKERS:

Evangeline C. Paschal, *Hunton & William LLP*, Washington, DC

David W. Sanford, *Sanford Heisler, LLP*, New York, NY

• 2:15 – 3:30 pm

The Patient Protection and Affordable Care Act: Employer Responses and Litigation Trends

Grand Ballroom C

This panel will discuss potential litigation issues concerning (i) corporate restructurings designed to avoid "pay or play" obligations, including diminishing employee weekly hours to less than 30 and/or decreasing the number of employees to less than 50; (ii) companies' compliance with coverage obligations and mandates; (iii) whistle blower protections; and (iv) key court decisions addressing challenges to independent review organization decisions.

MODERATOR:

Howard Shapiro, *Proskauer Rose LLP*, New Orleans, LA

SPEAKERS:

Timothy D. Hauser, *U.S. Department of Labor*, Washington, DC

Ellen M. Kelman, *Buescher, Goldhammer & Kelman, P.C.*, Denver, CO

Teresa Renaker, *Lewis Feinberg Lee Renaker & Jackson, P.C.*, Oakland, CA

• 3:45 – 5:00 pm

eDiscovery Boot Camp (F)

Grand Salons 21 & 24

This program will provide pragmatic guidance to practitioners new to the world of e-discovery. The discussion will include the basic legal framework and common definitions, as well as information regarding collection points, collection types, e-discovery and the individual, small and mid-size client, when you need an expert and how to find one, costs and budgeting, educating the court, and trending e-discovery issues.

MODERATOR:

Cardelle B. Spangler, Winston & Strawn LLP, Chicago, IL

SPEAKERS:

David S. Adelstein, Bush, Gottlieb, Singer, López, Kohanski, Adelstein & Dickinson, Glendale, CA

Brian E. Koncius, Bogas, Koncius & Croson P.C., Detroit, MI

Marcy Norwood Lynch, Boies, Schiller & Flexner LLP, Orlando, FL

Clinton P. Sanko, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Chattanooga, TN

• 3:45 – 5:00 pm

Negotiating an FLSA Settlement Agreement: Legal and Practical Considerations

Grand Ballroom C

This experienced panel will discuss issues commonly associated with FLSA settlements in both the court-supervised context and out-of-court settlements. Topics will include, among others, the enforceability of private releases, confidentiality provisions, waiving the right to join a collective action, equitable allotment of back wages in a certified class, reversion of back wages for absent class members, and voluntary certification issues for settlement purposes. Through the use of competing settlement clauses, the panel will discuss from both the management and employee side perspective their ideal language for certain provisions and deal breakers.

MODERATOR:

Robert A. Boonin, Butzel Long, A Professional Corporation, Ann Arbor, MI

SPEAKERS:

John S. Ho, Bond Schoeneck & King, PLLC, New York, NY

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

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

Linda R. Singer, JAMS, Washington, DC

✦Special Interest

• 8:00 – 9:15 am

State Regulation of Occupational Safety and Health

Grand Salon 22

In addition to the federal statute administered by the federal Occupational Safety and Health Administration, twenty seven states

have their own occupational safety and health programs. These state programs must be “at least as effective” as the federal program. In fact, some states have implemented regulations that exceed those required by federal law. This session will examine the differences between the federal program and state programs and the differences among state programs. It also will examine whether there is any way to practically enforce the “at least as effective” requirement and new initiatives of the federal agency to monitor the activities of state programs.

MODERATOR:

Stephen A. Yokich, Cornfield and Feldman LLP, Chicago, IL

SPEAKERS:

Gregory J. Baxter, Occupational Safety and Health Administration’s Region VIII, Denver, CO

Nancy J. Guyott, AFL-CIO, Indianapolis, IN

John J. Howard, National Institute for Occupational Safety and Health, Irvine, CA

Susan F. Wiltsie, Hunton & Williams LLP, Washington, DC

✦Wage and Hour

• 3:45 – 5:00 pm

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Robert A. Boonin, Butzel Long, A Professional Corporation, Ann Arbor, MI

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

Linda R. Singer, JAMS, Washington, DC

✦Workplace Problems and Solutions

• 8:00 – 9:15 am

Managing Employees with Discrimination or Other Complaints

Grand Salons 3, 6 & 9

Most practitioners, regardless of whether they represent employees, employers or unions, agree that managing situations involving current employees who have reported allegations of discrimination or are considered whistleblowers is tricky. This panel will explore addressing the “untouchable” employee and counseling and training management to minimize the risk of retaliation. The panel also will discuss creative solutions for negotiating settlements and employee exits.

MODERATOR:

Tamika D. Lynch, Siemens Industry, Chicago, IL

SPEAKERS:

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

Robert T. Bernstein, Laner, Muchin, Dombrow, Becker, Levin and Tomlinberg, Ltd., Chicago, IL

Paula R. Johnston, Teamsters Local 320, Minneapolis, MN

5:30 pm

Second Line Departure from the Hilton’s Ballroom Foyer

6:00 – 8:00 pm

Diversity Reception at the Piazza d’Italia, Loews New Orleans Hotel

Presented by the Diversity in the Legal Profession Committee

Join us for a social and networking reception for those who support the Section’s vision of diversity and inclusion. The reception will begin at 5:30 pm at the Hilton New Orleans Riverside. Grab a “geaux” cup and bandana and join the parade to the Loews New Orleans Hotel. The reception will feature entertainment by New Orleans Jazz & Heritage Festival favorite Glen David Andrews Band.

7th Annual Labor and Employment Law Conference

Friday, November 8

7:00 – 8:00 am

Continental Breakfast

Grand Ballroom A

Friday's 10:45 – 11:00 am
refreshment break is sponsored by
ERS Group.

12:30 – 2:00 pm

Pro Bono Luncheon

Grand Ballroom B

The Pro Bono Luncheon will feature the 2013 Frances Perkins Award Recipient who will speak on the importance of pro bono work. In addition, attendees will be able to engage in discussions relating to providing pro bono services and to learn first-hand how the Pro Bono Work Committee interacts with the Section.

12:30 – 2:00 pm

In-House Corporate Counsel Luncheon (In-House Corporate Counsel Only)

Magnolia

Friday's 3:30 – 3:45 pm
refreshment break is sponsored by
NERA Economic Consulting.

• 5:00 – 6:00 pm

Standing Committee Business Meetings

ADR in Labor & Employment Law,
Grand Salons 13 & 16

**Development of the Law under the
NLRA,** Grand Salons 12 & 15

Employee Benefits, Grand Ballroom A
Employment Rights & Responsibility,
Grand Ballroom D

Equal Employment Opportunity Law,
Grand Ballroom C

Ethics & Professional Responsibility,
Grand Salons 4 & 7

Federal Labor Standards Legislation,
Grand Salons 3 & 6

Federal Legislative Developments,
Grand Ballroom A

Immigration Law, Grand Ballroom A

Occupational Safety & Health Law,
Grand Ballroom A

Practice & Procedure under the NLRA,
Grand Salons 21 & 24

Railway & Airline Labor Law,
Grand Ballroom A

**State & Local Government Bargaining
& Employment Law,** Grand Salon 22

Technology in the Practice & Workplace,
Grand Ballroom A

Workers' Compensation, Grand Ballroom A

♣Plenary Session

• 11:00 – 11:15 am

Presentation of the 2013 Frances Perkins Pro Bono Service Award

Grand Ballroom CD

• 11:15 am – 12:30 pm

Supreme Court Review

Grand Ballroom CD

The Section Secretary will provide an informative review of the Supreme Court's 2012-2013 decisions that impact labor and employment law. Don't miss this must-see program.

SPEAKER:

Martin H. Malin, IIT Chicago-Kent
College of Law, Chicago, IL

♣Discrimination and Retaliation

• 9:30 – 10:45 am

The ADAAA: Five Years Later (F)

**Cosponsored by the
ABA Commission on Disability Rights
and the ABA Young Lawyers Division**

Grand Salons 3, 6 & 9

Panelists will discuss the key issues and critical case law developments that concern the Americans with Disabilities Act Amendments Act of 2008. An in-depth discussion will include how the definitions of disability, accommodation and undue hardship have impacted the way we advise our clients and prosecute and defend these actions.

MODERATOR:

Eric W. Iskra, Spilman Thomas
& Battle, PLLC, Charleston, WV

SPEAKERS:

Michael J. Belo, Berenbaum Weinshienk PC,
Denver, CO

Ashley Eddy, MGM Resorts International,
Las Vegas, NV

Gary E. Phelan, Cohen & Wolf, P.C.,
Bridgeport, CT

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

• 9:30 – 10:45 am

Caregiver Responsibility Discrimination: Are You One Sick Kid Away from Losing Your Job?

**Cosponsored by the ABA Commission
on Disability Rights and the ABA
Commission on Women in the Profession**

Grand Salon 16

It isn't quite gender discrimination, pregnancy discrimination or disability discrimination. It does not fall neatly under the categories of the ADA, FMLA, PDA or Title VII. Nonetheless, "caregiver responsibility discrimination" claims abound. This panel will explore the legal theories behind potential causes of action arising when employees believe they have been discriminated against because of their caregiver responsibilities for children, ill parents or a disabled family member. Issues for discussion include the employer's obligation, if any, to accommodate a pregnant employee or an employee with caregiving responsibility in the context of recent case law and the recent EEOC regulations.

MODERATOR:

Gail Golman Holtzman, Kass Shuler, P.A.,
Tampa, FL

SPEAKERS:

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

Ann M. Schmidt, Hoffmann-La Roche Inc.,
Nutley, NJ

Jamie Dolkas, University of California,
Hastings College of the Law, Center for
WorkLife Law, San Francisco, CA

Richard A. Williams, Jr., R.A. Williams
Law Firm, P.A., St. Paul, MN

• 2:15 – 3:30 pm

Discrimination against LGBT Individuals: Sex and Gender Revisited under Title VII (F)

**Cosponsored by the
ABA Commission on Women in the
Profession, the ABA Commission on
Sexual Orientation and Gender Identity
and the ABA Young Lawyers Division**

Grand Salons 13 & 16

This panel will address the recent efforts by the EEOC to expand the protection of Title VII to LGBT individuals in spite of the jurisprudence reflecting that discrimination on the basis of sexual orientation is not "based on sex." In particular, this panel will

examine the recent decision by the Commission, *Macy v. Holder* and how the law is transforming nationwide in ways that suggest “based on sex” may be redefined to be more inclusive.

MODERATOR:

Louis Lopez, U.S. Department of Justice, Civil Rights Division, Washington, DC

SPEAKERS:

Edward J. Reeves, Stoel Rives LLP, Portland, OR

Jennifer B. Salvatore, Nacht Roumel Salvatore Blanchard & Walker PC, Ann Arbor, MI

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

• 2:15 – 3:30 pm

Who Is a Qualified Individual with a Disability?

Cosponsored by the ABA Commission on Disability Rights

Grand Salons 3 & 6

The Americans with Disabilities Act (ADA) prohibits discrimination against a qualified individual on the basis of disability. The EEOC regulations and other guidance, as well as recent case law, have created a complex landscape to consider when evaluating whether an employee or an applicant is qualified. This panel will provide guidance on the meaning of qualified by weaving a review of recent case law and EEOC guidance into a discussion of a series of short hypothetical situations. The panel will focus on issues such as employment standards, essential functions, absenteeism and performance.

MODERATOR:

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

SPEAKERS:

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

Joyce L. Collier, Hardwick Collier, Doylestown, PA

Robert L. Jones, American Airlines, Fort Worth, TX

Cassie R. Ehrenberg, Cleary, Josem & Trigiani LLP, Philadelphia, PA

• 2:15 – 3:30 pm

The Rising Tide of Retaliation Claims

Grand Salons 12 & 15

Retaliation is the most common EEOC charge. This panel explores

the most recent court decisions and legislation expanding protections against workplace retaliation, including post-*Thompson* third-party retaliation claims and retaliatory harassment. This panel also will undertake a practical examination of what conduct may be deemed retaliatory.

MODERATOR:

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

SPEAKERS:

Jay Jaffe, 1199 SEIU United Health Care Workers East, New York, NY

Janie F. Schulman, Morrison & Foerster LLP, San Francisco, CA

Carolyn Wheeler, U.S. Equal Employment Opportunity Commission, San Francisco, CA

• 3:45 – 5:00 pm

ADA, HIPAA and GINA: Disclosing Private Information

Cosponsored by the ABA Commission on Disability Rights

Grand Salons 3 & 6

ADA, HIPAA and GINA protect the privacy of certain employee and medical information and have proven at times to be misunderstood. Many practitioners have heard others invoke these statutory schemes as barring access to certain information when the statute may not apply, while other practitioners, who are unfamiliar with the limits imposed by existing law, have disclosed protected information. This panel will explore the uses and possible misuses of these statutes.

MODERATOR:

David M. Fusco, Schwarzwald McNair & Fusco LLP, Cleveland, OH

SPEAKERS:

Howard D. Bye-Torre, Stoel Rives LLP, Seattle, WA

Sharon M. Dostmann, Cooper Health System, Philadelphia, PA

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

• 3:45 – 5:00 pm

Disciplining Employees for Disability-Related Activities

Cosponsored by the ABA Commission on Disability Rights

Grand Ballroom D

Some courts hold that employers are not required to accommodate

“misconduct” that stems from a disability, while others hold that conduct resulting from a disability is to be considered part of the disability and not a separate basis for discipline. The issue is now especially pressing because the ADAAA expanded what constitutes a disability. Join the panel as they tackle key questions and discuss potential accommodations where such are required.

MODERATOR:

Hope J. Singer, Bush Gottlieb Singer López Kohanski Adelstein & Dickinson, Los Angeles, CA

SPEAKERS:

Brian East, Texas Disability Rights, Austin, TX

Barbara L. Johnson, Paul Hastings LLP, Washington, DC

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

Joyce Walker-Jones, U.S. Equal Employment Opportunity Commission, Washington, DC

Employee Benefits

• 8:00 – 9:15 am

The Practical Application of the Patient Protection and Affordable Care Act in the Public Sector

Grand Salons 4 & 7

Some, but not all of the Patient Protection and Affordable Care Act (PPACA) survived constitutional challenge. However, other challenges are in the litigation pipeline. Major portions must be implemented by January 1, 2014. What collective bargaining obligations do unionized employers have as they attempt to comply with, and implement, PPACA's requirements? What changes in health benefits coverage should employers and unions be considering as they negotiate aspects of PPACA's requirements?

MODERATOR:

Donald D. Slesnick, II, Law Offices of Slesnick & Casey, LLP, Coral Gables, FL

SPEAKERS:

Thomas G. Hancuch, Vedder Price, P.C., Chicago, IL

Brenda Sutton-Wills, California Teachers Association, Sacramento, CA

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- 2:15 – 3:30 pm

Bargaining under the Affordable Care Act in the Private Sector: A Different Kind of Health Insurance “Exchange”

Grand Ballroom D

The enactment of health care reform has profoundly changed the benefits landscape, creating numerous collective bargaining issues for employers, unions, and multiemployer funds. This presentation will cover bargaining considerations, tips, and “best practices” in light of this groundbreaking legislation. Specific issues will include the impact of grandfathering, the new definition of “full-time” employees, mandated plan changes, penalties, the “Cadillac” tax, etc., on collective bargaining negotiations, CBAs and collectively bargained plans.

MODERATOR:

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

SPEAKERS:

Peter S. Dickinson, *Bush, Gottlieb, Singer, López, Kohanski, Adelstein & Dickinson, Glendale, CA*

Ronald J. Kramer, *Seyfarth Shaw LLP, Chicago, IL*

Jeffrey Stein, *1199 SEIU National Benefit & Pension Funds, New York, NY*

✦ Ethical, Practical and Technological Issues in Managing a Labor and Employment Law Practice

- 8:00 – 9:15 am

Very Recent Changes in the Ethics Rules: Wrapping Up the ABA Commission on Ethics 20/20 (E)

Grand Salon 22

Learn essential information about the August 2012 and February 2013 changes in the ABA Model Rules of Professional Conduct on admission by motion, performance of legal work by experienced attorneys pending admission to a new jurisdiction, *pro hac vice* admission, work by foreign in-house lawyers, unauthorized practice, multijurisdictional practice, registration of in-house counsel, outsourcing work to lawyers and non-lawyers, choice of law on discipline, the confidentiality questions arising from new technology, and client development through new technology.

MODERATOR:

James F. Allmendinger, *NEA New Hampshire, Concord, NH*

SPEAKERS:

J.S. Chris Christie, Jr., *Bradley Arant Boult Cummings LLP, Birmingham, AL*

Stephen Gillers, *New York University, New York, NY*

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

Nicole Walthour, *International Paper, Memphis, TN*

- 2:15 – 3:30 pm

BYOD: Bring Your Own Device or Bring Your Own Disaster?

Cosponsored by the ABA Law Practice Division

Grand Salons 21 & 24

Use of employee-owned devices, such as smartphones, tablets and laptops for both personal and professional purposes presents a host of legal issues and employee-relations challenges. While the opportunities for security breaches and lost data make many employers cringe, companies that dictate which devices employees must use may find themselves at a competitive disadvantage. This panel

will discuss important case law and legislative developments, privacy issues, unique liabilities in the wage-hour and discrimination contexts, preservation and discovery issues in litigation, what to do when an employee leaves, as well as critical “dos & don’ts” when crafting BYOD policies.

MODERATOR:

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

SPEAKERS:

Amira Day Dallafior, *Facebook, Menlo Park, CA*

Troy L. Kessler, *Shulman Kessler LLP, Long Island, NY*

David A. Rosenfeld, *Weinberg Roger & Rosenfeld P.C., Alameda, CA*

- 3:45 – 5:00 pm

Ethical Engagements: You Don’t Need a Ring, But You Might Want a Pre-Nup (E)

Grand Salons 13 & 16

Many states’ ethics rules require that attorneys memorialize certain terms at the beginning of a representation, such as the scope of representation and the fee arrangement. But are there other items that an attorney must or should communicate to a client from the onset of representation? This panel will discuss when an attorney-client relationship is formed and consider the ethics of engagement letters, covering topics like defining the scope of representation, explaining the grounds for terminating the representation, instructing clients about their preservation obligations, and warning clients about the risks of technology and social media use.

MODERATOR:

Cynthia E. Nance, *University of Arkansas, Fayetteville, AR*

SPEAKERS:

Nora L. Macey, *Macey Swanson and Allman, Indianapolis, IN*

Stephanie S. Padilla, *Johns Manville, Denver, CO*

Scott Pollins, *Willig, Williams & Davidson, Philadelphia, PA*

Dayna E. Underhill, *Hinshaw & Culbertson LLP, Portland, OR*

✦ International

- 8:00 – 9:15 am

Obligations to Employees in Times of Crises in the U.S. and Abroad

Grand Salon 16

"Duty of care" isn't just about avoiding OSHA scrutiny anymore. Employers now have to deal with keeping their employees safe from political insurrections, hurricanes, typhoons and kidnapping attempts. Attendees will obtain valuable information regarding employee training and best practices from attorneys and experts who specialize in international disaster training and evacuation.

MODERATOR:

Marley S. Weiss, *University of Maryland Francis King Carey School of Law, Baltimore, MD*

SPEAKERS:

Suzanne Garber, *International SOS, Houston, TX*

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

Robert B. Stulberg, *Broach & Stulberg, LLP, New York, NY*

✦ Labor-Management Relations

- 8:00 – 9:15 am

The Practical Application of the Patient Protection and Affordable Care Act in the Public Sector

Grand Salons 4 & 7

Some, but not all, of the Patient Protection and Affordable Care Act (PPACA) survived constitutional challenge. However, other challenges are in the litigation pipeline. Major portions must be implemented by January 1, 2014. What collective bargaining obligations do unionized employers have as they attempt to comply with, and implement, PPACA's requirements? What changes in health benefits coverage should employers and unions be considering as they negotiate aspects of PPACA's requirements?

MODERATOR:

Donald D. Slesnick, II, *Law Offices of Slesnick & Casey, LLP, Coral Gables, FL*

SPEAKERS:

Thomas G. Hancuch, *Vedder Price, P.C., Chicago, IL*

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

- 8:00 – 9:15 am

Meet the National Labor Relations Board

Grand Salons 21 & 24

How have the national election results impacted the NLRB over the past year? Come meet the NLRB members as they discuss recent developments in the area of traditional labor law.

MODERATORS:

John J. Toner, *Seyfarth Shaw LLP, Washington, DC*

Gwynne A. Wilcox, *Levy Ratner P.C., New York, NY*

SPEAKERS:

Mark Gaston Pearce, *Chairman, National Labor Relations Board, Washington, DC*

Nancy J. Schiffer, *National Labor Relations Board, Washington, DC*

Kent Y. Hirozawa, *National Labor Relations Board, Washington, DC*

Philip A. Miscimarra, *National Labor Relations Board, Washington, DC*

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

- 9:30 – 10:45 am

Meet the National Labor Relations Board General Counsel

Grand Salons 21 & 24

There will be a frank and candid discussion of issues faced by the General Counsel over the past year.

MODERATORS:

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

N. Elizabeth Reynolds, *Allison, Slutsky & Kennedy, P.C., Chicago, IL*

SPEAKER:

TBA

- 2:15 – 3:30 pm

Bargaining under the Affordable Care Act in the Private Sector: A Different Kind of Health Insurance "Exchange"

Grand Ballroom D

The enactment of health care reform has profoundly changed the benefits

landscape, creating numerous collective bargaining issues for employers, unions, and multiemployer funds. This presentation will cover bargaining considerations, tips, and "best practices" in light of this groundbreaking legislation. Specific issues will include the impact of grandfathering, the new definition of "full-time" employees, mandated plan changes, penalties, the "Cadillac" tax, etc., on collective bargaining negotiations, CBAs and collectively bargained plans.

MODERATOR:

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

SPEAKERS:

Peter S. Dickinson, *Bush, Gottlieb, Singer, López, Kohanski, Adelstein & Dickinson, Glendale, CA*

Ronald J. Kramer, *Seyfarth Shaw LLP, Chicago, IL*

Jeffrey Stein, *1199 SEIU National Benefit & Pension Funds, New York, NY*

- 3:45 – 5:00 pm

Education Issues at the National Labor Relations Board

Grand Salons 21 & 24

Issues in the education field are in the forefront at the NLRB. Are charter schools political subdivisions within the meaning of Section 2(2) of the Act, and therefore exempt from the Board's jurisdiction? Are university graduate student assistants performing services in connection with their studies statutory employees within the meaning of Section 2(3) of the Act? Should university faculty members be covered by the Act or excluded as managers? This panel will discuss these and other related issues involving the NLRB's positions on education issues.

MODERATOR:

Wayne R. Gold, *National Labor Relations Board, Baltimore, MD*

SPEAKERS:

Jeffery R. Boxer, *Bush Gottlieb Singer López Kohanski Adelstein Dickinson, Glendale, CA*

Jennifer Platzkere Snyder, *Dilworth Paxon LLP, Philadelphia, PA*

Continued on page 18

WEDNESDAY, NOVEMBER 6

3:00 pm – 4:00 pm	Law Student Orientation Grand Salon 4 (p. 4)
4:00 pm – 5:30 pm	The Benefits of Active Involvement in the ABA Section of Labor & Employment Law and Raising the Level of Ethics in Our Profession Grand Ballroom ABC (p. 4)
5:30 pm – 6:00 pm	First-Time Attendee/New Section Member Reception Grand Ballroom ABC (p. 4)
6:00 pm – 8:00 pm	Welcome Reception and Committee Expo Grand Ballroom ABC (p. 4)

THURSDAY, NOVEMBER 7

7:00 am – 8:00 am	Continental Breakfast Grand Ballroom A			
8:00 am – 9:15 am	Ethics of Social Media for Lawyers: It's Not Just Clients Who Need to Worry (E) Grand Salons 21 & 24 (p. 7)	The National Labor Relations Board's Entry into Immigration Issues Grand Salon 19 (p. 7)	It's Always 1983 in the American Workplace: Constitutional Protections for Public Sector Employees Grand Salons 12 & 15 (p. 9)	National Labor Relations Act Fundamentals for the Non-Union Workplace (F) Grand Salons 10 & 13 (p. 9)
9:30 am – 10:45 am	Ethics and Strategies in Labor and Employment Arbitration (E) Grand Salons 12 & 15 (p. 5)	Employer Use of Criminal Background Checks Grand Salons 3, 6 & 9 (p. 5)	Comprehensive Immigration Reform Grand Salon 19 (p. 7)	Latin America on the Rise: The Impact of Legal Reforms and Labor Market Developments in China and Latin America Grand Salon 22 (p. 8)
11:00 am – 11:15 am	Plenary Session: Welcome, Introductions and Presentation of the 2013 Arvid Anderson Public Sector Labor and Employment Attorney of the Year Award Grand Ballroom CD (p. 5)			
11:15 am – 12:30 pm	Plenary Session: The Patient Protection and Affordable Care Act: Current Status and What Is to Come Grand Ballroom CD (p. 5)			
12:30 pm – 2:00 pm	Diversity Luncheon Grand Ballroom B (p. 4)			
2:15 pm – 3:30 pm	Issues and Ethics of Mediation-Arbitration ("Med-Arb") Grand Ballroom D (p. 5)	Unconscious Bias: Diving Deeper Grand Salons 12 & 15 (p. 6)	The Patient Protection and Affordable Care Act: Employer Responses and Litigation Trends Grand Ballroom C (p. 6)	Apps for Labor and Employment Lawyers (T) Grand Salons 3 & 6 (p. 7)
3:45 pm – 5:00 pm	Class and Collective Action Arbitration: An Update Grand Salons 13 & 16 (p. 5)	Gender Pay Disparity: 50 Years after the Equal Pay Act Grand Salons 3 & 6 (p. 6)	The Patient Protection and Affordable Care Act: Compliance Grand Salons 12 & 15 (p. 6)	Marketing Your Practice to Secure Business and Recognition Grand Salon 22 (p. 7)
5:00 pm – 6:00 pm	International Labor & Employment Law Committee Business Meeting Grand Salon 4 & 7			
5:30 pm – 8:00 pm	5:30 pm Second Line Departure from the Hilton's Ballroom Foyer 6:00 pm – 8:00 pm Diversity Reception at the Piazza d'Italia, Loews New Orleans			

FRIDAY, NOVEMBER 8

7:00 am – 8:00 am	Continental Breakfast Grand Ballroom A			
8:00 am – 9:15 am	The Practical Application of the Patient Protection and Affordable Care Act in the Public Sector Grand Salons 4 & 7 (p. 13)	Very Recent Changes in the Ethics Rules: Wrapping Up the ABA Commission on Ethics 20/20 (E) Grand Salon 22 (p. 14)	Obligations to Employees in Times of Crises in the U.S. and Abroad Grand Salon 16 (p. 15)	Meet the National Labor Relations Board Grand Salons 21 & 24 (p. 15)
9:30 am – 10:45 am	The ADAAA: Five Years Later (F) Grand Salons 3, 6 & 9 (p. 12)	Caregiver Responsibility Discrimination: Are You One Sick Kid Away from Losing Your Job? Grand Salon 16 (p. 12)	Meet the National Labor Relations Board General Counsel Grand Salons 21 & 24 (p. 15)	Jury Consultants and Focus Groups to Fit Many Budgets and Timeframes Grand Salon 10 (p. 18)
11:00 am – 11:15 am	Plenary Session: Presentation of the 2013 Frances Perkins Pro Bono Service Award Grand Ballroom CD (p. 12)			
11:15 am – 12:30 pm	Plenary Session: Supreme Court Review Grand Ballroom CD (p. 12)			
12:30 pm – 2:00 pm	Pro Bono Luncheon Grand Ballroom B (p. 12)			
12:30 pm – 2:00 pm	In-House Corporate Counsel Luncheon Magnolia (p. 12)			
2:15 pm – 3:30 pm	Discrimination against LGBT Individuals: Sex and Gender Revisited under Title VII (F) Grand Salons 13 & 16 (p. 12)	Who Is a Qualified Individual with a Disability? Grand Salons 3 & 6 (p. 13)	The Rising Tide of Retaliation Claims Grand Salons 12 & 15 (p. 13)	Bargaining under the Affordable Care Act in the Private Sector: A Different Kind of Health Insurance "Exchange" Grand Ballroom D (p. 14)
3:45 pm – 5:00 pm	ADA, HIPAA and GINA: Disclosing Private Information Grand Salons 3 & 6 (p. 13)	Disciplining Employees for Disability-Related Activities Grand Ballroom D (p. 13)	Ethical Engagements: You Don't Need a Ring, But You Might Want a Pre-Nup (E) Grand Salons 13 & 16 (p. 14)	Education Issues at the National Labor Relations Board Grand Salons 21 & 24 (p. 15)
5:00 pm – 6:00 pm	Standing Committee Business Meetings See page 12 for locations.			
7:00 pm – 10:00 pm	Conference Reception at House of Blues Shuttles will depart to the House of Blues from the Hilton New Orleans Riverside and Loews New Orleans lobbies between 6:00 pm and 7:00 pm.			

SATURDAY, NOVEMBER 9

7:00 am – 8:00 am	Continental Breakfast Grand Ballroom A			
8:00 am – 9:15 am	Do Lawyers Have an Ethical Duty to Learn about and Understand Technology? (E) Grand Salons 13 & 16 (p. 22)	National Security: How Secure Is Too Secure? Grand Salon 22 (p. 22)	What You Can Do with That Deposition In Court Grand Salons 12 & 15 (p. 22)	The Impact of Bankruptcy on Labor and Employment Law (F) Grand Salons 21 & 24 (p. 22)
9:30 am – 10:45 am	The Business and Ethics of Hanging Out Your Shingle (E) Grand Salon 22 (p. 22)	Experts Discuss Tricky Evidentiary Issues in Employment Law Grand Salons 3 & 6 (p. 23)	Settlement Strategies: What Every Lawyer Needs to Know About Reimbursement of Medicare and Medicaid Grand Salons 13 & 16 (p. 23)	A Forensic Tour of Portable Devices and the Secrets They Reveal (T) Grand Salons 12 & 15 (p. 23)
11:00 am – 11:15 am	Plenary Session: Presentation of the 2013 Federal Labor and Employment Attorney of the Year Award Grand Ballroom C (p. 21)			
11:15 am – 12:30 pm	Plenary Session: Emerging Work/Career Balance and Stereotyping Issues in the Workplace Grand Ballroom C (p. 21)			
12:45 pm – 2:00 pm	College of Labor and Employment Lawyers Program Feliciana Ballroom, Loews New Orleans (p. 24)			
12:45 pm – 2:00 pm	An Exploration of Careers in Labor and Employment Law Grand Salon 4 (p. 24)			

nt Law Conference Program Grid

oom D (p.4)

ar Award Grand Ballroom CD (p.5)

ns Hotel (p.11)

30 and 6:45. (p.21)

The Ins and Outs of the Administrative Procedures Act: Why You Better Pay Attention to It <i>Grand Salons 4 & 7 (p.23)</i>	Can Employees Be Disciplined for Out-of-Work Behavior? <i>Grand Ballroom B (p.24)</i>	Investigation Basics: Planning, Execution and Documentation (F) <i>Grand Salons 3 & 6 (p.24)</i>	
An Overview of Whistleblower Claims (F) <i>Grand Salons 4 & 7 (p.23)</i>	Compensable Time in a Digital Age: Beyond Donning and Doffing <i>Grand Salons 21 & 24 (p.24)</i>	Workplace Investigations: Getting to the Bottom of Complex Matters without Falling into a Trap <i>Grand Ballroom B (p.24)</i>	

Overcoming New Hurdles for Class Certification <i>Grand Salons 4 & 7 (p.10)</i>	State Regulation of Occupational Safety and Health <i>Grand Salon 22 (p.11)</i>	Managing Employees with Discrimination or Other Complaints <i>Grand Salons 3, 6 & 9 (p.11)</i>	
The Constant Crisis: Public Sector Bargaining in the New Age <i>Grand Salons 4 & 7 (p.9)</i>	Has Specialty Healthcare Changed the Landscape in Organizing and Representation Proceedings? <i>Grand Salons 10 & 13 (p.9)</i>	Crafting an Effective Class Action Trial Plan <i>Grand Salons 21 & 24 (p.10)</i>	

Causes of Action for Workplace Abuse of Immigrant Workers <i>Grand Salons 13 & 16 (p.7)</i>	Next Up for North American Employers and Unions? International Framework Agreements (IFAs) and Corporate Social Responsibility (CSR) <i>Grand Salons 4 & 7 (p.8)</i>	Bankruptcy and the Railway Labor Act <i>Grand Salon 22 (p.9)</i>	An Inside View of an NLRB Case: What They Were Thinking <i>Grand Salons 21 & 24 (p.10)</i>
International Perspectives on Managing the Risks of Alternate Workforces <i>Grand Salons 4 & 7 (p.8)</i>	National Labor Relations Board Update <i>Grand Ballroom D (p.10)</i>	eDiscovery Boot Camp (F) <i>Grand Salons 21 & 24 (p.10)</i>	Negotiating an FLSA Settlement Agreement: Legal and Practical Considerations <i>Grand Ballroom C (p.11)</i>

Advanced eDiscovery: Litigating Today's Employment Lawsuit <i>Grand Salons 12 & 15 (p.18)</i>	Trial by Formula and Defendants' Due Process Rights <i>Grand Salon 10 (p.18)</i>	Wage and Hour Boot Camp (F) <i>Grand Salons 3, 6 & 9 (p.19)</i>	
Independent Contractors: Are They Misclassified? <i>Grand Salons 4 & 7 (p.19)</i>	Bullies in the Workplace <i>Grand Salon 22 (p.20)</i>	Determining When the Attorney-Client Privilege and Work Product Doctrine Apply to Internal Communications <i>Grand Salons 12 & 15 (p.20)</i>	

BYOD: Bring Your Own Device or Bring Your Own Disaster? <i>Grand Salons 21 & 24 (p.14)</i>	Communications with Potential Class Members Before and After Complaint Filing: Ethics and More (E) <i>Grand Salons 4 & 7 (p.18)</i>	Coordinating Criminal, Civil and Insurance Claims Associated with Employee Crime in the Workplace <i>Grand Salon 22 (p.18)</i>	Cross Examination: The Ten Commandments Reconsidered <i>Grand Ballroom C (p.18)</i>
Summary Judgment Practice: Live or Die <i>Grand Salons 12 & 15 (p.19)</i>	Trial by iPad <i>Grand Salons 4 & 7 (p.19)</i>	Recent FLSA Developments <i>Grand Ballroom C (p.20)</i>	The Pitfalls of Employee Assistance Program Referrals: No Good Deed Goes Unpunished <i>Grand Salon 22 (p.21)</i>

7th Annual Labor and Employment Law Conference

Friday, November 8 *Continued from page 15*

✦ Litigation

- 8:00 – 9:15 am

Advanced eDiscovery: Litigating Today's Employment Lawsuit

Grand Salons 12 & 15

Panelists will provide experienced practitioners with an update regarding recent case law as well as a discussion of trends in all aspects of eDiscovery. The panelists also will explore various strategies that will allow practitioners to confidently address the many vital issues surrounding this aspect of litigation.

MODERATOR:

Helen Bergman Moure, *Lex Aperta PLLC*, Seattle, WA

SPEAKERS:

Hon. James C. Francis, *U.S. District Court for the Southern District of New York*, New York, NY

Michael J. Gray, *Jones Day*, Chicago, IL
John R. Mooney, *Mooney, Green, Saindon, Murphy & Welch, P.C.*, Washington, DC

Marni J. Willenson, *Willenson Law LLC*, Chicago, IL

- 8:00 – 9:15 am

Trial by Formula and Defendants' Due Process Rights

Grand Salon 10

After *Dukes*, lower courts and state supreme courts are grappling with the contours of defendants' due process rights to individualized fact determinations in class actions. How do courts reconcile the requirements that all elements and damages be proved by a preponderance of the evidence with defendants' due process rights in the context of class actions? How does a defendant's entitlement to assert individual affirmative defenses apply in the wage and hour context? What is the appropriate role of extrapolation? How can liability ever be determined or damages be awarded in class actions without individualized inquiries? Is "trial by formula" inappropriate?

MODERATOR:

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

SPEAKERS:

Reed L. Russell, *Phelps Dunbar LLP*, Tampa, FL

Guy B. Wallace, *Schneider Wallace Cottrell Konecky LLP*, San Francisco, CA

- 9:30 – 10:45 am

Jury Consultants and Focus Groups to Fit Many Budgets and Timeframes

Grand Salon 10

Jury consultants can be valuable tools in preparing for trial or positioning to settle. Consultants can help evaluate the strengths and weaknesses of a case with a more neutral eye. Beyond helping to choose a jury, the jury consultant can work with litigators prior to jury selection to help shape their case, using various methods that fit most budgets and timeframes including questionnaires, attitude surveys, focus groups and mock trials. A panel of seasoned practitioners and an experienced consultant discuss the use of jury consultants, including specific examples of how the use of such a consultant impacted real cases.

MODERATOR:

Lisa J. Banks, *Katz, Marshall & Banks, LLP*, Washington, DC

SPEAKERS:

Kathryn Burkett Dickson, *Dickson Geesman LLP*, Oakland, CA

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

Carolyn S. Koch, *Jury Solutions, LLC*, Fairfax, VA

Yona Rozen, *Gillespie, Rozen & Watsky, P.C.*, Dallas, TX

- 2:15 – 3:30 pm

Communications with Potential Class Members Before and After Complaint Filing: Ethics and More (E)

Grand Salons 4 & 7

Ethics rules, the First Amendment, Rule 23 and the FLSA all implicate plaintiffs' and defendants' counsel's rights to speak with potential class members at various stages of the litigation. Since the Supreme Court's ruling in *Gulf Oil Co.*, the law regarding restrictions on potential class member communications has evolved inconsistently. Some courts have required preapproval of communications; others have ordered corrective communications. Class member declarations, releases and opt-outs have been invalidated based on findings of inappropriate communications. When counsel communicate with employees, what

disclosures should or must they make? This panel will explore best practices in this murky area.

MODERATOR:

Jahan C. Sagafi, *Lieff Cabraser Heimann & Bernstein*, San Francisco, CA

SPEAKERS:

Philip Monrad, *Leonard Carder, LLP*, Oakland, CA

W. V. Bernie Siebert, *Sherman & Howard L.L.C.*, Denver, CO

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

- 2:15 – 3:30 pm

Coordinating Criminal, Civil and Insurance Claims Associated with Employee Crime in the Workplace

Grand Salon 22

Workplace crimes create the need for employers to coordinate the criminal prosecution, the civil claim/suit, and any insurance claims, as well as employment issues. A misstep in one of these areas can impact the success of the others. Examining a hypothetical embezzlement, this panel will address the best practices and practical ways in which these issues can be coordinated to take into account preservation of evidence for both civil and criminal cases, confidentiality of criminal investigations, insurance policy requirements, and civil claims that may result. In addition, the panelists will address the management of the accompanying employment issues.

MODERATOR:

Brian Bauman, *Hoffmann-La Roche Inc.*, Nutley, NJ

SPEAKERS:

Patrick E. Deady, *Hogan Marren, Ltd.*, Chicago, IL

Nicholas C. Harbist, *Blank Rome LLP*, Princeton, NJ

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

- 2:15 – 3:30 pm

Cross Examination: The Ten Commandments Reconsidered

Grand Ballroom C

The video of Irving Younger's "Ten Commandments of Cross Examination," now over 40 years old, is thought to be

the most widely viewed CLE lecture of all time. It remains a classic in the pedagogy of cross examination, advocating a careful style: be brief, ask only questions to which you know the answer, leading questions only, don't quarrel with the witness. The Younger method is not beyond criticism, however, especially for experienced lawyers. We will screen the Younger video and follow with a discussion by experienced litigators.

MODERATOR:

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

SPEAKERS:

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

Barry A. Macey, *Macey Swanson and Allman*, Indianapolis, IN

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

• 3:45 – 5:00 pm

**Summary
Judgment Practice:
Live or Die**

Grand Salons 12 & 15

A summary judgment motion is a key tool in the employment litigation arsenal as the case either lives or dies at this phase. Defense counsel must prepare for summary judgment at the early stages of the litigation, recognizing the impact that pleadings and discovery will have on the motion. Plaintiff's counsel must conduct discovery and prepare the plaintiff for deposition with summary judgment in mind. Utilizing a sexual harassment fact pattern, a panel of experienced practitioners, along with a trial judge, will discuss how to obtain summary judgment and how to avoid it.

MODERATOR:

Hal K. Gillespie, *Gillespie, Rozen & Watsky, P.C.*, Dallas, TX

SPEAKERS:

Hon. Ivan L. R. Lemelle, *U.S. District Court for the Eastern District of Louisiana*, New Orleans, LA

Hon. Jerry E. Smith, *U.S. Court of Appeals for the Fifth Circuit*, Houston, TX

Katherine L. Butler, *Butler & Harris*, Houston, TX

Barbara Jean D'Aquila, *Norton Rose Fulbright*, Minneapolis, MN

• 3:45 – 5:00 pm

Trial by iPad

**Cosponsored by the
ABA Law Practice Division**

Grand Salons 4 & 7

This program will be a show-and-tell and demonstration of how lawyers are using tablets, such as iPads and other hardware and software products, to build a trial notebook, organize documents and present a case in trial or arbitration. Panelists will discuss cost-effective tools that enable firms of all sizes to litigate on a "level playing field."

SPEAKERS:

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

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

• **Wage and Hour**

• 8:00 – 9:15 am

Wage and Hour Boot Camp (F)

**Cosponsored by the
ABA Young Lawyers Division**

Grand Salons 3, 6 & 9

This year's version of the popular Wage and Hour Boot Camp will focus on both substantive and procedural issues involved in litigating individual as well as class, collective and hybrid wage and hour cases. Specific topics to be covered will include the duties tests for the exemptions, the salary basis test, independent contractors, determining the regular rate and the meaning of "work" and compensable time, the "similarly situated" test under Section 216(b) for collective actions, as well as the opt-in process, discovery and decertification issues.

MODERATOR:

Tracey Holmes Donesky, *Leonard, Street and Deinard Professional Association*,
Minneapolis, MN

SPEAKERS:

B. Craig Deats, *Deats Durst Owen & Levy, P.L.L.C.*, Austin, TX

James Kan, *Goldstein, Borgen, Dardarian & Ho*, Oakland, CA

Lawrence Peikes, *Wiggin and Dana LLP*,
Stamford, CT

• 8:00 – 9:15 am

**Trial by Formula and
Defendants' Due Process Rights**

Grand Salon 10

After *Dukes*, lower courts and state supreme courts are grappling with

the contours of defendants' due process rights to individualized fact determinations in class actions. How do courts reconcile the requirements that all elements and damages be proved by a preponderance of the evidence with defendants' due process rights in the context of class actions? How does a defendant's entitlement to assert individual affirmative defenses apply in the wage and hour context? What is the appropriate role of extrapolation? How can liability ever be determined or damages be awarded in class actions without individualized inquiries? Is "trial by formula" inappropriate?

MODERATOR:

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

SPEAKERS:

Reed L. Russell, *Phelps Dunbar LLP*,
Tampa, FL

Guy B. Wallace, *Schneider Wallace Cottrell Konecky LLP*, San Francisco, CA

• 9:30 – 10:45 am

**Independent Contractors:
Are They Misclassified?**

Grand Salons 4 & 7

In recent years, the issue of misclassification of independent contractors has been the focus of both federal and state legislation and has seen a significant increase in both government enforcement actions and private litigation. This panel will discuss the various tests used to determine independent contractor status in the wage and hour context, summarize government initiatives, address consequences of misclassification and discuss recent case developments in this area. Finally, the panel will provide practical advice on challenging and defending independent contractor status.

MODERATOR:

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

SPEAKERS:

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

Aaron D. Kaufmann, *Leonard Carder, LLP*,
Oakland, CA

Eric D. Reicin, *Association of Corporate Counsel*, Potomac, MD

7th Annual Labor and Employment Law Conference



- 2:15 – 3:30 pm

Communications with Potential Class Members Before and After Complaint Filing: Ethics and More (E)

Grand Salons 4 & 7

Ethics rules, the First Amendment, Rule 23 and the FLSA all implicate plaintiffs' and defendants' counsel's rights to speak with potential class members at various stages of the litigation. Since the Supreme Court's ruling in *Gulf Oil Co.*, the law regarding restrictions on potential class member communications has evolved inconsistently. Some courts have required preapproval of communications; others have ordered corrective communications. Class member declarations, releases and opt-outs have been invalidated based on findings of inappropriate communications. When counsel communicate with employees, what disclosures should or must they make? This panel will explore best practices in this murky area.

MODERATOR:

Jahan C. Sagafi, *Leff Cabraser Heimann & Bernstein*, San Francisco, CA

SPEAKERS:

Philip Monrad, *Leonard Carder, LLP*, Oakland, CA

W. V. Bernie Siebert, *Sherman & Howard L.L.C.*, Denver, CO

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

- 3:45 – 5:00 pm

Recent FLSA Developments

Grand Ballroom C

The law under the FLSA continues to develop, and 2013 had its share of interesting issues. This panel of experienced practitioners will

summarize and analyze developments in the law as it pertains to FLSA issues as well as the practical implications of the law on suits in the future.

MODERATOR:

Jeremy J. Glenn, *Meckler Bulger Tilson Marick & Pearson LLP*, Chicago, IL

SPEAKERS:

Ryan A. Hagerty, *Asher, Gittler & D'Alba, Ltd.*, Chicago, IL

Matthew C. Helland, *Nichols Kaster, PLLP*, San Francisco, CA

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

✦ Workplace Problems and Solutions

- 8:00 – 9:15 am

Obligations to Employees in Times of Crises in the U.S. and Abroad

Grand Salon 16

"Duty of care" isn't just about avoiding OSHA scrutiny anymore. Employers now have to deal with keeping their employees safe from political insurrections, hurricanes, typhoons and kidnapping attempts. Attendees will obtain valuable information regarding employee training and best practices from attorneys and experts who specialize in international disaster training and evacuation.

MODERATOR:

Marley S. Weiss, *University of Maryland Francis King Carey School of Law*, Baltimore, MD

SPEAKERS:

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

Robert B. Stulberg, *Broach & Stulberg, LLP*, New York, NY

Suzanne Garber, *International SOS*, Houston, TX

- 9:30 – 10:45 am

Bullies in the Workplace

Grand Salon 22

Rotten bosses and co-workers are not illegal, but they greatly impact the workplace in terms of time, energy, money, productivity, morale, and claims. Statistics show that incidences of workplace bullying have risen dramatically in the past few years. In addition to providing an update on legal developments in this area, this program will explore the issue of workplace

bullying from a practical perspective, with the goal of avoiding workplace bullying regardless of whether it creates a legal claim. It will address how to identify bullying and respond to it and how to create an environment designed to prevent it, in both the union and non-union contexts. Panelists will offer specific training suggestions.

MODERATOR:

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

SPEAKERS:

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

Brian J. LaClair, *Blitman & King LLP*, Syracuse, NY

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

Lamont E. Stallworth, Ph.D., *Loyola University*, Chicago, IL

- 9:30 – 10:45 am

Determining When the Attorney-Client Privilege and Work Product Doctrine Apply to Internal Communications

Grand Salons 12 & 15

In-house attorneys regularly provide legal advice to corporate officers, managers, and other representatives. A simple "cc" to in-house counsel does not automatically cloak written communications in the attorney-client privilege. Likewise, internal clients may assume that certain business communications are protected under the work product doctrine because the findings are self-critical and in-house counsel is included on the resulting memo. However, these beliefs are not always accurate. Panelists will engage in an interactive dialogue about when the attorney-client privilege and work product doctrine apply and how in-house counsel should frame the analysis of their disclosure obligations.

SPEAKERS:

Hon. Martin C. Carlson, *U.S. District Court for the Middle District of Pennsylvania*, Harrisburg, PA

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

Veronica G. Gromada, *Wal-Mart Stores, Inc.*, Bentonville, AR

Virginia "Ginger" Hardwick, *Hardwick Collier LLC*, Doylestown, PA

• 2:15 – 3:30 pm

Coordinating Criminal, Civil and Insurance Claims Associated with Employee Crime in the Workplace

Grand Salon 22

Workplace crimes create the need for employers to coordinate the criminal prosecution, the civil claim/suit, and any insurance claims, as well as employment issues. A misstep in one of these areas can impact the success of the others. Examining a hypothetical embezzlement, this panel will address the best practices and practical ways in which these issues can be coordinated to take into account preservation of evidence for both the civil and criminal cases, confidentiality of criminal investigations, insurance policy requirements, and civil claims that may result. In addition, the panelists will address the management of the accompanying employment issues

MODERATOR:

Brian Bauman, *Hoffmann-La Roche Inc.*, Nutley, NJ

SPEAKERS:

Patrick E. Deady, *Hogan Marren, Ltd.*, Chicago, IL

Nicholas C. Harbist, *Blank Rome LLP*, Princeton, NJ

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

• 3:45 – 5:00 pm

ADA, HIPAA and GINA: Disclosing Private Information

Cosponsored by the ABA Commission on Disability Rights

Grand Salons 3 & 6

ADA, HIPAA and GINA protect the privacy of certain employee and medical information and have proven at times to be misunderstood. Many practitioners have heard others invoke these statutory schemes as barring access to certain information when the statute may not apply, while other practitioners, who are unfamiliar with the limits imposed by existing law, have disclosed protected information. This panel will explore the uses and possible misuses of these statutes.

MODERATOR:

David M. Fusco, *Schwarzwald McNair & Fusco LLP*, Cleveland, OH

SPEAKERS:

Howard D. Bye-Torre, *Stoel Rives LLP*, Seattle, WA

Sharon M. Dostmann, *Cooper Health System*, Philadelphia, PA

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

• 3:45 – 5:00 pm

The Pitfalls of Employee Assistance Program Referrals: No Good Deed Goes Unpunished

Grand Salon 22

Employers may see referrals to EAP as an attractive option for dealing with “problem” employees. The speakers will explore the implications under the ADA and the FMLA of mandatory referrals to an EAP. Do these referrals constitute a medical exam? In light of recent case law and the growing use of employee wellness initiatives, how can employers reap the benefits of having these programs without creating inadvertent exposure? Can employees use a request for assistance under these programs to try to avoid adverse employment actions? Are the records kept in these programs protected under HIPAA or are they employment records?

MODERATOR:

Sheree C. Wright, *Vanderbilt University*, Nashville, TN

SPEAKERS:

Glen D. Savits, *Green Savits & Lenzo LLC*, Morristown, NJ

Laurie A. Vasichek, *U.S. Equal Employment Opportunity Commission*, Minneapolis, MN

Eunice Washington, *SEIU Benefit Funds*, Washington, DC

7:00 – 10:00 pm

Conference Reception at House of Blues

Sponsored by Proskauer Rose LLP

Shuttles will depart to the House of Blues from the Hilton New Orleans Riverside and Loews New Orleans lobbies between 6:30 and 6:45.

Join with old friends and new to celebrate the 7th Annual Labor and Employment Law Conference as you enjoy good food, drinks and entertainment by some of New Orleans’ finest musicians.

Saturday, November 9

7:00 – 8:00 am

Continental Breakfast

Grand Ballroom A

Sponsored by:
Greenberg Traurig LLP

Saturday’s 10:45 – 11:00 am
refreshment break is sponsored by
Baker & Hostetler LLP.

♣Plenary Session

• 11:00 – 11:15 am

Presentation of the 2013 Federal Labor & Employment Attorney of the Year Award

Grand Ballroom C

• 11:15 am – 12:30 pm

Emerging Work/Career Balance and Stereotyping Issues in the Workplace

Grand Ballroom C

How are employers creating more flexible work hours and workplaces to accommodate workers who face internal, as in personal and cultural, obstacles, maternal walls and care giving responsibilities? The panel will explore the reasons workers are holding themselves back from continuing their careers or advancing to more senior positions and will discuss how companies are dealing with them on the shop floor and in the corporate office. Additionally, many employers are dealing with the impact of employees asserting themselves on workplace issues, and the manner in which these become legal issues. The panel also will explore legal theories that employees may be using to challenge their employers in these areas.

MODERATOR:

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

7th Annual Labor and Employment Law Conference

SPEAKERS:

Thomasina V. Rogers, Occupational Safety and Health Review Commission, Washington, DC

Barbara Berish Brown, Paul Hastings LLP, Washington, DC

Darlene, Vorachek, Abrahamson Vorachek & Levinson, Chicago, IL

Carolyn A. Wiesenhahn, CVS Caremark, Woonsocket, RI

♣ Ethical, Practical and Technological Issues in Managing a Labor and Employment Law Practice

- 8:00 – 9:15 am

Do Lawyers Have an Ethical Duty to Learn about and Understand Technology? (E)

Cosponsored by the ABA Law Practice Division

Grand Salons 13 & 16

In a world critically dependent on technology, lawyers may have an obligation to move beyond the basics. The ABA recently approved changes to the Model Rules of Professional Conduct, clarifying that the requirement of “competence” includes keeping abreast of “the benefits and risks associated with relevant technology.” This panel will examine core competency areas, such as protecting confidential and privileged information and communicating with prospective or existing clients, witnesses and jurors. The panel also will consider the ethical implications of lawyers’ use, misuse and non-use of emerging technologies, such as cloud repositories, automated litigation holds and document review platforms.

MODERATOR:

Carol M. Langford, Law Office of Carol M. Langford, Walnut Creek, CA

SPEAKERS:

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

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

- 9:30 – 10:45 am

The Business and Ethics of Hanging Out Your Shingle

Grand Salon 22

Many lawyers dream of hanging out a shingle and opening their own

firm. This program will address issues regarding structuring a firm (such as solo practices, partnerships, and national practices), agreements and documents establishing the firm, developing a business plan, virtual offices, website development, initial marketing efforts, firm finances, and amicably and ethically separating from your firm and bringing clients with you without burning bridges.

MODERATOR:

Cassie Springer, Springer & Roberts LLP, Oakland, CA

SPEAKERS:

Cara E. Greene, Outten & Golden LLP, New York, NY

Lawrence Morales II, The Morales Firm, P.C., San Antonio, TX

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

♣ Labor-Management Relations

- 8:00 – 9:15 am

National Security: How Secure Is Too Secure?

Grand Salon 22

As national security becomes more of a concern, this program will explore the ways in which government agencies determine which positions require security clearances; which security components are enough to eliminate a position from coverage by a bargaining unit; and how agencies deal with the sharing of confidential information by employees. The panelists also will discuss retaliatory denials of security clearances, as well as the effect that Edward Snowden’s recent disclosure of NSA metadata collection will have on the granting of security clearances.

SPEAKERS:

Daniel J. Kaspar, National Treasury Employee Union, Chicago, IL

A.P. Williams, U.S. Army Research, Development and Engineering Command, Aberdeen, MD

♣ Litigation

- 8:00 – 9:15 am

What You Can Do with That Deposition In Court

Grand Salons 12 & 15

Experienced practitioners and a trial judge will demonstrate various uses of

depositions at trial (or arbitration) to illustrate both the legal requirements and most effective techniques. The discussion will include various techniques for impeachment by prior inconsistent statement, hearsay issues, refreshment of recollection, reading testimony directly into record, impeachment from video deposition, options for homemade video, and software to synch video to transcript.

MODERATOR:

Paula Graves Ardelean, Butler, Snow, O’Mara, Stevens and Cannada, PLLC, Ridgeland, MS

SPEAKERS:

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

Allison A. Jones, Davidson, Jones & Summers, Shreveport, LA

Lynne C. Hermle, Orrick, Herrington & Sutcliffe LLP, Silicon Valley, CA

Louis P. Malone III, O’Donoghue & O’Donoghue LLP, Washington, DC

- 8:00 – 9:15 am

The Impact of Bankruptcy on Labor and Employment Law (F)

Cosponsored by the ABA Young Lawyers Division

Grand Salons 21 & 24

This panel will address the impact of bankruptcy proceedings on labor and employment claims. Whether the debtor is an employer or employee, the panel will discuss how practitioners can protect their clients’ interests where bankruptcy is being considered or is occurring, including providing practical pointers for discovery and dispositive motions. The panel will address judicial estoppel and how it is established, as well as navigating bankruptcy where the defendant is also a debtor. Additionally, the union perspective on the impact of employer bankruptcy on the collective bargaining agreement will be included.

MODERATOR:

Joseph C. Liburt, Orrick, Herrington & Sutcliffe LLP, Silicon Valley, CA

SPEAKERS:

Daniel A. Katz, The Law Offices of Gary M. Gilbert & Associates, P.C., Silver Springs, MD

Richard M. Seltzer, Cohen, Weiss and Simon LLP, New York, NY

- 8:00- 9:15 am

The Ins and Outs of the Administrative Procedures Act: Why You Better Pay Attention to It

Grand Salons 4 & 7

If you practice before any federal employment administrative agency such as OSHA, Wage and Hour, MSPB and the OFCCP, an enforcement action will have you in an administrative proceeding before an ALJ governed by the Administrative Procedures Act and Civil Service Reform Act. Learn how practice in this area differs from practice in federal and state courts, with an emphasis on nuances and common mistakes made by less experienced practitioners. This session also will examine the standards of review and new proposed ALJ rules for the DOL.

MODERATOR:

T. Scott Kelly, *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*, Birmingham, AL

SPEAKERS:

Hon. Patrick Rosenow, *U.S. Department of Labor, Office of ALJ*, Covington, LA

Denise M. Clark, *Clark Law Group PLLC*, Washington, DC

Karen E. Mock, *U.S. Department of Labor*, Atlanta, GA

David Scher, *The Employment Law Group, P.C.*, Washington, DC

- 9:30 – 10:45 am

Experts Discuss Tricky Evidentiary Issues in Employment Law

Grand Salons 3 & 6

Here's your chance to discuss thorny evidentiary issues with experienced trial attorneys and an evidence law professor. How can you get in character evidence? Are prior bad acts admissible? Is a sexual harassment victim's past sexual behavior relevant? How can you show that your opponent lacks credibility? How can you introduce prior inconsistent statements? Our panel of experts will discuss these and many more tricky questions that often arise under the Federal Rules of Evidence in real trials of employment cases and will address how litigators can effectively use motions in limine to handle these evidentiary issues.

MODERATOR:

George M. Strickler, Jr., *Tulane University Law School*, New Orleans, LA

SPEAKERS:

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

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

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

- 9:30 – 10:45 am

Settlement Strategies: What Every Lawyer Needs to Know About Reimbursement of Medicare and Medicaid

Grand Salons 13 & 16

This panel will discuss issues related to obtaining reimbursement of Medicare and Medicaid payments, such as rights and responsibilities related to conditional Medicaid and Medicare payments and Medicare set asides, lawyers' responsibilities and liabilities, and how to draft settlement agreements that do not run afoul of these issues.

MODERATOR:

Henry N. Patterson Jr., *Patterson Harkavy LLP*, Chapel Hill, NC

SPEAKERS:

Joel Alpert, *Alpert & Alpert*, Southfield, MI

Terry Coriden, *Coriden Coriden Andrews & Glover, LLC*, Columbus, IN

Rafael Gonzalez, *Gould & Lamb*, Tampa, FL

- 9:30 – 10:45 am

A Forensic Tour of Portable Devices and the Secrets They Reveal (T)

Cosponsored by the ABA Law Practice Division

Grand Salons 12 & 15

Have you ever wondered what a smart phone or tablet device might reveal about a witness' "lost" communications or whereabouts during a critical period? A certified forensic examiner will reveal a few hidden gems of information that may be recoverable. This demonstration will show how seemingly non-existent but potentially critical information can be obtained from such devices.

MODERATOR:

Douglas E. Dexter, *Farella Braun + Martel LLP*, San Francisco, CA

SPEAKERS:

Gavin W. Manes, Ph.D., *Avansic*, Tulsa, OK

Laura S. Schnell, *Eisenberg and Schnell LLP*, New York, NY

Alvin Velazquez, *Service Employees International Union*, Washington, DC

✦Special Interest

- 9:30 – 10:45 am

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Terry Coriden, *Coriden Coriden Andrews & Glover, LLC*, Columbus, IN

Rafael Gonzalez, *Gould & Lamb*, Tampa, FL

- 9:30 – 10:45 am

An Overview of Whistleblower Claims (F)

Cosponsored by the ABA Young Lawyers Division

Grand Salons 4 & 7

Which federal environmental, safety and securities laws protect whistleblowers? Panelists will compare procedures and remedies available to employees under a variety of laws enforced by the federal district courts, OSHA and other agencies.

MODERATOR:

Shalanda D. Ballard, *3M*, St. Paul, MN

SPEAKERS:

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

Mark Hanna, *Murphy Anderson PLLC*, Washington, DC

Richard Renner, *Tate & Renner, Attorneys at Law*, Silver Springs, MD

Beth S. Slavet, *U.S. Department of Labor*, Washington, DC

7th Annual Labor and Employment Law Conference Program Schedule

Saturday, November 9

✦Wage and Hour

- 9:30 – 10:45 am

Compensable Time in a Digital Age: Beyond Donning and Doffing

Grand Salons 21 & 24

In the modern workforce, the issue of compensable time is evolving beyond simply donning and doffing. Many practitioners believe this area may present the next “big wave” of FLSA litigation. This panel will review both “traditional” compensable time issues, such as travel time and on-call time, while also discussing potential new claims, such as the use of handheld devices, remote access to work, and computer boot up time. In discussing whether such activities should be deemed legally compensable, the panel will explore issues such as *de minimis* work activities and provide practical advice on how to implement appropriate recordkeeping in the evolving workplace.

MODERATOR:

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

SPEAKERS:

J. Lindsay Johnston, Philadelphia, PA

Christine E. Webber, *Cohen Milstein*, Washington, DC

Jennifer T. Williams, *Akerman Senterfitt*, Miami, FL

Shane C. Youtz, *Youtz & Valdez, p.c.*, Albuquerque, NM

✦Workplace Problems and Solutions

- 8:00 – 9:15 am

Can Employees Be Disciplined for Out-of-Work Behavior

Grand Ballroom B

Much has been discussed recently about disciplining employees for online activities, but what about other out-of-work behavior? Do employers have the right to discipline or fire employees for activities outside of the workplace that they find offensive? Does the answer to this question depend on the type of job the employee holds? What role, if any, do privacy and free speech rights play in this context? These and other questions will be explored in a lively debate among the panelists based upon both real cases and hypotheticals.

MODERATOR:

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

SPEAKERS:

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

Cathi Hunt, *Starbucks Coffee Company*, Seattle WA

Marilyn S. Teitelbaum, *Schuchat, Cook & Werner*, St. Louis, MO

- 8:00 – 9:15 am

Investigation Basics: Planning, Execution and Documentation (F)

Cosponsored by the ABA Young Lawyers Division

Grand Salons 3 & 6

This program, designed for attorneys with little or no investigation experience, will cover the basics of performing a defensible investigation into employee misconduct. Using a hypothetical discrimination claim, the panel will discuss: investigator selection and related privilege issues, investigation plan development, evidence collection, witness interviews, and report outs and documentation.

MODERATOR:

J. Randall Coffey, *Fisher & Phillips LLP*, Kansas City, MO

SPEAKERS:

Jennie Clarke, *American Century Investments*, Kansas City, MO

Lori L. Deem, *Abrahamson Vorachek & Levinson*, Chicago, IL

Steven E. Starr, *Meyer, Suozzi, English & Klein, P.C.*, New York, NY

- 9:30 – 10:45 am

Workplace Investigations: Getting to the Bottom of Complex Matters without Falling into a Trap

Grand Ballroom B

This program will address issues arising in complex, high stakes investigations. Using a hypothetical involving alleged CEO harassment and hush money paid with corporate funds, the panel will explore strategic and tactical decisions the company will face from the time the allegation is made until the matter is resolved. The discussion will include investigator selection, Board reporting, parallel agency investigations, NLRA requirements, evidence collection,

witness interviews, press inquiries, privilege issues, and report outs and related documentation. Panelists also will address how (and whether) the investigation would differ in unionized and non-unionized workplaces.

MODERATOR:

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

SPEAKERS:

Nancy Bornn, *Nancy Bornn Law*, Playa del Ray, CA

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

Louis L. Robein, Jr., *Robein, Urann, Spencer, Picard & Cangemi, APLC.*, New Orleans, LA

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

- 12:45 – 2:00 p.m.

College of Labor and Employment Lawyers Program: A Special Screening of *The Art and Science of Arbitration*

Feliciano Ballroom, 9th Floor, Loews New Orleans

The Art and Science of Arbitration is the second documentary produced for The College of Labor and Employment Lawyers' Video History Project. This compelling piece focuses on arbitrators whose careers and contributions are landmarks in labor-management relations and in the resolution of industrial disputes. Featured are ten distinguished arbitrators, including Roberta Golick, George Nicolau, Ted St. Antoine, Jim Harkless and Secretary George Shultz. With humor and candor, they share their insights and experiences—revealing the joys, pitfalls, and great humanity of arbitration.

12:45 – 2:00 pm

An Exploration of Careers in Labor & Employment Law

Grand Salon 4

If you are a law student 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 employees or serving as government attorneys.

IT MAY BE YOUR FIRST EMPLOYMENT CASE. **IT WON'T BE OURS.**

The American Arbitration Association® provides custom-tailored employment conflict management services. Our diverse roster of accomplished employment arbitrators and mediators are committed to impartiality and objectivity. **So you'll always find the arbitrator right for your case.**

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Networking and Social Events

Wednesday, November 6

- 3:00 – 4:00 pm

Law Student Orientation

Grand Salon 4

All law student attendees are invited to mingle with each other and members of the Law Student Outreach Committee over coffee, tea and snacks prior to the start of the Conference. This event will offer students a very casual introduction to the ins and outs of the Section's Annual Conference. Students will also receive tips for making the most out of their Conference experience.

- 5:30 – 6:00 pm

First-Time Attendee/ New Section Member Reception

Grand Ballroom ABC

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

Grand Ballroom ABC

All attendees are invited to meet, greet and network during this opening reception at the Hilton New Orleans Riverside. Section Standing Committees will provide information about publications, services and programs they provide to Section members.

Thursday, November 7

- 12:30 – 2:00 pm

Diversity Luncheon

Grand Ballroom B

- 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.

International Labor & Employment Law,
Grand Salons 4 & 7

- 5:30 pm

Second Line Departure from the Hilton's Ballroom Foyer

- 6:00 – 8:00 pm

Diversity Reception at the Piazza d'Italia, Loews New Orleans Hotel

**Presented by the Diversity in
the Legal Profession Committee**

Join us for a social and networking reception for those who support the Section's vision of diversity and inclusion. The reception will begin at 5:30 pm at the Hilton New Orleans Riverside. Grab a "geaux" cup and bandanna and join the parade to the Loews New Orleans Hotel. The reception will feature entertainment by New Orleans Jazz & Heritage Festival favorite Glen David Andrews Band.

Friday, November 8

- 12:30 – 2:00 pm

Pro Bono Luncheon

Grand Ballroom B

The Pro Bono Luncheon will feature the 2013 Frances Perkins Award Recipient who will speak on the importance of pro bono work. In addition, attendees will be able to engage in discussions relating to providing pro bono services and to learn first-hand how the Pro Bono Work Committee interacts with the Section.

- 12:30 – 2:00 pm

In-House Corporate Counsel Luncheon

(In-House Corporate Counsel only)

Magnolia

- 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.

ADR in Labor & Employment Law,
Grand Salons 13 & 16

**Development of the Law under
the NLRA,** *Grand Salons 12 & 15*

Employee Benefits, *Grand Ballroom A*

Employment Rights & Responsibilities,
Grand Ballroom D

Equal Employment Opportunity Law,
Grand Ballroom C

Ethics & Professional Responsibility,
Grand Salons 4 & 7

Federal Labor Standards Legislation,
Grand Salons 3 & 6

Federal Legislative Developments,
Grand Ballroom A

Immigration Law, *Grand Ballroom A*

Occupational Safety & Health Law,
Grand Ballroom A

Practice & Procedure under the NLRA,
Grand Salons 21 & 24

Railway & Airline Labor Law,
Grand Ballroom A

**State & Local Government Bargaining
& Employment Law,** *Grand Salon 22*

Technology in the Practice & Workplace,
Grand Ballroom A

Workers' Compensation,
Grand Ballroom A

- 7:00 – 10:00 pm

Conference Reception at House of Blues

Sponsored by Proskauer Rose LLP

Shuttles will depart to the House of Blues from the Hilton New Orleans Riverside and Loews New Orleans between 6:30 and 6:45.

Join with old friends and new to celebrate the 7th Annual Labor and Employment Law Conference as you enjoy good food, drinks and entertainment by some of New Orleans' finest musicians.

Saturday, November 9

- 12:45 – 2:00 pm

An Exploration of Careers in Labor & Employment Law

Grand Salon 4

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.



Advocates for Workplace Fairness

Outten & Golden congratulates the Section on the 2013 Conference

Outten & Golden focuses on a global scale on advising and representing individuals and groups in employment, partnership, and related workplace matters. The firm counsels individuals on employment and severance agreements; handles complex compensation and benefits issues (including matters involving I.R.C. Sections 409A and 280G, bonuses, commissions, and stock and option agreements and awards), and advises professional partners (including accountants, doctors, and lawyers) with contractual and strategic issues.

It also represents employees with a wide variety of claims, including discrimination and harassment based on sex, sexual orientation, gender identity and expression, race, disability, national origin, religion, and age, as well as retaliation, whistleblower, and contract claims. Outten & Golden is also at the forefront of family leave issues and veterans' workplace rights. The firm handles some of the largest class action and impact litigations in the United States involving a wide range of employment issues, including economic exploitation, gender- and race-based discrimination, wage-and-hour violations, violations of the WARN Act, and other systemic workers' rights issues.

Outten & Golden has ten practice groups: Executives & Professionals, Financial Services, Sexual Harassment & Sex Discrimination, Family Responsibilities & Disabilities Discrimination, Lesbian Gay Bisexual & Transgender (LGBT) Workplace Rights, Discrimination & Retaliation, Whistleblower Retaliation, Class & Collective Actions, WARN Act, and Appellate Litigation.

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Left, top to bottom: Wayne N. Outten, Adam T. Klein, Kathleen Peratis, Jack A. Raisner, Carmelyn P. Malalis, René S. Roupinian, Rachel M. Bien Right, top to bottom: Anne Golden, Laurence S. Moy, Justin M. Swartz, Wendi S. Lazar, Tammy Marzigliano, Cara E. Greene, Ossai Miazad

7th Annual Labor and Employment Law Conference

Plenary Sessions

Cutting edge programs of wide general interest, including

- The Patient Protection and Affordable Care Act: Current Status and What Is to Come, *page 5*
- Supreme Court Review, *page 12*
- Emerging Work/Career Balance and Stereotyping Issues in the Workplace, *page 21*

Alternative Dispute Resolution

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

- Class and Collective Action Arbitration: An Update, *page 5*
- Ethics and Strategies in Labor and Employment Arbitration **(E)**, *page 5*
- Issues and Ethics of Mediation-Arbitration ("Med-Arb"), *page 5*

Discrimination and Retaliation

Hot topics in the employment discrimination and retaliation arena

- The ADAAA: Five Years Later **(F)**, *page 12*
- ADA, HIPAA and GINA: Disclosing Private Information, *page 13*
- Caregiver Responsibility Discrimination: Are You One Sick Kid Away from Losing Your Job?, *page 12*
- Disciplining Employees for Disability-Related Activities, *page 13*
- Discrimination against LGBT Individuals: Sex and Gender Revisited under Title VII **(F)**, *page 12*
- Employer Use of Criminal Background Checks, *page 5*
- Gender Pay Disparity: 50 Years after the Equal Pay Act, *page 6*
- The Rising Tide of Retaliation Claims, *page 13*
- Unconscious Bias: Diving Deeper, *page 6*
- Who is a Qualified Individual with a Disability?, *page 13*

Legend: E = Ethics F = Fundamentals T = Technology

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

Employee Benefits

Programs focusing on the Patient Protection and Affordable Care Act

- Bargaining under the Patient Protection and Affordable Care Act in the Private Sector: A Different Kind of Health Insurance "Exchange", *page 14*
- The Patient Protection and Affordable Care Act: Compliance, *page 6*
- The Patient Protection and Affordable Care Act: Current Status and What Is to Come, *page 6*
- The Patient Protection and Affordable Care Act: Employer Responses and Litigation Trends, *page 6*
- The Practical Application of the Patient Protection and Affordable Care Act in the Public Sector, *page 13*

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5:30 pm

Second Line Departure from the Hilton's Ballroom Foyer

6:00 – 8:00 pm

Diversity Reception at the Piazza d'Italia, Loews New Orleans Hotel



Presented by the Diversity in the Legal Profession Committee

Co-Hosted by: Association For Women Attorneys, Hispanic Lawyers Association of Louisiana, Louisiana Asian Pacific American Bar Association, Vietnamese American Bar Association, The National LGBT Bar Association, ABA Commission on Disability Rights, ABA Commission on Sexual Orientation and Gender Identity, ABA Commission on Racial & Ethnic Diversity in the Profession, and ABA Commission on Women in the Profession

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Join us for a social and networking reception for those who support the Section's vision on diversity and inclusion. The reception will begin at 5:30 pm at the Hilton New Orleans Riverside. Grab a "geaux" cup and bandanna and join the parade to the Loews New Orleans Hotel. The reception will feature entertainment by New Orleans Jazz & Heritage Festival favorite Glen David Andrews Band.

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7th Annual Labor and Employment Law Conference

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