Welcome to Chicago! We are delighted that you are joining us for the ABA Section of Labor and Employment Law’s 10th Annual Conference, the preeminent labor and employment law CLE event of the year! This guide outlines all of the activities that are planned during the Conference. You will have the opportunity to earn a year’s worth of CLE credit at this meeting based on the wide range of programming offered. The multi-track, balanced programs and plenary sessions will focus on cutting-edge issues in the labor and employment field, including Supreme Court updates, and will be presented by a distinguished faculty.

In addition to outstanding CLE programs, you have the opportunity at this Conference to learn more about the Section and its 15 standing committees and many administrative committees and task forces. At our Committee Expo on Wednesday evening, we encourage you to sign up to join one or more of our standing committees and to explore ways to become involved in Section initiatives, such as trial advocacy competition, law student outreach, pro bono projects, publications and many other activities.

Several thought-provoking events have been planned for the Conference, including the Pro Bono and Diversity and Inclusion Luncheons. In addition, our Section is pleased to share with you incredible art exhibits and entertainment at the distinctive House of Blues, the location of the Diversity and Inclusion Networking Reception on Thursday evening. On Friday evening, attendees will have the opportunity to attend the Conference Reception at the magnificent Field Museum along the shores of Lake Michigan.

We thank the many talented and dedicated individuals who have worked diligently for the past year to ensure the success of this Conference. Importantly, we also thank our many sponsors who have supported this Conference.

Planning already is underway for our 11th Annual Section Conference November 8–11, 2017 in Washington, D.C. We are interested in your thoughts and feedback for next year’s Conference.

Once again, welcome to the 10th Annual Section Conference and to Chicago. We look forward to visiting with you and to learning and socializing together.

Sincerely,

Gail Golman Holtzman  
Section Chair

Don Slesnick  
Section Chair-Elect
It is our pleasure to welcome you to the 10th Annual Section of Labor and Employment Law Conference held in Chicago. We are in a perfect spot to enjoy the best of the City! The headquarters hotel is just a short walk to Lake Michigan, the Magnificent Mile, the River Walk, Navy Pier, Millennium Park and Grant Park.

There is something for everyone in Chicago, and we encourage you to take advantage of our hometown. Whether it is our award-winning restaurants, shopping, theatres, museums, live music, nightlife, parks or bike paths, we hope you will enjoy the City’s many cultural aspects.

We have some suggestions if you find any free time while you are here. Please visit the Host Committee webpage at www.ambar.org/lelhostcommittee for ideas of what to do in our favorite city!

From the Host Committee

Ruben Chapa, Co-Chair, Public
Joel A. D’Alba, Co-chair, Union & Employee
Patricia Slovak, Co-chair, Employer
Marie Casciari, Employee
Lori Ecker, Employee
Michael J. Gray, Employer
Barry A Hartstein, Employer
Daniel Kaspar, Union & Employee
Wesley Kennedy, Union & Employee
Scott R. Koch, Employer

Martin H. Malin, Academic
Emelda Medrano, Public
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Brenda Pryor, Union & Employee
Diane Smason, Public
Anna Wermuth, Employer
Joseph Yastrow, Employer
Amy J. Zdravecky, Employer

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Eunice H. Cho
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Robert D. Kraus
Jennifer Kroll
Betsy Lawrence
Heather Lindsay
Tamika D. Lynch
Mark Maxin

10th Annual Labor and Employment Law Conference
Track Coordinators

Kevin M. McCarthy
Dennis M. McClelland
Myra L. McKenzie-Harris
Trina Mengesha
Stephen B. Moldof
D. Lynn Morison
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Anne-Marie V. Welch
Michael J. Wolf
Rebecca Yee
Jeffrey N. Young
Jason Zuckerman
When you have to be right

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Program Locations
All CLE sessions will take place at the Sheraton Grand Chicago Hotel. Specific meeting room assignments are listed on the schedule of events.

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

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

Program Materials
The program materials are available on the Conference app and also have been posted on the Conference website at www.ambar.org/laborconference.

Award Presentations
The Section awards will be presented on Friday, November 11 at 9:30 a.m. in the Sheraton Ballroom.

- Arvid Anderson Public Sector Labor and Employment Attorney of the Year
  The Arvid Anderson Public Sector Labor and Employment Attorney of the Year Award recognizes valuable contributions to public sector labor and employment law. The 2016 award will be presented to Prof. Martin H. Malin of Chicago-Kent College of Law.

- Federal Labor and Employment Attorney of the Year Award
  The Federal Labor and Employment Law Attorney of the Year Award is a salute to federal labor and employment lawyers and their many accomplishments. The 2016 Award will be presented to Barry J. Kearney of the National Labor Relations Board.

- Frances Perkins Public Service Award
  The Frances Perkins Public Service Award recognizes individuals or organizations that demonstrate a significant commitment to providing pro bono legal services primarily in the areas of labor and employment law to persons of limited means or to nonprofit, governmental, civic, community or religious organizations designed primarily to address the needs of individuals with limited means. The recipient of the 2016 Award is Jeff Brodin of Brodin HR Law. Mr. Brodin will make a presentation at the Pro Bono Luncheon on Friday, November 11.

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- Robert, Unanue, Singer, Picard & Canegren (International Law Firm Complex)

10th Annual Labor and Employment Law Conference • November 9–12, 2016 • Chicago, Illinois
Wednesday, November 9
2:00 – 8:00 pm
Conference Registration
4:30 – 5:00 pm
Law Student Orientation
5:00 – 6:00 pm
First-Time Attendee/New Section Member Orientation
6:00 – 8:00 pm
Welcome Reception and Committee Expo

Thursday, November 10
7:00 – 8:00 am
Breakfast
8:00 – 9:15 am
• Diligence vs. Perfection: Maintaining High Ethical Standards While Avoiding Burnout
• Getting Paid: From Judgment or Settlement to the Bank
• The New Standards on Sharing Wage and Other Confidential Information in the Workplace: Any Effect or Impact?
• Update on Purple Communications: Implementation Issues for Unions, Employees and Employers
• When Immigration and Employee Protection Laws Collide
• Whistleblower Protections for Federal Workers
• Who is an Employer? Expansive Considerations of Coverage
• Witness Examination
9:30 – 9:45 am
Welcome and Introductions
9:45 – 11:00 am
• Plenary Session: Presentation of 2016 Section Awards

Friday, November 11
7:00 – 8:00 am
Breakfast
7:00 – 10:00 pm
Diversity and Inclusion Networking Reception at House of Blues

8:00 – 9:15 am
• Arbitration of Statutory Discrimination Claims
• Defending and Attacking a Restrictive Covenant
• How to Manage Internal Communications with a Represented Party
• Current Implications of the Fissured Workplace
• National Labor Relations Board Case Law Update
• Negotiation, Mediation and Arbitration Under the Railway Labor Act
• Transgender Issues in the Workplace
• Tyson and the New FRCP Proportionality Standards: Their Impact on Class and Collective Actions
9:30 – 9:45 am
• Plenary Session: Presentation of 2016 Section Awards

9:45 – 11:00 am
• Plenary Session: Recent and Upcoming Supreme Court Labor and Employment Law Rulings

11:15 am – 12:30 pm
• Class Action Settlements: Strategies in Pursuing and Negotiating Class and Collective Settlements
• A Legal Primer on the Law and Practice of Corporate Governance
• Meet the National Labor Relations Board: Insider’s Perspective
• New White Collar Exemption Regulations: Then and Now
• Protection of Rights under ERISA and ACA: Claims of Interference, Discrimination and Retaliation
• Reducing the Risk of Workplace Violence
• Religious Accommodation in Today’s Workplace
• The Yates Memorandum and Its Impact on Corporate Executives One Year Later
12:30 pm – 2:15 pm
• Plenary Session: Maximizing the Millennial Workforce
5:15 – 6:00 pm
Standing Committee Business Meetings
6:30 – 7:00 pm
Young Lawyers Networking Reception at House of Blues
### Saturday, November 12

#### 7:00 – 8:00 am
**Breakfast**

#### 8:00 – 9:15 am
- Confidentiality, Waivers and Similar Settlement Agreement Provisions Under Scrutiny: Tell Me about Your Separation Agreement page 26
- The Evolving Law of Successorship in Business Transactions page 24
- The “Gig” Economy: Alternative Working Relationships around the Globe page 24
- How the December 2015 FRCP Revisions Have Impacted, Changed and Affected Discovery Practice page 25
- Litigating/Arbitrating Collective and Class Action Wage and Hour Cases page 26
- Managing Employees with Discrimination and Other Complaints page 22
- Off-Duty Conduct of State and Local Government Employees page 26

#### 9:30 – 10:45 am
- Mergers, Integrations and RIFs: Strategies from Employer, Unions and Employee Representatives page 26
- Paid Leave and Other Protections for Employees with Caregiver Responsibilities page 24
- The Pursuit of Compromise: An Examination of Settlement Strategies and Techniques in Single-Plaintiff Litigation (F) page 24
- Rebooting Harassment Prevention: A Call to Action page 22
- Recent Developments in Whistleblower Protection page 26
- The NLRB Returns to M.B. Sturgis: Miller & Anderson Says Bargaining Units May Include More than One Employer page 24
- Title VII Litigation and Employee Benefit Issues: What Every Employment Attorney Should Know (F) page 23

#### 11:00 am – 12:15 pm
- Bias, Prejudice & Harassment in the Legal Profession: A Proposal for a New Rule (E) page 25
- Employment Law Issues for Veterans in the Workforce (F) page 26
- Tackling Whistleblower Retaliation Cases page 26
- Whistleblowing Legislation in the U.S. and Canada: A Comparative Analysis page 24

#### 12:30 – 2:00 pm
- The College of Labor and Employment Lawyers
  - A Theatrical Post-Trial View of a Sexual Harassment Case: Perspectives (E) page 27
- Careers in Labor and Employment Law: A “How To” Exploration of Options and Advice for Law Students on Finding the Right Job page 27

### 6:00 – 8:00 am
**Conference Reception at The Field Museum**

### 8:00 – 10:00 am
**Committee Dinners** page 22, 28
**Wednesday, November 9**

- **4:30 pm – 5:00 pm**
  **Law Student Orientation**  
  Chicago IX  
  Law student attendees are invited to mingle with each other and members of the Outreach to Law Students Committee and Section Leadership prior to the start of the Conference. This event will offer students a casual introduction to the ins and outs of the Annual Section Conference.

- **5:00 pm – 6:00 pm**
  **First-Time Attendee/New Section Member Orientation**  
  Chicago X  
  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.

**Thursday, November 10**

- **7:00 am – 8:00 am**
  **Breakfast**  
  Chicago VI  
  Sponsored by Outten & Golden LLP

- **12:30 pm – 2:15 pm**
  **Diversity and Inclusion Luncheon**  
  Sheraton IV-V  
  Sponsored by Akerman LLP  
  Constangy, Brooks, Smith & Prophete LLP  
  Davis Wright Tremaine LLP  
  Emond Harnden LLP  
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  Mitchell Silberberg & Knupp LLP  
  Morgan Lewis & Bockius LLP  
  Morrison & Foerster LLP  
  Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
  O’Melveny & Myers LLP  
  Paul Hastings LLP  
  Posner & Rosen LLP  
  Proskauer Rose LLP  
  Schiff Hardin LLP  
  Van Dermyden Maddux Law Corporation

**Thursday’s 11:00 am – 11:15 am**

- **Refreshment Break**
  Sponsored by BakerHostetler

**Thursday’s 3:45 pm – 4:00 pm**

- **Refreshment Break**
  Sponsored by Jones Day

**Plenary Sessions**

- **9:30 am – 9:45 am**
  **Welcome and Introductions**  
  Sheraton IV-V

- **9:45 am – 11:00 am**
  **Closing the Gap: Do Women and Men Need to “Lean In” Together?**  
  Sheraton IV-V  
  Fifty years after Title VII, women continue to strive to achieve equality at work, including with respect to compensation and leadership roles. Even though studies have shown that gender diverse teams achieve better results, women continue to be underrepresented in many industries. There is increasing recognition that both men and women have important roles to play in ensuring equality at work and at home and that cultural and social roles need to be reexamined in order to achieve true workplace equality. This session will identify and explore how to break down barriers to gender equality and will discuss what role the law plays in doing so.

  **MODERATOR:**  
  Gail Golman Holtzman, Jackson Lewis P.C., Tampa, FL

  **PANELISTS:**  
  Michele Coleman Mayes, The New York Public Library; Chair, ABA Commission on Women in the Profession, New York, NY

**6:00 pm – 8:00 pm**

- **Welcome Reception and Committee Expo**  
  Chicago VI & VII  
  Sponsored by Bloomberg Law

  All attendees are invited to meet, greet and network during this opening reception at the Sheraton Grand Chicago Hotel. Section Committees will provide information about publications, services and programs they provide to labor and employment lawyers.
Discrimination, Harassment and Retaliation
• 8:00 am – 9:15 am
When Immigration and Employee Protection Laws Collide: How Do We Protect Whistleblowers, Witnesses or Other Victims of Discrimination or Retaliation When they are Undocumented?

Mayfair
This panel will explore the unique challenges involved in litigating cases involving undocumented workers and will suggest practical ways to protect undocumented workers as well as the limits of doing so.

Panelists:
Josh Levs, Journalist and Author of All In: How Our Work-First Culture Fails Dads, Families, And Businesses – And How We Can Fix It Together, Atlanta, GA
Joan C. Williams, UC Hastings College of the Law; Co-Author of What Works for Women at Work: Four Patterns Working Women Need to Know, San Francisco, CA

Moderator:
Julie A. Totten, Orrick, Herrington & Sutcliffe LLP, Sacramento, CA

Panelists:
Michael C. Hyter, Korn Ferry, Washington, DC
Katherine M. Larkin-Wong, Latham & Watkins LLP, Immediate Past President, Ms. JD, San Francisco, CA
Lauren Stiller Rikleen, President, Rikleen Institute for Strategic Leadership; Author of You Raised Us, Now Work With Us: Millennials, Career Success, and Building Strong Workplace Teams, Wayland, MA

• 11:15 am – 12:30 pm
Religious Accommodation in Today’s Workplace
Chicago X
Our country is a melting pot, meaning that our workplaces employ individuals with various customs and beliefs. Whether someone has religious beliefs or engages in religious practices that are less known to others, employers need to have a basic understanding of beliefs and customs in order to engage in the accommodation process. The panel will strive to educate the participants so they can better advise their respective clients on how to request, and respond to, a need for accommodation.

Panelists:
Eric L. Barnum, Baker & Hostetler LLP, Atlanta, GA
Chaim Book, Moskowitz & Book, LLP, New York, NY
Harsimran Kaur, The Sikh Institute, New York, NY
Jon H. Rosen, The Rosen Law Firm, Seattle, WA

2:30 pm – 3:45 pm
Return to Work Issues
Chicago X
There is a fine line between ensuring a safe and productive workplace and maintaining the legal, medical and privacy rights of employees and job applicants. Although an employer must have a legitimate, non-discriminatory reason to issue fitness for duty exams, many employees and job applicants who must submit to such exams find them discriminatory. This panel will explore the legal boundaries of fitness for duty exams and how they can be implemented to meet the goal of ensuring workplace safety while safeguarding critical employee rights.

Panelists:
Lisa A. Krupicka, Baruch, Porter & Johnson, PLLC, Memphis, TN
Cynthia N. Sass, Law Offices of Cynthia N. Sass, Toms River, NJ
Renu Singla, Transport Workers Union, New York, NY

2:30 pm – 3:45 pm
25 Years after the Civil Rights Act of 1991: Reflections on “Reform” Legislation
Sheraton III
Amid heated debates about affirmative action and in response to several Supreme Court decisions widely viewed as undermining civil rights protections, Congress enacted the Civil Rights Act of 1991, the most sweeping civil rights legislation since the Civil Rights Act of 1964. The 1991 Act amended several procedural and substantive amendments to the statutes enforced by the EEOC. For example, the 1991 Act permitted parties for the first time to obtain jury trials and authorized plaintiffs to recover compensatory and punitive damages (subject to statutory caps) in Title VII and ADA lawsuits involving intentional discrimination. In addition, the 1991 Act codified the mixed-motives causation standard and the disparate-impact theory of discrimination. This panel of experts will address these changes to assess their ongoing impact since the passage of the Act.

Panelists:
Mario L. Barnes, University of California, Irvine School of Law, Irvine, CA
Donald R. Livingston, Akis Gump Strauss Hauer & Feld LLP, Washington, DC
Carolyn Wheeler, Katz, Marshall & Banks, LLP, Washington, DC

Employee Benefits
• 11:15 am – 12:30 pm
Protection of Rights under ERISA and ACA: Claims of Interference, Discrimination and Retaliation
Chicago VII
The question of whether it is legal to reduce an employee’s hours to less than thirty hours per week in order to make the employee ineligible for employer-sponsored health benefits is hotly debated. Marin v. Dave & Buster’s Inc. alleges that the business strategy of reducing hours violates ERISA §510. Panelists will debate the issue as well as provide an update of how courts are analyzing causation in reference to the protection afforded by ERISA §510 and developments under ACA §1558. Plaintiffs, defendants and the government will provide perspectives on litigation of §510 cases, including discovery issues, trial issues and available remedies.
**Labor-Management Relations**

* 8:00 am – 9:15 am  
**Update on Purple Communications: Implementation Issues for Unions, Employees and Employers**  
Chicago X  
The Board's December 2014 decision in Purple Communications left open many questions, and, as we all know, “the devil is in the details.” For example, what are “special circumstances”? Can employers continue to monitor employee use of their email systems without exposing themselves to allegations of unlawful surveillance? How is “non-working time” construed? This panel will provide a nuts and bolts look at life under Purple Communications, almost two years out, to see if (and how) these questions have been answered and discuss the decision’s practical implications.  

**PANELISTS:**  
Jerry M. Hunter, Bryan Cave LLP, St. Louis, MO  
Pamela Jeffrey, Levy Ratner, P.C., New York, NY  
Jayme Sophir, National Labor Relations Board, Washington, DC

* 11:15 am – 12:30 pm  
**Meet the National Labor Relations Board: Insider’s Perspective**  
Chicago VII  
The Board continues to make significant changes in the interpretation of, and the application of, the National Labor Relations Act. Join us for an enlightening discussion, including a peek behind the curtain to observe a “day in the life of a Board Member” as the Board considers and makes decisions.  

**MODERATORS:**  
James W. Bucking, Foley Hoag LLP, Boston, MA  
Gwynne A. Wilcox, Levy Ratner, P.C., New York, NY

**Litigation/Class Action**

* 8:00 am – 9:15 am  
**Getting Paid: From Judgment or Settlement to the Bank**  
Sheraton I  
A monetary judgment or settlement that can’t be collected is a hollow victory. This panel will cover strategies designed to maximize a litigant’s chances of actually recovering on a monetary win or settlement, such as individual guarantors, confessions of judgment, post-judgment discovery and collection actions. The panel will also discuss the basic financial information one needs to be able to follow the money.

**PANELISTS:**  
Mark Crawford, BP America, London, United Kingdom  
Greg Groeneveld, The Law Offices of Greg Groeneveld, San Francisco, CA  
Janine Martin, Hammond & Shinners PC, St. Louis, MO

* 8:00 am – 9:15 am  
**Witness Examination**  
Cospresented by ABA Young Lawyers Division  
Chicago VIII  
An effective witness examination or cross-examination can be the difference between winning or losing a case. This skills-based panel will demonstrate effective examination techniques and discuss best practices for preparing for and conducting an examination.

**PANELISTS:**  
Hon. Lauren McFerran, National Labor Relations Board, Washington, DC  
Gary W. Shinners, National Labor Relations Board, Washington, DC

**A Conversation with the NLRB General Counsel and Deputy General Counsel**

**PANELISTS:**  
Hon. Richard F. Griffin, Jr., National Labor Relations Board, Washington, DC  
Jennifer Abruzzo, National Labor Relations Board, Washington, DC

**Class Action Settlements: Strategies in Pursuing and Negotiating Class and Collective Settlements**

**PANELISTS:**  
Fred W. Alvarez, Jones Day, Palo Alto, CA  
Troy L. Kessler, Shulman Kessler LLP, Long Island, NY  
Heather Mitchell, JPMorgan Chase, Chicago, IL

* 2:30 pm – 3:45 pm  
**Are You Smarter than a 1-L?**  
Mayfair  
Though the bar exam may be long over, effective practitioners need to stay current on evidentiary and procedural rules in order to provide competent representation. This game show-inspired panel will pit seasoned practitioners against new lawyers, testing and refreshing their and the audience’s FRE and FRCP rule knowledge.  

**MODERATOR/EMCEE:**  
Christopher David Ruiz Cameron, Southwestern Law School, Los Angeles, CA
Practice and Professionalism
8:00 am – 9:15 am
Diligence vs. Perfection: Maintaining High Ethical Standards While Avoiding Burnout (E)
Cosperson by ABA Center for Professional Responsibility
Sheraton III
The ethical obligation of diligence requires lawyers to pursue matters “despite opposition, obstruction or personal inconvenience” to the lawyer. Many lawyers strive for more than mere diligence – they shoot for perfection. As many of us know all too well, the quest for perfection can lead to severe anxiety and depression. Some lawyers turn to harmful behaviors such as substance abuse, while others suffer mental illnesses or suffer in silence. Many simply drop out of the profession. This panel will explore practical strategies for lawyers to fulfill their professional obligations while preserving their mental health and deriving satisfaction from the practice of law.

PANELISTS:
Jessie Cardinale, Pedowitz & Meister, LLP, New York, NY
Joel A. D’Alba, Asher, Gittler & D’Alba, Ltd., Chicago, IL
Keith D. Frazier, Ogletree Deakins, Nashville, TN
Sheena Hamilton, Steen & Hart, Washington, DC
Sarah Naji, Slevin & Hart, Washington, DC

PANELISTS:
Brianna M. Primozic, Posner & Rosen LLP, Los Angeles, CA
Anne B. Shaver, Lieff Cabraser Heiman & Bernstein, LLP, Oakland, CA
Grace E. Speights, Morgan, Lewis & Bockius LLP, Washington, DC

Wage and Hour
8:00 am – 9:15 am
Who Is an Employer? Expansive Considerations of Coverage
Chicago VII
Outsourcing, temporary employment, contracting and other changes throughout the economy have caused coverage issues under wage and hour laws to become increasingly complex. Experienced practitioners will discuss the latest developments with respect to coverage in the context of independent contractors, franchises, interns, volunteers and joint employment relationships, as well as address recent initiatives and positions taken by the Department of Labor and National Labor Relations Board on these issues.
Workplace Problems and Solutions

**8:00 am – 9:15 am**

The New Standards on Sharing Wage and Other Confidential Information in the Workplace: Any Effect or Impact?

Chicago IX

The OFCCP recently issued new regulations to enhance the sharing of wage and salary information in the workplace. The EEOC has likewise expressed a desire to protect employees who share information in the workplace in furtherance of protected rights. The NLRB also has demonstrated strong support for collective activity in the represented and non-represented work place to prevent retaliatory or other adverse acts against employees sharing information concerning wages and benefits and other working conditions. Social media and technology are simultaneously changing the landscape for exchanging information in the workplace including confidential employer information. This panel will explore the state of the law that affects sharing of information about working conditions including confidential and examine the impact on employees, employers and unions.

**PANELISTS:**

Darrious Baker, South Carolina Department of Health and Environmental Control, Columbia, SC
David S. Fortney, Fortney & Scott LLC, Washington, DC
Angie Cowan Hamada, Allison, Slutsky & Kennedy, P.C., Chicago, IL
Nina T. Pirrotti, Garrison, Levin-Epstein, Fitzgerald & Pirrotti, P.C., New Haven, CT

**11:15 am – 12:30 pm**

A Legal Primer on the Law and Practice of Corporate Governance (F)
Cosponsored by ABA Young Lawyers Division Sheraton I

What do employment lawyers need to know about corporate governance? Employment lawyers often face issues about corporate authority to act and need to identify the individuals or bodies that hold that authority. What is a board of directors really responsible for and how can corporate governance affect litigation or settlement of employment matters? How do corporations provide indemnification for individuals and what corporate governance rules apply?

**PANELISTS:**

Christopher Wilkinson, Ford & Harrison LLP, Washington, DC
Gregory K. McGillivary, Orrick, Herrington & Sutcliffe LLP, Washington, DC
Eve H. Cervantes, Altshuler Berzon LLP, San Francisco, CA
Hon. Patricia Smith, U.S. Department of Labor, Washington, DC
Christopher Wilkinson, Orrick, Herrington & Sutcliffe LLP, Washington, DC

**2:30 pm – 3:45 pm**

Tipping Points: Should the Law on Tipping Stay or Go?
Sheraton I

Social custom and etiquette have long-suggested that a tip is to be given to certain workers for the services they perform. Legal questions surrounding the concept’s definition, however, add complexity to the question of who has a right to the proceeds: the chef, the busboy, the bartender? This panel will discuss Section 3(m) and the regulation of wages of tipped workers and consider the question of whether the FLSA's regulation of tips actually benefits tipped workers.

**PANELISTS:**

Joseph V. Kaplan, Passman & Kaplan, P.C., Washington, DC
Louis Lopez, Office of Special Counsel, Washington, DC
Deborah Miron, Merit Systems Protection Board, Washington, DC
Jeff Rosenblum, U.S. Securities and Exchange Commission, Washington, DC

**8:00 am – 9:15 am**

Whistleblower Protection for Federal Workers
Sheraton II

With a steady increase in the number of claims filed by employees blowing the whistle on waste, fraud and abuse in the federal government, there have been in recent years a number of significant legal developments affecting whistleblower protections for federal employees including changes made by the Whistleblower Protection Enhancement Act of 2012 and the Supreme Court's 2014 decision in Dep't of Homeland Security v. MacLean. The panel will discuss the current state of the law regarding whistleblower protections for federal employees and proposed legislation that could further change the landscape of federal whistleblower rights and agency responsibilities.

**PANELISTS:**

Todd S. Aidman, Ford & Harrison LLP, Tampa, FL
Loren B. Donnell, Burr and Smith, LLP, Tampa, FL
Hope Pordy, Spivak Lipton LLP, New York, NY
Dane Steffenson, U.S. Department of Labor, Atlanta, GA

**10:30 am – 11:15 am**

Workplace Problems and Solutions

Whistleblower Protection for Federal Workers
Sheraton II

With a steady increase in the number of claims filed by employees blowing the whistle on waste, fraud and abuse in the federal government, there have been in recent years a number of significant legal developments affecting whistleblower protections for federal employees including changes made by the Whistleblower Protection Enhancement Act of 2012 and the Supreme Court's 2014 decision in Dep't of Homeland Security v. MacLean. The panel will discuss the current state of the law regarding whistleblower protections for federal employees and proposed legislation that could further change the landscape of federal whistleblower rights and agency responsibilities.

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Loren B. Donnell, Burr and Smith, LLP, Tampa, FL
Hope Pordy, Spivak Lipton LLP, New York, NY
Dane Steffenson, U.S. Department of Labor, Atlanta, GA
What is the interplay between corporate governance and liability insurance for officers and directors? This panel will address the fundamentals of corporate governance from the perspective of issues that are common to representing individuals, unions and management in employment matters.

**PANELISTS:**

- Melinda C. Burrows, Outercall Inc., Bellevue, WA
- Ty Hyderally, Hyderally & Associates PC, Montclair, NJ
- Dale Pierson, IUOE Local 150, Countryside, IL
- Eric D. Reicin, MorganFranklin Consulting, LLC, Washington, DC

**11:15 am – 12:30 pm**

**Reducing the Risk of Workplace Violence**

**Sheraton II**

Violence at the workplace, affecting the health of employees, is increasingly a concern for employers. Several states have adopted statutes regulating workplace violence. California’s OSHA program has adopted a violence standard, and Federal OSHA relies on the general duty clause to address this hazard. Recently, the OSHA has granted review in a case that will address whether OSHA can continue to cite employers for failing to reduce the risk of violence. This session will discuss the various federal and state approaches to this issue and what employers and employees should do to reduce the risk.

**PANELISTS:**

- Carla J. Gunnin, Jackson Lewis P.C., Atlanta, GA
- Orlando J. Pannocchia, U.S. Department of Labor, Washington, DC
- Stephen Yokich, Dowd, Bloch, Bennett, Cervone, Auerbach and Yokich, Chicago, IL

**11:15 am – 12:30 pm**

**The Yates Memorandum and Its Impact on Corporate Executives One Year Later**

**Mayfair**

In 2015 Deputy Attorney General Sally Yates issued the “Individual Accountability for Corporate Wrongdoing” memorandum (often referred to as the “Yates Memorandum”), signaling the DOJ’s intent to strengthen the pursuit of justice by holding corporate individuals accountable for criminal actions. This panel will examine the impact of the Yates Memorandum and its potential for criminal actions against individual corporate employees and executives. Will the potentially enhanced government efforts to seek prosecution of individuals change the behavior of individuals and executives during internal investigations? Are individuals seeking their own legal representation now given the potential for criminal accountability? This panel will explore the impact of the Yates Memorandum from the perspective of both individual and corporate representation during government investigations and other legal actions.

**PANELISTS:**

- Jonathan Ben-Asher, Ritz Clark & Ben-Asher, New York, NY
- John Lausch, Kirkland & Ellis, LLP, Chicago, IL
- James (Jim) C. McGovern, Hogan Lovells US LLP, New York, NY

**5:15 pm – 6:00 pm**

**Standing Committee Business Meetings**

**Sheraton and Chicago Ballrooms**

(See page 28 for room assignments.)

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

**6:30 pm – 7:00 pm**

**Young Lawyers Networking Reception at House of Blues**

Members of the ABA Young Lawyers Division are invited to a special networking reception in the Foundation Room at the House of Blues.

**7:00 pm – 10:00 pm**

**Diversity and Inclusion Networking Reception at House of Blues**

Sponsored by Jackson Lewis P.C.
Presented by ABA Diversity in the Legal Profession Committee

Join us for a social and networking reception to support the Section’s diversity and inclusion initiatives focusing on lawyers of color; female lawyers; lesbian, gay, bisexual and transgender lawyers; and lawyers with disabilities.

The reception will take place at the House of Blues and will feature great food, drinks and live entertainment.

(Continued on page 18)
### WEDNESDAY, NOVEMBER 9

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Location</th>
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<tbody>
<tr>
<td>2:00 pm – 8:00 pm</td>
<td>Conference Registration</td>
<td>Chicago VI</td>
</tr>
<tr>
<td>4:30 pm – 5:00 pm</td>
<td>Law Student Orientation</td>
<td>Chicago IX</td>
</tr>
<tr>
<td>5:00 pm – 6:00 pm</td>
<td>First-Time Attendee/New Section Member Orientation</td>
<td>Chicago X</td>
</tr>
<tr>
<td>6:00 pm – 8:00 pm</td>
<td>Welcome Reception and Committee Expo</td>
<td>Chicago VI &amp; VII (p.10, 28)</td>
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### THURSDAY, NOVEMBER 10

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Location</th>
</tr>
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<tbody>
<tr>
<td>7:00 am – 8:00 am</td>
<td>Breakfast</td>
<td>Chicago VI</td>
</tr>
<tr>
<td>8:00 am – 9:15 am</td>
<td>Diligence vs. Perfection: Maintaining High Ethical Standards While Avoiding Burnout (E)</td>
<td>Superior A-B (p.27)</td>
</tr>
<tr>
<td>8:00 am – 9:15 am</td>
<td>Getting Paid: From Judgment or Settlement to the Bank</td>
<td>Superior A-B (p.27)</td>
</tr>
<tr>
<td>8:00 am – 9:15 am</td>
<td>The New Standards on Sharing Wage and Other Confidential Information in the Workplace: Any Effect or Impact? (F)</td>
<td>Superior A-B (p.27)</td>
</tr>
<tr>
<td>8:00 am – 9:15 am</td>
<td>Update on Purple Communications: Implementation Issues for Unions, Employees and Employers</td>
<td>Superior A-B (p.27)</td>
</tr>
<tr>
<td>9:30 am – 11:00 am</td>
<td>Plenary Session: Welcome and Introductions – Closing the Gap: Do Women and Men Need to “Lean In” Together?</td>
<td>Sheraton IV-V</td>
</tr>
<tr>
<td>11:15 am – 12:30 pm</td>
<td>Class Action Settlements: Strategies in Pursuing and Negotiating Class and Collective Settlements</td>
<td>Chicago IX, page 12</td>
</tr>
<tr>
<td>11:15 am – 12:30 pm</td>
<td>A Legal Primer on the Law and Practice of Corporate Governance (P)</td>
<td>Sheraton I, page 14</td>
</tr>
<tr>
<td>11:15 am – 12:30 pm</td>
<td>Meet the National Labor Relations Board: Insider’s Perspective</td>
<td>Chicago VII, page 12</td>
</tr>
<tr>
<td>11:15 am – 12:30 pm</td>
<td>New White Collar Exemption Regulations: Then and Now</td>
<td>Sheraton III, page 14</td>
</tr>
<tr>
<td>12:30 pm – 2:15 pm</td>
<td>Diversity and Inclusion Luncheon</td>
<td>Sheraton IV-V</td>
</tr>
<tr>
<td>2:30 pm – 3:45 pm</td>
<td>Are You Smarter than a 1-L? Mayfair, page 12</td>
<td>Superior A-B (p.27)</td>
</tr>
<tr>
<td>2:30 pm – 3:45 pm</td>
<td>A Conversation with the NLRB General Counsel and Deputy General Counsel</td>
<td>Chicago VII, page 12</td>
</tr>
<tr>
<td>2:30 pm – 3:45 pm</td>
<td>Recent Developments in Class Certification/Decertification</td>
<td>Chicago VIII, page 13</td>
</tr>
<tr>
<td>2:30 pm – 3:45 pm</td>
<td>Return to Work Issues</td>
<td>Chicago X, page 11</td>
</tr>
<tr>
<td>4:00 pm – 5:15 pm</td>
<td>Plenary Session: Maximizing the Millennial Workforce</td>
<td>Sheraton IV-V (p.11)</td>
</tr>
<tr>
<td>5:15 pm – 6:00 pm</td>
<td>Standing Committee Business Meetings</td>
<td>See page 28 for locations.</td>
</tr>
<tr>
<td>6:30 pm – 7:00 pm</td>
<td>Young Lawyers Networking Reception at House of Blues</td>
<td>Sheraton IV-V</td>
</tr>
<tr>
<td>6:00 pm – 8:00 pm</td>
<td>Diversity and Inclusion Networking Reception at House of Blues</td>
<td>Sheraton IV-V</td>
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### FRIDAY, NOVEMBER 11

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Location</th>
</tr>
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<tbody>
<tr>
<td>7:00 am – 8:00 am</td>
<td>Breakfast</td>
<td>Chicago VI</td>
</tr>
<tr>
<td>7:00 am – 8:00 am</td>
<td>Plenary Session: Fair Pay and Safe Workplaces Executive Order: What You Need to Know</td>
<td>Chicago X (p.18)</td>
</tr>
<tr>
<td>8:00 am – 9:15 am</td>
<td>Arbitration of Statutory Discrimination Claims</td>
<td>Chicago VIII, page 18</td>
</tr>
<tr>
<td>8:00 am – 9:15 am</td>
<td>Defending and Attacking a Restrictive Covenant</td>
<td>Chicago X, page 22</td>
</tr>
<tr>
<td>8:00 am – 9:15 am</td>
<td>How to Manage Internal Communications with a Represented Party (E)</td>
<td>Sheraton II, page 20</td>
</tr>
<tr>
<td>8:00 am – 9:15 am</td>
<td>Current Implications of the Fissured Workplace</td>
<td>Sheraton I, page 21</td>
</tr>
<tr>
<td>9:30 am – 11:00 am</td>
<td>Plenary Session: Presentation of the 2016 Section Awards – Recent and Upcoming Supreme Court Labor and Employment Law Rulings</td>
<td>Sheraton IV</td>
</tr>
<tr>
<td>11:15 am – 12:30 pm</td>
<td>Calculating Overtime Damages in Wage and Hour Cases</td>
<td>Chicago VIII, page 21</td>
</tr>
<tr>
<td>11:15 am – 12:30 pm</td>
<td>Compelling Companies to be Agents of Change: Regulations Requiring Human Trafficking Prevention and Disclosures</td>
<td>Mayfair, page 19</td>
</tr>
<tr>
<td>11:15 am – 12:30 pm</td>
<td>Independent Contractors and Contingent Workers Under the NLRA: Whose Employees Are They Anyway?</td>
<td>Chicago VII, page 20</td>
</tr>
<tr>
<td>11:15 am – 12:30 pm</td>
<td>&quot;Just Culture&quot; Policies: What You Need to Know</td>
<td>Sheraton II, page 22</td>
</tr>
<tr>
<td>12:30 pm – 2:00 pm</td>
<td>Pro Bono Luncheon</td>
<td>Michigan Room (p.18)</td>
</tr>
<tr>
<td>12:30 pm – 2:00 pm</td>
<td>In-House Corporate Counsel Luncheon</td>
<td>Fountainview</td>
</tr>
<tr>
<td>2:15 pm – 3:30 pm</td>
<td>Advising Clients throughout the Whistleblower Investigation: A Candid Discussion Regarding the Complex Issue of How Lawyers Work with their Clients</td>
<td>Chicago VIII, page 21</td>
</tr>
<tr>
<td>2:15 pm – 3:30 pm</td>
<td>Bargaining in Post-Recession Years</td>
<td>Chicago X, page 21</td>
</tr>
<tr>
<td>2:15 pm – 3:30 pm</td>
<td>Compensable Time</td>
<td>Chicago VII, page 21</td>
</tr>
<tr>
<td>2:15 pm – 3:30 pm</td>
<td>Meet the NLRB Regional Directors: Get Practical Tips for Success Before the Regions</td>
<td>Sheraton II, page 20</td>
</tr>
<tr>
<td>3:45 pm – 5:00 pm</td>
<td>Plenary Session: Law Enforcement Labor Relations Post-Ferguson</td>
<td>Sheraton IV-V (p.18)</td>
</tr>
<tr>
<td>6:00 pm – 8:00 pm</td>
<td>Conference Reception at The Field Museum</td>
<td>Sheraton IV-V</td>
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<tr>
<td>8:00 pm – 10:00 pm</td>
<td>Committee Dinners</td>
<td>See page 28 for locations.</td>
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### SATURDAY, NOVEMBER 12

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<thead>
<tr>
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<tbody>
<tr>
<td>7:00 am – 8:00 am</td>
<td>Breakfast</td>
<td>Chicago VI</td>
</tr>
<tr>
<td>8:00 am – 9:15 am</td>
<td>Confidentiality, Wavers and Similar Settlement Agreement Provisions Under Scrutiny: Tell Me about Your Separation Agreement</td>
<td>Sheraton II, page 26</td>
</tr>
<tr>
<td>8:00 am – 9:15 am</td>
<td>The Evolving Law of Succession in Business Transactions</td>
<td>Chicago II, page 26</td>
</tr>
<tr>
<td>8:00 am – 9:15 am</td>
<td>The “Gig” Economy: Alternative Working Relationships around the Globe</td>
<td>Sheraton III, page 24</td>
</tr>
<tr>
<td>8:00 am – 9:15 am</td>
<td>How the December 2015 FRCP Revisions Have Impacted, Changed and Affected Discovery Practice</td>
<td>Sheraton I, page 24</td>
</tr>
<tr>
<td>9:30 am – 10:45 am</td>
<td>Mergers, Integrations and RfIs: Strategies from Employer, Unions and Employee Representatives</td>
<td>Sheraton III, page 26</td>
</tr>
<tr>
<td>9:30 am – 10:45 am</td>
<td>Paid Leave and Other Protections for Employees with Caregiver Responsibilities</td>
<td>Sheraton II, page 24</td>
</tr>
<tr>
<td>9:30 am – 10:45 am</td>
<td>The Pursuit of Compromise: An Examination of Settlement Strategies and Techniques in Single-Plaintiff Litigation (F)</td>
<td>Sheraton I, page 24</td>
</tr>
<tr>
<td>11:00 am – 12:15 pm</td>
<td>Blas, Prejudice &amp; Harassment in the Legal Profession: A Proposal for a New Rule (E)</td>
<td>Chicago IX, page 25</td>
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<tr>
<td>11:00 am – 12:15 pm</td>
<td>Employment Law Issues for Veterans in the Workplace (P)</td>
<td>Sheraton II, page 26</td>
</tr>
<tr>
<td>11:00 am – 12:15 pm</td>
<td>Helping Your Clients Understand and Accommodate Invisible Disabilities</td>
<td>Chicago VII, page 23</td>
</tr>
<tr>
<td>11:00 am – 12:15 pm</td>
<td>Investigating Class and Systemic Claim</td>
<td>Sheraton III, page 25</td>
</tr>
<tr>
<td>12:30 pm – 2:00 pm</td>
<td>The College of Labor and Employment Lawyers: A Theatrical Post-Trial View of a Sexual Harrassment Case: Perspectives (E)</td>
<td>Superior A-B (p.27)</td>
</tr>
<tr>
<td>12:30 pm – 2:00 pm</td>
<td>Careers in Labor and Employment Law: A “How To” Exploration of Options and Advice for Law Students on Finding the Right Job</td>
<td>Missouri (p.27)</td>
</tr>
<tr>
<td>2:00 pm – 3:30 pm</td>
<td>The College of Labor and Employment Lawyers: How the Dust is Settling in the Wake of the 2015 Labour Trilogy from the SCC</td>
<td>Superior A-B (p.27)</td>
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16 ABA Section of Labor and Employment Law [www.ambar.org/laborconference](http://www.ambar.org/laborconference)
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<td>and Upcoming Supreme Court Labor and Employment Law Rulings</td>
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<td>Chicago VI</td>
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10th Annual Labor and Employment Law Conference • November 9-12, 2016 • Chicago, Illinois
Friday, November 11

7:00 am – 8:00 am
Breakfast
Chicago VI
Sponsored by Akin Gump Strauss Hauer & Feld LLP

Friday’s 11:00 am – 11:15 am
Refreshment Break is sponsored by Polsinelli.

12:30 pm – 2:00 pm
Pro Bono Luncheon
Michigan Room
Sponsored by Epstein Becker & Green, P.C., Morgan, Lewis & Bockius LLP, Paul Hastings LLP and Proskauer Rose LLP

Friday’s 2:00 pm – 2:15 pm
Refreshment Break is sponsored by FordHarrison LLP.

Plenary Sessions

• 7:00 am – 8:00 am
Fair Pay and Safe Workplaces Executive Order: What You Need to Know
Chicago X
On August 25, 2016, after extensive input from the public, the Department of Labor and the Federal Acquisition Regulatory Council issued the final rules and guidance implementing Executive Order 13673: Fair Pay and Safe Workplaces. The Executive Order requires prospective federal contractors to disclose labor law violations and gives agencies guidance on how to consider labor violations when awarding federal contracts. Lafe E. Solomon, DOL Senior Labor Compliance Advisor, will facilitate a discussion on the new rules and guidance pertaining to compliance with the Executive Order.

SPEAKER:

• 9:30 am – 9:45 am
Section Award Presentations
Sheraton IV-V

• 9:45 am – 11:00 am
Recent and Upcoming Supreme Court Labor and Employment Law Rulings
Sheraton IV-V
SCOTUSblog publisher and Supreme Court litigator Tom Goldstein will discuss the principal rulings from the last term involving labor and employment issues as well as significant cases on the horizon.

SPEAKER:
Tom Goldstein, SCOTUSblog publisher and Supreme Court litigator, Goldstein & Russell, Bethesda, MD

• 3:45 pm – 5:00 pm
Law Enforcement Labor Relations Post-Ferguson
Sheraton IV-V
In recent years there have been numerous high profile controversies over police interactions with citizens, most particularly with those in the African-American community. Seasoned practitioners of labor law for public safety units will be joined by other experts to review the current state of policing as it relates to collective bargaining, officer training, and today’s racial climate. This session also will explore the impact of recent events on the method and manner by which law enforcement approaches its duties and responsibilities.

MODERATOR:
Jason C. Marsili, Passer & Rosen LLP, Los Angeles, CA

PANELISTS:
Jennifer A. Dunn, Franzek Rudlet P.C., Chicago, IL
Delrish Moss, Chief of Police, Ferguson Police Department, St. Louis, MO
John Rivera, President, Florida and Dade County Police Benevolent Associations, Miami, FL
Harry S. Stern, Rains Lucia Stern, PC, San Francisco, CA

Alternative Dispute Resolution

• 8:00 am – 9:15 am
Arbitration of Statutory Discrimination Claims
Chicago VIII
Since the Supreme Court’s decision in 14 Penn Plaza LLC v. Pyett, which supported the arbitration of employment discrimination claims against employers under collective bargaining agreements that provided for such adjudication, attorneys have made strides to respond to the holdings of Penn Plaza LLC v. Pyett.

SPEAKER:
Robert D. Kraus, Kraus & Zuchlewski LLP, New York, NY

MODERATORS:
Robert D. Kraus, Kraus & Zuchlewski LLP, New York, NY

PANELISTS:
Hon. Diane M. Welsh (Ret.), JAMS, Philadelphia, PA
Hon. Candace Cooper (Ret.), JAMS, Los Angeles, CA
Martin F. Scheiman, Arbitrator/Mediator, New York, NY

• 2:15 pm – 3:30 pm
A New Tool for Today’s Complex Negotiations: To Affinity and Beyond
Mayfair
The Federal Mediation and Conciliation Service is using an innovative “Affinity Model” to push parties to focus on a problem solving approach to economic bargaining. Applying neuroscience principles, FMCS moves participants from a spontaneous emotional mind-set to a problem solving state of mind. Using flip charts, post-it notes and other visual aids, the Affinity Model actively engages parties to identify issues, clarify interests, and construct a zone of possible agreement. This panel will discuss the benefits of this new approach and explore its application to the resolution of labor and employment disputes.

SPEAKER:
Paul Salvatore, Proskauer Rose LLP, New York, NY

MODERATORS:
Robert M. Goldich, Greenberg Traurig LLP, Philadelphia, PA
Paul Salvatore, Proskauer Rose LLP, New York, NY

PANELISTS:
Hon. Candace Cooper (Ret.), JAMS, Los Angeles, CA
Hon. Diane M. Welsh (Ret.), JAMS, Philadelphia, PA

This panel will discuss the legal issues that have followed the Court’s decision, the protocols used by parties for the arbitration of discrimination claims, and the effect on the resolution of discrimination claims.

• 11:15 am – 12:30 pm
Mediation of the Most Difficult Cases and How They Settle
Chicago X
Although current statistics continue to show that over 95 percent of cases settle before trial, the odds alone rarely aid in the resolution of the most difficult cases, which sometime require multiple sessions and a mediator’s persistence. In this advanced program, experienced mediators will speak candidly about techniques and strategies utilized to settle very contentious and complex cases, answering questions posed by lawyer moderators.

MODERATORS:
Robert M. Goldich, Greenberg Traurig LLP, Philadelphia, PA

PANELISTS:
Hon. Diane M. Welsh (Ret.), JAMS, Philadelphia, PA

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Discrimination, Harassment and Retaliation

* 8:00 am – 9:15 am
Transgender Issues in the Workplace
Cosponsored by ABA Commission on Sexual Orientation and Gender Identity Chicago IX

While the public is more aware of transgender issues, bias and bigotry still exist, particularly in the workplace. Studies have shown that transgender individuals experience a more difficult time securing and maintaining employment despite their talents and abilities. Once an employee discloses their plan for gender transition, the workplace may become emotionally charged during this transition. For example, the issue of which bathroom a transgender employee can use is a hot topic for debate and litigation. This panel will discuss the latest developments in the law, including legal requirements for accommodating and protecting transgender employees while also addressing the concerns of co-workers and employers.

PANELISTS:
Allison Beck, Federal Mediation and Conciliation Service, Washington, DC
Camille Grant, Illinois Education Association – NEA, Chicago, IL
Javier Ramirez, Federal Mediation and Conciliation Service, Washington, DC
Robert E. Riley, Robbins, Schwartz, Nicholas, Lifton & Taylor, Chicago, IL
Mark D. Risk, Mark Risk P.C., New York, NY
Juan Salgado, Instituto del Progreso Latino, Chicago, IL

United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . ." At what point does a school employee have rights under both Titles VII and IX? The panel will discuss the extent these laws co-exist and diverge, when Title VII pre-empts Title IX, and strategies to be employed by both plaintiff and defense counsel in pursuing their respective interests.

PANELISTS:
Mohammed J. Lakhani, Del Gado Law Group, LLC, Chicago, IL
Emma Leheny, NEA, Washington, DC
Adele Rapport, Chicago, IL
Kim Turner, Gender Equity & LGBT Rights Program and the Fair Play for Girls in Sports Project, San Francisco, CA
Julie Heuberger Yura, Lake Forest College, Lake Forest, IL

* 2:15 pm – 3:30 pm
OFFCP: A View from the Trenches
Sheraton I

This panel will discuss the impact of OFCCP’s recent initiatives – such as the new LGBT rules, pay secrecy rules, and strengthened protections of veterans and people with disabilities – as well as OFCCP’s enforcement efforts. Topics of discussion will include: What trends are DOL seeing in its outreach, or employees in light of these developments? Should attorneys give to employers, unions, and employees in light of these developments?

PANELISTS:
Jon A. Geier, Paul Hastings, Chicago, IL
Elizabeth Nadeau, Law Office of Elizabeth Nadeau, Washington, DC
Consuela A. Pinto, U.S. Department of Labor, Washington, DC

Immigration and Human Trafficking

* 11:15 am – 12:30 pm
Compelling Companies to be Agents of Change: Regulations Requiring Human Trafficking Prevention and Disclosures
Mayfair

International Conventions and Laws prohibiting Trafficking in Persons, Child Labor and other forms of forced labor have prohibited and criminalized trafficking activities for years. Many business organizations, however, have not focused on how these issues relate to their own companies, employees, contractors and supply chains. Recent federal, state and international legislative and regulatory developments now require the private sector, including federal contractors, to change their business methods or face significant penalties. Laws like the California Transparency in Supply Chains Act and the UK Modern Slavery Act, as well as federal contractor acquisition regulations, require many companies to take significant steps to prevent trafficking and to address conditions of employment of employees at all levels of their operations. This panel will outline strategies for protecting worker rights and ensuring effective legal compliance strategies.

PANELISTS:
Enicee H. Choy, Immigration Justice Project – Southern Poverty Law Center, Atlanta, GA
Karen Edwards, International Paper, Memphis, TN
Jennifer Rosenbaum, National Guestworker Alliance/New Orleans Worker’s Center for Racial Justice, New Orleans, LA
Lafe E. Solomon, U.S. Department of Labor, Washington, DC

* 2:15 pm – 3:30 pm
What Every Labor and Employment Lawyer Needs to Know about Immigration Law (F)
Cosponsored by ABA Young Lawyers Division Chicago IX

Whether it is a question arising from the completion of Form I-9 to the effect an acquisition has on an international workforce to discriminatory practices against foreign nationals, immigration law is a growing and pervasive part of every labor and employment law practice. This panel will discuss how understanding this area of the law will allow management attorneys to better represent corporate clients and avoid immigration issues before they become problems. Plaintiffs’ lawyers will learn how to spot potential areas of litigation that fall outside of standard discrimination-based claims. Union lawyers will enhance their understanding of the challenges facing a diverse workforce. Stay ahead of the curve by understanding the immigration curve ball.

PANELISTS:
Hon. M. Patricia Smith, U.S. Department of Labor, Washington, DC
Jonathan Grode, Greens & Spiegel LLC, Philadelphia, PA
Winifred Kao, Asian Americans Advancing Justice – Asian Law Caucus, San Francisco, CA
Christopher Williams, Workers’ Law Office, PC, Chicago, IL

10th Annual Labor and Employment Law Conference • November 9–12, 2016 • Chicago, Illinois
Labor-Management Relations

• 8:00 am – 9:15 am
  National Labor Relations Act Case Law Update
  Chicago VII
  This program will provide a timely and thought-provoking review of the new and important unfair labor practice and representation decisions issued by the National Labor Relations Board, federal appellate courts and the U.S. Supreme Court.
  PANELISTS:
  Richard Bock, National Labor Relations Board, Washington, DC
  Johnda Bontley, SEIU, Washington, DC
  Kelsey Sheldon, David Wright Tremaine LLP, Bellevue, WA

• 8:00 am – 9:15 am
  Negotiation, Mediation and Arbitration Under the Railway Labor Act
  Mayfair
  The panel will discuss and demonstrate the various phases and methods of reaching a collective bargaining agreement under the Railway Labor Act. In doing so, the presenters will review some of the common issues and obstacles that may arise in reaching agreement, including regressive bargaining, inability to pay and concessionary agreements, failed ratifications, and lack of authority to bargain. Neutrals will offer practical tips for overcoming such problems and reaching a deal.
  PANELISTS:
  Molly Gabel, Alaska Airlines, Inc., Seattle, WA
  Stephen B. Moldof, Cohen, Weiss and Simon LLP, New York, NY
  Donald J. Munro, Jones Day, Washington, DC
  Linda A. Puchala, National Mediation Board, Washington, DC
  Elizabeth A. Roma, Guerrieri, Clayman, Bartos & Porcelly, P.C., Washington, DC

• 11:15 am – 12:30 pm
  Independent Contractors and Contingent Workers Under the NLRA: Whose Employees Are They Anyway?
  Chicago VII
  In FedEx Home Delivery, the Board refined its independent contractor test to additionally consider a new “independent-business” factor to determine whether an individual is an independent contractor rather than an employee. Since then, how has the Board applied this new test in different contexts? In what ways have management and unions adapted to the new test in conducting labor relations, organizing or responding to organizing efforts? The panel also will discuss recent cases addressing the contingent workforce and offer practical strategies for managing these employees from the perspectives of employer, employee and union advocates.
  PANELISTS:
  Julie Gutman Dickinson, Bush Gottlieb, Los Angeles, CA
  John D. Doyle, National Labor Relations Board, Washington, DC
  Daniel J. Hewitt, CVS, Woonsocket, RI
  Marianna Matura, Shulman Kantor, New York, NY
  Joseph J. Torres, Winston & Strawn LLP, Chicago, IL

• 2:15 pm – 3:30 pm
  Meet the NLRB Regional Directors: Get Practical Tips for Success Before the Regions
  Sheraton II
  Our panel of Regional Directors will discuss what they find important in cases, how they make decisions, and what evidence they find to be most compelling. They will discuss regional practices in investigation and case-handling procedures — including the impact of the new R-case procedures in regional practice.
  MODERATORS:
  Benjamin Bodzy, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Chicago, IL
  Pamela Chandran, SEIU Local 121 RN, Pasadena, CA

• 8:00 am – 9:15 am
  Litigation/ Class Action
  • 8:00 am – 9:15 am
    Tyson and the New FRCP Proportionality Standards: Their Impact on Class and Collective Actions
    Sheraton III
    This past year has had potentially dramatic effects for class and collective action practitioners. First, amendments to FRCP Rule 26 took effect requiring the courts to consider proportionality in discovery. Second, the Supreme Court issued its decision in Tyson addressing the use of statistics in class and collective actions. Have these developments changed class and collective action practice and in what way?
    PANELISTS:
    Molly Elkin, Woodley & McGillivray LLP, Washington, DC
    James M. Finkberg, Altshuler Berzon LLP, San Francisco, CA
    Rae Vann, Norris, Tyson, Lawley & Lakis, Washington, DC

• 11:15 am – 12:30 pm
  Taking and Defending 30(b)(6) Depositions
  Sheraton III
  30(b)(6) depositions are among the most powerful tools in discovery. This session will address the nuts and bolts of preparing for, taking and defending a 30(b)(6) deposition. Panelists will discuss notice requirements, topic identification, witness designation, witness preparation, logistical considerations, and use of the deposition at summary judgment and trial.
  PANELISTS:
  Shalanda Ballard, 3M, Minneapolis, MN
  Eric Kinder, Spelman & Thomas & Battle, PLLC, Charleston, WV
  Matthew H. Morgan, Nichols Kaster, LLP, Minneapolis, MN

Practice and Professionalism

• 8:00 am – 9:15 am
  How to Manage Internal Communications with a Represented Party
  Sheraton II
  Cosponsored by ABA Center for Professional Responsibility
  Some employees choose to raise employment concerns and fight their battles on two fronts — using internal reporting mechanisms and using engaged counsel. That can create a sticky wicket for corporate clients — and in-house counsel. ABA Model Rule of Professional Conduct Rule 4.2 addresses communicating with represented parties, and attorneys must be mindful of their obligations under that Rule and the advice they give their clients on communicating with represented employees. Panelists will discuss best practices and, through vignettes, offer advice on how clients can engage in effective internal dispute resolution methods and avoid violations of the Rule.
Public Sector

**2:15 pm – 3:30 pm**

**Bargaining in Post-Recession Years**

*Chicago X*

The 2008 Great Recession brought us public budget tightening, reductions in force and shared sacrifices in wages and benefits. Now that the economy has leveled, what has been the impact in public sector negotiations? How have state laws changed with respect to subjects of bargaining in response to the recession? What has been the effect of the increase in the number of “right to work” states? How will the decision by the US Supreme Court in *Friedrichs v. California Teachers Association* regarding the constitutionality of fair share provisions in public sector collective bargaining agreements impact how unions are financed, how unions deliver services, and which party is successful in national partisan politics?

**What is different about negotiating in 2016 from 2006 and what strategies have both management and labor employed to their satisfaction? Has there been any impact in impasse resolution decisions?**

**PANELISTS:**

- **Tiffanie Benfer**, Hardwick Benfer, LLC, Doylestown, PA
- **Michelle D. Craig**, Transcendent Legal, New Orleans, LA
- **Scott R. Koch**, JPMorgan Chase, Chicago, IL
- **Brenda Sutton-Wills**, California Teachers Association, Santa Fe Springs, CA

**2:15 pm – 3:30 pm**

**Compensable Time**

*Chicago VII*

In this advanced level program, wage and hour experts will discuss the evolution of compensable time under the Fair Labor Standards Act and Portal-to-Portal Act over the last ten years, including the major court decisions (*Alvarez, Sandifer* and *Busk*) during that period, and discuss considerations related to the class of cases on these issues. Will new technology like email, text messages and smartphones bring about a new generation of compensable time cases?

**PANELISTS:**

- **James Kan**, Goldstein, Borgen, Dardarian & Ho, Oakland, CA
- **Ellen Kearns**, Constamag, Brooks, Smith & Prohpeite LLP, Boston, MA
- **Jennifer Reasting**, Leonard Carder, LLP, Oakland, CA
- **Kevin Wilemon**, U.S. Department of Labor, Chicago, IL

**Whistleblower**

**2:15 pm – 3:30 pm**

**Advising Clients throughout the Whistleblower Investigation: A Candid Discussion Regarding the Complex Issue of How Lawyers Work with their Clients**

*Chicago VIII*

Highly experienced panelists have agreed to candidly discuss complex issues that arise with their clients throughout the whistleblower investigative process, especially when a private whistleblower retaliation case runs parallel to a government investigation. The panel will address: 1) how they prepare their clients to participate in an investigative interview, internally or with the government; 2) how they work with their clients regarding document preservation and presentation during an investigation; 3) when they decide to be visibly involved in the investigative process, in contrast to providing background advice; 4) how they decide the path a complaint should take; 5) how they advise their clients to respond to agency inquiries without waiving privilege; and 6) whether and how they advise their clients to take remedial actions, as well as determining the timing for and communications about those actions.
Program Schedule

Panelists:
- Lynne Bernabei, Bernabei Kabat, PLLC, Washington, DC
- Mark Hanna, Murphy Anderson PLLC, Washington, DC
- Daniel J. Hurson, Law Offices of Daniel J. Hurson, Washington, DC
- Arian June, WilmerHale, Washington, DC
- Marcia Narine, St. Thomas University School of Law, Miami, FL

Workplace Problems and Solutions

• 8:00 am – 9:15 am
  Defending and Attacking a Restrictive Covenant
  Sheraton X
  There are many considerations that can affect the terms and provisions of a restrictive covenant. However, if the intent is to create the greatest likelihood of enforceability, what considerations would be paramount in this process? Similarly, how should legal counsel for an individual approach these same issues? This panel of skilled practitioners will address the more advanced issues in creating and defending covenants based on the litigation perspective, including issues like choice of law, nature of the restriction, and defining the protected interest.

Panelists:
- Hon. Bernice B. Donald, U.S. Court of Appeals for the Sixth Circuit, Memphis, TN
- Katie Bunch, JPMorgan Chase, Chicago, IL
- Stephen E. Fox, Polsinelli, Kansas City, MO
- Marissa Warren, Pedowitz & Meister, LLP, New York, NY

• 11:15 am – 12:30 pm
  “Just Culture” Policies: What You Need to Know
  Sheraton II
  Employers are increasingly implementing “Just Culture” or similar policies intended to promote safe practices and behavior in the workplace. Some of these programs have replaced “zero tolerance” and similar programs that have been used to promote safe and compliant behavior by employees. What are Just Culture programs about, who uses them, and what legal issues are involved in supporting or challenging “Just Culture”-style programs? What are the criticisms of such programs from the perspective of employee and union representatives? Do these programs present a developing trend in the relationship between employers, employees, and unions?

Panelists:
- Alexandra Freemire, SG Collaborative Solutions, LLC, Framingham, MA
- Gregory A. Hearing, Thompson, Sizemore, Gonzalez & Hearing, P.A., Tampa, FL
- Megann McManus, Meyer, Suozzi, English and Klein, P.C., New York, NY
- Maranda Rosenthal, Alaska Airlines, Inc., Seattle, WA
- Kathleen A. Yodice, Law Offices of Yodice Associates, Frederick, MD

• 2:15 pm – 3:30 pm
  Pay Equity in Practice: What Are Employers Doing, What Can They Do, and What Works?
  Sheraton III
  For many employers today, there is a large focus on providing both diversity in the workplace and demonstrating pay equity practices to employees and the general public. This panel will explore specific practices that have been implemented both to comply with federal, state or local laws as well as the legality of additional practices that may go beyond those requirements.

Panelists:
- Rachel Geman, Lieff Cabraser Heimann & Bernstein, LLP, New York, NY
- Samantha C. Grant, Mitchell Silverberg & Knapp LLP, Los Angeles, CA
- Wendy L. Kahn, Zweidling, Paul, Kahn & Wolly PC, Washington, DC
- Tamika Lynch, Siemens, Buffalo Grove, IL
- Paul F. White, Resolution Economics, Washington, DC

6:00 pm – 8:00 pm
Conference Reception at The Field Museum

Join with old friends and new to celebrate the 10th Annual Labor and Employment Law Conference at the magnificent Field Museum. Guests will be able to tour the wonderful exhibits from 6:00 pm until 9:00 pm.

8:00 pm – 10:00 pm
Committee Dinners
(See page 28 for locations)

Tickets for these dinners may be purchased at ABA Registration Desk (limited quantities available).

Saturday, November 12

Panelists:
- Stacey A. Campbell, Campbell Litigation, P.C., Denver, CO
- Virginia “Ginger” Hardwick, Hardwick Beiser, LLC, Doylestown, PA
- Donna Hughes, Impax Laboratories, New York, NY
- Rebecca Yee, SEIU Local 721, Los Angeles, CA

• 8:00 am – 9:15 am
  Discrimination, Harassment and Retaliation
  Chicago X
  This program will discuss the challenges associated with current employees who have reported allegations of discrimination or are considered whistleblowers. The panelists will provide recommendations regarding do’s and don’ts for current employees who wish to stay and tactics for negotiating exit strategies for those who wish to leave. The panelists also will discuss ways that employers can manage the risk associated with retaliation and the impact of recent court decisions applying the cat’s paw theory of liability to retaliation cases.

Panelists:
- Stacey A. Campbell, Campbell Litigation, P.C., Denver, CO
- Virginia “Ginger” Hardwick, Hardwick Beiser, LLC, Doylestown, PA
- Donna Hughes, Impax Laboratories, New York, NY
- Rebecca Yee, SEIU Local 721, Los Angeles, CA

• 9:30 am – 10:45 am
  Rebooting Harassment Prevention: A Call to Action
  Chicago IX
  In June 2016, EEOC Commissioners Chai R. Feldblum and Victoria A. Lipnic issued a report as Co-Chairs of the Select Task Force on the Study of Harassment in the Workplace. The report presents a sober picture of harassment in the workplace, the
workforce ages, this issue grows even more crucial. The panel will introduce the most common hidden disabilities to the participants, discuss appropriate ways to engage with employees with hidden disabilities and offer various accommodation techniques and resources. Participants should leave having a “toolkit” to address these issues on a broad spectrum.

PANELISTS:
Alisa Arnoff, Scalambrino & Arnoff LLP, Chicago, IL
Kathleen Phair Barnard, Schwerin Campbell Barnard Iglitzin & Lavitt LLP, Seattle, WA
Tracie DeFreitas, Job Accommodation Network, Morgantown, WV
Brett Rawitz, U.S. Foods, Chicago, IL

• 11:00 am – 12:15 pm
Legal Issues in an Aging Workforce: Beyond the ADEA

Chicago VII

This panel will discuss the legal issues associated with an aging workforce and provide practical and creative strategies for addressing aging employees with declining physical and/or mental capabilities, age bias and assumptions regarding aging employees’ abilities, and the application of the ADEA and the ADA.

PANELISTS:
Manuel Cuevas-Trisán, Motorola Solutions, Inc., Chicago, IL
Brenda Feis, Feis Goldy LLC, Chicago, IL
Joseph M. Sellers, Cohen Milstein Sellers & Toll PLLC, Washington, DC
Patricia A. Wise, Niehaus, Wise & Kalas Ltd, Toledo, OH
Brent D. Garren, SEIU 32BJ, New York, NY
Nesheba M. Kittling, Fisher & Phillips LLP, Chicago, IL
Daniel B. Kohrman, AARP Litigation, Washington, DC
Diane I. Smason, U.S. Equal Employment Opportunity Commission, Chicago, IL
George L. Washington, Jr., Orange Business Services, Washington, DC

Employee Benefits

• 9:30 am – 10:45 am
Title VII Litigation and Employee Benefit Issues: What Every Employment Attorney Should Know (F)

Cosponsored by ABA Young Lawyers Division
Chicago VII

The purpose of this program is to assist employment attorneys in identifying and addressing employee benefit issues and claims that arise during Title VII cases.

PANELISTS:
Neelam Chandna, Reich, Adell & Civitan, Los Angeles, LA
Robert W. Rachal, Proskauer Rose LLP, New Orleans, LA
Joanne Roskey, U.S. Department of Labor, Washington, DC
Mary Ellen Signorille, AARP Litigation, Washington, DC

Top innovators in the technology, energy and infrastructure, and finance sectors rely on Orrick for creative legal advice. We are proud to support their success with transactional, litigation and compliance solutions around the world.

PANELISTS:
Brent D. Garren, SEIU 32BJ, New York, NY
Nesheba M. Kittling, Fisher & Phillips LLP, Chicago, IL
Daniel B. Kohrman, AARP Litigation, Washington, DC
Diane I. Smason, U.S. Equal Employment Opportunity Commission, Chicago, IL
George L. Washington, Jr., Orange Business Services, Washington, DC

failure of most employees to complain, and some limitations of current anti-harassment training. The report also offers compelling reasons to fight harassment and suggests concrete ways to do so, including identifying best practices for policies and procedures and suggestions for new training. Several members of the Select Task Force, together with Commissioner Feldblum, will discuss the report and ideas aimed at “rebooting” harassment prevention efforts.

PANELISTS:
Manuel Cuevas-Trisán, Motorola Solutions, Inc., Chicago, IL
Brenda Feis, Feis Goldy LLC, Chicago, IL
Joseph M. Sellers, Cohen Milstein Sellers & Toll PLLC, Washington, DC
Patricia A. Wise, Niehaus, Wise & Kalas Ltd, Toledo, OH

International

• 8:00 am – 9:15 am
The “Gig” Economy: Alternative Working Relationships around the Globe
Sheraton III
Ever since “app-driven” business models “disrupted” the taxi industry, significant attention has shifted to businesses that rely on “zero hours” contracts, contingent workers, or “on-demand” models (which claim to have no employees at all). These businesses, which challenge fundamental tenets of the employer/employee relationship, have been praised but also have encountered a firestorm of opposition from government regulators, class action litigators, labor unions and others who regard the “gig” economy as an expanding threat to worker security and workplace stability. This panel will analyze the future of these alternative work models in various countries in light of these clashing interests.

PANELISTS:
Rubén Agote, Cuatrecasas Goncalves Pereira SL, Barcelona, Spain
Sharon Block, U.S. Department of Labor, Washington, DC
Danny J. Kaufner, Borden Ladner Gervais, Montreal, QC
Saerom Park, SEIU, Washington, DC
Steven M. Swirsky, Epstein Becker Green, New York, NY

• 9:30 am – 10:45 am
Paid Leave and Other Protections for Employees with Caregiver Responsibilities under Laws, Employment Contracts and Collective Bargaining Agreements around the World
Sheraton II
A movement is underway in the United States to promote caregiver rights in the workplace. At the same time, there is much discussion in the United Kingdom regarding work/life balance. This panel will discuss the laws and employer practices impacting caregivers at work around the world, including: What legal standards exist concerning caregiver rights in different countries? What actions are employer and advocacy groups taking that impact these rights? How do employment agreements and collective bargaining agreements impact such rights?

PANELISTS:
Susanne Burri, Utrecht Law School, Utrecht, Netherlands
Bronwyn McKenna, UNISON, London, United Kingdom
Devjani Mishra, Aexion Pharmaceuticals, Inc., New Haven, CT
Clare Murray, CM Murray LLP, London, United Kingdom
Niall Pelly, Matheson, Dublin, Ireland
Catherine K. Ruckelshaus, National Employment Law Project, New York, NY

Litigation/Class Action

• 8:00 am – 9:15 am
How the December 2015 FRCP Revisions Have Impacted, Changed and Affected Discovery Practice, including E-Discovery
Sheraton I
This program will discuss how the December 2015 changes to the FRCP have impacted and changed discovery and will provide guidance regarding litigation strategies for obtaining, limiting, and negotiating the scope of discovery in light of the new rules, with a special eye towards e-discovery requests in the ESI era.

PANELISTS:
Hon. Jay C. Gandhi, U.S. District Court for the Central District of California, Los Angeles, CA
Daniel L. Bonnett, Martin & Bonnett PLLC, Phoenix, AZ
Gary B. Eidelman, Saul Ewing LLP, Baltimore, MD
Richard T. Seymour, Law Offices of Richard T. Seymour, Washington, DC

• 9:30 am – 10:45 am
The Pursuit of Compromise: An Examination of Settlement Strategies and Techniques in Single-Plaintiff Litigation (F)
Sheraton I
Although most claims are resolved through settlement, attention to effectively and
efficiently steering a case toward a negotiated resolution often takes a back burner to the press of litigation. This panel will explore settlement strategies in individual litigation, including the proper use, valuation and timing of offers of compromise, strategy and timing for alternative dispute resolution, how much pre-settlement formal and informal discovery is sufficient, insurance considerations and general negotiation strategies.

PANELISTS:
Hon. David H. Coar (Ret.), JAMS, Chicago, IL
Lisa J. Banks, Katz, Marshall & Banks, LLP, Washington, DC
Brian J. LaClair, Blitman & King LLP, Syracuse, NY
Jonathan Turner, Mitchell Silberberg & Knapp LLP, Los Angeles, CA

Investigating Class and Systemic Claims
Sheraton III
The stakes are high in class and systemic cases and for both the company and putative class counsel, and determining whether class claims or liability exists is crucial to charting a course of action. This panel will discuss how to properly investigate class claims and determine whether a viable class or collective action exists. The panel also will provide pre-litigation strategies for vetting potential class actions and discuss best practices.

PANELISTS:
Joan Fife, Winston & Strawn LLP, San Francisco, CA
Douglas L. Steele, Woodley & McGillivary LLP, Washington, DC
Juno Turner, Outten & Golden LLP, New York, NY

Practice and Professionalism
Bias, Prejudice & Harassment in the Legal Profession: A Proposal for a New Rule (E)
Cosponsored by ABA Center for Professional Responsibility
Chicago IX
The Comment to ABA Model Rule of Professional Conduct Rule 8.4 states that an attorney who, in the course of representing a client, manifests bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, may be unethical. Some states have incorporated this language into their versions of the misconduct rule. At the other extreme, some critics state that the comment lacks sufficient breadth or clarity, and that it serves no purpose because any words or conduct that are prejudicial to the administration of justice violate the misconduct rule. The ABA Standing Committee on Ethics and Professional Responsibility is currently considering an amendment that would substantially change this language in several ways. The proposed amendment would move the text from the Comment to the Rule, more clearly describe the prohibited conduct, expand the reach of the Rule, and remove the exception for conduct that is not prejudicial to the administration of justice. Join this panel as it discusses the pros and cons and what practical impact the change would have on an attorney's responsibilities.

PANELISTS:
James F. Allmendinger, Law Offices of James F. Allmendinger LLC, Concord, NH
Paula J. Frederick, State Bar of Georgia, Atlanta, GA
Wendi S. Lazar, Outten & Golden LLP, New York, NY
Myles V. Lynk, Arizona State University College of Law, Phoenix, AZ
Dayna E. Underhill, Holland & Knight LLP, Portland, OR
Program Schedule

Public Sector
* 8:00 am – 9:15 am
Off-Duty Conduct of State and Local Government Employees
Chicago VIII
Public employees are under such constant scrutiny that regulation of off-duty conduct is expected. But does the discipline differ if the employee who was arrested for DUI is a teacher, a water clerk or a police officer? Does it change if the charge is domestic violence? Public intoxication? The public might “expect more” from all public employees, but are there instances where that expectation is not just (as in “just cause”)?

PANELISTS:
Emily H. Martin, Washington Public Employment Relations Commission, Seattle, WA
Gary L. Bailey, Illinois FOP Labor Council, Western Springs, IL
Mark L. Olson, Buelow Vetter Buikema Olson Viet, LLC, Milwaukee, WI

Wage and Hour
* 8:00 am – 9:15 am
Litigating/Arbitrating Collective and Class Action Wage and Hour Cases
Chicago VII
Panelists will discuss the most recent developments related to litigation of wage and hour collective and class action cases, which may include the overtime exception under FLSA §161, trial by representative proof, use/need for experts, trial by formula, bifurcated trials, arbitration of independent contractor cases, and confirmation of awards in arbitration.

PANELISTS:
Hon. Gary Feinerman, U.S. District Court for the Northern District of Illinois, Chicago, IL
Nicholas J. Enoch, Lubin and Enoch P.C., Phoenix, AZ
Michele R. Fisher, Nichols Kaster, PLLP, Minneapolis, MN
John S. Ho, Cozen O’Connor, New York, NY
Michael J. Loeb, JAMS, San Francisco, CA

Whistleblower
* 9:30 am – 10:45 am
Recent Developments in Whistleblower Protection Law
Chicago X
This panel will focus on the key developments in whistleblower retaliation claims, including: 1) the scope of protected whistleblowing under SOX and Dodd-Frank; 2) trends in jury verdicts in federal and state whistleblower litigation; 3) the SEC’s role in combating whistleblower retaliation; 4) whistleblower protection for employees of government contractors; and 5) the SEC’s bar against gag clauses in confidentiality agreements and policies.

PANELISTS:
Megan E. Guenether, U.S. Department of Labor, Washington, DC
Gregory Keating, Choate Hall & Stewart LLP, Boston, MA
Amy Shulman, Broach & Stubbery LLP, New York, NY
Jason Zuckerman, Zuckerman Law, Washington, DC

* 11:00 am – 12:15 pm
Trying Whistleblower Retaliation Cases
Chicago X
As whistleblowers obtain record verdicts under SOX and other federal and state whistleblower protection laws, more whistleblower cases are heading to trial. This panel will offer practical tips for prosecuting and defending whistleblower retaliation cases, including effective trial themes, the use of experts concerning the objective reasonableness of a whistleblower’s alleged protected disclosures, and common evidentiary issues. In addition, the panel will address issues to explore in discovery.

PANELISTS:
Hon. Denise Page Hood, U.S. District Court for the Eastern District of Michigan, Detroit, MI
David deRubertis, The deRubertis Law Firm, APC, Studio City, CA
Robin Potter, Robin Potter & Associates, P.C., Chicago, IL
Janie F. Schulman, Morrison & Foerster LLP, Los Angeles, CA

Workplace Problems and Solutions
* 8:00 am – 9:15 am
Confidentiality, Waivers and Similar Settlement Agreement Provisions Under Scrutiny: Tell Me about Your Separation Agreement
Chicago IX
Increasingly, enforcement and regulatory agencies are challenging confidentiality provisions as part of settlement or release agreements. This panel will explore whether certain waivers of rights, confidentiality, non-disparagement and covenants not to sue or cooperate are valid in light of recent decisions by the courts as well as actions taken by agencies such as the EEOC, SEC and NLRA. Our panel will review the state of the law as well as explore best practices to avoid further disputes about these types of provisions.

PANELISTS:
Jennie Clarke, American Century Investments, Kansas City, MO
Lori L. Deem, Outten & Golden LLP, Chicago, IL
Gregory Gochanour, U.S. Equal Employment Opportunity Commission, Chicago, IL
Jennifer Kroll, Martin and Bonnett PLLC, Phoenix, AZ
Anne-Marie V. Welch, Clark Hill PLC, Detroit, MI

* 9:30 am – 10:45 am
Mergers, Integrations and RIFs: Strategies from Employer, Unions and Employee Representatives
Sheraton III
This panel will review the current legal issues that arise when advising employers, unions and individuals when a business is undergoing a merger, consolidation or integration with another entity, and the reductions in force that often accompany such actions. The focus will be on practical tips for representing employers, unions and employees in these situations at various stages including from negotiations to implementation.

PANELISTS:
Julie Stahr, Schiff Hardin LLP, Chicago, IL
Alvin Velazquez, SEIU, Washington, DC
Darlene Vorachek, Abrahamson, Vorachek & Levinson, Chicago, IL
Nicole M. Walthour, International Paper, Memphis, TN

* 11:00 am – 12:15 pm
Employment Law Issues for Veterans in the Workforce
Sheraton II
This panel will review the key fundamental protections afforded to veterans in the workplace. The latest developments on USERRA including new regulations and compliance efforts as well as the federal contractor tool kit will be reviewed. What strategies are employers using to comply with the new standards as well as create employment opportunities for veterans? The panel also will explore the latest developments and legal trends for veterans with post-traumatic disorders, 9/11 recovery workers and veterans with other disabilities.
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PANELISTS:
Andrew Braniff, U.S. Department of Justice, Washington, DC
Brian Claus, John Marshall Law School, Chicago, IL
Kenneth R. Harrison, Sr., Sugarman & Suskind, P.A., Coral Gables, FL
Esther G. Lander, Akun Gump Strauss Hauer & Feld LLP, Washington, DC
Kathryn Piscitelli, Attorney at Law, Orlando, FL

• 12:30 pm – 2:00 pm
The College of Labor & Employment Lawyers
A Theatrical Post-Trial View of a Sexual Harassment Case: Perspectives (E)
Superior A-B

Through the vehicles of both a short one-act play featuring the participants in a sexual harassment trial and a moderator-led panel discussion among a judge, arbitrator, former litigant and attorneys representing employees and management, the program will explore the obligation of trial attorneys to fully understand how the courtroom participants (the judge, the jury, the attorneys and their clients, and the witnesses) view an emotionally charged trial, focusing, in important part, on the adverse effect of incivility and a lack of professionalism in the courtroom and the arbitration forum. The following interactive audience discussion will be directed toward eliciting “war stories” of the horrors about players in the litigation scenario losing appropriate “perspective.”

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

PANELISTS:
Hon. Rebecca R. Pallmeyer, U.S. District Court for the Northern District of Illinois, Chicago, IL
Richard J. Gonzalez, Chicago-Kent College of Law, Chicago, IL
Kristen E. Michaels, McDermott Will & Emery, Chicago, IL
Lisa B. Moss, Carmell Charone Widmer Moss & Barr, Ltd., Chicago, IL
Jeanne Charles Wood, Wood ADR, Chicago, IL and Miami, FL

• 2:00 pm – 3:30 pm
How the Dust is Settling in the Wake of the 2015 Labour Trilogy from the SCC
Superior A-B

In 2015, the Supreme Court of Canada issued three landmark decisions establishing a marked shift in the relationship between the collective bargaining process and the Canadian Charter of Rights and Freedoms. Essentially reversing the position of the 1980s Supreme Court in the original labour trilogy, the Court has adopted an expansive conception of the freedom to associate which includes the right to meaningful collective bargaining and (arguably) the right to strike. The panelists will suggest potential additional consequences for trade unions and employers that may be argued by each party in the future based on these decisions.

MODERATOR:
Peter McLellan, Stewart McKelvey, Halifax, NS

PANELISTS:
Jeffrey F. Goodman, Hicks Morley, Toronto, ON
Howard Goldblatt, Goldblatt Partners LLP, Toronto, ON

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

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.
Networking and Social Events

Wednesday, November 9

• 4:30 – 5:00 p.m.
  **Law Student Orientation**  
  *Chicago IX*
  Law student attendees are invited to mingle with each other and members of the Outreach to Law Students Committee and Section Leadership prior to the start of the Conference. Students also will receive tips for making the most out of their Conference experience.

• 5:00 – 6:00 pm
  **First-Time Attendee/New Section Member Orientation**  
  *Chicago X*
  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.

• 6:00 – 8:00 pm
  **Welcome Reception and Committee Expo**  
  *Chicago VI & VII*
  All attendees are invited to meet, greet and network during this opening reception at the Sheraton Grand Chicago Hotel. Section Committees will provide information about publications, services and programs they provide to labor and employment lawyers.

Thursday, November 10

• 5:15 – 6:00 pm
  **Standing Committee Business Meetings**  
  *Sheraton and Chicago Ballrooms*
  Section of Labor and Employment Law Standing Committees will conduct business meetings in an informal setting.  
  ADR in Labor and Employment Law – Chicago VI  
  Development of the Law Under the NLRA – Sheraton I  
  Employee Benefits – Chicago VI  
  Employment Rights and Responsibilities – Chicago VII  
  Equal Employment Opportunity – Chicago VIII  
  Ethics and Professional Responsibility – Chicago VI  
  Federal Labor Standards Legislation – Chicago X  
  Federal Sector Labor and Employment Law – Chicago VI  
  International Labor and Employment Law – Chicago IX  
  Occupational Safety and Health Law – Chicago VI  
  Practice and Procedure Under the NLRA – Sheraton II  
  Railway and Airline Labor Law – Chicago VI  
  State and Local Government Bargaining and Employment Law – Sheraton III  
  Technology in the Practice and Workplace – Chicago VI  
  Workers’ Compensation – Chicago VI

• 6:30 – 7:00 pm
  **Young Lawyers Networking Reception at House of Blues**
  Members of the ABA Young Lawyers Division are invited to a special networking reception in the Foundation Room at the House of Blues.

Thursday, November 10

• 7:00 – 10:00 pm
  **Diversity and Inclusion Networking Reception at House of Blues**
  *Presented by ABA Diversity in the Legal Profession Committee*
  Join us for a social and networking reception to support the Section’s diversity and inclusion initiatives focusing on lawyers of color; female lawyers; lesbian, gay, bisexual and transgender lawyers; and lawyers with disabilities. The reception will take place at the House of Blues and will feature great food, drinks and live entertainment.

Friday, November 11

• 6:00 – 8:00 pm
  **Conference Reception at The Field Museum**
  Join with old friends and new to celebrate the 10th Annual Labor and Employment Law Conference at the magnificent Field Museum. Guests will be able to tour the wonderful exhibits from 6:00 pm until 9:00 pm.

• 8:00 – 10:00 pm
  **Committee Dinners (optional ticketed events):**
  *International Labor and Employment Law – Howells & Hood*
  *State and Local Government Bargaining and Employment Law – Trattoria No. 10*
  Tickets for these dinners may be purchased at ABA Registration Desk (limited quantities available).
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The following distinguished lawyers were elected Fellows of the College of Labor & Employment Lawyers in the Class of 2016

Paul Lancaster Adams, Philadelphia, PA
William E. Altman, Bingham Farms, MI
Elena R. Baca, Los Angeles, CA
John F. Beasley, Jr., Watkinsville, GA
John K. Bennett, Morristown, NJ
Jonathan C. Berns, St. Louis, MO
Robert Bonhomme, Montreal, QC, Canada
Jeffrey S. Bosley, San Francisco, CA
Kirsten S. Branigan, Nutley, NJ
Jeff C. Brodin, Phoenix, AZ
Paulette Brown, Morristown, NJ
William H. Brown, III, Philadelphia, PA
Carolyn Cairns, Seattle, WA
Melinda J. Caterine, Portland, ME
Terri L. Chase, New York, NY
Sally G. Cimini, Pittsburgh, PA
Erika C. Collins, New York, NY
Jac Cotiguala, Chicago, IL
Mark H. Cousens, Southfield, MI
John A. Culver, Denver, CO
Tamara L. Cummings, Western Springs, IL
Bernice B. Donald, Cincinnati, OH (Honorary)
Eric Dreiband, Washington, DC
Theresa D. Egler, Morristown, NJ
Thomas A. Farr, Raleigh, NC
Noah A. Finkel, Chicago, IL
Adam S. Forman, Southfield, MI
David S. Fryman, Philadelphia, PA
Kenneth W. Gage, New York, NY
M. Patricia Gallivan, QC, Vancouver, BC, Canada
David I. Goldman, Washington, DC (Honorary)
J. Gregory Grisham, Nashville, TN
Laura A. Gross, Gainesville, FL
Mark A. Hanley, Tampa, FL
Kathryn M. Hartrick, Evanston, IL
Brian E. Hayes, Washington, DC
William A. Herbert, New York, NY
Denise R. Hoggard, Little Rock, AR
Jane Howard-Martin, Torrence, CA
Annette Idalski, Atlanta, GA
Edward L. Isler, Vienna, VA
Harry I. Johnson, III, Santa Monica, CA
Barbara B. Johnston, QC, Calgary, Alberta, Canada
Carolyn L. Kay, Toronto, ON, Canada
Deborah P. Kelly, Washington, DC
Mark G. Kisicki, Phoenix, AZ
James H. Kizziar, Jr., San Antonio, TX
Kenneth D. Kleinman, Philadelphia, PA
Christopher Kuczynski, Washington, DC
Jeffrey A. Lee, Birmingham, AL
Brian Malsberger, Atlanta, VA (Honorary)
Lisa Manshel, Millburn, NJ
Bryant S. McFall, Dallas, TX
Thomas M. McInerney, San Francisco, CA
Neil V. McKittrick, Boston, MA
Grant L. Mitchell, QC, Winnipeg, MB, Canada
Scott S. Moore, Omaha, NE
Peter S. Ohr, Chicago, IL
Raylene Y. Palichuk, Edmonton, AB, Canada
Penelope J. Phillips, Minneapolis, MN
Andra Pollak, Toronto, Ontario (Honorary)
Theodore R. Scott, San Diego, CA
Kathleen C. Slaught, San Francisco, CA
J. Arthur Smith, III, Baton Rouge, LA
Robert B. Stulberg, New York, NY
S. Brett Sutton, Reno, NV
Nigel F. Telman, Chicago, IL
Maryse Tremblay, Montreal, QC, Canada
Robert S. Turk, Miami, FL
Susan M. Ursel, Toronto, ON, Canada
Cathy Ventrell-Monsees, Washington, DC
Jeanne M. Vonhof, Chicago, IL
John B. West, Toronto, ON, Canada
Alaine S. Williams, Philadelphia, PA
Sue K. Willman, Kansas City, MO
Susan F. Wiltse, Washington, DC
James W. Wimberly, Jr., Atlanta, GA
Jeanne C. Wood, Pembroke Pines, FL
Stephen S. Zashin, Cleveland, OH
The following distinguished lawyers were elected in the Class of 2016:

Barbara B. Johnston, QC, Calgary, Alberta, Canada
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Brian Malsberger, Arlington, VA (Honorary)
Andra Pollak, Toronto, Ontario (Honorary)
Cathy Ventrell-Monsees, Washington, DC
Thomas M. McInerney, San Francisco, CA
Christopher Kuczynski, Washington, DC
Maryse Tremblay, Montreal, QC, Canada
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