American Bar Association Section of Labor & Employment Law
National Symposium on Technology in Labor and Employment Law
April 10-12, 2019
Chicago, Illinois

AGENDA

Wednesday, April 10

6:30 – 7:30 pm  Welcome Reception at Hotel Monaco

Thursday, April 11

8:00 – 9:00 am  Registration and Continental Breakfast

9:00 – 9:15 am  Welcome and Introductions from Committee Co-Chairs
    Felicia Davis, *Paul Hastings LLP, Los Angeles, CA*
    Nicole Decter, *Segal Roitman LLP, Boston, MA*
    Zoë DeGeer, *Outten & Golden LLP, San Francisco, CA*

9:15 – 10:30 am  Leveraging Technology to Address the Wage Gap
    Pay equity among women and minorities continues to be a major problem and challenge for employers to address. Many employers are aware of pay gaps among their work force and want to address the problem. There are myriad reasons employers should want to eliminate pay gaps in their workforce. Fair pay leads to increased morale and improved productivity. It is also a powerful recruiting and retention tool, attracting better talent and reducing turnover costs. In other words, equal pay is good for business. Speakers from both sides of the debate will discuss how employers and employees can use technological advancements to narrow the wage gap.

10:30 – 10:45 am  Break

10:45 – 12:00 noon  General Data Protection Regulation (“GDPR”):
    What it Its Impact so Far, and Why U.S. Employers Should Care
    2018 was the year of data privacy compliance. Companies with operations, employees, and customers in the EU were grappling with how to ensure their processes complied with GDPR by the May deadline. In June, California passed a consumer protection law, which will undoubtedly impact employers because of its expansive definition of “consumers.” With the likelihood that other jurisdictions will pass similar laws, what do employers need to know going forward? This panel will address the practical implications that employers face in administering privacy policies and what is on the horizon for California and other US jurisdictions, nearly a year after the May GDPR deadline.

12:00 – 1:00 pm  Lunch
1:15 – 2:30 pm  The New/Old Technology Jurisprudence at the NLRB
During the time of the Obama Administration, the NLRB issued a host of decisions that expanded the Board's existing precedents on handbooks, surveillance, recognition, and workplace communications to expressly include email and social media. During the Trump Board's short tenure, it has already moved decisively, not only to limit these technology-oriented precedents but to transform the Board's underlying jurisprudence. This panel will discuss the implications of the Trump Board's recent technology-oriented decisions on the NLRA and the American workplace and consider what lies ahead.

2:30 – 4:00 pm  The Ethical Use of Artificial Intelligence in the Workforce
AI is coming: what does it mean for your business? We hear this question everywhere, across multiple industries, with no two people answering the question the same. While businesses wrestle with how to adopt artificial intelligence ("AI") technologies into their business models, the less obvious question often missed is, “what are the ethical issues associated with using AI?” This panel will discuss the ethical issues involved in implementing AI technologies in the workplace, attempts by some companies to create codes of ethics related to the use of AI, and ethical issues surrounding the use of AI by human resources to manage employees. The panel will also discuss related topics, such as intellectual property ownership of work product that is a result of AI.

4:00 – 4:15 pm  Break

4:15 – 5:15 pm  The Gig Economy Revolution and its Aftermath
How have workers, employers, and legislators responded to the explosion of the gig economy? A recent study from Intuit estimated that 36 percent of all workers are self-employed (up from 17 percent 25 years ago). By 2020, up to 43 percent of all workers will be independent contractors, whether as plumbers or working through a technology company’s app. The legal and regulatory framework for gig workers is changing at a breathtaking pace. This panel will discuss: recent litigation addressing worker (mis)classification, including new legal standards such as California’s new ABC test; the development of associations and alliances to provide benefits and services to gig workers; and legal and regulatory reform at the municipal and state level related to the growing gig workforce. The panel will also explore whether AI will eventually replace gig workers as companies invest in automation technologies.

6:30 – 9:30 pm  Dinner

Friday, April 12

8:00 – 8:45 am  Continental Breakfast and Business Meeting

8:45 – 9:00 am  ABA Section of Labor & Employment Leadership Update

9:00 – 10:15 am  Eliminating Resistance in Digital Discovery:
Reducing Frustration, Building Trust
Digital discovery can save tremendous amounts of time and money from the outset of a matter – as long as everyone is on the same page. Resistance to new concepts and distrust, however, can quickly turn the tools of electronic discovery into weapons of distraction. This panel will explore methods and procedural frameworks to successfully litigate with digital discovery by standardizing expectations of
opposing counsel and/or the judge. Points of discussion will include: negotiating scope to fit the needs of the matter, building metrics to assess the reasonable costs of digital discovery, developing consensus on forms of production, and educating opposing counsel and your judge on best practices.

10:15 – 11:15 am Biometrics and Privacy in the Workplace
Over the last decade, the use of biometrics has rapidly expanded from recognition of fingerprints, voices, and faces to heartbeats, speech patterns, hand geometry, gait, and keystrokes. Commercial and government entities continue to innovate and explore ways to leverage this technology while public and legal debate continues about biometrics. This panel will explore the (1) myriad uses of biometrics by both private and public entities as well as (2) practical consequences to biometrics use, and (3) legal challenges such as privacy, security, and the GDPR.

11:15 – 11:30 am Break

11:30 – 12:45 pm Practical Trial Skills Panel
Technology has enhanced every aspect of trying cases in the modern era. Trial attorneys have a litany of modern tools at their disposal to effectively tell their story to a jury or judge. Courtrooms are adapting to allow attorneys to leverage these ever-evolving resources. But what are the best tools and are they being used effectively? This panel will explore how to leverage trial technology and will include practical demonstrations. Specific topics will include: conducting mock trials and other forms of jury research; jury selection; how to use presentation software effectively; how to best use key documents pictures, animation, and deposition clips to enhance your narrative; and how to use graphics, multimedia, and other forms of technology in the courtroom.

12:45 – 1:15 pm Lunch

1:30 – 2:30 pm Technology Utilization and Innovation in the Age of #MeToo
The last three (3) years have produced a cascade of revelations concerning serious sexual harassment and other gender-based discrimination related misconduct throughout the American workplace. #MeToo has questioned the status quo in many, if not all, industries. How (and what) technology should be employed to address this crisis? And, what are the legal implications, practical impacts, and ethical queries for management, government, unions, and individuals when these technologies are employed? Drawing from their respective expertise and experience, this panel will address these questions in depth. In doing so, they will provide insight on technology aiming to prevent gender discrimination and sexual harassment and to assist in the investigation and resolution of claims. They will also discuss this technology’s implementation in the workplace, in investigations, and in the courtroom.

2:30 – 3:30 pm Can you Cover Payroll with Bitcoin?
Bitcoin can pay for your coffee at Starbucks, your music on iTunes, your ride on Uber, and even for your holiday presents on Amazon, but can it pay for your employees’ wages? Bitcoin is “an innovative payment network and a new kind of money.” In other words, Bitcoin is a blockchain application that allows people around the world to trade with one another without a middleman such as a bank. While other blockchain applications, i.e., Human Resources applications, are welcomed in the market, it is still taboo to pay employees with Bitcoin under United States wage regulations. The Fair Labor Standards Act requires employers
to pay employees their prescribed wages, including minimum wage and overtime compensation, in cash or negotiable instruments payable at par. State laws tack on additional requirements. Governments still struggle with regulating Bitcoin, and employers fear violating the FLSA’s mandates by compensating employees with Bitcoin. This panel will explore the definition of Bitcoin, how Bitcoin has been used in other traditional settings, a case study of employers abroad who have paid their employees’ wages with Bitcoin, and a pro/con debate on whether states should embrace Bitcoin as an authorized form of payment for wages.