13th Annual Labor and Employment Law Conference

November 6–9, 2019
Hilton New Orleans Riverside
New Orleans, Louisiana

Program Guide

Download the Event App at: www.ambar.org/laborconference
Welcome to New Orleans! We are pleased that you are joining us for the ABA Section of Labor and Employment Law’s 13th Annual Conference. This Program Guide outlines the programs and activities that are planned throughout the Conference.

In addition to outstanding CLE sessions, you can learn more about the Section and its committees. At our Welcome Reception and 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 the Diversity and Inclusion in the Legal Profession Committee, Law Student and Young/New Lawyer Outreach, Social Media Committee, publications, Member Engagement and many other activities.

A number of thought-provoking events have been planned for the Conference, including the Pro Bono Luncheon and the Diversity and Inclusion Luncheon. In addition, we hope you will attend the many social events, as well, where you can network with other Conference attendees, speakers and government officials in casual settings. Our Friday Conference Reception will feature great food, several live bands, a Second Line Parade and lots of fun!

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 generous sponsors whose contributions underwrite some of the costs of this Conference and help keep the registration fees affordable.

Once again, welcome to the 13th Annual Section Conference and to New Orleans. We look forward to visiting with you and, together, learning about the latest developments in our profession.

Christopher T. Hexter
2019–2020 Chair
St. Louis, Missouri

Samantha C. Grant
2019–2020 Chair-Elect
Los Angeles, California

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

Connect with other attendees before, during and after the Conference.

Link to the Conference webpage at www.ambar.org/laborconference.
Welcome to New Orleans!

New Orleans is pleased to host the ABA Section of Labor and Employment Law Conference once again. It is a pleasure to welcome you back to our beloved city. In addition to the exceptional Conference programming, which we expect you will find stimulating and educational, we hope you will take time to enjoy all that New Orleans has to offer. Please be sure to try all of the delicious Creole and Cajun cuisine of New Orleans as well as some of the more exotic offerings that are new to our food community. We also have wonderful museums, theatres and great music, including our famed New Orleans Jazz!

Visit the Conference webpage (www.ambar.org/laborconference) for suggestions of restaurants, events and neighborhoods you should visit, as well as music to enjoy on your visit.

For those bringing families to the meeting, please visit www.ambar.org/LELkids for recommended family friendly venues and events that we have compiled for your consideration.

We are grateful to have you all back in the Crescent City. Enjoy the Conference, and “Laissez Les Bon Temps Rouler!”

Your New Orleans Host Committee

Mark N. Mallery, Co-Chair, Employer
Julie Richard-Spencer, Co-Chair, Union & Employee
Howard Shapiro, Co-Chair, Employer

Hon. Nannette Jolivette Brown, Public
Maria C. Cangemi, Union & Employee
Brendon Davis, Employer
Keith T. Hill, Public
Hon. Ivan L. R. Lemelle, Public

Brendon Davis, Employer
Monique Gougisha Doucette, Employer
Stacey C. S. Cerrone, Employer
Michelle D. Craig, Employer
Kevin Mason-Smith, Union & Employee
Matthew M. McCluer, Employer
Monique Gougisha Doucette, Employer

Kevin Mason-Smith, Union & Employee
Matthew M. McCluer, Employer
M. Kathleen McKinney, Public

Lynne R. Stern, Neutral
Please join the College of Labor & Employments Lawyers in welcoming the following distinguished lawyers who were elected Fellows in the Class of 2019.

M. Ann Anderson, Pilot Mountain, NC
Melissa J. Auerbach, Chicago, IL
George Avraam, Toronto, ON
Tracey T. Barbaree, Atlanta, GA
Mario A. Barrera, San Antonio, TX
Jose J. Behar, Chicago, IL
Megan A. Bonanni, Royal Oak, MI
Ivelisse Bonilla, Tucson, AZ
Malcolm D. Boyle, QC, Halifax, NS
Noelle C. Brennan, Chicago, IL
Frank E. Brown, Tallahassee, FL
Alexandre W. Buswell, Montreal, QC
Richard R. Carlson, Houston, TX
Gilbert F. Casellas, Chevy Chase, MD (Honorary)
Milt Christiansen, Winnipeg, MB
Keith A. Clouse, Dallas, TX
Brendan D. Cummins, Minneapolis, MN
Maria Greco Danaher, Pittsburgh, PA
Angie Coward Davis, Memphis, TN
Joshua M. Davis, Boston, MA
Jeffrey S. Donahue, Lansing, MI
Samantha Dulaney, New York, NY
Patricia A. Dunn, Washington, DC
Robert M. Elliot, Winston-Salem, NC
Cliff Freed, Seattle, WA
Jonathan C. Fritts, Washington, DC
Samuel R. Fulkerson, Oklahoma City, OK
Ruben J. Garcia, Las Vegas, NV
John L. Gierak, Birmingham, MI
Jeremy J. Glenn, Chicago, IL
Jill A. Goldy, Chicago, IL
Jennifer S. Hagerman, Memphis, TN
Kenneth R. Harrison, Coral Gables, FL
Peter F. Helwig, Lakeland, FL
Wade W. Herring, II, Savannah, GA
Cathi J. Hunt, Everett, WA
Fred B. Jacob, Washington, DC
Karen Ann Jensen, Ottawa, ON

David L. Johnson, Nashville, TN
Robert L. Jones, Jr., Ft. Worth, TX
Michael G. Kane, Westfield, NJ
Mark L. Keenan, Atlanta, GA
M. Brian Keller, Nepean, ON
Brian J. Kelly, Cleveland, OH
Daren H. Lipinsky, Chino Hills, CA
Margaret J. Lockhart, Toledo, OH
Louis Lopez, Washington, DC
Paul J. Lukas, Minneapolis, MN
Nancy H. Maisano, Seattle, WA
David A. McManus, New York, NY
Rafael E. Medina, Chicago, IL
John R. Merinar, Jr., Bridgeport, WV
Michael D. Mitchell, Houston, TX
Evan R. Moses, Los Angeles, CA
Patricia M. Nemeth, Detroit, MI
Danielle L. Ochs, San Francisco, CA
Stephanie Padilla, Denver, CO
Kathleen Peratis, New York, NY
Rebecca G. Pontikes, Boston, MA
Eric D. Reicin, McLean, VA
Mori P. Rubin, Los Angeles, CA
Jennifer L. Sabourin, Detroit, MI
Rebecca L. Salawdeh, Wauwatosa, WI
Theodore (Ted) A. Schroeder, Pittsburgh, PA
Jason C. Schwartz, Washington, DC
Douglas T. Schwarz, New York, NY
Michael J. Sheehan, Chicago, IL
Kenneth B. Siepman, Indianapolis, IN
Mary Ellen Simonson, Phoenix, AZ
Jonathan L. Snare, Washington, DC
John L. Stout, Toronto, ON
Joan M. Swartz, St. Louis, MO
Arnold W. (Trip) Umbach, III, Birmingham, AL
Darrell R. VanDeusen, Timonium, MD
John A. Vering III, Kansas City, MO
George L. Washington, Jr., Oak Hill, VA
Douglas M. Werman, Chicago, IL
Carolyn L. Wheeler, Washington, DC
Nicholas Wyckoff Woodfield, Washington, DC
Melissa S. Woods, New York, NY
Mark A. Wright, Toronto, ON
Julie B. Yanow, Toluca Lake, CA
General Information

Program Locations
All CLE sessions will take place at the Hilton New Orleans Riverside except the College of Labor and Employment Lawyers program on Saturday, November 9, which will be at the Loews New Orleans Hotel. Specific meeting room assignments are listed on the Schedule of Events (pages 10–25).

CLE Accreditation Information
The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, CT, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, ME, MN, MP, MS, MO, MT, NH, NJ, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI and WV. These states sometimes do not approve a program for credit before the program occurs. This course is expected to qualify for 15 CLE credit hours (including 5 ethics hours) in 60-minute states, and 19.2 credit hours (including 6 ethics hours) in 50-minute states. Credit hours are estimated and are subject to each state's approval and credit rounding rules. For more information about CLE accreditation in your state, visit https://www.americanbar.org/events-cle/mcle.

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

Award Presentations
The Section awards will be presented on Friday, November 8 at 9:30 a.m. in the Grand 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 2019 award will be presented to James Baird.

• 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, government, civic, community or religious organizations designed primarily to address the needs of individuals with limited means.

CONGRATULATIONS, JIM!
The attorneys of Clark Baird Smith LLP wish to congratulate Jim Baird, 2019 recipient of the ABA’s prestigious Arvid Anderson Public Sector Labor and Employment Attorney of the Year Award.

Jim, your 50+ years of practicing law has substantially contributed to the development of public sector labor law, in the tradition of Arvid Anderson.

You have contributed countless hours to the ABA, including past service as an ABA governor, as well as significant involvement with the Labor and Employment Law Section, and the Section’s State and Local Government Bargaining and Employment Law Committee, for several decades.

You have authored or co-authored numerous books and articles on important public sector law topics.

You were a founding partner of Clark Baird Smith LLP.

Thanks Jim, for your leadership, guidance and friendship.

From your colleagues at Clark Baird Smith LLP

Ted Clark  Jim Powers  Kelly Coyle
Bob Smith  Ben Gehrt  Paul Denham
Yvette Heintzelman  Abby Rogers  Roxana Underwood
Jill Leka

CLARK BAIRD SMITH LLP
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6133 N. RIVER ROAD, SUITE 1120
ROSEMONT, IL 60018
847.378.7700
WWW.CBSLAWYERS.COM
YOU WANT EMPLOYMENT LAWYERS WHO CAN CUT THROUGH THE COMPLEXITY

WE HEAR YOU.

Today’s workplace is more difficult to manage than ever before.

And the list of state and federal regulations continues to grow every year.

Our Labor & Employment Group works closely with HR departments and company leaders to resolve – and prevent – disputes and costly litigation.

We’re known for creative advice and practical solutions.


Qualities you look for in a lawyer.

Fox Rothschild LLP
ATTORNEYS AT LAW
950 attorneys nationwide
Wednesday, November 6

4:00 pm – 8:00 pm
Conference Registration

4:30 pm – 5:00 pm
Law Student Orientation pgs 10, 26

5:00 pm – 5:30 pm
Track Coordinator Orientation pg 10

5:00 pm – 6:00 pm
First-Time Attendee/ New Section Member Orientation pgs 10, 26

6:00 pm – 8:00 pm
Welcome Reception and Committee Expo pgs 10, 26

Thursday, November 7

8:00 am – 9:15 am
CONCURRENT PROGRAMS
  • Balancing Employee Rights under the National Labor Relations Act with Employer Obligations under Title VII pg 11
  • How to Avoid and Respond to Sanctionable Conduct: Lessons from inside the Sandbox (Ethics) pg 13
  • Living the High Life: How Legalizing Marijuana Impacts the Modern Workplace pg 12
  • The Role of the Lawyer and Ethics Dilemmas (Ethics) pg 14
  • State Law Limitations on the Use of Non-Competition or Non-Solicitation Agreements: How Enforcement Actions Are Impacted in this Ever-Changing Landscape pg 13
  • When and Where Are Public Employee Strikes Legal? pg 14

9:45 am – 10:00 am
Welcome and Introductions

11:30 am – 12:45 pm
CONCURRENT PROGRAMS
  • Alphabet Soup and the Employment Lawyer: The Interplay of FMLA, ADA and WC pg 14
  • The Brave New World: NAFTA 2.0, BREXIT and Cross-Border Labor Migration pg 12
  • Determining Pregnancy- and Disability-Related Leaves pg 11

2:30 pm – 3:45 pm
CONCURRENT PROGRAMS
  • Causation Standards under Employment Discrimination Statutes: But-For, Motivating Factor, Pretext: What Does It All Mean? pg 11
  • Crafting Winning Opening Statements and Closing Arguments for a Judge or Arbitrator pg 13

3:45 pm – 5:00 pm
CONCURRENT PROGRAMS
  • The Current Administration’s Impact on the Federal Workplace pg 12
  • The EEOC’s Pay Reporting Requirement: Will It Persist and Impact the Pay Gap? pg 15

4:00 pm – 5:15 pm
CONCURRENT PROGRAMS
  • Meet the National Labor Relations Board General Counsel pg 13
  • Navigating an Employee Benefit Plan Audit pg 11

5:15 pm – 6:00 pm
Standing Committee Business Meetings pg 26

7:00 pm – 10:00 pm
Committee Dinners (ticketed) pg 26

International Labor and Employment Law – Arnaud’s
State and Local Government Bargaining and Employment Law – Mother’s Next Door

Friday, November 8

8:00 am – 9:15 am
CONCURRENT PROGRAMS
  • Employee Protest, Political Action and Freedom of Speech in the Modern Workplace pg 22
  • Navigating State Wage and Hour Laws pg 21
  • NLRA Basics: An Interactive Labor Law Primer (Fundamentals) pg 19
  • OFCCP’s New Focused Reviews pg 18
  • Technology in the Age of #MeToo pg 20

9:45 am – 10:00 am
Presentation of Section Awards

10:00 am – 11:15 am
PLENARY SESSION
  The Power of People Analytics pg 15

11:30 am – 12:45 pm
CONCURRENT PROGRAMS
  • Addressing Workplace Mental Health Issues around the World pg 19
  • The Ethics of Collective Bargaining (Ethics) pg 19
  • Meet the U.S. Department of Labor: A Discussion of Strategic Initiatives in 2019 and Beyond pg 21
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Saturday, November 9

8:00 am – 9:00 am
VALUES TRACK
Body Wisdom and Mindfulness Tools to Enhance Workplace Performance pg 23

9:00 am – 10:15 am
CONCURRENT PROGRAMS
• How to Achieve Diversity and Inclusion in Arbitrator Selection pg 23
• LGBTQ Issues before the Supreme Court pg 23
• Name that Objection pg 24
• NLRB Rulemaking under the APA: Proposals to Revive Notice and Comment Rulemaking and Its Effect on Practitioners pg 23
• Solving the Privacy Puzzle in the Workplace pg 25
• The State of OSHA Inspections Post-Mar Jac pg 24
• Wage and Hour Fundamentals (Fundamentals) pg 24

10:45 am – 12:00 noon
CONCURRENT PROGRAMS
• All You Need to Know about the 2018 Rule 23 Amendments pg 24
• Attorneys’ Fees and Costs in Wage and Hour Class and Collective Actions pg 25
• Developments in Sarbanes-Oxley, Dodd-Frank and the SEC Whistleblower Program pg 25
• Employee Use of Personal Technology at the Workplace pg 23
• Gamification in Employee Recruiting and Selection pg 24
• Harassment Claims in the Wake of the #MeToo Movement: To Arbitrate or Not to Arbitrate, That is the Question pg 23

12:30 pm – 2:00 pm
COLLEGE OF LABOR AND EMPLOYMENT LAWYERS PROGRAM:
Retrospectives on Labor and Employment Law pg 25

Conference Program At-A-Glance

• Protecting Diversity Programs in a Damore Era: Strategies for the Successful Creation and Implementation of Aggressive Diversity Programs pg 22
• Surveillance, Perception of Surveillance and the Challenges of Work in the Age of Scanners, Electronic Communication and Social Media (Ethics) pg 21
• Tips for Identifying the Best Jury for Your Case in the Social Media Age pg 20
• Who is Entitled to Protection from Retaliation? (Fundamentals) pg 18

4:00 pm – 5:15 pm
CONCURRENT PROGRAMS
• Class Action Certifications: When and How to Challenge and The Best Defenses to Withstand the Challenge pg 20
• Class Discovery in Wage and Hour Litigation pg 21
• Does the Railway Labor Act Need a Formal Union Decertification Procedure? pg 19
• Emerging and Evolving ADA Issues, including Website Accessibility, Service/Emotional Support Animals and Neurodiverse Hiring pg 22
• Ethical Strategies for Dealing with Overly Aggressive Counsel: You Can Go Higher (Fundamentals/Ethics) pg 20
• Is Using Implicit Bias to Prove Discrimination under Title VII and Other Antidiscrimination Statutes a Viable Option? pg 18
• Recent Developments at OSHA pg 20

6:00 pm – 7:00 pm
Second Line Parade from Hilton to House of Blues pg 26

7:00 pm – 10:00 pm
Conference Reception at House of Blues pg 26
Wednesday, November 6

• 4:30 pm – 5:00 pm
Law Student Orientation
Grand Salon 9
Law student attendees are invited to mingle with each other and members of the Outreach to Law Students Committee 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 – 5:30 pm
Track Coordinator Orientation
Grand Salon 15

• 5:00 pm – 6:00 pm
First-Time Attendee/ New Section Member Orientation
Grand Salon 1
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 pm – 8:00 pm
Welcome Reception and Committee Expo
Grand Ballroom
All attendees are invited to meet, greet and network during this opening reception at the Hilton New Orleans Riverside. Section Committees will offer information about publications, services and programs they provide to labor and employment lawyers.

Thursday, November 7

7:00 am – 8:00 am
Continental Breakfast
Grand Ballroom A&B
Sponsored by Jackson Lewis P.C.

Thursday’s 9:15 am – 9:45 am
Refreshment Break is sponsored by Polsinelli PC.

Thursday’s 11:15 am – 11:30 am
Refreshment Break is sponsored by Morgan, Lewis & Bockius LLP.

12:45 pm – 2:15 pm
Diversity and Inclusion Luncheon
Featuring Ted Shaw, Director, Center for Civil Rights, University of North Carolina School of Law at Chapel Hill; former Director-Counsel and President, NAACP Legal Defense and Educational Fund, Inc., St. Charles Ballroom, 3rd Floor
Presented by the Diversity and Inclusion in the Legal Profession Committee
Co-sponsored by: Barnes & Thornburg LLP; Borden Ladner Gervais LLP; Brownstein Hyatt Farber Schreck, LLP; Davis Wright Tremaine LLP; Epstein Becker & Green, P.C.; Faegre Baker Daniels LLP; Farella Braun + Martel LLP; Fisher & Phillips, LLP; Greenberg Traurig LLP; Jones Day; Lanier Muchin; Lief Cabraser Heimann & Bernstein, LLP; Littler Mendelson PC; Ogletree, Deakins, Nash Smoak & Stewart PC; O’Melveny & Myers LLP; Orrick Herrington & Sutcliffe LLP; Rosen Marsili Rapp LLP; Seyfarth Shaw LLP; Society for Human Resource Management; Van Dyrmeyden Maddux Law Corporation

Plenary Sessions

• 9:45 am – 10:00 am
Welcome and Introductions
Grand Ballroom C
Judy Perry Martinez, President, American Bar Association, New Orleans, LA
Christopher T. Hexter, Chair, ABA Section of Labor and Employment Law, St. Louis, MO
Samantha C. Grant, Chair-Elect, ABA Section of Labor and Employment Law, Los Angeles, CA

• 10:00 am – 11:15 am
Supreme Court Review
Grand Ballroom C
The Section Secretary will review recent decisions from the Supreme Court and look at what is in the pipeline for the coming term.
SPEAKER:
Peggie R. Smith, Washington University School of Law, St. Louis, MO

• 12:45 pm – 2:15 pm
Diversity and Inclusion Luncheon
Featuring Ted Shaw, Director, Center for Civil Rights, University of North Carolina School of Law at Chapel Hill; former Director-Counsel and President, NAACP Legal Defense and Educational Fund, Inc.

MODERATOR:
Cynthia E. Nance, University of Arkansas School of Law, Fayetteville, AR

PANELISTS:
Dennis M. McClelland, Phelps Dunbar LLP, Tampa, FL
P. Casey Pitts, Atchuelev Berzon LLP, San Francisco, CA
Lynn Rhinehart, Economic Policy Institute, Washington, DC
George L. Washington, Jr., Orange Business Services, Oak Hill, VA
**Discrimination, Harassment and Retaliation Track**  
Sponsored by Welch Consulting

- **8:00 am – 9:15 am**  
  **Balancing Employee Rights under the NLRA with Employer Obligations Under Title VII**  
  Grand Ballroom D  
  This panel will explore the tension that exists, or that is perceived to exist, between the right of employees to engage in protected concerted activity under the National Labor Relations Act and the obligation of employers to prevent discrimination and harassment under the federal and state discrimination laws. What special considerations are involved in investigating, prosecuting and defending these types of claims in concert in unionized and nonunionized workplaces? When does an employer go too far in seeking to prevent or punish arguably offensive employee conduct involving workplace issues? Where do the NLRB and the EEOC stand on this and what regulatory guidance exists to clarify the issues? How might Title VII litigation be impacted by a concurrent arbitration proceeding concerning whether the plaintiff was disciplined for “just cause” under the collective bargaining agreement or employment agreement?

  **PANELISTS:**  
  Kimberley Chaput, Association of Flight Attendants, Astoria, OR  
  Amber Trzinski Fox, U.S. Equal Employment Opportunity Commission, Washington, DC  
  Sidney O. Minter, Jackson Lewis PC, Raleigh, NC  
  Gillian Thomas, ACLU Women’s Rights Project, New York, NY  
  Trish Wray, Duke Energy Corporation, Charlotte, NC

- **11:30 am – 12:45 pm**  
  **Determining Pregnancy- and Disability-Related Leave**  
  Grand Salon 19  
  Panelists will discuss the interplay between accommodation and leave requests under the PDA, ADAAA and FMLA, along with the potential consequences for mishandling such requests. Learn best practices for employers and employees in navigating this process and hear a discussion of the latest litigation trends.

  **PANELISTS:**  
  Stephen P. Beiser, McGinley Stafford, New Orleans, LA  
  Paul W. Mollica, Outten & Golden LLP, Chicago, IL  
  Peter Varney, UNC Health Care, Chapel Hill, NC  

**Employee Benefits Track**

- **11:30 am – 12:45 pm**  
  **What Every Employment Litigator Should Know About Employee Benefits Before and During Settlement**  
  Grand Salon 13  
  The resolution of employment litigation often involves issues related to employee benefits. This program will explore employee benefit issues for employment litigators.

  **PANELISTS:**  
  Maria C. Cangemi, Robein, Urann, Spencer, Picard & Cangemi, APLC, New Orleans, LA  
  Stacey C.S. Cerrone, Proskauer Rose LLP, New Orleans, LA  
  Denise M. Clark, The Clark Law Group, Washington, DC

- **2:30 pm – 3:45 pm**  
  **Causation Standards under Employment Discrimination Statutes: But-For, Motivating Factor, Pretext: What Does It All Mean?**  
  Grand Ballroom D  
  Although plaintiffs always bear the burden of proving discrimination, the causation standards courts have constructed do not always seem to mean the same thing to every judge in every jurisdiction. This presentation will explore how causation standards do or do not differ at various procedural stages of a case and when attempting to prove a claim of Title VII discrimination, Title VII retaliation, age discrimination under the Age Discrimination in Employment Act, and other common types of discrimination claims.

  **PANELISTS:**  
  Stephen P. Beiser, McGinley Stafford, New Orleans, LA  
  Paul W. Mollica, Outten & Golden LLP, Chicago, IL  
  Peter Varney, UNC Health Care, Chapel Hill, NC  

- **2:30 pm – 3:45 pm**  
  **Navigating an Employee Benefit Plan Audit**  
  Grand Salon 12  
  The U.S. Department of Labor conducts investigations of pension, 401(k), health and welfare, and other types of employee benefit plans. This panel will discuss the DOL investigatory process and prepare advocates to help their clients navigate a DOL investigation.

  **PANELISTS:**  
  Benjamin Eisner, Spear Wilderman PC, Philadelphia, PA  
  Aliya Robinson, ERISA Industry Committee (ERIC), Washington, DC  
  Michelle Thomas, Kaiser Permanente, Oakland, CA
Federal Sector Track
• 2:30 pm – 3:45 pm
The Current Administration’s Impact on the Federal Workplace
Grand Salon 1
This panel will review the key changes that the Trump Administration has brought to the federal workforce. Both the implemented and proposed changes have raised a host of legal issues that will be discussed, including the First Amendment and free speech rights for federal workers, collective bargaining rights, and the impact of the May 2018 Executive Orders on the federal workplace. Panelists will offer their insights about how the Trump Administration approaches these rights and responsibilities, as well as suggest best practices for dealing with the new political realities.

PANELISTS:
Cathy Harris, Kator, Parks, Weiser & Harris, PLLC, Washington, DC
Tristan Leavitt, U.S. Merit Systems Protection Board, Washington, DC
Cathie McQuiston, American Federation of Government Employees, Washington, DC
Jeff Rosenblum, Federal Deposit Insurance Corporation, Washington, DC
Nick Schwellenbach, Project on Government Oversight (POGO), Washington, DC

International Track
• 11:30 am – 12:45 pm
The Brave New World: NAFTA 2.0, BREXIT and Cross-Border Labor Migration
Grand Salon 12
Political and economic changes are sweeping the globe, as are changes to the common law, statutory and regulatory framework governing a global workforce. Until now, citizens of European Union member states have been entitled to free movement across borders. UK employers have been free to employ French, Polish and other EU citizens from outside the UK, and European employers have been free to hire British citizens. Simultaneously, NAFTA provided employers with some ability to move key personnel, especially executives, managers and professionals, across borders among Canada, the US and Mexico. The United States-Mexico-Canada Agreement (USMCA), which, assuming ratification, will replace NAFTA, has somewhat different provisions about cross-border employee mobility. This panel will examine, from a comparative perspective, the effects of these changes on US-based employers operating in the UK, the EU and in multiple countries within North America.

PANELISTS:
Ovaldo O. Barsanti, D’Auria & Barsanti, Buenos Aires, Argentina
Mia Belk, Dentsply Sirona, York, PA
Owen E. Harrnstadt, International Association of Machinists & Aerospace Workers, Upper Marlboro, MD
Danny J. Kauper, Borden Ladner Gervais LLP, Montréal, QC
Marcia Longdon, Kingsley Napley, London, United Kingdom
Kushal Patel, Laura Devine Attorneys, New York, NY

Labor-Management Relations Track
Sponsored by American Arbitration Association
• 8:00 am – 9:15 am
Living the High Life: How Legalizing Marijuana Impacts the Modern Workplace
Grand Salon 18
With the explosion of states legalizing marijuana for medical and/or recreational use, employers are more frequently confronting how to deal with employees who use marijuana, including considerations related to drug testing policies. Indeed, employers in this new industry themselves face intriguing challenges in operating businesses that violate federal law while being sanctioned by certain states. This program will address substantive and procedural issues from the perspective of the employer,
employee and union representatives, identifying current legal obligations and forecasting on where these obligations may change as legalized marijuana becomes even more widespread.

PANELISTS:
Bennett Allen, Cook & Logothenis, LLC, Cincinnati, OH
Luis Avila, Varnum LLP, Grand Rapids, MI
Erica Brown, Dawn Foods Global, Jackson, MI
Geoffrey A. Mort, Kraus & Zachlewski LLP, New York, NY

11:30 am – 12:45 pm
Meet the National Labor Relations Board
Grand Salon 18
There have been significant changes in the priorities of the NLRB since the Obama Board. Hear from the Chairman and Members of the Trump Board as they discuss and share insights on decisions as well as agency initiatives and developments since their panel last year.

PANELISTS:
Hon. John F. Ring, National Labor Relations Board, Washington, DC
Hon. Lauren McFerran, National Labor Relations Board, Washington, DC
Hon. Marvin E. Kaplan, National Labor Relations Board, Washington, DC
Hon. William J. Emanuel, National Labor Relations Board, Washington, DC

MODERATORS:
Jennifer Platczere Snyder, Dilworth Paxson LLP, Philadelphia, PA
Gwynne A. Wilcox, Levy Ratner, P.C., New York, NY

2:30 pm – 3:45 pm
Meet the National Labor Relations Board General Counsel
Grand Salon 18
Having completed nearly two years in office, the General Counsel of the NLRB will discuss his vision as General Counsel as well as recent developments, initiatives and changes that have been implemented since last year’s Conference.

MODERATORS:
Jennifer Abruzzo, Communication Workers of America, Washington, DC
Amy J. Zdravecky, Barnes & Thornburg LLP, Grand Rapids, MI

PANELISTS:
Hon. Peter B. Robb, National Labor Relations Board, Washington, DC
Alice B. Stock, National Labor Relations Board, Washington, DC

Litigation and Class Action Track
Sponsored by Welch Consulting
8:00 am – 9:15 am
State Law Limitations on the Use of Non-Competition or Non-Solicitation Agreements: How Enforcement Actions Are Impacted in this Ever-Changing Landscape
Grand Salon 13
Several states have enacted or are in the process of enacting laws restricting the use of non-competition and non-solicitation agreements. How do these laws square up with the Defend Trade Secrets Act, and what is a litigator’s best strategy for enforcement/defense of these restrictive agreements? How does the employer/employee’s conduct impact enforcement actions?

PANELISTS:
Joseph Y. Ahmad, Ahmad, Zavitsanos, Anfiakos, Alivi & Mensing P.C., Houston, TX
Danielle Woods Coleman, VMWare, San Francisco, CA
William Hamilton, University of Florida College of Law, Gainesville, FL
Eric A. Tate, Morrison & Foerster, San Francisco, CA

MODERATOR:
Denis Dembowski, Bloomberg Law, Washington, DC

11:30 am – 12:45 pm
Motions in Limine: How to Best Use them to Your Advantage
Grand Salon 9
Motions in limine are usually an afterthought. But thinking early about how they can be used to your advantage may be an important strategic benefit. This panel will discuss the pros and cons of motions in limine, which ones plaintiffs and defendants should consider filing and looking out for, and how to draft and respond to them.

PANELISTS:
Hon. Carl J. Barbour, U.S. District Court for the Eastern District of Louisiana, New Orleans, LA
Uche N. Egemonye, U.S. Department of Labor, Atlanta, GA
Marcus G. Keegan, Keegan Law Firm, LLC, Atlanta, GA
Vanessa M. Kelly, Clark Hill PLC, Princeton, NJ

2:30 pm – 3:45 pm
Crafting Winning Opening Statements and Closing Arguments for a Judge or Arbitrator
Grand Salon 3
During the opening statements and closing arguments in a bench trial or arbitration, it is essentially the lawyer that is on trial. This panel will discuss the function and role of both opening statements and closing arguments and how they differ, including how to set the tone for trial or arbitration and how to develop a coherent theme that is ultimately knit together in the end. Panelists will provide tips on engaging a judge or arbitrator (as opposed to a jury) from the start and becoming likeable and trustworthy – two essential components for an effective trial lawyer.

PANELISTS:
Hon. LaShann deArcy Hall, U.S. District Court for the Eastern District of New York, New York, NY
Hon. Irma E. Gonzalez (ret.), JAMS, San Diego, CA
Denise K. Drake, Polsinelli PC, Kansas City, MO
Megan Mechak, McLinvilleary Steele Elkin LLP, Washington, DC

Practice and Professionalism Track
8:00 am – 9:15 am
How to Avoid and Respond to Sanctionable Conduct: Lessons from the Sandbox (Ethics)
Grand Salon 1
This panel will use real-life labor and employment cases and inspired-by-a-true-story hypotheticals to discuss different types of sanctionable conduct, how to avoid unintentional mishaps, and how to respond when opposing counsel goes low.

PANELISTS:
Hon. Christopher “Casey” Cooper, U.S. District Court for the District of Columbia, Washington, DC
Paula J. Frederick, State Bar of Georgia, Atlanta, GA
Ellen J. Messing, Messing, Rudavsky & Wéliky, P.C., Boston, MA
Dawn Siler-Nixon, FordHarrison, Tampa, FL
Public Sector Track

- **8:00 am – 9:15 am**
  **When and Where Are Public Employee Strikes Legal?**
  Grand Salon 12
  Over the last few years a number of public employee strikes arose across the country. Most notably, there have been teacher strikes in several “red” states that have received national attention. This session will look at public employee strikes, at the differences in various states’ laws governing public employee strikes, and the outcome of recent public employee strikes.

  **PANELISTS:**
  - Lewis G. Brewer, Lewis G. Brewer PLLC, Charleston, WV
  - Emma Leheny, National Education Association, Washington, DC
  - Emily Martin, Washington Public Employment Relations Commission, Kirkland, WA
  - Alexander A. Molina, Los Angeles Unified School District, Los Angeles, CA

- **11:30 am – 12:45 pm**
  **First Responders, Social Media and the First Amendment: A Difficult Mix**
  Grand Salon 1
  This panel will review recent cases under §1083 raising First Amendment challenges to employment terminations for social media use by first responders. Courts are increasingly deferring to the interests of the public employer. The panel will explore whether this is a trend or a reaction to the unique role of first responders in our communities.

  **PANELISTS:**
  - Amanda Clark, Asher Gittler & D’Alba Ltd., Chicago, IL
  - Curtis Hale, Poltrock & Poltrock, Chicago, IL
  - Kay B. Hodge, Stoneman, Chandler & Miller LLP, Boston, MA
  - Eric Rodriguez, Miami-Dade County Attorney’s Office, Miami, FL

Whistleblower Track

- **8:00 am – 9:15 am**
  **Whistleblower Laws and Issues from Across the Globe: It’s a Small World After All**
  Grand Salon 19
  Like it or not, we live in a global world: many American employers operate in multiple countries. What whistleblower protections do those countries have, and how do they compare with ours? What are the employers’ systems for complying with these numerous laws? Can foreign employees blow the whistle in the US under US law? What are the pluses and minuses of the multiple systems, both for employers and for employees? The panel will explore these and related topics and provide practical advice for employers and employees operating – or thinking of operating – outside the US.

  **PANELISTS:**
  - Deborah Casale, Slater and Gordon Lawyers, London, United Kingdom
  - Andrea Gangemi, Portolano Cavallo, Milan, Italy
  - Mary Inman, Constantine Cannon LLP, London, United Kingdom
  - Jane A. Norberg, Securities and Exchange Commission, Washington, DC
  - Victoria Richter, Deutsche Bank, New York, NY

Workplace Problems and Solutions Track

- **8:00 am – 9:15 am**
  **The Role of the Lawyer and Ethics Dilemmas (Ethics)**
  Grand Salon 3
  Lawyers often are asked about a range of issues. Is it the lawyer’s role to provide ethical advice to employees or business ethics advice to employers? What are lawyers’ obligations to keep clients honest? What is legal versus business or non-legal advice? This panel will explore the extent of lawyers’ obligations, whether communications are subject to the attorney/client privilege when lawyers act as business partners or confidants, and what steps lawyers should take to differentiate their roles and protect attorney/client privileged communications.

  **PANELISTS:**
  - Jonathan Ben-Asher, Ritz, Clark & Ben-Asher, New York, NY
  - Heather R. Boshak, Fox Rothschild LLP, Morristown, NJ
  - Paula Johnston, Education Minnesota, Minneapolis, MN
  - Bobby Simpson, General Electric, Louisville, KY

Workers’ Compensation Track

- **11:30 am – 12:45 pm**
  **Ensuring Pay Equity**
  Grand Salon 1
  In addition to the federal Equal Pay Act, states are adding or strengthening laws requiring equal pay for equal work. This program will go beyond a survey of the law and will identify legal risks and practical tips to promote pay equity. How can an employer provide equal pay for substantially equal work? The panel will discuss how to determine whether jobs
are comparable, conduct pay equity analysis, determine whether differences in pay are based on legitimate factors other than sex, and address unexplained pay differentials.

**PANELISTS:**
- Eve H. Cervantez, Altshuler Berzon LLP, San Francisco, CA
- Erin M. Connell, Orrick, Herrington & Sutcliffe LLP, San Francisco, CA
- Ellen Weitz, Siemens, Houston, TX
- Nathan D. Woods, Ph.D., Edgeworth Economics, L.L.C., Washington, DC

**Friday, November 8**

- **2:30 pm – 3:45 pm**
  **The EEOC’s Pay Reporting Requirement: Will It Persist and Impact the Pay Gap?**
  Grand Salon 19

  Earlier this spring, the U.S. District Court for the District of Columbia ordered the EEOC to reinstate a pay data requirement. The EEOC has since announced that covered U.S. employers must submit pay data for calendar years 2017 and 2018 by September 30, 2019. The EEOC recently confirmed it will not require pay data in future EEO-1 reporting cycles. The pay reporting requirement and state equal pay and pay transparency laws continue to create new legal obligations but also increase pressure for a greater understanding of pay equity issues, including how to address or explain pay gaps. This panel will explore the EEO-1 Component 2 pay reporting requirement for 2019, the impact of other pay reporting requirements around the globe, whether the reporting requirement will move the needle toward more equitable pay, and other practical and privacy implications.

  **PANELISTS:**
  - Olamide Adetunji, SEIU, Washington, DC
  - Joshua Mitchell, Ph.D., Welch Consulting, Los Angeles, CA
  - Maranda Rosenthal, American Airlines, Fort Worth, TX
  - Anne B. Shaver, Lieff, Cabraser, Heimann & Bernstein, LLP, San Francisco, CA

**Plenary Sessions**

- **9:45 am – 10:00 am**
  **ABA Section of Labor and Employment Law Award Presentations**
  Grand Ballroom C

- **10:00 am – 11:15 am**
  **The Power of People Analytics**
  Grand Ballroom C

  Employers are using people analytics to make employment decisions. Some employers have entire people analytics teams to further business goals such as recruiting and selecting employees, increasing productivity, improving employee morale, and implementing diversity and inclusion initiatives. As the use of people analytics grows in the workplace, it is important for labor and employment lawyers to understand this burgeoning field and its impact on the workplace. This panel will explore the science behind people analytics, how C-Suites and HR teams are using this data publicly and internally for diversity and inclusion purposes, and the many litigation-related questions this data collection raises. Panelists will consider these questions and provide insights into whether the use of people analytics is more helpful or hurtful to workplaces and diversity and inclusion initiatives.

  **PANELISTS:**
  - Peter Boumgarden, Ph.D., Washington University in St. Louis, St. Louis, MO
  - Emily M. Dickens, Society for Human Resource Management, Alexandria, VA
  - James M. Finberg, Altshuler Berzon LLP, San Francisco, CA
  - Samantha C. Grant, Sheppard Mullin Richter & Hampton LLP, Los Angeles, CA

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

(Continued on page 18)
13th Annual Labor and Employment Law Conference

**WEDNESDAY, NOVEMBER 6**

- **4:00pm – 8:00pm**  Conference Registration  Grand Ballroom A&B
- **4:30pm – 5:00pm**  Law Student Orientation  Grand Salon 9 (pages 10, 26)
- **5:00pm – 5:30pm**  Track Coordinator Orientation  Grand Salon 15 (page 10)
- **5:00pm – 6:00pm**  First-Time Attendee/New Section Member Orientation  Grand Salon 1 (pages 10, 26)
- **6:00pm – 8:00pm**  Welcome Reception and Committee Expo  Grand Ballroom (pages 10, 26)

**THURSDAY, NOVEMBER 7**

- **7:00am – 8:00am**  Continental Breakfast  Grand Ballroom A&B
- **8:00am – 9:15am**  Balancing Employee Rights Under the NLRA with Employer Obligations Under Title VII  Grand Ballroom D, page 11
- **8:00am – 9:15am**  How to Avoid and Respond to Sanctionable Conduct: Lessons from Inside the Sandbox  Grand Salon 1, page 13
- **8:00am – 9:15am**  Living the High Life: How Legalizing Marijuana Impacts the Modern Workplace  Grand Salon 18, page 12

- **9:45am – 10:00am**  Plenary Session: Welcome and Introductions  Grand Ballroom C (page 10)
- **10:00am – 11:15am**  Plenary Session: Supreme Court Review  Grand Ballroom C (page 10)
- **11:30am – 12:45pm**  Alphabet Soup and the Employment Lawyer: The Interplay of FMLA, ADA and WC  Grand Ballroom D, page 14
- **11:30am – 12:45pm**  The Brave New World: NAFTA 2.0, BREXIT and Cross-Border Labor Migration  Grand Salon 12, page 12
- **12:45pm – 2:15pm**  Diversity and Inclusion Luncheon (ticketed event)  St. Charles Ballroom, 3rd Floor (page 10)
- **2:30pm – 3:45pm**  Causation Standards under Employment Discrimination Statutes: But-For, Motivating Factor, Pretext: What Does It All Mean?  Grand Ballroom D, page 11
- **2:30pm – 3:45pm**  Crafting Winning Opening Statements and Closing Arguments for a Judge or Arbitrator  Grand Salon 3, page 13
- **2:30pm – 3:45pm**  The Current Administration’s Impact on the Federal Workplace  Grand Salon 1, page 12

- **4:00pm – 5:15pm**  Plenary Session: The Changing Workplace  Grand Ballroom C (page 10)
- **5:15pm – 6:00pm**  Standing Committee Business Meetings  See page 26 for locations.
- **7:00pm – 10:00pm**  Young Lawyers Dine-Around  (page 26)
- **7:00pm – 10:00pm**  Committee Dinners (optional ticketed events)  (page 26)

**FRIDAY, NOVEMBER 8**

- **7:00am – 8:00am**  Continental Breakfast  Grand Ballroom A&B
- **8:00am – 9:15am**  Employee Protest, Political Action and Freedom of Speech in the Modern Workplace  Grand Ballroom D, page 22
- **8:00am – 9:15am**  Navigating State Wage and Hour Laws  Grand Salon 1, page 21
- **8:00am – 9:15am**  NLRA Basics: An Interactive Labor Law Primer (Fundamentals)  Grand Salon 19, page 19

- **9:45am – 10:00am**  Plenary Session: Presentations of Section Awards  Grand Ballroom C (page 15)
- **10:00am – 11:15am**  Plenary Session: The Power of People Analytics  Grand Ballroom C (page 15)
- **11:30am – 12:45pm**  Addressing Workplace Mental Health Issues around the World  Grand Salon 19, page 19
- **11:30am – 12:45pm**  The Ethics of Collective Bargaining: Bigger and Better?  Grand Salon 3, page 19
- **11:30am – 12:45pm**  Meet the Department of Labor: A Discussion of Strategic Initiatives in 2019 and Beyond  Grand Salon 18, page 21

- **12:45pm – 2:15pm**  Pro Bono Luncheon (ticketed event)  Marlborough Room, 2nd Floor (page 15)
- **12:45pm – 2:15pm**  In-House Corporate Counsel Luncheon (ticketed event; in-house corporate counsel only)  St. Charles Ballroom, 3rd Floor (page 10)
- **2:15pm – 3:30pm**  Addressing Constructive Discharge in the Individual Discrimination and Harassment Claim  Grand Salon 18, page 18
- **2:15pm – 3:30pm**  Are Grassroots Movements the New Enforcers?  Grand Salon 12, page 22
- **2:15pm – 3:30pm**  Crafting Winning Opening Statements and Closing Arguments in a Jury Trial  Grand Salon 1, page 20

- **4:00pm – 5:15pm**  Class Action Certifications: When and How to Challenge and The Best Defenses to Withstand the Challenge  Grand Salon 19, page 20
- **4:00pm – 5:15pm**  Class Discovery in Wage and Hour Litigation  Grand Salon 13, page 21
- **4:00pm – 5:15pm**  Does the Railway Labor Act Need a Formal Union Decertification Procedure?  Grand Salon 12, page 19

- **6:00pm – 7:00pm**  Second Line Parade from Hilton to House of Blues  Hilton Lobby (page 26)
- **7:00pm – 10:00pm**  Conference Reception at House of Blues  House of Blues, 225 Decatur Street (page 26)

**SATURDAY, NOVEMBER 9**

- **7:30am – 9:00am**  Continental Breakfast  Grand Ballroom A&B
- **8:00am – 9:00am**  VALUES TRACK: Body Wisdom & Mindfulness Tools to Enhance Workplace Performance  Grand Ballroom 9 (page 23)
- **9:00am – 10:15am**  How to Achieve Diversity and Inclusion in Arbitrator Selection  Grand Salon 12, page 23
- **9:00am – 10:15am**  LGBTQ Issues before the Supreme Court  Grand Salon 3, page 23
- **9:00am – 10:15am**  Name that Objection  Grand Salon 13, page 24

- **10:45am – 12:00pm**  All You Need to Know About the 2018 Rule 23 Amendments  Grand Salon 12, page 24
- **10:45am – 12:00pm**  Attorneys’ Fees and Costs in Wage and Hour Class and Collective Actions  Grand Salon 19, page 25
- **10:45am – 12:00pm**  Developments in Sarbanes-Oxley, Dodd-Frank and the SEC Whistleblower Program  Grand Salon 1, page 25

- **12:30pm – 2:00pm**  The College of Labor and Employment Lawyers Program: Retrospectives on Labor and Employment Law  NOTE: This program will be presented at the Loews
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Hotel in the Feliciana Room. (page 25)
Discrimination, Harassment and Retaliation Track
Sponsored by Welch Consulting

• 8:00 am – 9:15 am
  OFCCP’s New Focused Reviews
  Grand Salon 12
This session will examine how OFCCP’s efforts to change disability compliance and inclusion have impacted federal contractors’ and subcontractors’ compliance efforts and explore whether OFCCP’s emphasis on disability compliance will be an impetus for a culture change. Panelists will discuss the current status of the reviews and also will provide insights on how to create a diverse and inclusive workplace culture for individuals with disabilities.

PANELISTS:
  Keir Bickerstaffe, U.S. Department of Labor, Washington, DC
  Craig E. Leen, U.S. Department of Labor, Washington, DC
  Catherine (Cay) Thompson, Raytheon Company, Boston, MA
  Annette Tyman, Seyfarth Shaw LLP, Chicago, IL

• 11:30 am – 12:45 pm
  Who is Entitled to Protection from Retaliation? (Fundamentals)
  Grand Salon 1
In Thompson v. North American Stainless, the Supreme Court held “firing a close family member [of a complainant] will almost always” permit a claim for third party retaliation. Since Thompson, third party retaliation claims have continued to grow. This panel will discuss how courts have determined whether different co-employee relationships were sufficient to allow a third party retaliation claim to proceed. The panel will also compare the analysis of third party claims under Title VII with analysis of such claims under anti-retaliation provisions of other labor laws such as the FLSA.

PANELISTS:
  Yvette D. Everhart, Sass Law Firm, Tampa, FL
  Janis Johnson, SunTrust Banks, Atlanta, GA
  Nolan Lafer, Bittman & King LLP, Syracuse, NY
  Angelique R. Vincent-Hamacher, Robinson, Bradshaw & Hinson, P.A., Charlotte, NC

• 2:15 pm – 3:30 pm
  Addressing Constructive Discharge in the Individual Discrimination and Harassment Claim
  Grand Salon 18
When the plaintiff quits prior to a distinct adverse action, a host of issues arise. Was the plaintiff’s decision justified? What evidence do you need to prove constructive discharge? What’s the impact on damages? This panel will use hypothetical scenarios to explain how to prove or disprove constructive discharge and succeed at trial. The panel also will explore how constructive discharge impacts damages and strategies to maximize or minimize the emotional distress damages that result.

PANELISTS:
  Wynter P. Allen, Alden Law Group, PLLC, Washington, DC
  Lucas J. Kaster, Nichols Kaster, PLLP, Minneapolis, MN
  Frank Martinez, LVMH Moët Hennessy Louis Vuitton Inc., New York, NY
  Carson H. Sullivan, Paul Hastings LLP, Washington, DC

• 4:00 pm – 5:15 pm
  Is Using Implicit Bias to Prove Discrimination under Title VII and Other Antidiscrimination Statutes a Viable Option?
  Grand Salon 18
It is common knowledge that implicit bias is a real phenomenon – no matter how self-aware a person claims to be, everyone harbors some internal biases. But can an employee successfully claim that his or her employer’s implicit biases motivated an adverse action? How “intentional” does the discrimination have to be? Is expert testimony on this subject admissible? This panel will explore parties’ use of implicit bias and the testimony of social science experts to prove or rebut claims of employment discrimination. In addition to addressing employee’s and employer’s experience with using implicit bias as a strategy, this presentation will feature a social science expert who has been retained in employment matters and a judge to discuss her experience with the use of implicit bias in employment cases and her reactions when employees use this evidence to criticize the decisions of their employers.

PANELISTS:
  Hon. J. Michele Childs, U.S. District Court for the District of South Carolina, Columbia, SC
  Lloyd B. Chinn, Proskauer Rose LLP, New York, NY
  Lindsey E. Krause, Nichols Kaster, PLLP, Minneapolis, MN
  Melissa S. Woods, Cohen, Weiss and Simons LLP, New York, NY
  Sheree C. Wright, Vanderbilt University, Nashville, TN

Immigration and Human Trafficking Track

• 8:00 am – 9:15 am
  What Every Labor and Employment Lawyer Needs to Know about Immigration Law (Fundamentals)
  Grand Salon 3
This program will take the foundation provided at the 2018 Conference and expand upon it in key areas, including common visa classifications (H-1B and H-2B), worksite enforcement, reductions in force, and mergers and acquisitions. Guided by expert practitioners, this panel will help those wishing to cross over into the practice of immigration law – or those wishing to learn how to spot immigration issues – gain a stronger foundation for doing so.

PANELISTS:
  Kathryn Brown, Justice at Work, Philadelphia, PA
  Jonathan A. Grode, Green & Spiegel LLC, Philadelphia, PA
  Monica T. Guizar, Weinberg & Rosenfeld, Los Angeles, CA
  Marisa Warren Sternstein, Dentons Aegis Network, New York, NY

• 2:15 pm – 3:45 pm
  Revisiting Creative Responses to Gender-Based Violence in the Workplace and in Global Supply Chains
  Grand Salon 19
Gender-based violence continues to be a severe workplace issue that leaves women workers more vulnerable to human trafficking and other labor abuses. In June 2017, the International Labor Organization’s (ILO) began a world-wide Dialogue on Violence Against Women and Men in the Workplace. Since then, a broad range of creative proposals have been advanced to improve working conditions and legal compliance with international and
### Labor-Management Relations Track

**8:00 am – 9:15 am**

**NLRA Basics:**

**An Interactive Labor Law Primer (Fundamentals)**

**Grand Salon 19**

Using a series of hypotheticals drawn from real-life scenarios, this program will lead the audience step by step through various legal issues arising under the National Labor Relations Act, beginning with issues facing non-union workplaces, and continuing through union organizing drives, collective bargaining and various scenarios that could create unfair labor practices.

**Panelists:**

- Allison Anderson, Foley Hoag LLP, Boston, MA
- Steven Flaggler, WestRock Company, Atlanta, GA
- Genaira Tyce, National Labor Relations Board, Brooklyn, NY
- Lindsey Wagner, Scott Wagner & Associates, Los Angeles, CA
- Hannah S. Weinstein, Rothner, Segall & Greenstone, Pasadena, CA

### 11:30 am – 12:45 pm

**The Ethics of Collective Bargaining: Bigger and Better! (Ethics)**

**Grand Salon 3**

As last year’s popular interactive ethics program made clear, union and management attorneys face a myriad of ethical issues in negotiating collective bargaining agreements. Against a new factual backdrop, this program will allow attendees to explore more ethical issues that arise in connection with collective bargaining and labor relations issues.

**Panelists:**

- Vanessa D. Bullock, Federal Mediation and Conciliation Service, Philadelphia, PA
- Pamela Chandra, UNAC/UHCP, San Diego, CA
- Ellen Crane, Saginaw Valley State University, University Center, MI
- Susan Davis, Cohen, Weiss and Simon LLP, New York, NY
- Jamie R. Rich, Greenberg Traurig, LLP, San Francisco, CA

### 2:15 pm – 3:30 pm

**Evolving Labor Issues in the Gig Economy**

**Grand Ballroom D**

The rise of the gig economy – characterized by employment relationships that are designed to be temporary and flexible – has presented unique issues in the area of labor law. With this type of employment relationship becoming increasingly common, how should practitioners confront common labor problems in this new context? Panelists will provide an open-ended exploration of the issues involved for various practitioners.

**Panelists:**

- Johnna Bentley, SEIU, Washington, DC
- Caryl L. Flannery, Centene Corporation, St. Louis, MO
- Richard F. Griffin Jr., Bredhoff & Kaiser PLLC, Washington, DC
- Lori Armstrong Halber, Reed Smith LLP, Philadelphia, PA

### 4:00 pm – 5:15 pm

**Does the Railway Labor Act Need a Formal Union Decertification Procedure?**

**Grand Salon 12**

Panelists will debate whether the National Mediation Board should institute a formal decertification procedure.

**Panelists:**

- Kevin Brodar, United Transportation Union, North Olmsted, OH
- Rachel S. Janger, O’Melveny & Myers LLP, Los Angeles, CA
- Stephen B. Moldof, Cohen, Weiss and Simon LLP, New York, NY

### Litigation and Class Action Track

Sponsored by Welch Consulting

**8:00 am – 9:15 am**

**Trying the Challenging Employment Case**

**Grand Salon 18**

This panel will discuss strategies for trying some of the more complex/thorny issues in a sexual harassment case to a jury, judge or arbitrator. Issues to be considered include the handling of delayed reporting of harassment by the plaintiff (e.g., “Why Did I Report?” arguments), the introduction of, and challenges to, “MeToo” evidence, addressing the continuing violation theory at trial, direct and cross-examination of alleged harassers and victims, and handling challenges presented by the “serial plaintiff” and the “equal opportunity offender.”

**Panelists:**

- Sarah Chilton, CM Murray LLP, London, United Kingdom
- Link Christin, Caron Treatment Centers, Wernersville, PA
- Cristiano Cominotto, AL Assistenza Legale, Milan, Italy
- Judy Krebs, SEIU 775, Seattle, WA
- Camille A. Olson, Seyfarth Shaw LLP, San Francisco, CA
Panelists:
Hon. Rebecca R. Pallmeyer, U.S. District Court for the Northern District of Illinois, Chicago, IL
Lisa J. Banks, Katz, Marshall & Banks, Washington, DC
Eric L. Barnum, Baker & Hostetler LLP, Atlanta, GA
Sara J. Geenen, The Previant Law Firm, S.C., Milwaukee, WI
• 11:30 am – 12:45 pm
Tips for Identifying the Best Jury for Your Case in the Social Media Age
Grand Salon 12
Jury selection is as important as any other aspect of trial. Ideally, you will have given thought to a strategy for identifying potential jurors who will be best for your case and set of claims. In the short amount of time you have with potential jurors, how do you obtain information and best identify the juror that is perfect for your case, or worse, the disaster juror? How do you demonstrate your likeability and trustworthiness during a process where you are eliminating jurors or peering into their personally held beliefs and private life? Panelists will provide their views on jury selection dos and don’ts.
Panelists:
Hon. Nannette Jolivette Brown, U.S. District Court for the Eastern District of Louisiana, New Orleans, LA
Justin Mulaire, U.S. Equal Employment Opportunity Commission, New York, NY
Michael P. Royal, Littler Mendelson P.C., Dallas, TX
Michael C. Subit, Frank Freed Subit & Thomas LLP, Seattle, WA
Jill Huntley Taylor, Ph.D., Dispute Dynamics, Philadelphia, PA
• 2:15 pm – 3:30 pm
Crafting Winning Opening Statements and Closing Arguments in a Jury Trial
Grand Salon 1
During the opening statements and closing arguments in a jury trial, it is essentially the lawyer that is on trial. This panel will discuss the function and role of both opening statements and closing arguments and how they differ, including how to set the tone for trial and how to develop a coherent theme that is ultimately knit together in the end. Panelists also will provide tips on engaging the jury from the start and becoming likeable and trustworthy – two essential components for an effective trial lawyer.
Panelists:
Hon. Leslie J. Abrams Gardner, U.S. District Court for the Middle District of Georgia, Atlanta, GA
Maureen S. Binetti, Wilentz, Goldman & Spitzer, P.A., Woodbridge, NJ
Kim Boyle, Phelps Dunbar LLP, New Orleans, LA
Laurie M. Burgess, Messing Adam & Jasmine LLP, San Francisco, CA
• 4:00 pm – 5:15 pm
Class Action Certifications: When and How to Challenge and The Best Defenses to Withstand the Challenge
Grand Salon 19
In a mock argument format, defense counsel will challenge class certification with plaintiff’s counsel providing the rebuttal. A judge will decide each argument as raised, including lack of commonality of law or facts, class representatives are not truly representative, due process concerns for the defendant, right to raise individualized defenses, lack of standing, etc. The judge will provide feedback on successful arguments/defenses presented and in litigations before the judge and the sufficiency of the evidence relied upon by the defendant.
Panelists:
Hon. Mary S. Scriven, U.S. District Court for the Middle District of Florida, Tampa, FL
Lincoln Bisbee, Morgan, Lewis & Bockius LLP, Washington, DC
J. Derek Braziel, Lee & Braziel, LLP, Dallas, TX
Aaron D. Kaufmann, Leonard Carder LLP, Oakland, CA
OSHA Track
• 4:00 pm – 5:15 pm
Recent Developments at OSHA
Grand Salon 1
The panel will discuss the state of the Occupational Safety and Health Administration during the first two years of the Trump Administration. Panelists will discuss what they are seeing in OSHA enforcement, litigation and new or pending rule or policy changes.
Panelists:
Esmeralda Aguilar, Sherman Dunn, P.C., Washington, DC
Eric J. Conn, Conn Maciel Carey LLP, Washington, DC
Anne R. Godoy, U.S. Department of Labor, Washington, DC
Nicole Marquez, Worksafe, Oakland, CA
Practice and Professionalism Track
• 4:00 pm – 5:15 pm
Ethical Strategies for Dealing with Overly Aggressive Counsel: You Can Go Higher (Ethics/Fundamentals)
Grand Salon 3
Facing scorched earth tactics and other unprofessional conduct and/or unethical tactics from counsel can be daunting for everyone but especially for new attorneys. This program will use scenarios from labor and employment cases to discuss what counsel should do when faced with challenging behavior. Learn to push back ethically and professionally at depositions, telephone conferences, email and motion and practice work.
Panelists:
Hon. Karen Wells Roby, U.S. District Court for the Eastern District of Louisiana, New Orleans, LA
Blanca Banuelos, California Rural Legal Assistance, Stockton, CA
Eric W. Iskra, Spilman Thomas & Battle PLLC, Charleston, WV
Nicole E. Teixeira, Leonard Carder LLP, Oakland, CA
Technology Track
• 8:00 am – 9:15 am
Technology in the Age of #MeToo
Grand Salon 13
The #MeToo and #TimesUp movements have produced a cascade of revelations concerning serious sexual harassment and other gender-based discrimination in the workplace. These movements have questioned the status quo in many, if not all, industries. How (and what) should technology 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, panelists will provide insight on technology aiming to prevent pay inequities, 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.
Wage and Hour Track
Sponsored by Welch Consulting

8:00 am – 9:15 am
Navigating State Wage and Hour Laws
Grand Salon 1

Many states have wage and hour laws that offer greater protections to workers and stricter requirements for employers than the FLSA. Application of the states’ ABC and other tests for determining whether a worker is an employee and longer statutes of limitations are just two examples. Workers are increasingly bringing state law claims instead of or in conjunction with FLSA claims. This panel will explore trends in state law claims being filed (including tip credit and fluctuating work week pay period issues as well as different standards for penalties) and discuss best practices to ensure employer compliance.

Panelists:
Gail Schnitzer Eisenberg, Stowell & Friedman, Ltd., Chicago, IL
Angie Cowan Hamada, Allison Slutsy & Kennedy, P.C., Chicago, IL
Michelle G. Marks, Epstein Becker & Green, P.C., Chicago, IL
Jenny R. Yang, Senior Fellow, Urban Institute, Washington, DC

11:30 am – 12:45 pm
Surveillance, Perception of Surveillance and the Challenges of Work in the Age of Scanners, Electronic Communication and Social Media (Ethics)
Grand Ballroom D

In the last two decades, technologies that track the conduct of employees (and prospective employees) on, and off, duty have increased exponentially. Most Americans have online consumer and social media footprints that are massive, which often are accessible to employers. This panel will consider these tracking technologies and the use of workers’ electronic data, how they are being used, ethical and legal considerations from employer, employee, union and government perspectives, and the use of data drawn from these technologies in litigation.

Panelists:
Gail A. Glick, Alexander Krakow + Glick LLP, Los Angeles, CA
Nicky Jatana, Jackson Lewis P.C., Los Angeles, CA
Gavin W. Manes, Ph.D., Aranovic, Tulsa, OK
Steven C. Steinberg, Anti-Defamation League, Washington, DC
Clement L. Tsao, Brustetter, Stroum & Jennings, PLLC, Nashville, TN

2:15 pm – 3:30 pm
Valuing a Wage and Hour Case and Calculating Damages
Grand Salon 18

This panel will discuss questions that arise in case valuation such as participation rates, likelihood of success, statutes of limitations, liquidated damages, and other remedies. Panelists will address strategies for proving or disproving hours worked along with technical issues, including what constitutes compensable and overtime rate, and whether a .5 or 1.5 overtime premium is appropriate. The impact of bench versus jury trial on these issues will be explored, along with a discussion of hot button issues in mediation concerning the case value.

Panelists:
Hon. Virginia Hernandez Covington, U.S. District Court for the Middle District of Florida, Tampa, FL
Hunter Hughes, Alternative Dispute Resolution, Atlanta, GA
Theodora R. Lee, Littler Mendelson P.C., Walnut Creek, CA
Lawrence Morales II, The Morales Firm, P.C., San Antonio, TX
David Ricksecker, McGillivary Steele LLP, Washington, DC

4:00 pm – 5:15 pm
Class Discovery in Wage and Hour Litigation
Grand Salon 13

Discovery in class and collective actions can be daunting, and the rules and requirements are constantly evolving. Learn from experienced panelists about issues that arise in conducting discovery in wage and hour actions, and hear about best practices and strategies for implementing an effective discovery plan. Representative discovery, depositions, ESI and common discovery disputes will be addressed.

Panelists:
Hon. Becky R. Thorson, U.S. District Court for the District of Minnesota, Minneapolis, MN
Oswald B. Cousins, Morrison & Foerster LLP, Palo Alto, CA
Valentin Estévez, Ph.D., Welch Consulting, Bryan, TX
Troy L. Kessler, Shulman Kessler LLP, Melville, NY
Joshua F. Young, Gilbert & Stackman, Los Angeles, CA

Whistleblower Track

2:15 pm – 3:45 pm
Ethical and Strategic Issues When the Whistleblower is a Gatekeeper (Ethics)
Grand Salon 3

There are myriad ethical and strategic issues that arise when lawyers, accountants and compliance professionals blow the whistle against corporate fraud. This panel will explore the many issues from the multiple perspectives and different statutes, including the False Claims Act, the SEC whistleblower provisions, SOX and OSHA-administered whistleblower retaliations statutes. Professional ethics issues also will be explored for the whistleblower and counsel.
13th Annual Labor and Employment Law

Workplace Problems and Solutions Track
Sponsored by EmployStats

• 8:00 am – 9:15 am
Employee Protest, Political Action and Freedom of Speech in the Modern Workplace
Grand Ballroom D

Protests increasingly are moving into the workplace with the 2017 Day Without Immigrants, the NFL players, Google, etc. This panel will explore the legal protections and limits on employee free speech in government and private sector union and non-union workplaces. Panelists will discuss recent developments under Section 7 of the National Labor Relations Act, the interplay between free speech rights/lawful off duty conduct and antidiscrimination or retaliation protections, and what type of activity is protected.

• 11:30 am – 12:45 pm
Protecting Diversity Programs in a Damore Era: Strategies for the Successful Creation and Implementation of Aggressive Diversity Programs
Grand Salon 13

How can employers move the needle on diversity in a meaningful, measurable and lawful way? Efforts to create a more diverse and inclusive workforce and to expand and strengthen opportunities for underrepresented talent fall in the good bucket, but how employers try to achieve diversity can violate anti-discrimination laws if developed improperly. How do Students for Fair Admissions, Inc. v. President and Fellows of Harvard College et al. and other recent cases guide affirmative action for employers? This panel will discuss the legal risk associated with implementing aggressive diversity initiatives or affirmative action programs and best practices to successfully implement programs while minimizing legal risk.

• 2:15 pm – 3:30 pm
Are Grassroots Movements the New Enforcers?
Grand Salon 12

Employees, independent contractors and unions are increasingly using social media and grassroots movements to seek transparency, accountability and social responsibility from employers. What do organizers need to consider when driving these campaigns, especially in the context of public sector walk-outs? What impact do such movements have on employers’ reputations, decision-making and workplace practices? This panel will explore whether grassroots efforts by workers, employees and unions are driving change in employment policies and cultures, how employers are or should be responding, and legal and other issues that these stakeholders should expect to confront in the near future.

Panelists:

Connie N. Bertram, Polsinelli PC, New York, NY
Channah Broyde, U.S. Department of Labor, Atlanta, GA
Melinda C. Burrows, NetScout Systems, Inc., Westford, MA
Michael Filoromo, III, Katz, Marshall & Banks, LLP, Washington, DC
Mark Hanna, Murphy Anderson PLLC, Washington, DC

Panelists:

Christopher David Ruiz Cameron, Southwestern Law School, Los Angeles, CA
Brent L. Garren, SEIU 32BJ, New York, NY
Daniel L. Nash, Akin Gump Strauss Hauer & Feld LLP, Washington, DC
Andrew Miragliaotta, National Labor Relations Board, New Orleans, LA
Christine E. Webber, Cohen Milstein Sellers & Toll PLLC, Washington, DC

Panelists:

Mark Hanna, Murphy Anderson PLLC, Washington, DC

Panelists:

M. Carter DeLorme, Jones Day, Washington, DC
Nick Kalm, Reputation Partners, Chicago, IL
Mark D. Risk, Mark Risk PC, New York, NY
Maneesh Sharma, United Steelworkers, Pittsburgh, PA

Moderator:

Molly Gabel, Alaska Airlines, Seattle, WA

Emerging and Evolving ADA Issues, including Website Accessibility, Service/Emotional Support Animals and Neurodiverse Hiring
Grand Ballroom D

This panel will explore the new meaning of equal employment opportunity for individuals with disabilities. What are the accessibility requirements for employers’ websites and apps? How should employers evaluate requests to bring service and emotional support animals to work? Can employers focus on hiring veterans with disabilities or individuals with particular kinds of disabilities who are well-suited for jobs in their workforce such as recovering substance abusers? What are neurodiverse hiring initiatives? Can employers single out specific types of disabilities (e.g., autism spectrum disorders or “more severe” disabilities) for special hiring? How can employers avoid job segregation?

Panelists:

Jillian M. Cutler, Frank Freed Subit & Thomas LLP, Seattle, WA
Dana Lossia, Levy Ratner, PC, New York, NY
Shelly Carthen Watson, University of Minnesota, Minneapolis, MN
Jennifer T. Williams, Cozen O’Connor, Miami, FL

Moderator:

Dori Goldstein, Bloomberg Law, Washington, DC
### Values Track

**8:00 am – 9:00 am**

**Body Wisdom and Mindfulness**

**Tools to Enhance Workplace Performance**

Grand Salon 9

A senior executive corporate lawyer and a professional yoga teacher and life coach will provide practical tools for mindfulness at work. Maximize your workplace performance, make sound decisions, and navigate stressful decision making using brain and body wisdom. Drawing from several decades of legal experience and coaching strategies, the speakers will offer mindfulness-based exercises and tips to conserve and restore energy, so you can build resilience that can be called upon in moments of crisis.

**SPEAKERS:**
- Leonard Shen, Visa, Inc., San Jose, CA
- Cindy Walker, eRYT CLC, Mindful Movement, Los Gatos, CA

### Alternative Dispute Resolution Track

**Sponsored by JAMS**

**9:00 am – 10:15 am**

**How to Achieve Diversity and Inclusion in Arbitrator Selection**

Grand Salon 12

Parties select arbitrators based upon a reputation for acceptability and fairness. However, parties have criticized the makeup of arbitration panels as being too white, too male and too old. Yet those same parties select “who they know” to hear and resolve disputes presented. The recruitment and advancement of women and persons of color to serve as arbitrators and mediators presents a vexing problem in the labor and employment ADR community. This panel will discuss the challenges and opportunities in developing more diverse rosters of arbitrators.

**PANELISTS:**
- Hon. Candace Cooper (ret.), JAMS, Los Angeles, CA
- Allison Gambill, Brownstein Hyatt Farber Schreck, LLP, Denver, CO
- Wesley Kennedy, Allison, Slutsky & Kennedy, P.C., Chicago, IL
- Homer LaRue, Howard University School of Law, Washington, DC
- Jon H. Rosen, The Rosen Law Firm, Seattle, WA
- Alan A. Symonette, Arbitrator, Philadelphia, PA

### Discrimination, Harassment and Retaliation Track

**Sponsored by Welch Consulting**

**9:00 am – 10:15 am**

**LGBTQ Issues before the Supreme Court**

Grand Salon 3

Pending before the Supreme Court is a trilogy of cases concerning whether LGBTQ individuals are protected under Title VII. The panel will discuss these cases, G. & G.R. Harris Funeral Homes, Inc. v. EEOC, Altitude Express, Inc. v. Zarda, and Bostock v. Clayton County, Georgia, and other significant cases impacting the LGBTQ community in the queue and ripe to be heard by the U.S. Supreme Court.

**PANELISTS:**
- J. Randall Coffey, Fisher & Phillips LLP, Kansas City, MO
- Duncan Crabtree-Ireland, SAG-AFTRA, New York, NY
- Louis Lopez, U.S. Office of Special Counsel, Washington, DC
- Gregory R. Nevins, Lambda Legal, Washington, DC

### Labor-Management Relations Track

**Sponsored by American Arbitration Association**

**9:00 am – 10:15 am**

**NLRB Rulemaking under the APA: Proposals to Revive Notice and Comment Rulemaking and Its Effect on Practitioners**

Grand Salon 19

The NLRB recently published a Notice of Proposed Rulemaking in the Federal Register regarding its joint-employer standard. The NLRB General Counsel has expressed a preference for notice-and-comment rulemaking in important areas of labor law under the assumption that such rulemaking would foster predictability, consistency and stability. What is the current status of the NLRB’s rulemaking authority under the APA? To what extent is deference afforded to the agency under Chevron, Skidmore as revived by Mend, and other federal authority? To what extent is notice-and-comment rulemaking preferable to judicial rulemaking, or vice-versa, in the unique context of labor law? What role should the NLRB play in fostering labor relations?

**PANELISTS:**
- Daniel E. Curry, Schwartz Stein sapir Dohrmann & Sommers, Los Angeles, CA
- RyAnn McKay Hooper, Epstein Becker & Green, P.C., New York, NY

**MODERATOR:**
- Nicole Mormilo, National Labor Relations Board, Washington, DC

**10:45 am – 12:00 noon**

**Employee Use of Personal Technology at the Workplace: Bound and Gagged at Work or Fair Limits to Ensure Productivity?**

Grand Salon 3

The world is increasingly tech dependent and employers want tech savvy employees who can communicate with ease on today’s devices and apps. Yet many
employers want these same employees to effectively check their tech at the office door. How is the Board currently balancing employee use of technology to exercise Section 7 rights against the right of employers to control their property and workplace? From recording devices, to email and the internet, this panel will look at the Trump Board’s revisiting of employee rights to use tech at work, including those recently secured by key Obama Board decisions.

**PANELISTS:**
- Katherine “Katy” Dunn, SEIU Local 32BJ, New York, NY
- Ashley Eddy Kott, MGM Resorts International, Las Vegas, NV
- Kathleen McKinney, National Labor Relations Board, New Orleans, LA
- Amber M. Rogers, Hunton Andrews Kurth LLP, Houston, TX
- Teri Guttman Valdes, Teri Guttman Valdes LLC, Coral Gables, FL

**Litigation and Class Action Track**

Sponsored by Welch Consulting

**9:00 am – 10:15 am**

**Name that Objection**

Grand Salon 13

Trial attorneys often have only split seconds to process objectionable questions or testimony and address the court with cogent and persuasive argument rebutting it. Panelists will discuss how to recognize the most frequent objections, preserve an objection for appeal purposes, and sharpen objection reflexes. The panel also will provide tips for identifying objectionable testimony after it is given and what to do when the “cat is out of the bag.”

**PANELISTS:**
- Hon. Ivan L. R. Lemelle, U.S. District Court for the Eastern District of Louisiana, New Orleans, LA
- Allison Balus, Baird Holm LLP, Omaha, NE
- Kevin D. Fitzpatrick Jr., DeLong, Caldwell, Bridgers, Fitzpatrick & Benjamin, L.L.C., Atlanta, GA

**10:45 am – 12:00 noon**

**All You Need to Know About the 2018 Rule 23 Amendments**

Grand Salon 12

For the first time in 15 years, Federal Rule of Civil Procedure 23, governing class actions, has been amended. This panel will address the key changes to the Rule that are likely to impact future federal class action litigation. Topics will include notice to class members by any “appropriate means,” notice of proposed settlement, core factors for the court to consider in approving settlements, amendments designed to discourage bad faith objections, and changes to appealable issues.

**PANELISTS:**
- Tracey Holmes Donesky, Stinson Leonard Street LLP, Minneapolis, MN
- Loren B. Donnell, Burr & Smith, LLP, Fort Lauderdale, FL
- Jennifer L. Kroll, Martin & Bonnett P.L.L.C., Phoenix, AZ

**OSHA Track**

**9:00 am – 10:15 am**

**The State of OSHA Inspections Post-Mar Jac**

Grand Salon 15

On October 9, 2018, the U.S. Court of Appeals for the Eleventh Circuit upheld a district court’s order quashing an Occupational Safety and Health Administration inspection warrant. OSHA unsuccessfully challenged the district court’s finding that the agency lacked administrative probable cause based on injuries noted on a company’s OSHA Form 300 logs. The panel will discuss whether Mar-Jac Poultry impairs OSHA’s ability to rely upon 300 logs and similar evidence as the basis for obtaining an administrative search warrant. The panel will also address related legal issues that may arise during various stages of an OSHA inspection.

**PANELISTS:**
- Victoria L. Bor, Sherman Dunn, P.C., Washington, DC
- Juan Lopez, U.S. Department of Labor, Arlington, VA
- Shontell Powell, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Atlanta, GA
- Jora Trang, Worksafe, Washington, DC

**Technology Track**

**10:45 am – 12:00 noon**

**Gamification in Employee Recruiting and Selection**

Grand Salon 9

Companies in all industries, from technology to food service, have introduced gamification into the recruiting and hiring process. Now that law firms are on board, the technology looks like it is here to stay. But do pre-employment games really help select the best applicants? Do they favor millennials over older workers? Do applicants of certain ethnicities fare better? This panel will tell you everything you need to know about the gamification of recruiting, what technologies employers are using, whether they accurately predict employee success, and whether they can be validated to eliminate bias.

**PANELISTS:**
- Kate Bischoff, tHRise Law & Consulting LLC, Minneapolis, MN
- Andrzej Carberry, John Deere, Moline, IL
- Eric Dunleavy, Ph.D., DCI Consulting Group, Washington, DC
- Peter Romer-Friedman, Outten & Golden LLP, Washington, DC

**Wage and Hour Track**

Sponsored by Welch Consulting

**9:00 am – 10:15 am**

**Wage and Hour Fundamentals (Fundamentals)**

Grand Salon 1

This panel will discuss wage and hour fundamentals all management and
employee attorneys should know. From the nuts and bolts of the FLSA, to what to expect in wage and hour litigation, this panel will give an overview of important issues to practitioners who are new to the wage and hour arena or need a refresher. Common mistakes employers make under federal and state wage and hour law will also be discussed.

**PANELISTS:**
- Elizabeth Gropman, Leonard Carder, LLP, Oakland, CA
- Laura Ho, Goldstein, Borgen, Dardarian & Ho, Oakland, CA
- N. Katie Manley, Morgan Stanley, New York, NY
- Jibraun Riaz, Davis Wright Tremaine LLP, Los Angeles, CA

- **10:45 am – 12:00 noon**
  **Attorneys’ Fees and Costs in Wage and Hour Class and Collective Actions**
  **Grand Salon 19**

  The FLSA mandates the award of reasonable attorneys’ fees and costs to a prevailing plaintiff. This panel will analyze how courts are determining a reasonable fee in settlement and post-trial and what costs are being permitted as recoverable. Common funds, lodestars and multipliers will be discussed, along with challenges defendants are making in disputed fee requests. Limitations on the recoverability of costs, such as expert fees, travel and computer aided research tools, will also be explored.

  **PANELISTS:**
  - Hon. Janis van Meerveld, U.S. District Court for the Eastern District of Louisiana, New Orleans, LA
  - Jason C. Marsili, Rosen Marsili & Rapp LLP, Los Angeles, CA
  - Nathan J. Oleson, Akin Gump Strauss Hauer & Feld LLP, Washington, DC
  - Jessica Riggin, Rakin, Hyland & Riggin LLP, San Francisco, CA

**Whistleblower Track**

- **10:45 am – 12:00 noon**
  **Developments in Sarbanes-Oxley, Dodd-Frank and the SEC Whistleblower Program**
  **Grand Salon 1**

  The past few years have seen major developments under Sarbanes-Oxley, Dodd-Frank and the SEC Whistleblower Program. This panel will analyze some of the more significant changes, including interpretations of the Lawson decision regarding SOX’s coverage of contractors, the extraterritorial application of SOX, the ARB’s broadened interpretation of the contributing factor standard, the Digital Realty decision’s requirement of external reporting under Dodd-Frank, and the proposed changes to rules governing the SEC whistleblower program. Panelists will discuss the impact of these developments on internal compliance programs and on how counsel for employers and employees approach claims under Dodd-Frank and SOX.

  **PANELISTS:**
  - Christopher J. Collins, Sheppard Mullin Richter & Hampton LLP, New York, NY
  - Megan Guenther, U.S. Department of Labor, Washington, DC
  - Frances Nicastro, Barlays, New York, NY
  - Jason Zuckerman, Zuckerman Law, Washington, DC

**Workplace Problems and Solutions Track**

**Sponsored by EmployStats**

- **9:00 am – 10:15 am**
  **Solving the Privacy Puzzle in the Workplace**
  **Grand Salon 18**

  This panel will discuss the many issues employers face identifying which privacy laws apply, addressing employees’ concerns about the use and protection of their personal information, and bargaining with unions about the use of employees’ personal information. What are the current privacy standards in light of the European Union’s General Data Protection Regulation (GDPR) and the California Consumer Privacy Act? Panelists will discuss the legal responsibilities and risks that employers have related to employees’ personal information and will provide practical tips related to data privacy or security breach of employee data.

  **PANELISTS:**
  - Mathilde Houet-Weil, Weil & Associés, Paris, France
  - Wendi S. Lazar, Outten & Golden LLP, New York, NY
  - Jessica Ludd, UNAC/UHCP, San Dimas, CA
  - Tamika D. Lynch, Siemens, Buffalo Grove, IL
  - Jason Pill, Phelps Dunbar, Tampa, FL
  - Tami Becker Gomez, Alaska Airlines, Seattle, WA

- **10:45 am – 12:00 noon**
  **Grand Salon 18**

  This panel will discuss off-duty conduct, including use of alcohol and drugs, social media presence, romantic/sexual relationships, political protest and the extent to which employers can monitor and enforce standards or laws employees are expected to follow outside the workplace.

  **PANELISTS:**
  - Ericka Dorsey, American Federation of Government Employees, Washington, DC
  - Kimberly W. Geisler, Scott Dukes and Geisler, P.C., Birmingham, AL
  - Brian E. Koncios, Boga & Koncios P.C., Bingham Farms, MI

- **12:30 pm – 2:00 pm**
  **The College of Labor and Employment Lawyers Presents: Retrospectives on Labor and Employment Law**
  **Loews New Orleans Hotel – Feliciana Room**

  Join us for a fascinating tour of the past fifty years of labor and employment law. Our “tour guides” are acclaimed veterans in the field, with almost 150 years of combined experience between them, each having been involved in critical and iconic developments that are still relevant today. Their enduring reputations are exceeded only by the scope of their achievements as trailblazers in the field of labor and employment law. Panelists will share their experiences and recollections gained in landmark cases, ground-breaking negotiations, and historic mediated agreements that left an indelible mark on the field of labor and employment law.

  **MODERATOR:**
  - Cynthia E. Nance, University of Arkansas School of Law, Fayetteville, AR

  **PANELISTS:**
  - Chai R. Feldblum, Morgan Lewis & Bockius LLP, Washington, DC
  - Peter J. Hurtgen, Carley Hurtgen & Johnsrud, LLP, Menlo Park, CA
  - Theodore J. St. Antoine, University of Michigan Law School, Ann Arbor, MI
Networking and Social Events

**Wednesday, November 6**

- **4:30 pm – 5:00 pm**
  **Law Student Orientation**
  Grand Salon 9
  Law student attendees are invited to network 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**
  Grand Salon 1
  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 pm – 8:00 pm**
  **Welcome Reception and Committee Expo**
  Grand Ballroom A&B
  All attendees are invited to meet, greet and network during this opening reception at the Hilton New Orleans Riverside. Section Committees will provide information about publications, services and programs they provide to labor and employment lawyers.

**Thursday, November 7**

- **5:15 pm – 6:00 pm**
  **Standing Committee Business Meetings**
  Section of Labor and Employment Law Standing Committees will conduct business meetings in an informal setting.
  - ADR in Labor & Employment Law Committee – Grand Salon 15
  - Committee on Development of the Law Under the NLRA – Grand Salon 12
  - Employee Benefits Committee – Grand Ballroom B
  - Employment Rights & Responsibilities Committee – Grand Salon 19
  - Equal Employment Opportunity Committee – Grand Salon 13
  - Federal Labor Standards Legislation Committee – Grand Salon 1
  - Federal Sector Labor & Employment Law Committee – Grand Ballroom B
  - Immigration & Human Trafficking Committee – Grand Ballroom B
  - International Labor & Employment Law Committee – Grand Salon 18
  - Occupational Safety & Health Law Committee – Grand Ballroom B
  - Practice & Procedure Under the NLRA Committee – Grand Salon 9
  - Railway & Airline Labor Law Committee – Grand Ballroom B
  - State & Local Government Bargaining & Employment Law Committee – Grand Salon 3
  - Technology in the Practice & Workplace Committee – Grand Ballroom B

- **7:00 pm – 10:00 pm**
  **Young Lawyers Dine-Around**
  Members of the ABA Young Lawyers Division are invited to participate in an organized “dine-around” at several of New Orleans’ wonderful restaurants. Sign-up information and further details will be provided to YLD Conference registrants.

- **7:00 pm – 10:00 pm**
  **Committee Dinners**
  (optional ticketed events)
  - International Labor and Employment Law
    Arnaud’s
  - State and Local Government Bargaining and Employment Law
    Mother’s Next Door

**Friday, November 8**

- **6:00 pm – 7:00 pm**
  **Second Line Parade from Hilton to House of Blues**
  Hilton Lobby

- **7:00 pm – 10:00 pm**
  **Conference Reception at House of Blues**
  Join with old friends and new to celebrate the 13th Annual Labor and Employment Law Conference at the House of Blues, which will feature great food, drinks and live entertainment by local favorites Big Sam’s Funky Nation, Anais St. John, and Sasha.

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Second Line Parade in the Marigny and French Quarter neighborhoods: Treme Brass Band. Photo by Infrogmation of New Orleans, Wikimedia Commons
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ABA Section of Labor & Employment Law
2020 Committee Midwinter Meetings

State & Local Government Bargaining & Employment Law Committee
January 23–25
Grand Hyatt Playa del Carmen
Playa del Carmen, Mexico

ADR in Labor & Employment Law Committee
January 24–26
Grand Hyatt Playa del Carmen
Playa del Carmen, Mexico

Employee Benefits Committee
February 5–8
Omni Rancho Las Palmas
Rancho Mirage, California

Federal Labor Standards Legislation Committee
February 19–21
JW Marriott Los Cabos Beach Resort
Puerto Los Cabos, Mexico

Committee on Development of the Law under the NLRA
March 1–4
El San Juan Hotel
San Juan, Puerto Rico

Committee on Practice and Procedure under the NLRA
March 3–6
El San Juan Hotel
San Juan, Puerto Rico

Occupational Safety & Health Law Committee
March 3–6
Omni Rancho Las Palmas
Rancho Mirage, California

Federal Sector Labor & Employment Law Committee
March 9–10
Kimpton Hotel Monaco
Washington, D.C.

Railway & Airline Labor Law Committee
March 11–13
Surf & Sand Resort
Laguna Beach, California

Employment Rights & Responsibilities Committee
March 17–21
El San Juan Hotel
San Juan, Puerto Rico

National Conference on Equal Employment Opportunity Law
Presented by the Equal Employment Opportunity Committee
March 25–28
Park Hyatt Aviara Resort
Carlsbad, California

National Symposium on Technology in Labor & Employment Law
Presented by the Technology in the Practice & Workplace Committee
April 15–17
Marriott Marquis
Washington, D.C.

International Labor & Employment Law Committee
May 3–7
Ritz-Carlton Berlin
Berlin, Germany
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November 4-7, 2020