Welcome to Philadelphia! We are delighted that you are joining us for the ABA Section of Labor and Employment Law’s Ninth Annual Section Conference. An enormous amount of work by many talented and dedicated people has been done to ensure that this will be the preeminent 2015 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, you will have the opportunity to earn a year’s worth of CLE credit for most jurisdictions 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 also are hopeful you will attend the social events at the Conference as well, to meet other attendees, speakers and government officials. Our First-Time Attendee and New Section Member Orientation, Welcome Reception and Committee Expo, Diversity Reception, and Section Reception will be great opportunities to network and mingle.

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

We also are interested in your thoughts and feedback as we plan our Tenth Annual Section Conference from November 9-12, 2016 in Chicago.

Again, welcome to the Annual Section Conference and to Philadelphia!

Wayne N. Outten
2015–2016 Chair
ABA Section of Labor and Employment Law
New York, New York

Gail Golman Holtzman
2015–2016 Chair-Elect
ABA Section of Labor and Employment Law
Tampa, Florida

From the Host Committee

Welcome to the 9th Annual Labor and Employment Law Conference in Philadelphia! The City of Brotherly Love is bursting with history, art and wonderful cuisine, and we encourage you to take some time to explore and enjoy. You’ll find our Conference headquarters hotel, the Loews, is a short walk to many of Philadelphia’s iconic sights. We encourage you to get out and explore some of what our City has to offer. The biggest difficulty will be deciding among the attractions:

- Independence Hall
- Liberty Bell
- Betsy Ross’s Home
- Old City
- National Constitution Center
- Rodin Museum
- Philadelphia Art Museum
- Eastern State Penitentiary
- Pennsylvania Academy of the Fine Arts (PAFA)

Please drop by the Concierge Desk for information on places to visit and a list of your Host Committee’s favorite Philadelphia restaurants and other highlights. Whatever you choose to do, we welcome you to Philadelphia for a fantastic 9th Annual Labor and Employment Law Conference!

Your Philadelphia Host Committee

Mark S. Dichter, Co-chair, Employer
Ginger Hardwick, Co-chair, Employee
Pilar Castillo, Public
Alan Epstein, Employee
Sarah Bryan Fask, Employer
Robert M. Goldich, Employer
Jonathan A. Grode, Employer
Elana Holo, Public
J. Lindsay Johnston, Employer
Spencer H. Lewis, Jr., Public
Scott M. Pollins, Employee
Jennifer Platzkere Snyder, Employer
Alan A. Symonette, Neutral
Nancy A. Walker, Employer and Union & Employee
Jonathan Walters, Union & Employee
Deborah R. Willig, Union & Employee

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**Saturday, November 7**

7:00 am – 8:00 am

**Continental Breakfast, Millennium Hall, 2nd Floor**

8:00 am – 9:15 am

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*Standing at the Intersection of Workplaces Injuries: When Both the Federal and State Governments Get Involved, Washington A, 3rd Floor, page 26*

*When the Ethics Rules Become a Sword (E), Howe, 33rd Floor, page 24*

9:30 am – 10:45 am

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*Compensable Time in the Digital Age, Washington BC, 3rd Floor, page 24*

*Does the Government Make the Rules? How Much Deference Should Be Given to Government Rulemaking and Opinions, Lescaze, 33rd Floor, page 23*

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*How Arbitrators’ Backgrounds Influence the Decision-Making Process, Howe, 33rd Floor, page 21*

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12:30 pm – 2:00 pm

**The College of Labor and Employment Law Program: Civility and Professionalism in the Practice of Labor and Employment Law: Insights from Our Canadian Neighbors, Howe, 33rd Floor, page 26**
Wednesday, November 4

- **2:30 pm – 3:30 pm**
  **Law Student Orientation**
  Commonwealth Ballroom A, 2nd Floor
  This event will offer law students a casual introduction to the ins and outs of the Conference. Students also will receive tips for making the most out of their Conference experience.

- **3:30 pm – 4:30 pm**
  **Pre-Conference Program: Raising the Level of Ethics and Professionalism in the Labor and Employment Bar (E)**
  Commonwealth Ballroom BC, 2nd Floor
  This panel will share their views about ethics and professionalism in the practice of labor and employment law. The judges will address a broad range of ethical issues that labor and employment lawyers often face and provide guidance on the way courts expect practitioners to handle them. In addition, they will discuss the ways, from a court’s perspective, in which treating colleagues with respect and professionalism can benefit lawyers and their clients. We also will hear from a law school professor who will share her perspective on the role of ethics and professionalism in the law school setting and in our profession.

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

  **PANELISTS:**
  Hon. Cynthia M. Rufe, U.S. District Court for the Eastern District of Pennsylvania, Philadelphia, PA

Thursday, November 5

- **7:00 am – 8:00 am**
  **Continental Breakfast**
  Millennium Hall, 2nd Floor
  Sponsored by Jackson Lewis PC

  **Thursday’s 11:00 am – 11:15 am Refreshment Break is sponsored by ERS Group.**

- **12:30 pm – 2:00 pm**
  **Diversity Luncheon**
  Regency Ballroom, 2nd Floor Mezzanine
  Presented by the Diversity in the Legal Profession Committee
  Co-Sponsored by: Akin Gump LLP; Baker & Hostetler LLP; Butler Snow; Constangy, Brooks, Smith & Prophete, LLP; Cozen O’Connor; DLA Piper LLP; Fisher & Phillips LLP; Littler; Morrison & Foerster LLP; Outten & Golden LLP; Paul Hastings LLP; Proskauer Rose LLP; Schiff Hardin LLP

  The Diversity Luncheon will feature a discussion on how racially-charged events in the national spotlight have elevated the need for competencies in creating a work culture that recognizes heightened emotions, follows best practices for having respectful conversations at work about race relations, and combats stereotyping and implicit bias. These subjects pose challenges and opportunities for workplaces nationally. Professor Cyndi Nance will moderate a conversation between Kelly Dermody of Lieff Cabraser and Luther Wright of Ogletree Deakins on how we can engage with these pressing issues.

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

  **SPEAKERS:**
  Kelly M. Dermody, Lieff Cabraser Heimann & Bernstein LLP, San Francisco, CA
  Luther Wright, Jr., Ogletree, Deakins, Nash, Smoot & Stewart, P.C., Nashville, TN

- **6:00 pm – 8:00 pm**
  **Welcome Reception and Committee Expo**
  Millennium Hall, 2nd Floor
  Sponsored by Bloomberg Law

  Conference attendees are invited to meet, greet and network during this opening reception at the Loews Philadelphia Hotel. Section Committees will present information about publications, services and programs they provide to labor and employment lawyers.

- **4:30 pm – 5:30 pm**
  **First-Time Attendee/ New Section Member Orientation**
  Commonwealth Ballroom BC, 2nd Floor
  If you are a new member of the Section of Labor and Employment Law or if this is your first Section meeting, join your peers for an overview of what you should know about the Section and how to get the most benefit from attending the Conference.

- **5:30 pm – 6:00 pm**
  **First-Time Attendee/ New Section Member Reception**
  Commonwealth Ballroom BC, 2nd Floor
  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.

- **7:00 am – 8:00 am**
  **Continental Breakfast**
  Millennium Hall, 2nd Floor
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  Luther Wright, Jr., Ogletree, Deakins, Nash, Smoot & Stewart, P.C., Nashville, TN
Plenary Session

9:30 am – 9:45 am
Welcome and Introductions
Regency Ballroom, 2nd Floor Mezzanine
Paulette Brown, President, American Bar Association
William H. Pugh, V, President, Pennsylvania Bar Association
Wayne N. Outten, Chair, American Bar Association Section of Labor and Employment Law

9:45 am – 11:00 am
Supreme Court Update: New Decisions and Consideration of the Effect of Important Prior Decisions
Regency Ballroom, 2nd Floor Mezzanine
The Section Secretary, Professor Scott A. Moss, will give us not just an informative review of the key labor and employment decisions from the 2014-2015 Term of the Supreme Court but also will evaluate how several significant Supreme Court decisions from previous years actually are being applied in the lower courts.

SPEAKER:
Scott A. Moss, Professor of Law, University of Colorado Law School, Boulder, CO

Discrimination, Harassment and Retaliation

8:00 am – 9:15 am
Religious Discrimination and Accommodations after the Supreme Court’s Ruling in EEOC v. Abercrombie & Fitch
Commonwealth AB, 2nd Floor
This panel will discuss important developments in the law on religious discrimination and accommodation, especially since the Supreme Court’s ruling in the Abercrombie case. What information is an employee required to tell her employer about her religious observances? What questions can an employer ask its employees or applicants about their religious practices? Just how far must an employer go to provide its employees with religious accommodations? Has the legal landscape really changed?

PANELISTS:
Pamela D. Chadrant, SEIU Local 121RN, Los Angeles, CA

9:45 am – 11:00 am
Has the legal landscape really changed?
employees with religious accommodations?
far must an employer go to provide its
about their religious practices? Just how
an employer ask its employees or applicants
her religious observances? What questions can
the word “stray”; whether the
doctrine” has been mistaken, misplaced and misapplied; and whether courts should look at the totality of the circumstances rather than focusing on a single comment/remark.

PANELISTS:
Karen M. Buesing, Akerman LLP, Tampa, FL
Paula Johnston, Teamsters Local 320, Minneapolis, MN
Carol Mioskoff, U.S. Equal Employment Opportunity Commission, Washington, DC
Mariann Meier Wang, Cuti Hecker Wang LLP, New York, NY
George L. Washington, Jr., Orange Business Services, Washington, DC

11:15 am – 12:30 pm
Harassment Claims: Actionable or Not?
Commonwealth CD, 2nd Floor
This panel will review how courts have viewed how much harassment is needed to rise to the level of an actionable hostile environment. It will delve into the extent to which, as a practical but not necessarily legal matter, there may be differences in how certain specific conduct is viewed, e.g., one utterance of the N-word versus other remarks or conduct. The panel also will discuss the stray remarks doctrine: how courts have interpreted the word “stray”; whether the “doctrine” has been mistaken, misplaced and misapplied; and whether courts should look at the totality of the circumstances rather than focusing on a single comment/remark.

PANELISTS:
Karen M. Buesing, Akerman LLP, Tampa, FL
Paula Johnston, Teamsters Local 320, Minneapolis, MN
Carol Mioskoff, U.S. Equal Employment Opportunity Commission, Washington, DC
Mariann Meier Wang, Cuti Hecker Wang LLP, New York, NY
George L. Washington, Jr., Orange Business Services, Washington, DC

2:15 pm – 3:30 pm
The Outer Edges of Retaliation Claims
Washington BC, 3rd Floor
This session will focus on non-traditional retaliation claims and explore the outer edges of what is actionable under the anti-retaliation laws. The panel will discuss how minor of a slight can amount to an adverse employment action for purposes of a viable retaliation claim, and explore the current scope of retaliatory harassment. The panel will also compare and contrast retaliation claims in the private versus public sector where the standard for establishing retaliation may be more relaxed. The latest developments in other topics, such as associational and other non-traditional theories of retaliation, will be of particular interest to employees who seek protection and employers who desire to limit their potential exposure. Finally, the panel will also provide an update on the current state of the law with respect to post-employment retaliation, and importantly, provide guidance for employers on how to prevent such potentially troublesome behavior from occurring in the workplace.

PANELISTS:
Pamela D. Chadrant, SEIU Local 121RN, Los Angeles, CA
Ronetta J. Francis, Wal-Mart Stores, Inc., Fayetteville, AR
Daniel Mach, ACLU, Washington, DC
Eric D. Reicin, MorganFranklin Consulting, LLC, McLean, VA
Sharon Fast Gustafson, Attorney at Law, PLC, Arlington, VA
Caitlin J. Halligan, Gibson Dunn & Crutcher LLP, New York, NY
Cathi J. Hunt, Starbucks Coffee Company, Seattle, WA
Alaine S. Williams, Willig, Williams & Davidson, Philadelphia, PA

Legends:
E = Ethics  F = Fundamentals  T = Technology

9:45 am – 11:00 am
Pregnancy Discrimination and Accommodations after the Supreme Court’s Ruling in Young v. UPS
Co-Sponsored by ABA Commission on Women in the Profession
Commonwealth CD, 2nd Floor
This panel will discuss the evolving legal landscape regarding reasonable accommodations for pregnant employees, including the EEOC’s recent interpretive guidance and the Supreme Court ruling in Young v. UPS. The panel also will provide practical tips on what employers should do to comply with the latest federal and state law developments in pregnancy discrimination and accommodation law.

PANELISTS:
Sharon Fast Gustafson, Attorney at Law, PLC, Arlington, VA
Caitlin J. Halligan, Gibson Dunn & Crutcher LLP, New York, NY
Cathi J. Hunt, Starbucks Coffee Company, Seattle, WA
Alaine S. Williams, Willig, Williams & Davidson, Philadelphia, PA

11:15 am – 12:30 pm
Corruption and Bribery: What Employees, Employers and Trade Unions Need to Know About the Law in Different Foreign Jurisdictions
Congress A, 4th Floor
Panelists will explore the laws of various countries in the areas of anti-corruption and anti-bribery in cross-border business operations, including what employers, unions and employees need to know and what they can do in foreign jurisdictions without infringing those laws. They will provide
specific examples of where an employer has gone astray and how employee groups and trade unions together or separately may afford the necessary protection to the affected persons including employees.

**PANELISTS:**

Eari V. Brown, Jr., Solidarity Center, Washington, DC
Paul Callaghan, Taylor Wessing, London, UK
Ann Marley Chilton, Environmental Resources Management (ERM), Austin, TX
Benjamin Hensler, Worker Rights Consortium, Los Angeles, CA

* 2:15 pm – 3:30 pm

**International Wage and Hour Laws: A Comparative Look**

Congress A, 4th Floor

Employers who do business and have local or foreign employees working abroad on a short term or permanent basis face a multitude of divergent wage and hour laws. In recent years, certain U.S. jurisdictions and Canada have increased their minimum statutory wage and/or adopted living wage standards. Germany has instituted a minimum wage for the first time. The EU Working Time Directive requires employers to compensate employees who are technologically connected to their workplace at all hours of the day. Collective bargaining agreements in many jurisdictions do the same. This panel will explore how countries around the world are meeting minimum and living wage issues in a wired world and will survey the most common wage and hour laws abroad.

**PANELISTS:**

Tetsuro Kinoshita, Tokyo Kyodo Law Office, Tokyo, Japan
Eri R. Kuzz, Sherrard Kuzz LLP, Toronto, ON
Bronwyn McKenna, UNISON, London, UK
Gwynne A. Wilcox, Levy Ratner PC, New York, NY

**Labor-Management Relations**

* 8:00 am – 9:15 am

**Northwestern, Pacific Lutheran and Changing Issues Facing Private Schools**

Congress BC, 4th Floor

What do faculty, football players and graduate student teaching assistants have in common? They are all “employees” under the NLRA or are they? In Northwestern University, the Board must decide whether grant-in-aid scholarship football players are “employees” under the Act. That implicate holdings in Brown University, which reversed a decision that graduate students performing teaching assistant tasks were employees. And the Board has decided Pacific Lutheran University, a case involving the assertion of jurisdiction over a private, religiously affiliated university and the determination whether faculty members are managerial employees under fordham University. What is the impact of these recent developments on campuses and beyond?

**PANELISTS:**

Jeremiah A. Collins, Bredhoff & Kaiser, P.L.L.C., Washington, DC
David Durham, DLA Piper, San Francisco, CA
M. Anastasia “Ana” Hermosillo, National Labor Relations Board – Region 19, Seattle, WA
Dr. Ellen Staurowsky, Ed.D., Drexel University Center for Hospitality and Sports Management, Philadelphia, PA

* 8:00 am – 9:15 am

**Public Sector Basics (F)**

Co-Sponsored by ABA Young Lawyers Division

Washington BC, 3rd Floor

Public Sector Labor Law is a vast field, complicated by the various statutes that govern labor relations across the United States. Nevertheless, the issues that arise in Public Sector labor law share many themes and its practitioners grapple with familiar fundamental issues, common across jurisdictions. This session will familiarize attendees with those themes using a client-counseling framework and interactive hypotheticals ranging from 1st Amendment issues post-Franks v. Lane, when Weingarten Rights can be invoked, and collective bargaining issues including the duty to bargain in good faith and maintaining the status quo. Each set of hypotheticals will address some of the more commonly litigated areas of Public Sector Labor Law.

**PANELISTS:**

John H. Gretzinger, Mika, Meyers, Beckett & Jones PLC, Grand Rapids, MI
Peter R. Meyers, Arbitrator & Mediator, Chicago, IL
D. Lynn Morison, Michigan Labor Relations Board, Detroit, MI
Anne Thomas, Ohio Education Association, Bentleyville, OH

* 8:00 am – 9:15 am

**Railroads vs. Airlines: One Statute, But Two Different Approaches**

Lescaze, 33rd Floor

This program will focus on the differences in handling of labor-management issues in the two industries covered by the Railway Labor Act (RLA). This will include an interactive discussion about some of the many distinctions between airlines and railroads under the RLA, such as: methods of bargaining, handling of grievances and arbitrations, the use of self-help, judicial challenges to arbitration awards, the establishment of presidential emergency boards, and the intervention of Congress in the negotiating process. For experienced practitioners, this presentation will offer thought-provoking review about the reasons why the application of the same law to two industries often produces such divergent practices and outcomes, and how that may impact the role attorneys play in that process. For those who are new to the RLA, the panel will offer an overview of the sort of issues and cases that typically arise under the Act for both railroads and airlines.

**PANELISTS:**

Nicholas Geale, National Mediation Board, Washington, DC
Chris A. Helling, O’Melveny & Myers LLP, San Francisco, CA
Kayden Howard, Kansas City Southern Railway Company, Kansas City, MO
Carmen R. Parcelli, Guerrieri Clayman & Partners & Parcelli PC, Washington, DC
Carla M. Siegel, IAMAW, Upper Marlboro, MD

* 11:15 am – 12:30 pm

**NLRB Update**

Commonwealth AB, 2nd Floor

This program will provide a timely and thought provoking review of the new and important unfair labor practice and representation decisions issued by the NLRB, federal appellate courts and the Supreme Court.

**PANELISTS:**

Jonathan C. Fritts, Morgan Lewis & Bockius LLP, Washington, DC
Nicole Cuda Perez, Spiegel Lipton LLP, New York, NY
Dennis P. Walsh, National Labor Relations Board, Philadelphia, PA

* 2:15 pm – 3:30 pm

**Employee Monitoring and Surveillance**

Commonwealth CD, 2nd Floor

The installation and use of electronic surveillance devices has increasingly become a point of contention between unions and public employers across jurisdictions. This panel will provide a review of the different types of public sector employee surveillance practices—both overt and covert. Discussion will cover emerging trends such as GPS on vehicles, body cameras, video cameras and computer monitoring devices. The panel will address the best practices for implementing and announcing novel surveillance methods.
Litigation/Class Action

- **8:00 am – 9:15 am**
  **The Interplay between Rule 23(c)(4) and the Other Provisions of Rule 23, Including Damages Issues at the Certification Stage**
  **Washington A, 3rd Floor**
  Rule 23(c)(4) provides that when appropriate, an action may be brought or maintained as a class action with respect to particular issues. As construed by some appellate courts, Rule 23(c)(4) imposes a duty on the court to ensure that only those questions that are appropriate for class adjudication be certified. Courts have used Rule 23(c)(4) to certify some elements of liability for class determination, while leaving other elements to individual claims. The text of the Rule, however, does not directly address the interrelationship among the provisions and divergent interpretations that have emerged among courts. This panel will discuss the interplay between Rule 23(c)(4) and the other provisions of Rule 23, including recent case law after Dukes v. Walmart and Comcast Corp. v. Behrend, the impact of issue certification and damages at the class certification phase, and the most effective arguments being made on both sides.
  
  **PANELISTS:**
  - Richard L. Alfred, Seyfarth Shaw LLP, Boston, MA
  - James M. Finberg, Altschuler Berzon LLP, San Francisco, CA
  - Rachel Geman, Lief, Cabaniss, Heimann & Bernstein, LLP, New York, NY
  - Alan S. King, Drinker Biddle & Reath LLP, Chicago, IL
  - Linda R. Singer, JAMS, Washington, DC

- **2:15 pm – 3:30 pm**
  **Making it Count: Effective Pre-Trial Oral Advocacy**
  **Lescaze, 33rd Floor**
  In the age of email and e-filings, the litigator's most effective weapon, the spoken word, can become dull through disuse. This panel sharpens the sword and explores how to effectively advocate from the case management conference to closing argument, with insights on how to sway judges and juries. Leading public speakers will explain the mechanics of oral advocacy, including how to prepare concise and effective presentations, how to tune to the audience and make them care, use of visual aids and avoiding common mistakes.
  
  **PANELISTS:**
  - Maureen S. Binetti, Wilentz, Goldman & Spitzer, PA, Woodbridge, NJ
  - Sean R. Gallagher, Polsinelli PC, Denver, CO
  - Yona Rozen, AFL-CIO, Washington, DC
  - Gwen Rosenman Stern, Drexel University Thomas R. Kline School of Law, Philadelphia, PA

- **3:45 pm – 5:00 pm**
  **Do We Really Need Experts in this Case and When Should We Hire Them?**
  **Lescaze, 33rd Floor**
  In both individual and class or collective action cases, each time we complete the Rule 26(f) conference, we have specific discussions about the use of an expert. But prior to the Rule 26(f) conference, particularly if the matter is a class action case, the parties need to look at the case and determine if the use of an expert is really necessary. This program will address the necessity of an expert in both individual and class action cases, when an expert should be retained and how to provide specific instructions to the expert. The panel will provide suggestions regarding the timing agreements made in the Rule 26(f) conference, as well as give guidance on using the expert in all stages of the litigation, from drafting and responding to discovery through assistance with the deposition of the opposing party's expert.
**Practice and Professionalism**

*2:15 pm – 3:30 pm*

**Ethics of E-Discovery in Complex Litigation (E, T)**

Co-Sponsored by ABA Center for Professional Responsibility

Washington, A, 3rd Floor

An attorney's obligations with respect to e-discovery are more complicated in the context of a class action or complex litigation. Attorneys for both the putative class and the company must decide how broadly to issue spoliation and preservation instructions. New technologies, like predictive coding and electronic file transfer (e.g., FTP), promise an easier route to identifying and producing relevant documents in complex litigation, but what are the ethical requirements and pitfalls when using these technologies? This panel will explore these questions and more in discussing the ethics of e-discovery in complex litigation.

**Wage and Hour**

*8:00 am – 9:15 am*

**The Contingent Workforce: Update on Misclassification and Joint Employment Issues**

Regency Ballroom, 2nd Floor Mezzanine

The spotlight on worker misclassification and joint employment by the DOL shows no signs of dimming. While the use of contingent employment relationships (such as independent contractors and leased workers) may offer businesses and workers greater flexibility, such arrangements can expose employers to significant wage and hour liability if not effectively managed. A panel of experts will discuss contingent workforce issues including how to draw the line between employees and independent contractors, how to determine whether a company is an employer or joint employer of a contingent worker, what is at stake for companies that misclassify contingent workers, and litigation and DOL-enforcement trends in this important area.

**Compensable Time under the FLSA in the Wake of Integrity Staffing Solutions v. Busk**

Washington BC, 3rd Floor

In its landmark ruling in Amazon.com Fulfillment Center MDL, the Supreme Court has for the first time in over 50 years attempted to clarify what are preliminary and postliminary activities excluded from compensable time under the FLSA. Hear from the trenches of the litigation regarding the Court’s decision, its impact on off-the-clock litigation under the FLSA and the viability of state law causes of action post-Busk.

**2:15 pm – 3:30 pm**

**Revisions to the White Collar Exemptions**

Howe, 33rd Floor

The Department of Labor’s attempt to clarify the 541 exemptions is certain to lead to significant new litigation and changes in the way companies seek to define workers’ duties in order to exempt those workers from having to pay them overtime under the FLSA. The program will explain the new regulations, how they change the exemptions, discuss the comments the Department received before finalizing the regulations, provide predictions as to how companies will react and identify the most significant new issues that will arise in wage and hour litigation.

**Are Unpaid Internships Still Viable?**

Howe, 33rd Floor

Most employers agree that the U.S. Department of Labor’s six criteria for unpaid internships are very difficult to meet, especially the fourth criterion prohibiting employers from deriving any “immediate advantage” from their interns. Although courts have given the criteria differing weight, one thing is clear: employers must closely examine their internship programs to ensure they are compliant or risk litigation. This panel will discuss the key decisions that have shaped this area of the law.

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Whistleblower

• 8:00 am – 9:15 am
Performing Issue-Spotting and Client Intake in Whistleblower Cases
Howe, 33rd Floor

The proliferation of whistleblower retaliation and reward laws has created a complex maze of claims and remedies. This panel will examine issues that frequently arise in private sector whistleblower cases and provide practical tips for both plaintiff counsel and defense counsel to develop an effective strategy to prosecute or defend a whistleblower retaliation case. Topics will include preserving retaliation claims while pursuing reward claims, choosing the optimal forum, claim splitting and exhausting administrative remedies.

PANELISTS:
Patrick E. Deady, Hogan Marren Babbo & Rose, Ltd., Chicago, IL
Virginia Hardwick, Hardwick Benfer, LLC, Doylestown, PA
Arian M. June, WilmerHale, Washington, DC

• 11:15 am – 12:30 pm
Ethical and Legal Implications of Using Confidential and Electronic Documents in Whistleblower Litigation (E)
Co-Sponsored by ABA Center for Professional Responsibility
Congress BC, 4th Floor

The use of confidential, unlawfully-obtained, or electronically-stored documents in whistleblower rewards and retaliation litigation poses myriad challenging issues for both plaintiff and defense counsel. Relevant evidence, which may involve information subject to employment confidentiality agreements, often exists on electronic media. Panelists will provide practical tips and best practices for companies about preserving and collecting electronic information during internal whistleblower investigations and best practices for whistleblowers seeking to use company documents in support of claims while minimizing the risk of counterclaims. This panel also will survey case law and address thorny issues, including: the tension between providing documents to government investigators and complying with contractual and common law duties owed to an employer; restrictions on using evidence obtained unlawfully; sanctions that can result from the use of privileged information; and prohibitions against companies interfering with disclosures to law enforcement and regulatory agencies.

PANELISTS:
Connie N. Bertram, Proskauer Rose LLP, Washington, DC
Kathleen Clark, Washington University Law School, St. Louis, MO
Myra McKenzie-Harris, Wal-Mart Stores, Inc., Bentonville, AR
Jennifer M. Verkamp, Morgan Verkamp LLC, Cincinnati, OH

Workplace Problems and Solutions

• 8:00 am – 9:15 am
Employment Law Issues for Startups
Commonwealth CD, 2nd Floor

Start up companies face unique employment law issues. This panel will address these issues including the pitfalls of so-called “Sweat-Equity” and other unorthodox compensation arrangements, the risks associated with relaxed and youthful corporate culture (like sexual harassment or age discrimination), startups’ heavy reliance on a contingent workforce (including independent contractors, consultants, interns) and best practices for drafting and negotiating employment, severance, and restrictive covenants in the startup world.

PANELISTS:
Karen Klein, Hotel Tonight, Inc.
Doug Mandell, Mandell Law Group, PC, San Francisco, CA

Tifani Sadek, Sadek Bonahoom, PLC, Detroit, MI
Shruti Shah, Move Loot, Inc., San Francisco, CA

• 11:15 am – 12:30 pm
Pandemic Disease Issues in the Workplace: Employment Rights and Responsibilities
Washington A, 3rd Floor

Widespread outbreaks of communicable diseases pose particular challenges in the workplace. How far can an employer go in attempting to prevent the spread of a disease among its employees? Can employers quarantine employees who may have been exposed to an infectious disease? Do employees enjoy standard protections regarding medical inquiries and disclosure of personal health information to eager-to-know co-workers, or are those protections relaxed in the face of a potential health emergency? This program will explore these questions and will examine preparedness measures that should be in place to minimize workplace transmission of communicable diseases and to protect employees who may be traveling during an outbreak.

PANELISTS:
Ann Haley Fromholz, The Fromholz Law Firm, Pasadena, CA
Thomas Benjamin Huggett, Littler Mendelson P.C., Philadelphia, PA
Gail Lopez-Henriquez, Freedman and Lorry, P.C., Philadelphia, PA
Robert H. Taylor, Thomas Jefferson University, Philadelphia, PA

Non-Compete and Similar Arrangements as Part of Employer Equity Programs and Compensation Plans
Washington BC, 3rd Floor

In response to the difficulty of enforcing restrictive covenants and the variability of the laws of 50 states, employers are turning to another strategy: building restrictive covenants into their equity compensation and similar benefit plans. This program will explore this trend as well as recent litigation pertaining to such plans and their enforcement.

PANELISTS:
Roger Dennis, Drexel University, Philadelphia, PA
Jeffrey S. Heller, BP America Inc., Houston, TX
Arnold H. Pedowitz, Pedowitz & Meister, LLP, New York, NY
Janie F. Schulman, Morrison & Foerster LLP, San Francisco, CA
9th Annual Labor and Employment Law Conference

2:15 pm – 3:30 pm
Investigating the Executive: Common Perils and Pitfalls Faced When Investigating the Corporate Executive Suite, Part 1
Congress BC, 4th Floor

Investigating executives typically creates a host of issues including maintaining independence, dealing with someone who can act and speak for the company, and facing a subject who is likely lawyered-up and well aware of how internal investigations work. Part 1 of this program will examine the complex legal issues involved in representing the board of directors, providing legal counsel to executives, shareholder fallout, and dealing with legal fallout when executives are implicated while simultaneously holding the legal or public reins of power in a company.

**Panelists:**
- Jonathan Ben-Asher, Ritz, Clark & Ritz, LLC, New York, NY
- Scott R. Koch, JPMorgan Chase & Co., Chicago, IL
- Frank Scruggs, Berger Singerman LLP, Miami, FL
- Sue Ann Van Dermyden, Van Dermyden Maddux Law Corporation, Sacramento, CA

3:45 pm – 5:00 pm
Effectively Managing Remote Work
Howe, 33rd Floor

Advances in technology have enabled more and more employees to perform job duties outside of the traditional “workplace.” As a result, employers may find themselves in need of policies that effectively address issues that may be implicated when an employee performs a substantial amount of work remotely. From performance management challenges, to ADA accommodation issues, to compensable time questions under the FLSA, remote work often adds a layer of complexity to the employer-employee dynamic and to legal questions regarding employment rights and responsibilities. This program will examine legal problems that are often posed by remote work and will offer guidance on solutions to make remote work programs effective for employers and employees.

**Panelists:**
- Tiffanie C. Benfer, Hardwick Benfer, LLC, Doylestown, PA
- Devjani Mishra, Alexion Pharmaceuticals, Inc., Cheshire, CT
- Alex Roe, Communication Workers of America, Washington, DC
- Joseph H. Vastrow, Laner Muchin, Ltd., Chicago, IL

6:00 pm – 8:00 pm
Diversity Reception at The Barnes Foundation
Presented by the Diversity in the Legal Profession Committee
Co-Hosted by: Asian Pacific American Bar Association of Pennsylvania (APABA-PA); The Barristers’ Association of Philadelphia; Gay and Lesbian Lawyers of Philadelphia (GALLOP); Hispanic Bar Association of Pennsylvania (HBAPA); LGBT Rights Committee of the Philadelphia Bar Association; National Bar Association Women Lawyers Division, Philadelphia Chapter; The South Asian Bar Association of Philadelphia (SABA Philly)

**Panelists:**
- Joseph H. Yastrow
- Alex Roe
- Devjani Mishra
- Tiffanie C. Benfer

7:00 am – 8:00 am
Continental Breakfast
Millennium Hall
Sponsored by Morgan Lewis

9:30 am – 9:45 am
Award Presentations
Regency Ballroom, 2nd Floor Mezzanine

9:45 am – 11:00 am
Workplace Equality and Race: Roadblocks and Routes to a Better Outcome
Regency Ballroom, 2nd Floor Mezzanine

For more than 20 years, many employers have expended significant time and effort attempting to achieve workplace equality. The focus has not just been to eradicate race discrimination but also to promote workforce assimilation and advancement. Despite decades of varying approaches, the results are decidedly mixed. This panel will explore questions such as why it has proven difficult to recruit and to retain a racially diverse workforce and what needs to be done differently. We promise a thought-provoking discussion that includes a hard look at the implications of the country’s current social discourse about race, why race is a topic that
is often difficult to discuss, and what might make a difference in achieving racial equality in the workplace. The esteemed panel also will discuss the legal implications of varying approaches to advancing equality in our workplaces.

**MODERATOR:**
Juan Williams, Fox News Channel; Author of “Eyes on the Prize: America’s Civil Rights Years, 1954-65,” New York, NY

**PANELISTS:**
Lani Guinier, Harvard University Law School, Boston, MA
Gail Heriot, U.S. Commission on Civil Rights; University of San Diego School of Law, San Diego, CA
Natalie Norfus, Burger King Corporation, Miami, FL

* 2:15 pm – 3:30 pm
**An Interview with Steven Greenhouse: Observations from 30+ Years of Reporting on Labor and Employment Matters**
Regency Ballroom, 2nd Floor Mezzanine

With more than thirty years of covering labor and employment news for the New York Times, what better speaker to discuss the significant issues, changes, and trends of the past 30 years, as well as offering some future prognostications, than Steven Greenhouse, the reporter who until recently covered labor and the workplace for the Times? Enjoy a fascinating interview addressing how labor and employment issues have changed since Mr. Greenhouse started reporting on them and the currents and influences pushing those changes. Join us for a historical perspective from a seasoned and insightful reporter of the many notable developments and milestones affecting the American workplace and what we might expect going forward.

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

### Alternative Dispute Resolution

* 8:00 am – 8:30 am
**Obtaining Information in Arbitration**
Commonwealth A, 2nd Floor

This panel will discuss such issues as the right to information and discovery in arbitration; limitations on those processes; obtaining effective subpoenas; enforcing one’s right to information and discovery against an uncooperative adversary; remedies and consequences for a refusal to provide information and discovery in arbitration.

**PANELISTS:**
Samantha C. Grant, Mitchell Silberberg & Knupp LLP, Los Angeles, CA
Wesley G. Kennedy, Allison, Slutsky & Kennedy, P.C., Chicago, IL
Robert D. Kraus, Kraus & Zachlewski LLP, New York, NY
John E. Sands, Arbitrator and Mediator, Roseland, NJ

* 3:45 pm – 5:00 pm
**Effective Strategies for Employment Mediations (F)**
Co-Sponsored by ABA Young Lawyers Division
Commonwealth CD, 2nd Floor

Most cases settle prior to trial. A panel of experienced practitioners will lead a discussion on best practices and share their tips for achieving the best settlement for your clients. The discussion will include how best to position the case for settlement and achieve the best result, the most effective strategies for relating to a difficult client or opposing counsel, unique issues that arise in settling multi-party litigation, whether court-ordered or agency mediation is worth the time, whether private mediation is worth the cost, when drafting a tentative terms document, how much specificity is required and which successful strategies utilized in traditional labor mediation are relevant and viable in agency, court ordered or private mediation.

**PANELISTS:**
Eileen Hoffman, Federal Mediation and Conciliation Service, Washington, DC
Susan Grody Ruben, Arbitrator and Mediator, Cleveland, OH
Dana L. Sullivan, Buchanan Angeli Altschul & Sullivan, LLP, Portland, OR
Robert D. Weisman, Ice Miller LLP, Columbus, OH

### Discrimination, Harassment and Retaliation

* 8:00 am – 9:15 am
**Diplomas, Tests and Physical Abilities: The ADA’s Prohibition of the Discriminatory Use of Qualification Standards**
Congress BC, 4th Floor

The panel will discuss the difference between qualification standards and essential functions, explicit vs. implied standards, neutral vs. impairment-based standards and whether particular standards screen out— or tend to screen out—individuals on the basis of disability. In addition, the panel will address the employer’s duty of reasonable accommodation, whether a direct threat is posed and other defenses.

**PANELISTS:**
Paul C. Buchanan, Buchanan Angeli Altschul & Sullivan, LLP, Portland, OR
Brian East, Disability Rights Texas, Austin, TX
Christopher Kuczynski, U.S. Equal Employment Opportunity Commission, Washington, DC
Antone Melton-Meaux, St. Jude Medical, Inc., Minneapolis, MN

* 11:15 am – 12:30 pm
**Legal and Practical Implications of Domestic Violence in the Workplace: It’s Not Just the NFL**
Co-Sponsored by ABA Commission on Women in the Profession
Commonwealth B, 2nd Floor

The topic of domestic violence in the NFL and other professional sports leagues dominated headlines across the country but also brought greater attention to domestic violence issues regarding employees in everyday workplaces. This panel will examine domestic violence anti-discrimination statutes, including the Violence Against Women Act, state law protections for victims of domestic violence, and strategies for protecting victims in the absence of protective statutes. The panelists also will provide guidance regarding practical considerations of dealing with and accommodating employees who are victims of domestic violence, who and how to notify, responding to injunctions, and safety issues/ threat assessment.

**PANELISTS:**
Donna M. Hughes, Impax Laboratories, Middlesex, NJ
Lisalyn R. Jacobs, St. Jude Medical, Inc., Minneapolis, MN
Julie Richard-Spencer, Robein Urann Spencer Picard & Cangemi, APLC, Metairie, LA
George W. Woods, Jr., MD, Oakland, CA

(Continued on page 18)
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<thead>
<tr>
<th>Time</th>
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<tbody>
<tr>
<td>9:00am – 10:00am</td>
<td>Continental Breakfast</td>
<td>Millennium Hall, 2nd Floor</td>
</tr>
<tr>
<td>10:00am – 11:30am</td>
<td>The Basics of Litigating Front Pay</td>
<td>Commonwealth Hall, 2nd Floor</td>
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<tr>
<td>11:30am – 1:00pm</td>
<td>First-Time Attendee/New Section Member Orientation</td>
<td>Commonwealth Hall, 2nd Floor</td>
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<tr>
<td>1:00pm – 2:00pm</td>
<td>First-Time Attendee/New Section Member Reception</td>
<td>Commonwealth Hall, 2nd Floor</td>
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<tr>
<td>2:00pm – 3:00pm</td>
<td>Welcome Reception and Committee Expo</td>
<td>Millennium Hall, 2nd Floor</td>
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**THURSDAY, NOVEMBER 5**

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<tr>
<td>7:00am – 8:00am</td>
<td>Continental Breakfast</td>
<td>Millennium Hall, 2nd Floor</td>
</tr>
<tr>
<td>8:00am – 9:15am</td>
<td>The Contingent Workforce: Update on Misclassification and Joint Employment Issues</td>
<td>Regency Ballroom, 2nd Floor Mezzanine</td>
</tr>
<tr>
<td>9:15am – 10:15am</td>
<td>Employment Law Issues for Startups</td>
<td>Commonwealth CD, 2nd Floor</td>
</tr>
<tr>
<td>10:15am – 11:15am</td>
<td>The Interplay between Rule 23(c)(4) and the Other Provisions of Rule 23, Including Damages Issues at the Certification Stage</td>
<td>Washington A, 3rd Floor, page 11</td>
</tr>
<tr>
<td>11:15am – 12:15pm</td>
<td>Are Unpaid Internships Still Viable?</td>
<td>Howe, 33rd Floor, page 12</td>
</tr>
<tr>
<td>12:15pm – 1:15pm</td>
<td>Corruption and Bribery: What Employees, Employers and Trade Unions Need to Know About the Law in Different Foreign Jurisdictions</td>
<td>Congress A, 4th Floor, page 9</td>
</tr>
<tr>
<td>1:15pm – 2:15pm</td>
<td>Ethics and Legal Implications of Using Confidential and Electronic Documents in Whistleblower Litigation</td>
<td>Congress BC, 4th Floor, page 13</td>
</tr>
<tr>
<td>2:15pm – 3:15pm</td>
<td>International Wage and Hours Laws: A Comparative Look</td>
<td>Congress A, 4th Floor, page 10</td>
</tr>
<tr>
<td>3:15pm – 4:15pm</td>
<td>Compensable Time under the FLSA in the Wake of Integrity Staffing Solutions v. Busk</td>
<td>Washington BC, 3rd Floor, page 12</td>
</tr>
<tr>
<td>4:15pm – 5:15pm</td>
<td>A Conversation with the NLRB General Counsel and Deputy General Counsel</td>
<td>Commonwealth AB, 2nd Floor, page 11</td>
</tr>
<tr>
<td>5:15pm – 6:15pm</td>
<td>Cross-Border Litigation: The Practical and Legal Issues that Arise When Evidence is Located Abroad or Just Across State Lines</td>
<td>Congress A, 4th Floor, page 12</td>
</tr>
<tr>
<td>6:15pm – 7:15pm</td>
<td>How We Really Need Experts in this Case and When Should We Hire Them?</td>
<td>Lescaze, 33rd Floor, page 11</td>
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**FRIDAY, NOVEMBER 6**

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<thead>
<tr>
<th>Time</th>
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<tbody>
<tr>
<td>7:00am – 8:00am</td>
<td>Continental Breakfast</td>
<td>Millennium Hall, 2nd Floor</td>
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<tr>
<td>8:00am – 9:15am</td>
<td>Affinity Groups: Good Idea or Bad Lescaze</td>
<td>3rd Floor</td>
</tr>
<tr>
<td>10:15am – 11:15am</td>
<td>Displaying Professionalism When Clients Allege Wrongdoing and Malpractice</td>
<td>Washington A, 3rd Floor, page 19</td>
</tr>
<tr>
<td>11:15am – 12:15pm</td>
<td>Ethics Issues in Litigating Cases Involving Low Wage Workers</td>
<td>Lescaze, 33rd Floor, page 19</td>
</tr>
<tr>
<td>1:15pm – 2:15pm</td>
<td>Plenary Session: Presentation of the 2015 Section Awards</td>
<td>Regency Ballroom, 2nd Floor Mezzanine (p.14)</td>
</tr>
<tr>
<td>2:15pm – 3:15pm</td>
<td>Building Your Practice 140 Characters at a Time</td>
<td>Howe, 33rd Floor, page 28</td>
</tr>
<tr>
<td>3:15pm – 4:15pm</td>
<td>Class Discovery: Plaintiff and Defense Perspectives on Expanding and Limiting Discovery Regarding Unnamed Class Members</td>
<td>Commonwealth A, 2nd Floor, page 20</td>
</tr>
<tr>
<td>4:15pm – 5:15pm</td>
<td>Effective Strategies for Employment Mediations</td>
<td>Commonwealth CD, 2nd Floor, page 15</td>
</tr>
<tr>
<td>5:15pm – 6:15pm</td>
<td>Immigration Reform Version 2015</td>
<td>Congress A, 4th Floor, page 18</td>
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**SATURDAY, NOVEMBER 7**

<table>
<thead>
<tr>
<th>Time</th>
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<tbody>
<tr>
<td>7:00am – 8:00am</td>
<td>Continental Breakfast</td>
<td>Millennium Hall, 2nd Floor</td>
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<tr>
<td>8:00am – 9:15am</td>
<td>Discovery Abuse and Sanctions Lescaze</td>
<td>3rd Floor</td>
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<tr>
<td>10:15am – 11:15am</td>
<td>The FMLA 20 Years Later</td>
<td>Commonwealth AB, 2nd Floor, page 21</td>
</tr>
<tr>
<td>11:15am – 12:15pm</td>
<td>Ethics: Who Is My Client and Other Ethical Pitfalls in ERISA Cases</td>
<td>Howe, 33rd Floor, page 22</td>
</tr>
<tr>
<td>12:15pm – 1:15pm</td>
<td>Non-Traditional Organizing</td>
<td>Washington BC, 3rd Floor, page 22</td>
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<tr>
<td>1:15pm – 2:15pm</td>
<td>Best and Worst Practices in Drafting Separation Agreements</td>
<td>Commonwealth AB, 2nd Floor, page 26</td>
</tr>
<tr>
<td>2:15pm – 3:15pm</td>
<td>Compensable Time in the Digital Age</td>
<td>Washington BC, 3rd Floor, page 24</td>
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<tr>
<td>3:15pm – 4:15pm</td>
<td>Does the Government Make the Rules?</td>
<td>Lescaze, 33rd Floor, page 23</td>
</tr>
<tr>
<td>5:15pm – 6:15pm</td>
<td>Exploring the Evolving Law of Gender and Employee Benefits</td>
<td>Commonwealth AB, 2nd Floor, page 22</td>
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</table>

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

**1st Annual Labor and Employment Law Conference Program Grid**

[Click for more details](www.ambar.org/laborconference)
<table>
<thead>
<tr>
<th>Time</th>
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<tbody>
<tr>
<td>12:30pm – 2:00pm</td>
<td>Conference Reception at Reading Terminal Market</td>
<td>Howe, 33rd Floor</td>
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<tr>
<td>7:00am – 8:00am</td>
<td>Standing Committee Business Meetings</td>
<td>Millennium Hall, 2nd Floor</td>
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<tr>
<td>7:00pm – 10:00pm</td>
<td>Plenary Session: An Interview with Steven Greenhouse</td>
<td>Regency Ballroom, 2nd Floor Mezzanine</td>
<td>E,F</td>
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<tr>
<td>5:00pm – 6:00pm</td>
<td>In-House Corporate Counsel Luncheon</td>
<td>Howe, 33rd Floor</td>
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<td>2:15pm – 3:30pm</td>
<td>Pro Bono Luncheon</td>
<td>Howe, 33rd Floor</td>
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<tr>
<td>12:30pm – 2:00pm</td>
<td>Plenary Session: Workplace Equality and Race: Roadblocks and Routes to a Better Outcome</td>
<td>Howe, 33rd Floor</td>
<td>E,F</td>
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<tr>
<td>9:30am – 9:45am</td>
<td>Plenary Session: Presentation of the 2015 Section Awards</td>
<td>Howe, 33rd Floor</td>
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<tr>
<td>7:00am – 8:00am</td>
<td>Continental Breakfast</td>
<td>Howe, 33rd Floor</td>
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<tr>
<td>6:00pm – 8:00pm</td>
<td>Diversity Reception at The Barnes Foundation</td>
<td>Howe, 33rd Floor</td>
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<tr>
<td>5:30pm – 6:00pm</td>
<td>Diversity Luncheon</td>
<td>Howe, 33rd Floor</td>
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<tr>
<td>4:30pm – 5:30pm</td>
<td>Plenary Session: Welcome and Introductions ~ Supreme Court Update: New Decisions and Consideration of the Effect of Some Important Decisions</td>
<td>Howe, 33rd Floor</td>
<td>E,F</td>
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<tr>
<td>2:30pm – 3:30pm</td>
<td>First-Time Attendee/New Section Member Reception</td>
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<td>Howe, 33rd Floor</td>
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<tr>
<td>7:00am – 8:00am</td>
<td>Pre-Conference Program: Raising the Level of Ethics and Professionalism in the Labor and Employment Bar</td>
<td>Howe, 33rd Floor</td>
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<tr>
<td>6:00pm – 8:00pm</td>
<td>Plenary Session: Corporate Executive Suite, Part 2</td>
<td>Howe, 33rd Floor</td>
<td>E,F</td>
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<tr>
<td>5:30pm – 6:00pm</td>
<td>Plenary Session: Corporate Executive Suite, Part 1</td>
<td>Howe, 33rd Floor</td>
<td>E,F</td>
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<tr>
<td>4:30pm – 5:30pm</td>
<td>Plenary Session: Corporate Executive Suite, Part 3</td>
<td>Howe, 33rd Floor</td>
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**Performing Issue-Spotting and Client Intake in Whistleblower Cases**

**Litigating Cases Brought by the Government**

**Making it Count: Effective Pre-Trial Oral Advocacy**

**Effectively Managing Remote Work**

**Obtaining Information in Arbitration**

**Practice Before the NLRB Regions: A Discussion with the Regional Directors**

**Managing Sensitive Workplace Complaints**

**Legal and Practical Implications of Domestic Violence in the Workplace: It's Not Just the NFL**

**Wage and Hour Basics**

**OSHA: Keeping the Contingent Workforce Safe**

**Policies and Practices Designed to Protect Confidential Information and Trade Secrets**

**Standing at the Intersection of Workplaces Injuries: When Both the Federal and State Governments Get Involved**

**When the Ethics Rules Become a Sword**

**McDonnell Douglas: Benefit or Burden**

**21st Century Employers: Franchisors, Subcontractors, Temporary Agencies, Joint Employers and Other Iterations of the Contingent Workforce**

**What You Should Know About Ombuds (F)**

**How Arbitrators’ Backgrounds Influence the Decision-Making Process**

**The Impact of the Supreme Court Ruling in EEOC v. Mach Mining on EEOC's Conciliation Process**

**Recent Developments in Whistleblower Protection Law**

**Our Canadian Neighbors**
Immigration

**3:45 pm – 5:00 pm**

**Recent Developments in LGBT Issues in Employment Law**

Co-Sponsored by ABA Commission on Sexual Orientation and Gender Identity

Commonwealth B, 2nd Floor

Grasping the current status of LGBT-related employment law can be challenging for practitioners on all sides. While the Supreme Court’s recent decision in Obergefell v. Hodges found a 14th Amendment due process right for same-sex marriage, it remains legal in most of the 50 states to fire an employee for being gay. Anti-discrimination laws in 21 states and a growing number of localities, however, now provide express protection for gay employees. Furthermore, in 18 states and the District of Columbia, legal protections extend specifically to transgender as well as gay employees. At the federal level, President Obama’s July 2014 Executive Order proscribes LGBT discrimination in the federal government and among federal contractors. While the EEOC may interpret Title VII’s ban on sex discrimination to prohibit discrimination against transgender and gender non-conforming employees, Title VII still does not expressly bar discrimination against LGBT employees in the private sector. What influence will Obergefell exert, if any, in the employment arena? Using hypotheticals that reflect the real world of employers and employees, this panel will illuminate this rapidly developing area of the law, including but not limited to, the interplay of the different types of state-level protections, whether the EEOC’s current application of Title VII is a permissible interpretation of the law, in particular, the extent to which any courts are following the EEOC’s lead.

**Panelists:**
- Sean G. Hanagan, Jackson Lewis PC, New York, NY
- Seema Nanda, U.S. Department of Labor, Washington, DC
- Rebecca A. Smith, National Employment Law Project, Seattle, WA
- Joshua Stehlik, National Immigration Law Center, Los Angeles, CA

**International**

**8:00 am – 9:15 am**

**Voices from the Factory: Can American Unions Learn from Models Beyond Europe, South America and Asia?**

Congress A, 4th Floor

Our panel will explore whether the 2014 policy voluntarily recognizing non-exclusive union representatives at the Chattanooga Tennessee Volkswagen plant starts a new era for trade unions in the United States. In particular, the question remains: can trade unions build upon this policy to organize elsewhere? Panel members also will review the organizing models that exist in Latin America, Korea and Japan and compare them to those existing in both North America and the European Union. Together, panel members will explore whether importing of these models, or parts of these models, is realistic.

**Panelists:**
- Lisa J. Banks, Katz, Marshall & Banks, LLP, Washington, DC
- J. Randall Coffey, Fisher & Phillips LLP, Kansas City, MO
- Manuel Quinto-Pozos, Deutscher Owen & Levy, P.L.L.C., Austin, TX
- Sheree C. Wright, Vanderbilt University, Nashville, TN

**Labor-Management Relations**

**8:00 am – 9:15 am**

**Practice Before the NLRB Regions: A Discussion with the Regional Directors**

Commonwealth B, 2nd Floor

Our panel of Regional Directors will discuss what they find important in cases, how they make decisions, and the evidence they find to be most compelling. They will discuss regional practices in investigation and case-handling procedures—including new R-case procedures.

**Moderators:**
- Allyson L. Belovin, Levy Ratner, P.C., New York, NY
- Mark G. Kislack, Ogletree, Deakins, Nash, Smoot & Stewart, P.C., Phoenix, AZ

**Panelists:**
- Karen P. Fernbach, National Labor Relations Board, New York, NY
- Rhonda P. Ley, National Labor Relations Board, Buffalo, NY
- James Paulsen, National Labor Relations Board, Brooklyn, NY

**11:15 am – 12:30 pm**

**The NLRB’s New Election Rules**

Commonwealth CD, 2nd Floor

The NLRB’s new election rules have been labeled by many employer practitioners as an “ambush” and hailed by union practitioners as long overdue. Now that the Board has issued its new rules, how have these changes have been implemented by the NLRB in election procedures from filing petitions to conducting elections and beyond? Practitioners will share their experiences from the front lines.

**Panelists:**
- Jennifer Abruzzo, National Labor Relations Board, Washington, DC
- Craig Becker, AFL-CIO, Washington, DC
- Christopher David Ruiz Cameron, Southwestern University Law School, Los Angeles, CA
- Joseph J. Torres, Winston & Strawn LLP, Chicago, IL

**3:45 pm – 5:00 pm**

**What Is Protected? Important Issues in Protected Concerted Activity Cases**

Congress BC, 4th Floor

The definition of protected concerted activity, an area of the law that impacts both unionized and non-unionized employers, is evolving. Are employees social media postings protected §7 activity or product disparagement? Do class action waivers limit §7 rights? Are intermittent strikes in minimum wage protests protected?
If there is no union in the picture must an employer bargain with its employees as a remedy to an unfair labor practice? And now that the Board has overruled Register Guard, what standard of employee access to employer electronic communications systems should apply? Keeping abreast of such change is a challenge addressed in this timely program.

**Panelists:**
J. Lindsay Johnston, SCTE, Philadelphia, PA
David E. Leach III, National Labor Relations Board, Newark, NJ
Jon Meyer, Backus Meyer & Branch LLP, Manchester, NH
Emily Perez, Hammond and Shimmers, P.C., St. Louis, MO
Jennifer Platzkere Snyder, Dilworth Paxson LLP, Philadelphia, PA

**Litigation/Class Action**

**8:00 am – 9:15 am**

**Expert Witness Depositions: A How-To Guide**

*Friday, November 6*

Anyone heading into a “battle of the experts” needs to be armed with strategies for the all-important expert witness depositions. This interactive panel will cover the fundamentals of expert witness depositions, including preparing experts to testify, effective techniques for deposing experts, the goals of expert testimony, and how and when to use expert testimony and to keep it out of court.

**Panelists:**
Daniel L. Bonnett, Martin & Bonnett, P.L.L.C., Phoenix, AZ
Kathryn Burkett Dickson, Dickson Geesman LLP, Oakland, CA
Dr. Bernard Siskin, BLDS, Philadelphia, PA
Julie A. Totten, Orrick, Herrington & Sutcliffe LLP, Sacramento, CA

**11:15 am – 12:30 pm**

**Ethics Issues in Litigating Cases Involving Low Wage Workers**

A How-To Guide

*Friday, November 6*

This panel will address ethics issues for employee counsel in deciding whether to take and how to litigate cases where the employee may not have means to pay fees. The unique settlement considerations for all practitioners when dealing with low wage employees in all types of litigation, including whether an employer can require an employee to drop or stay a grievance if the employee files an EEOC charge also will be discussed.

**Panelists:**
Robert A. Canino, U.S. Equal Employment Opportunity Commission, Dallas, TX
Nicole “Nikki” Horberg Deeter, Segal Roitman, LLP, Boston, MA
Sara L. Paulman, Woodley & McGivern, Washington, DC
Esther G. Lander, Akin Gump Strauss Hauer & Feld, LLP, Washington, DC

**3:45 pm – 5:00 pm**

**Class Discovery: Plaintiff and Defense Perspectives on Expanding and Limiting Discovery Regarding Unnamed Class Members**

*Friday, November 6*

One of the most contentious discovery issues in class actions is what extent and when plaintiff’s counsel may seek discovery regarding unnamed class members and to what extent and when defense counsel can depose non-named plaintiff opt-ins. Courts have recognized that discovery requests for class information implicate privacy interests and may increase the burden of discovery on claims that may not be suitable for certification. Courts also have recognized that such class information can be relevant to establishing the proof necessary to certify a class. This program will address the issue of discovery related to the putative class from both sides, including what is required to obtain discovery of unnamed class members, limits on such discovery, the use of an opt-in or opt-out procedure for protecting the release of class information, the suitability of sample data versus class-wide data, the use of aggregated class information, and the role of protective orders and limits upon contacts with disclosed class members.

**Panelists:**
Erin Foley, Seyfarth Shaw, LLP, Chicago, IL
Wendy L. Kohn, Zwedling, Paul, Kohn & Wolly, PC, Washington, DC
Cynthia N. Sass, Law Offices of Cynthia N. Sass, P.A., Tampa, FL

**11:15 am – 12:30 pm**

**Displaying Professionalism When Clients Allege Wrongdoing and Malpractice**

*Friday, November 6*

Interactions with clients don’t necessarily end with a jury verdict, a finding of innocence or guilt, or the granting of a motion, or the signing of a final document for a deal. In the labor and employment context, appeals, a second trial, and/or a set of continuing obligations following settlement are possibilities. Also, a desired outcome is not guaranteed, and unhappy clients are not afraid to let everyone—including bar associations and disciplinary boards—know their thoughts on how their lawyers performed. Panelists will discuss what continuing ethical obligations lawyers have when their clients have lodged or threaten to lodge disciplinary complaints against them—while the attorney-client relationship still exists. Panelists will discuss Model Rules of Professional Conduct requirements and give suggestions on how to manage through these challenging situations.

**Panelists:**
Dolores Dorsainvil, Office of Bar Counsel, Washington, DC
Andrew M. Schpak, Barran Liebman LLP, Portland, OR
Brenda E. Sutton-Wills, California Teachers Association, Los Angeles, CA
Justin M. Swartz, Outten & Golden LLP, New York, NY
Dayna E. Underhill, Holland & Knight LLP, Portland, OR

**11:15 am – 12:30 pm**

**Cybersecurity: It’s Not Just About BigLaw Anymore**

*Friday, November 6*

According to Visa, 85% of data breaches occur at the small business level. Once viewed as relatively secure, law firms are now viewed as a “back door” to the valuable data of their clients. Why attack
a large corporation when you can attack a law firm representing hundreds of them? Why mine for individual social security numbers when you can hack an employment lawyer’s computer for a wage & hour class list? The ABA recently issued rules and resolutions imploring attorneys to focus on cybersecurity. This panel will highlight cybersecurity risks for attorneys, discuss ethical issues related to cloud computing and privacy policies, explore the role of counsel in navigating the choppy waters of data security threats and breaches, and offer guidance on ways to mitigate those risks to comply with the ethical obligations regarding data security.

**PANELISTS:**
Bill Daley, Archer Daniels Midland Company, Chicago, IL  
Gavin W. Manes, Ph.D., Avansis E-Discovery and Digital Forensics, Tulsa, OK  
Heather A. Morgan, Paul Hastings, Los Angeles, CA  
Beth E. Terrell, Terrell Marshall Daudt & Willie PLLC, Seattle, WA

*3:45 am – 5:00 pm*  
**Building Your Practice 140 Characters at a Time (T)**  
Washington A, 3rd Floor
In an era of rampant social media use, many attorneys disregard Twitter as a vehicle for mindless social commentary. Despite this belief, many business savvy employment lawyers are realizing financial gains through active Twitter use. This panel comprises attorneys who have successfully integrated Twitter into their business development and now boast a regular audience of thousands of followers. Hear them discuss the benefits of active Twitter engagement and explain what it can do for your law practice including updates on the law and best practices, commenting on legal developments, linking to concurrent blogs, providing access to presentations and recent decisions, and using Twitter as a valuable source of referrals.

**PANELISTS:**
David M. Cook, Cook & Logothetis, LLC, Cincinnati, OH  
Philip K. Miles III, McQuaide Blasko, State College, PA  
Daniel A. Schwartz, Shipman & Goodwin LLP, Hartford, CT

**Wage and Hour**  
*8:00 am – 9:15 am*  
**Wage and Hour Basics (F)**  
Co-Sponsored by ABA Young Lawyers Division  
Commonwealth CD, 2nd Floor
Learn why wage and hour litigation continues to keep lawyers and courts busy. This program will discuss what employers and workers are covered by wage and hour laws and what the law requires in terms of paying overtime and not running afoul of minimum wage requirements. The most prolific issues in litigation will be noted while providing an overview of the law including coverage and exemptions, and how wage and hour claims are brought and resolved as individual cases, opt-in collective actions or Rule 23 hybrids.

**PANELISTS:**
Jonathan Harris, Cohen, Weiss and Simon LLP, New York, NY  
Kyong Ha Grownway, Curtin & Heftner LLP, Doylestown, PA  
Andrew P. Lee, Goldstein, Borges, Dardarian & Ho, Oakland, CA  
Dane L. Steffenson, U.S. Department of Labor, Atlanta, GA

**Workplace Problems and Solutions**  
*8:00 am – 9:15 am*  
**Affinity Groups: Good Idea or Bad**  
Lescaze, 33rd Floor
Many businesses and government entities today establish or recognize various forms of affinity groups that are intended to give recognition and some voice to persons based on gender, sexual orientation, race, ethnicity and the like. This panel will explore the pros and cons of affinity groups in general, and explore legal risks and practical applications of affinity groups in today’s workplace.

**PANELISTS:**
Stacey A. Campbell, Campbell Litigation, P.C., Denver, CO  
Matthew Murphy, U.S. Equal Employment Opportunity Commission, Washington, DC  
Laura S. Schnell, Eisenberg & Schnell LLP, New York, NY  
Stafford A. Woodley, Jr., PepsiCo, Inc., Somers, NY

*11:15 am – 12:30 pm*  
**Managing Sensitive Workplace Complaints**  
Washington BC, 3rd Floor
Approaching the bad habits or poor hygiene of an employee is a difficult area, as HR runs the risk of violating discrimination laws or offending the employee in question. However, overly powerful perfumes/colognes, bad breath, irritating coughs, poor bathroom habits and foul body odor are all drains on productivity and potentially pose health risks for other employees. This session will discuss how to delicately resolve these sensitive issues without running afoul of the ADA, collectively bargained rights, privacy laws, religious or national origin discrimination laws or other potential legal liabilities.

**PANELISTS:**
Cheryl D. Jackson, State Farm Mutual Automobile Insurance Co., Bloomington, IL  
Stephanie Jones, U.S. Equal Employment Opportunity Commission, Charlotte, NC  
Maria L. H. Lewis, Drinkers Biddle & Reath LLP, Philadelphia, PA  
Scott M. Pollins, Pollins Law Firm, Philadelphia, PA  
Hope Singer, Bush Gottlieb, Glendale, CA

**Civil Labor Enforcement, Private Claims and Supply Chain Accountability: What You Can Do to Help Fight Trafficking in Persons**  
Congress A, 4th Floor
The role of civil actors in the fight against human trafficking (modern-day slavery) is often overlooked but represents a critical element of the fight against this injustice. This session will explore the role of civil labor enforcement agencies in addressing worker vulnerabilities and employer violations and the role of civil litigation in bringing compensation and dignity to victims of this crime. In addition, recent movement around supply chain monitoring and accountability, ranging from the California Foreign Labor Recruiters Regulation law and new guidance from the California Attorney General on the California Supply Chains Transparency Act to the enhanced anti-trafficking provisions of the 2015 U.S. Federal Acquisition Regulations (F.A.R.), have highlighted the important role companies can play in identifying trafficking in their supply chains and addressing it. Featuring high-level officials from government agencies charged with enforcing civil labor laws, as well as practitioners who advise employers
and represent affected workers, this panel promises insight into this important issue and the role every attorney can play.

**PANELISTS:**
Jonathan A. Grode, Green and Spiegel LLC, Philadelphia, PA
Laura Moskowitz, U.S. Department of Labor, Washington, DC
Martina Vandenberg, Human Trafficking Pro Bono Legal Center, Washington, DC

**Saturday, November 7**

**7:00 pm – 8:00 am**
**Continental Breakfast**
Millennium Hall, 2nd Floor
Sponsored by FordHarrison

**Saturday’s 9:15 am – 9:30 am and 10:45 am – 11:00 am**
Refreshment Breaks are sponsored by Epstein Becker & Green, P.C.

**11:00 am – 12:15 pm**
**Alternative Dispute Resolution**

**How Arbitrators’ Backgrounds Influence the Decision-Making Process**

Howe, 33rd Floor
New data has become available that looks into the professional backgrounds of employment arbitrators, the type of education or training they have, the proportion that are full-time neutrals versus part-time, and the proportion of their practice that is dedicated to arbitration versus other work. This information will help answer a number of questions that arise in employment and labor arbitration. For example: Are there advantages to having full-time professional neutrals serving as arbitrators? What are the impacts of arbitrator training programs? What is the impact of varied employment and work histories? This panel will discuss the research and answer these questions and others.

**PANELISTS:**
Jennifer Bills, Disability Rights North Carolina, Raleigh, NC
Karin Feldman, AFL-CIO, Minneapolis, MN
Patrick C. Hajovsky, BP Corporation North America Inc., Houston, TX
Richard G. Moon, Verrill Dana LLP, Portland, ME

**Discrimination, Harassment and Retaliation**

**8:00 am – 9:15 am**
**The FMLA 20 Years Later**
Commonwealth AB, 2nd Floor
The Family and Medical Leave Act was signed into law in 1993, and since then it has seen many changes, yet many questions remain. This panel will include a primer and discussion on the fundamentals of the FMLA, featuring important coverage and eligibility issues. The panel also will address how far the FMLA has come and where it is (and should) be going—particularly in light of the Supreme Court’s DOMA decision. Finally, by using hypotheticals, this panel will explore the practical implications of the recent case law developments and discuss the critical overlap issues between the FMLA with a myriad of other state and federal discrimination and leave laws.

**PANELISTS:**
Andrea J. Appel, U.S. Department of Labor, Philadelphia, PA
Joan G. Hill, United Steelworkers International Union, Pittsburgh, PA
Tamika D. Lynch, Siemens Industry, Buffalo Grove, IL
Jeff Nowak, Franczek Badelet PC., Chicago, IL
Melissa E. Pierre-Louis, Outten & Golden LLP, New York, NY

**9:30 am – 10:45 am**
**McDonnell Douglas: Benefit or Burden**
Congress BC, 4th Floor
From day one of a discrimination dispute, lawyers on both sides are asking whether the plaintiff can meet his final burden under McDonnell Douglas to survive summary judgment—to assert a basis for an inference of discrimination. The panel will review trends and circuit differences in applying the test, various asserted bases for the inference, use of comparator evidence (including whether the type of discrimination claim impacts its discoverability), the significance of shifting or pretextual employer explanations, and legal and practical employer strategies to work with McDonnell Douglas.
Employee Benefits

- **8:00 am – 9:15 am**
The ERISA Primer: What Every Labor and Employment Lawyer Should Know (F)
Co-Sponsored by ABA Young Lawyers Division
Commonwealth CD, 2nd Floor
All labor and employment lawyers will encounter an “ERISA” issue at some point in their careers. The focus of this panel will be the fundamental concepts of the Employee Retirement Income Security Act (ERISA) and the key issues that arise under the statute that every labor and employment attorney should know.

PANELISTS:
Kevin M. Covert, Honeywell International, Inc., Morrisstown, NJ
Tess J. Ferrara, Schiff Hardin LLP, Washington, DC
Joyce A. Mader, O'Donoghue & O'Donoghue LLP, Washington, DC
Joanne Roskey, U.S. Department of Labor, Washington, DC
Mary Ellen Signorielle, AARP Foundation Litigation, Washington, DC

- **9:30 am – 10:45 am**
Ethics: Who Is My Client and Other Ethical Pitfalls in ERISA Cases (E)
Co-Sponsored by ABA Center for Professional Responsibility
Howe, 33rd Floor
Representing clients in matters involving employee benefit plans presents unique challenges. The Employee Retirement Income Security Act (ERISA) allows persons to wear “two hats” and serve as an officer or director and as a fiduciary to a plan. Does the attorney represent the individual, management, or the employee benefit plan? Can the attorney ethically represent the interests of the employer and the plan? This program will cover how to identify the client; the related issue of communications with represented clients; the potential ethical conflicts; the fiduciary exception to the attorney-client privilege; and strategies for how practitioners can keep themselves and their clients out of trouble.

PANELISTS:
Marjorie A. Butler, U.S. Department of Labor, Boston, MA
Mark D. DeBofsky, DeBofsky & Associates, PC, Chicago, IL
Benjamin Eisner, Spear Wilderena PC, Philadelphia, PA
Erin M. Sweeney, Miller & Chevalier Chartered, Washington, DC

- **11:00 am – 12:15 pm**
Exploring the Evolving Law of Gender and Employee Benefits
Co-Sponsored by ABA Commission on Sexual Orientation and Gender Identity
Commonwealth AB, 2nd Floor
Gender discrimination in employee benefits has been the source of much litigation since the passage of Title VII of the Civil Rights Act of 1964. Employers, employees, labor unions and their attorneys need to know how the evolving law of gender equality affects employee benefit plan design. This session will cover what benefits pension and health plans must provide to same sex spouses, whether health plans must cover gender reassignment surgery and other issues at the intersection of gender equality and employee benefits.

PANELISTS:
Sharon M. Goodman, Slevin & Hart PC, Washington, DC
AJ Pearlman, U.S. Department of Health & Human Services Office for Civil Rights, Washington, DC

- **9:00 am – 12:15 pm**
The Impact of the Supreme Court Ruling in EEOC v. Mach Mining on EEOC’s Conciliation Process
Congress BC, 4th Floor
This program will be an advanced-level discussion of the EEOC’s conciliation process, including the extent of court review after the Supreme Court ruling in EEOC v. Mach Mining, as well as practical and tactical tips for employers and employees during conciliation, including what to do when the parties reach an impasse, whether you can have an agreement separate from one with the EEOC, and how to best respond to the EEOC’s demands.

PANELISTS:
Martin Ebel, EEOC-Officer of Field Management Programs, Washington, DC
Lori D. Ecker, Law Office of Lori D. Ecker, Chicago, IL
Gary Siniscalco, Orrick, Herrington & Sutcliffe LLP, San Francisco, CA

- **11:00 am – 12:15 pm**
Non-Traditional Organizing
Washington BC, 3rd Floor
Panelists will address the complex issues that arise during alternative organizing campaigns. How have minimum wage campaigns been used in organizing? What should an employer do in response to walkouts, flash mobs, Youtube videos and other methods of raising employment disputes? How have employers used the NLRA or other laws to respond? Is there a risk of new ULP issues? Are neutrality agreements an effective means to resolve disputes during such campaigns?

PANELISTS:
Leah Z. Jaffe, National Labor Relations Board, New York, NY
Erin Johansson, Jobs With Justice, Washington, DC
Judy Dros Keyes, Davis Wright Tremaine, San Francisco, CA
LaRelle Purdell, SEIU, Washington, DC

- **9:30 am – 10:45 am**
21st Century Employers: Franchisors, Subcontractors, Temporary Agencies, Joint Employers and Other Iterations of the Contingent Workforce
Commonwealth CD, 2nd Floor
This program will explore the evolving law regarding who is an “employer” under the NLRA in light of ever-changing ways in which companies obtain labor services. Both the NLRB and unions have responded with new approaches to these issues. Union strategies including social media, neutrality agreements, corporate campaigns, and the fast food and Wal-Mart strikes are all part of this shifting landscape of legal issues. The NLRB General Counsel’s decision to issue complaints against McDonald’s and some of its franchisees and the outcry against that decision make this a must-attend session.

PANELISTS:
Susan K. Garera, Beeson, Tayer & Bodine, APC, Oakland, CA
Willis J. Goldsmith, Jones Day, New York, NY
Peter Sung Ohr, National Labor Relations Board, Chicago, IL
**What You Should Know About Ombuds (F)**

*Washington A, 3rd Floor*

Most ombuds who specialize in workplace matters regularly provide ADR services concerning employment issues and sometimes labor issues. Workplace ombuds' distinguishing characteristic is that they are employed by organizations that usually have a stake in the outcome. Lately, we have seen greater overlap between the roles of ombuds and other workplace ADR practitioners. This panel will discuss what we need to know about ombuds, their activities and how they relate to other types of ADR practitioners and to party advocates in the labor and employment law community. What issues arise concerning their independence, neutrality, confidentiality and impartiality? Are ombuds and labor unions compatible? This session will emphasize the federal sector, but session participants will find it particularly applicable to private sector and public sector workplaces as well.

**PANELISTS:**

Scott M. Deyo, National Geospatial-Intelligence Agency; Chair, Coalition of Federal Ombudsman, Washington, DC

Kevin Jessar, American Red Cross, Washington, DC

Michael J. Wolf, Federal Labor Relations Authority, Washington, DC

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**Litigation/Class Action**

*8:00 am – 9:15 am*

**Discovery Abuse and Sanctions**

*Lescaze, 33rd Floor*

Cases are often won or lost during discovery, and counsel will go to great lengths to position their clients well during this phase of litigation. When does zealous advocacy cross the line into discovery abuse? Has this issue gotten worse over the years and what can you do about it? How will the changes to the Federal Rules of Civil Procedure impact this phase of litigation, if at all? When are sanctions appropriate to seek or to award? A panel of litigators and judges will discuss issues related to incivility in litigation, discovery tactics and abuse, and the potential role of sanctions.

**PANELISTS:**

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

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

Frederick Payne, Honda Manufacturing of Indiana, Greensburg, IN

Grace Speights, Morgan Lewis & Bockius LLP, Washington, DC

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**Does the Government Make the Rules? How Much Deference Should be Given to Government Rulemaking and Opinions**

*Lescaze, 33rd Floor*

Different government agencies enforce various employment laws and have distinctly different ways in which they do so. The one consistency among government agencies is that they issue opinion letters, guidance or other memoranda that they enforce and expect unions, employees and employers to follow. What rules and opinions are truly binding? The deferral standard by both courts and parties varies depending on what type of rule it is; some agencies are given congressional rulemaking authority where some are not, but they develop rules anyway. What are the pros and cons of government agency rulemaking on parties in litigation, and what is the future of it?
**Program Schedule**

Saturday, November 7

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**MODERATORS:**

Eric S. Dreiband, Jones Day, Washington, DC

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

**PANELISTS:**

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

John H. Ferguson, National Labor Relations Board, Washington, DC


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**Practice and Professionalism**

• 8:00 am – 9:15 am

*When the Ethics Rules Become a Sword (E)*

Co-Sponsored by ABA Center for Professional Responsibility

Howe, 33rd Floor

In the course of representing a client, attorneys may be tempted to pursue every possible tactical advantage, including lobbying accusations of unethical conduct, moving to disqualify, threatening sanctions, or reporting opposing counsel to disciplinary committees. But, as a recent opinion from the Iowa State Bar points out, attorneys who take these steps may be violating the ethics rules themselves. This panel will explore when threats, bar complaints, or sanctions motions cross the line of acceptable conduct, and when reporting an adversary's conduct is required under the ethics rules.

**PANELISTS:**

Delyanne Barros, Practical Law, New York, NY

Erika L. Leonard, Paul Hastings LLP, Atlanta, GA

Kimberly McCoy-Cruz, U.S. Equal Employment Opportunity Commission, Miami, FL

Richard Rosenblatt & Gosch, PLLC, Denver, CO

• 11:00 am – 12:15 pm

*Ethically “Blawging”: Your Way to Success (E)*

Co-Sponsored by ABA Center for Professional Responsibility

Washington A, 3rd Floor

The *ABA Journal* has been ranking the top 100 law blogs for eight years, with hundreds of contenders from the ranks of labor and employment law alone. Some are geared to employees, advising them how to avoid being fired. Whatever the focus, lawyer blogs have become a powerful tool for marketing and information sharing. This panel will demonstrate some of the top blogs from this year’s *ABA Journal* Blawg 100 and share advice on how to blog your way to your desired practice goals while complying with ethical rules on confidentiality, advertising, creating lawyer-client relationships and trial publicity.

**PANELISTS:**

Donna M. Ballman, Donna M. Ballman, P.A., Fort Lauderdale, FL

Eric B. Meyer, Diltworth Paxson, Philadelphia, PA

Jonathan Turley, George Washington University School of Law, University, DC

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**Wage and Hour**

• 9:30 am – 10:45 am

*Compensable Time in the Digital Age*

Washington BC, 3rd Floor

Everything we do can leave a digital footprint: parking in the garage, entering the building, logging onto the network, answering calls, GPS on the company car. Employees often get and receive work emails at all times of the day. What is compensable time and what is the effect of all of the timestamps of our digital age?

**PANELISTS:**

G. Edward (Ted) Anderson, Welch Consulting, Los Angeles, CA

James N. Boudreau, Greenberg Traurig, LLP, Philadelphia, PA

Renée L. Bowser, United Food & Commercial Workers Union, Washington, DC

Bernard R. Mazaheri, Morgan & Morgan, P.A., Orlando, FL

• 11:00 am – 12:15 pm

*Arbitration of Wage and Hour Claims*

Washington BC, 3rd Floor

The panelists will discuss current trends in enforcement of individual arbitration agreements, including the form and scope of such agreements and applicability to collective action claims. The panel also will share insights on collectively bargained arbitration agreements and the handling of FLSA-based wage claims in the grievance process.

**PANELISTS:**

Robert F. Friedman, Littler Mendelson P.C., Dallas, TX

Matthew C. Helland, Nichols Kaster, LLP, San Francisco, CA

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**Whistleblower**

• 11:00 am – 12:15 pm

*Recent Developments in Whistleblower Protection Law*

Lescaze, 33rd Floor

This panel will focus on the key developments in whistleblower retaliation claims including: 1) the ARB's Speegle and Fordham decisions defining the causation standard and dual motive defense under SOX; 2) extraterritorial application of SOX and Dodd-Frank; 3) the SEC's enforcement of the whistleblower protection provisions of Dodd-Frank; 4) trends in jury verdicts in federal and state whistleblower litigation; 5) the scope of protected conduct under SOX and Dodd-Frank; 6) key procedural distinctions between SOX and Dodd-Frank; 7) decisions limiting the scope of Lawson; 8) the viability of the “duty speech” defense in DOL whistleblower cases; and 9) the scope of protected conduct under the False Claims Act's anti-retaliation provision.

**PANELISTS:**

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

Mark Hanna, Murphy Anderson PLLC, Washington, DC

Marci Narine, St. Thomas University School of Law, Miami, FL

Jason M. Zuckerman, Zuckerman Law, Washington, DC

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**Workplace Problems and Solutions**

• 8:00 am – 9:15 am

*Policies and Practices Designed to Protect Confidential Information and Trade Secrets*

Congress BC, 4th Floor

In an era of proliferating electronic gadgets, cloud computing and personal devices moving in and out of the workplace, employers have realized that there is more to managing confidentiality and trade secrets than banning memory sticks and using encryption. This program will explore the latest legal strategies used by employers to protect confidential information (including whether these strategies create more issues both for employers and employees) and it will review key components of effective programs to protect trade secrets in a world where it is becoming easier and easier to move data.
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San Francisco
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San Francisco, CA 94111
(415) 638-8800

**Panelists:**
William E. Bensussen, SAG-AFTRA, Los Angeles, CA  
Gary B. Eidelman, Saul Ewing LLP, Baltimore, MD  
T. Warren Jackson, DirecTV, El Segundo, CA  
Mark D. Risk, Mark Risk PC, New York, NY  

- 8:00 am – 9:15 am
  **Standing at the Intersection of Workplaces Injuries: When Both the Federal and State Governments Get Involved**  
  Washington A, 3rd Floor
  How can employers and employees navigate the turbulent waters of intersecting state and federal laws on workplace injuries? State and federal governments have enacted many laws to protect employees and employers from the significant effect of workplace injuries. These laws may overlap causing confusion and potential harm to employees and employers. These panelists will discuss the interface between workers’ compensation and the American with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), Title VII (Workplace Harassment and Discrimination), and return-to-work programs. Topics will cover how long ADA lasts, employer/employee responsibilities with regard to FMLA, the preemption of emotional distress claims, and issues relating to separation of employment, including COBRA.  
  **Panelists:**  
  Bill Abate, Holman Automotive Group, Inc., Maple Shade, NJ  
  Mark A. Baugh, Baker Donelson Bearman Caldwell & Berkowitz, PC, Nashville, TN  
  Leto Copeley, Copeley Johnson Groninger PLLC, Charlotte, NC  

- 9:30 am – 10:45 am
  **Separation Agreements**  
  Best and Worst
  Commonwealth AB, 2nd Floor
  This panel will take an in-depth look at best and worst practices in negotiating and drafting separation agreements. It will address negotiating strategies and drafting techniques for a range of employees—from entry level to C-level employees. In particular, the panel will discuss provisions that are likely to trigger disagreement between employers and employees, including tax treatment of settlement compensation and also non-monetary provisions such as non-disparagement, indemnification, protection of confidential information, and “never darken my door” clauses.  
  **Panelists:**  
  Sharon Dostmann, Cooper Health Systems, Philadelphia, PA  
  Neshoba M. Kittling, Fisher & Phillips LLP, Chicago, IL  
  Robert B. Stulberg, Broach & Stulberg, LLP, New York, NY  
  Marisa Warren, Pedowitz & Meister, LLP, New York, NY  

- 11:00 am – 12:15 pm
  **Banning the Box: Preventing Misuse of Criminal History in Hiring**
  Commonwealth CD, 2nd Floor
  In an effort to reduce unemployment and to give fair employment opportunities to applicants who have criminal records, some municipalities and employers are not requiring job applicants to disclose whether they have ever been arrested and/or incarcerated until an offer of employment is made. The idea is to make a decision based upon an applicant’s qualifications and not based solely on a criminal record or incarceration. The panel will explore the practicalities of this policy, whether it is effective or ineffective, and its use as a tool to reduce recidivism.  
  **Panelists:**  
  Everett Gillison, Mayor’s Chief of Staff, City of Philadelphia, Philadelphia, PA  
  Donald R. Livingston, Akin Gump Strauss Hauer & Feld LLP, Washington, DC  
  Michelle Rodriguez, National Employment Law Project, Oakland, CA  

- 12:30 pm – 2:00 pm
  **The College of Labor and Employment Law Program: Civility and Professionalism in the Practice of Labor and Employment Law: Insights from Our Canadian Neighbors**
  Howe, 33rd Floor
  All dispute resolution systems, including both private arbitration forums and the public courts, are based upon the premise that the parties participating in any particular matter should act in a civil manner in order to reach a fair and just disposition. In this moderated panel discussion of civility and professionalism in Canadian courts and arbitration forums, you will learn that the Canadian national tendency to talk things out with reasonable politeness (which has permitted Canada to build an enviable nation of competing regional and cultural interests with a minimum of rancor) is also reflected in the civility and professionalism exhibited in its courts and arbitration forums. While rare instances of notably uncivil and unprofessional behavior do occur, Canadian labor and employment lawyers are well-known to adhere to principles of civility and professionalism that should be the envy of their American counterparts. In a fun-filled and educational multi-media presentation, panelists will reveal how Canadian lawyers promote public confidence in the legal system by employing representational tactics that are legal, honest and respectful, acting with integrity and professionalism, and taking the time to fully educate their clients regarding the advantages of dealing with opponents in a civil manner.  
  **Moderator:**  
  Alan Epstein, Specter Gadon & Rosen, P.C., Philadelphia, PA  
  **Panelists:**  
  Jim Hayes, Mediator/Arbitrator, Toronto, ON  
  Danny Kauffer, Borden Ladner Gervais LLP, Montréal, QC  
  Ronald A. Pink, Pink Larkin, Halifax, NS  
  Frederick R. von Veh, Bennett Jones LLP, Toronto, ON  

- 12:30 pm – 2:00 pm
  **Careers in Labor and Employment Law: A “How To” Exploration of Options and Advice for Law Students on Finding the Right Job**
  Regency A, 2nd Floor Mezzanine
  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.  
  **Panelists:**  
  Darrious Baker, Fisher & Phillips LLP, Columbia, SC  
  Jessie Cardinale, Pedowitz & Meister LLP, New York, NY  
  Chizoba Nwamaka Egbo, Littler, Philadelphia, PA  
  Molly Gabel, Alaska Air, Seattle, WA  
  Ryan A. Hagerty, Asher, Gittler & D’Alba Ltd., Chicago, IL
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John P. Barry, Newark, NJ
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Harvey C. Berger, San Diego, CA
Marc E. Bernstein, New York, NY
D. Albert Brannen, Jr., Atlanta, GA
Deborah C. Brown, Tampa, FL
Melinda Burrows, Bellevue, WA
Joan E. Casciari, Chicago, IL
Paul J.J. Cavalluzzo, Toronto, ON
Denise M. Clark, Washington, DC
James C. Dale, Boise, ID
Kelly M. Dermody, San Francisco, CA
Walt De Treux, Philadelphia, PA
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Steven W. Moore, Denver, CO
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Amy Jo Zdravecky, Chicago, IL
Daniel G. Zeiser, Cleveland, OH

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Networking and Social Events

Wednesday, November 4

• 2:30 pm – 3:30 pm
  Law Student Orientation
  Commonwealth Ballroom A, 2nd Floor
  This event will offer law students a casual introduction to the ins and outs of the Annual Section Conference. Students also will receive tips for making the most out of their Conference experience.

• 4:30 pm – 5:30 pm
  First-Time Attendee/New Section Member Orientation
  Commonwealth Ballroom BC, 2nd Floor
  If you are a new member of the Section of Labor and Employment Law or if this is your first Section meeting, join your peers for an overview of what you should know about the Section and how to get the most benefit from attending the Conference.

• 5:30 pm – 6:00 pm
  First-Time Attendee/New Section Member Reception
  Commonwealth Ballroom BC, 2nd Floor
  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 pm – 8:00 pm
  Welcome Reception and Committee Expo
  Millennium Hall, 2nd Floor
  All attendees are invited to meet, greet and network during this opening reception at the Loews Philadelphia Hotel. Section Committees will provide information about publications, services and programs they provide to labor and employment lawyers.

Thursday, November 5

• 12:30 pm – 2:00 pm
  Diversity Luncheon
  (Ticketed event)
  Regency Ballroom, 2nd Floor Mezzanine

• 5:00 pm – 6:00 pm
  International Labor and Employment Law Committee Business Meeting
  Congress A, 4th Floor

• 6:00 pm – 8:00 pm
  Diversity Reception at The Barnes Foundation
  Join us for a social and networking reception for lawyers of color, female lawyers, LGBT lawyers, disabled lawyers, and all those who support the Section’s vision of diversity and inclusion.

Friday, November 6

• 12:30 pm – 2:00 pm
  Pro Bono Luncheon
  (Ticketed event)
  Howe Room, 33rd Floor
  The Pro Bono Luncheon will feature a presentation by the recipient of the 2015 Frances Perkins Public Service Award.

• 12:30 pm – 2:00 pm
  In-House Corporate Counsel Luncheon
  (Ticketed event for In-House Corporate Counsel only)

• 7:00 pm – 10:00 pm
  Conference Reception at Reading Terminal Market
  Join with old friends and new to celebrate the 9th Annual Labor and Employment Law Conference as you enjoy food, drinks, entertainment and networking.
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“A few years ago, we were introduced to the CCH Labor & Employment portfolio which included the newly revamped CCH Employment Law Daily service. Our practice group had previously been utilizing another daily labor service and research library for many years. Immediately, we found CCH’s content and online research platform to be fully comprehensive, intuitive, and especially user-friendly, not to mention being vastly more affordable than our previous resources.”

—Richard Gerakitis, Partner, Troutman Sanders, Atlanta, GA
Conference Events to Celebrate and Honor Diversity

Thursday, November 5

• 12:30 pm – 2:00 pm

Diversity Luncheon

Regency Ballroom, 2nd Floor Mezzanine
Presented by the Diversity in the Legal Profession Committee
Co-Sponsored by: Akin Gump LLP; Baker & Hostetler LLP; Butler Snow LLP; Constangy, Brooks, Smith & Prophete, LLP; Cozen O’Connor; DLA Piper LLP; Fisher & Phillips LLP; Littler; Morrison & Foerster LLP; Outten & Golden LLP; Paul Hastings LLP; Proskauer Rose LLP; Schiff Hardin LLP

The Diversity Luncheon will feature a discussion on how racially-charged events in the national spotlight have elevated the need for competencies in creating a work culture that recognizes heightened emotions, follows best practices for having respectful conversations at work about race relations, and combats stereotyping and implicit bias. These subjects pose challenges and opportunities for workplaces nationally. Professor Cyndi Nance will moderate a conversation between Kelly Dermody of Lieff Cabraser and Luther Wright of Ogletree Deakins on how we can engage with these pressing issues.

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

SPEAKERS:
Kelly M. Dermody, Lieff Cabraser Heimann & Bernstein LLP, San Francisco, CA
Luther Wright, Jr., Ogletree, Deakins, Nash, Smoak & Stewart, PC, Nashville, TN

Thursday, November 5

• 6:00 pm – 8:00 pm

Diversity Reception at The Barnes Foundation

Presented by the Diversity in the Legal Profession Committee
Co-Hosted by: Asian Pacific American Bar Association of Pennsylvania (APABA-PA); The Baristers’ Association of Philadelphia; Gay and Lesbian Lawyers of Philadelphia (GALLOP); Hispanic Bar Association of Pennsylvania (HBAPA); LGBT Rights Committee of the Philadelphia Bar Association; National Bar Association Women Lawyers Division, Philadelphia Chapter; The South Asian Bar Association of Philadelphia (SABA Philly);
Co-Sponsored by: Akerman LLP; Akin Gump; Baker & Hostetler LLP; Borden Ladner Gervais LLP; Fisher & Phillips LLP; Laner Muchin, Ltd.; Lieff Cabraser Heimann & Bernstein LLP; Morrison & Foerster LLP; Obermayer Rebmann Maxwell & Hippel LLP; Ogletree, Deakins, Nash, Smoak & Stewart, P.C.; O’Melveny & Myers LLP; Outten & Golden LLP; Paul Hastings LLP; Proskauer Rose LLP; Schnader Harrison Segal & Lewis LLP

The Barnes Foundation is internationally recognized as the foremost collection of late-nineteenth and early twentieth-century modern art with the largest number of Impressionist, Post-Impressionist and early Modern paintings in the world. It is especially renowned for its diversity. Dr. Barnes’ passion for African art was cultivated at an early age when he regularly attended camp meetings and gospel masses with his mother. This influence had a profound impact on his life and inspired him to create this extraordinary collection of art and the Foundation that he dedicated to education.

Join us for a social and networking reception for those who support the Section’s vision on diversity and inclusion. Enjoy cocktails and hors d’oeuvres while viewing the collection’s “ensembles,” which allow comparison and study of works from various time periods, geographic areas and styles.

Buses will depart from the Loews Philadelphia Hotel beginning at 5:30 pm.
Save the Dates!

November 9–12, 2016

CHICAGO

10th Annual Labor and Employment Law Conference

Save the Dates!