Midwinter Meeting

El San Juan Hotel • San Juan, Puerto Rico

Employment Rights and Responsibilities Committee

March 17–21, 2020
Grab your beach towel and sun screen, because we’re going to San Juan!

Please join us in March 2020 in San Juan, Puerto Rico for the ABA Employment Rights and Responsibilities Committee Midwinter Meeting.

Our annual CLE program will take place from March 17 – 21 at the beautifully restored El San Juan Hotel. For more than 70 years, the El San Juan has been a centerpiece of Puerto Rican elegance and entertainment. It is located along Isla Verde Beach, which has recently been voted as the Best Urban Beach in the United States. The El San Juan features a first-class spa, four pools, and a new tri-level fitness center, along with tennis courts, shops, a night club, and the famous Chandelier Bar, which has been the epicenter of San Juan nightlife for locals and travelers alike for generations.

The ERR Midwinter Meeting will offer a wide range of thought-provoking and topical educational programming, including A Deep Dive into Mediation Strategies, Direct and Cross Examination Boot Camp, Navigating the Ethical Obligations of Representing Incapacitated Clients, a look at the sure to be landmark pending Supreme Court cases concerning LGBTQ+ Protections in the Workplace, and Implications of Legalized Cannabis for the Labor and Employment Lawyer. As always, ERR prides itself on membership diversity and balanced presentations reflecting the employer/management, employee/plaintiff, union, government and in-house counsel perspectives.

The ERR Midwinter Meeting is also a place to enjoy meeting new friends and catching up with long-time ERR colleagues. Special events include a welcome reception, first-time attendee luncheon, subcommittee reception, Old San Juan Dine-Around, and our famous Friday night dinner dance.

On behalf of the ERR family, we hope you will make plans to join us in beautiful San Juan, Puerto Rico for a fantastic and one-of-a-kind Midwinter Meeting.

Melinda C. Burrows, In-House Corporate Counsel Co-Chair
Hon. Stephanie M. Jones, Public Co-Chair
Glen D. Savits, Employee Co-Chair
Douglas L. Steele, Union & Employee Co-Chair
Paul E. Starkman, Employer Co-Chair
Tuesday, March 17

- **6:00 – 7:00 p.m.**
  Welcome Reception at El San Juan Hotel

Wednesday, March 18

- **8:00 – 9:00 a.m.**
  Continental Breakfast

- **8:00 – 9:00 a.m.**
  ERR Subcommittee Co-Chair Meeting

- **9:00 – 10:00 a.m.**
  Ethics Issues when Dealing with Difficult Clients
  Nothing troubles a lawyer more than dealing with a client who thinks they are being reasonable, when the lawyer thinks the exact opposite. This panel will discuss the ethical issues confronting counsel when dealing with clients who are non-responsive, unreasonable, overly demanding, micromanaging, lying or otherwise uncooperative. The panelists also will discuss how they deal with the particularly difficult situation where the client refuses to entertain reasonable settlement offers and the ethical obligations lawyers have if they choose to end their relationship with a client.
  **MODERATOR:**
  Anna M. Pohl, Thomson Reuters, New York, NY
  **SPEAKERS:**
  Raymond E. Morales, The Law Offices of Raymond E. Morales, San Juan, PR
  Michael P. Posner, Los Angeles, CA
  Jason Zuckerman, Zuckerman Law, Washington, DC

- **10:00 – 11:00 a.m.**
  Damages in Noncompete Cases
  Presented by the Covenants Not to Compete and Trade Secrets Subcommittee
  In noncompete litigation, when injunctive relief is not available or after the injunction phase, the employer, former employee and the new employer often must litigate the various types of damages available under noncompete, nonsolicitation and nondisclosure provisions. Join this panel of seasoned litigators as they explore the many issues related to identifying and quantifying the various types of monetary damages, such as unjust enrichment, recovery of lost profits, disgorgement of profits, and the use of experts to prove damages. The panel also will examine clawback issues, liquidated damages, and the availability of attorney’s fees awards.
  **MODERATOR:**
  Jeffrey Dretler, Rubin and Rudman LLP, Boston, MA
  **SPEAKERS:**
  Hon. Daniel R. Dominguez, U.S. District Court for the District of Puerto Rico, San Juan, PR
  Kristin M. Case, The Case Law Firm, Chicago, IL
  Renee McMahon, Charles River Associates, Chicago, IL

- **11:30 a.m. – 12:45 p.m.**
  First-Time Attendee Luncheon
  Sponsored by Morrison & Foerster LLP
  First-time attendees are invited to an informal luncheon with Section and Committee leaders who will discuss what ERR does and how to get involved.

- **1:00 – 1:30 p.m.**
  Welcome, Introductions and Section Leadership Report

**COMMITTEE CO-CHAIRS**
Melinda C. Burrows, Netscout Systems, Inc., Westford, MA
Hon. Stephanie M. Jones, Federal Agency, Knoxville, TN
Glen D. Savits, Green Savits LLC, Florham Park, NJ
Paul E. Starkman, Clark Hill PLC, Chicago, IL
Douglas L. Steele, McGillivray Steele Elkln LLP, Washington, DC

**PROGRAM CO-CHAIRS**
Wynter P. Allen, Alden Law Group, PLLC, Washington, DC
Gary B. Eidelman, Saul Ewing Arnstein & Lehr LLP, Baltimore, MD
Scott M. Pollins, Pollins Law, Swardmore, PA
George L. Washington, Jr., Orange Business Services, Oak Hill, VA

**ADMINISTRATIVE CO-CHAIRS**
Kristin M. Case, The Case Law Firm, Chicago, IL
Monique Gougisha Doucette, Ogletree Deakins Nash Smook & Stewart, P.C., New Orleans, LA
Donna M. Hughes, EmblemHealth, New York, NY

10:00 – 11:30 a.m.
Corporate Counsel Caucus

Donald S. Barth and Bobbie J. Fox will host a caucus meeting for in-house attorneys focusing on emergent issues important to the in-house labor and employment practitioner. The topics will be discussed from the unique perspective of in-house counsel responsible for providing legal advice to corporate clients on these issues. The meeting format allows participants to discuss and compare approaches for addressing risk management and other legal issues. Attendance is limited to in-house corporate counsel to promote a free flow of information. Discussion topics will be solicited from in-house registrants in advance of the meeting.
SECTION LEADERSHIP

Christopher T. Hexter, Section Chair, Schuchat, Cool & Werner, St. Louis, MO
Samantha C. Grant, Section Chair-Elect, Sheppard, Mullin, Richter & Hampton LLP, Los Angeles, CA
Jonathan Ben-Asher, Employee Council Liaison, Ritz, Clark & Ben-Asher, New York, NY
Eric W. Iskra, Employer Council Liaison, Spilman Thomas & Battle PLLC, Charleston, WV
Louis Lopez, Public Council Liaison, U.S. Office of Special Counsel, Washington, DC
Michael P. Posner, Union & Employee Council Liaison, Los Angeles, CA

1:30 – 2:45 p.m.
The Opioid Epidemic and Escalating Prescription Drug Costs: Are Your Clients Footing the Bill?
Presented by the Employee Benefits Subcommittee
The United States is in the midst of an opioid crisis and the prices of prescription drugs are skyrocketing. Some employee benefit plans have even sued opioid manufacturers on behalf of their participants for allegedly engaging in criminal activity. Panelists will discuss what employers, unions, employees, insurance carriers, pharmacy benefit managers, service providers and employee benefit plans need to know about the opioid epidemic and managing prescription drug costs in order to provide appropriate care without breaking the bank and also how the crisis impacts collective bargaining.
MODERATOR: Erin M. Sweeney, Miller & Chevalier Chartered, Washington, DC
SPEAKERS: Bobbie J. Fox, CopperPoint Insurance, Phoenix, AZ
Dr. Paul R. Gigante, MD, Neurosurgeons of New Jersey, Livingston, NJ
Joel R. Hurt, Feinstein Doyle Payne & Kravek LLC, Pittsburgh, PA

2:45 – 3:45 p.m.
Race, Gender and Privilege: A Robust Discussion on Majority Privilege and its Impact on Our Profession
Presented by the Diversity Outreach and Inclusion Task Force
Panelists will illuminate what privilege – the passive advantages one enjoys because of race, gender, socio-economic status – looks like in our profession and how it influences decisions large and small. Attendees will walk away with a clearer understanding of what the legal community can do to recognize the impact of white privilege on the profession and to increase diversity and inclusion in the profession. The panel also will explore and critique the programs that companies, law firms and other large institutions put in place to address the effects of white male privilege in the workplace.
MODERATOR: Kelly M. Dermody, Lieff Cabraser Heimann & Bernstein, LLP, San Francisco, CA
SPEAKERS: John Biewen, Duke University, Durham, NC
Lucas Kaster, Nichols Kaster, PLLP, Minneapolis, MN
Joseph K. West, Duane Morris, LLP, Washington, DC

3:45 – 4:00 p.m.
Refreshment Break

4:00 – 5:00 p.m.
LGBTQ+ Protections in the Workplace: Will the Supreme Court’s Rulings Bring Clarity or Sow Confusion?
This term the Supreme Court will review a trilogy of cases concerning whether Title VII prohibits discrimination based on sexual orientation and gender identity. The decisions in these cases—G. & G.R. Harris Funeral Homes, Inc. v. EEOC, Altitude Express Inc. v. Zarda, and Bostock v. Clayton County, GA—will shape the legal landscape for LGBTQ+ (and all) workers for decades to come. Practitioners should better understand the various federal and state laws and authorities that establish rights and responsibilities for LGBTQ+ employees and their employers. At this critical crossroad, experts in this field will provide an overview of the relevant protections, discuss these significant developments, and offer best practices to implement in the workplace.
MODERATOR: Louis Lopez, Office of Special Counsel, Washington, DC
SPEAKERS: Eric L. Barnum, BakerHostetler, Atlanta, GA
Duncan Crabtree-Ireland, SAG-AFTRA, Los Angeles, CA
Omar Gonzalez-Pagan, Lambda Legal Defense and Education Fund, Inc., New York, NY
Sonya Richburg, Coca-Cola Bottling Co. Consolidated, Charlotte, NC

6:00 – 7:00 p.m.
Subcommittee Reception
For those having a hard time deciding which ERR subcommittee to join, the Membership Committee will present the Subcommittee Reception. First-time attendees are encouraged to meet with subcommittee co-chairs and other ERR and Section leaders in a festive and relaxed setting to learn more about ERR’s subcommittees and how to become involved in ERR activities. We thank the following firms for their generous contributions in support of this reception:

Butler Snow LLP
Employment Practices Group
Green and Spiegel LLC
Green Savits LLC
HomansPeck, LLC
Hardwick Benfer LLC
Ice Miller LLP
John Sands, Arbitrator & Mediator
McGillivary Steele Elkin, LLP
Nichols Kaster, PLLP
Pollins Law
Ritz, Clark and Ben-Asher
Scott Dukes & Geisler P.C.
Verrill Dana LLP
Thursday, March 19

• 8:00 – 9:00 a.m.
  Continental Breakfast

• 8:00 – 9:00 a.m.
  *Breakfast Roundtable: Legal Issues Surrounding the Prevalence of Homeworkers in Various Jurisdictions
  Presented by the International Law Subcommittee
  The use of flexible working arrangements by multi-national employers has changed the breadth and scope of the employment relationship. This panel will consider various challenges confronting the use of homeworkers, including regulation of work hours, use and ownership of home office equipment and protection of confidential information. Panelists will also discuss the applicability of workers compensation and other protections for workers who regularly work remotely.
  MODERATOR: Mark D. Risk, Mark Risk PC, New York, NY
  SPEAKERS: Myriam Delawari-de Gaudusson, De Gaulle Fleurance & Associés, Paris, France
  Michael Howcroft, Blake, Cassels & Gordon LLP, Vancouver, BC
  Sharon Reiley, Stucchi & Partners, Milan, Italy
  Richard Rosenblatt, Rosenblatt & Gosch, Denver, CO

CONCURRENT PROGRAMS: TRACK 1

• 9:00 – 10:00 a.m.
  Trauma-Informed Counseling: A New Approach to Witness Interviews
  Presented by the Workplace Investigations Subcommittee
  Why did the complainant wait to file a complaint? Why is the complainant hesitant to talk? Does this mean her allegations are not true? The respondent is not acting in a normal manner for someone in this situation. Does that mean he is lying? Learn how to tackle these questions and navigate challenging interviews using trauma-informed interview techniques, which emphasize physical, psychological and emotional safety for interviewees. Learn how trauma-informed techniques can be used to handle emotionally charged interviews. Emphasis will be placed on how to avoid common interview mistakes, use of helpful trauma-informed techniques, and how these skills can enhance investigative interviews and improve workplace dynamics.
  MODERATOR: Deborah Maddux, Van Dermyden Maddux Law Corporation, Sacramento, CA
  SPEAKERS: Hon. Stephanie M. Jones, Federal Agency, Knoxville, TN
  Virginia “Ginger” Hardwick, Hardwick Benfer, LLC, Doylestown, PA
  Jeffrey D. Patton, Spilman, Thomas & Battle PLLC, Winston-Salem, NC
  Kathleen Roseme, New Jersey Transit Corporation, Newark, NJ

• 10:00 – 10:15 a.m.
  Refreshment Break

• 10:15 – 11:30 a.m.
  Tactics to Make Mediation Work for You
  Presented by the Alternatives to Litigation Subcommittee
  This panel of experienced mediators will explore the decisions that can make all the difference in creating the best environment to be successful in your negotiations. The group will offer insights on best practices for mediation preparation, from picking the right time to mediate, choosing the right mediator, preparing your client, preparing a powerful position paper, setting the tone with your opening statement, and getting into a zone of bargaining as soon as possible.
  MODERATOR: Lori L. Deem, Outten & Golden LLP, Chicago, IL
  SPEAKERS: Maureen S. Binetti, Wilentz Goldman & Spitzer, PA, Woodbridge, NJ
  Ralph A. Morris, DePaul College of Law, Palatine, IL
  Zhanna Meggison, U.S. Equal Employment Opportunity Commission, Charlotte, NC

• 11:30 a.m. – 12:30 p.m.
  Direct and Cross Examination Boot Camp
  Presented by the Trial and Appellate Advocacy Subcommittee
  This program, geared toward young lawyers and those with limited trial experience, will demonstrate effective techniques for direct and cross examination, including discussing strategy decisions about tone, length, and content, as well format.
  MODERATOR: Megan Mechak, McGillivray Steele Elkin LLP, Washington, DC
  SPEAKERS: Hon. Daniel R. Dominguez, U.S. District Court for the District of Puerto Rico, San Juan, PR
  Laura C. Mattiacci, Console Mattiacci Law, Philadelphia, PA
  Eric A. Tate, Morrison & Foerster LLP, San Francisco, CA

CONCURRENT PROGRAMS: TRACK 2

• 9:00 – 10:00 a.m.
  Age Discrimination in a New Age
  Presented by the Statutory Rights Subcommittee
  This program, geared toward young lawyers and those with limited trial experience, will demonstrate effective techniques for direct and cross examination, including discussing strategy decisions about tone, length, and content, as well format.
  MODERATOR: Megan Mechak, McGillivray Steele Elkin LLP, Washington, DC
  SPEAKERS: Hon. Daniel R. Dominguez, U.S. District Court for the District of Puerto Rico, San Juan, PR
  Laura C. Mattiacci, Console Mattiacci Law, Philadelphia, PA
  Eric A. Tate, Morrison & Foerster LLP, San Francisco, CA
the but-for standard in ADEA cases. Panelists also will analyze how the aging workforce is impacting this area of the law and the stereotypes that contribute to this issue, especially in today’s digital workplace.

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

**SPEAKERS:**
- Daniel P. Kohrman, AARP Foundation, Washington, DC
- Alyson Palmer, Google, San Francisco, CA (invited)
- Michael Rosen, Foley Hoag, Boston, MA

**10:00 – 10:15 a.m.**

**Refreshment Break**

**10:15 – 11:30 a.m.**

**Employee Rights and Responsibilities for Someone Else’s Employees: Unknotting the Tangled Relationships in an Ever-Evolving Workforce**

Presented by the Contingent Workforce and Employment at Will Subcommittees

Do you sometimes feel like untangling employment relationships is a mental game of Twister? In this session, our panelists will help you unravel the employment relationships and legal responsibilities of staffing companies, PEOs, and affiliated companies by analyzing joint employer theories under a variety of statutes. The panel will also provide tips about how a secondary employer can help ensure contingent workers are given equal opportunities and lawful treatment without becoming a primary employer.

**MODERATOR:**
Kelly Lawson, U.S. Department of Labor, Boston, MA

**SPEAKERS:**
- Daniel L. Bonnett, Martin & Bonnett P.L.L.C., Phoenix, AZ
- Caryl L. Flannery, Centene Corporation, St. Louis, MO
- Jennifer L. Muse, Honigman, Detroit, MI
- Terrill A. Wilkins, Abrahamson Vorachek & Rdzanek, Chicago, IL

**11:30 a.m. – 12:30 p.m.**

**Developments and Trends for Responsible Business Conduct in the Modern Workplace**

Presented by the International Subcommittee

The modern workplace has changed in recent years as a result of national and societal movements aimed at protecting workers from various forms of harassment and discrimination. This panel will examine some of the most significant changes to the modern workplace and recent attempts by multinational corporations to promote responsible workplace conduct and, in particular, to address appropriate working conditions and safety rules.

**MODERATOR:**
Jeffrey Greene, William Fry, Dublin, Ireland

**SPEAKERS:**
- Paul Callaghan, Taylor Wessing, London, United Kingdom
- Wendi S. Lazar, Outen & Golden LLP, New York, NY
- Leticia Ribeiro, Trench Rossi Watanabe, Sao Paulo, Brazil
- Roselyn Sands, EY Société d’Avocats, Paris, France

**12:30 – 1:30 p.m.**

**Subcommittee Luncheon**

ERR’s subcommittees will meet over lunch to plan activities for the next year and their panels for the 2021 Midwinter Meeting. Newcomers are encouraged to attend! We thank the following for their generous contributions in support of the Subcommittee Luncheon:

- Ahmad Zavitsanos Anaipakos
- Alavi & Mensing P.C.
- Borden Ladner Gervais LLP
- The Case Law Firm
- Cozen O’Connor
- Foley Hoag LLP

**2:00 – 4:00 p.m.**

**Beach Volleyball**

Sponsored by the Membership Committee

**7:00 – 10:00 p.m.**

**Dine-Around**

Meeting registrants and guests are invited to participate in an organized “dine-around” in some of the best restaurants in San Juan. Sign-up sheets will be posted at the ABA Registration Desk.

**Friday, March 20**

**8:00 – 9:00 a.m.**

**Continental Breakfast**

**8:00 – 9:00 a.m.**

*Breakfast Roundtable: Gab with the Government*

Join a panel of government agency attorneys from the DOL, EEOC and NLRB who will discuss the newest developments and provide the latest updates from their respective agencies. Come prepared to ask questions and learn about matters currently of interest to the federal government in the labor and employment law context. This session is open to all meeting attendees.

**MODERATOR:**

**SPEAKERS:**
- Uche Egemonye, U.S. Department of Labor, Atlanta, GA
- Linda M. Mohns, National Labor Relations Board, Memphis, TN
- Diane I. Smason, U.S. Equal Employment Opportunity Commission, Chicago, IL

**8:00 – 9:00 a.m.**

*Breakfast Roundtable: The Effect of Populist Movements on Employee Mobility and Migration*

Spurred by a growing economy and record low unemployment, populist political movements have tightened America’s relatively lax borders

*This Breakfast Roundtable is an informal gathering designed to permit group discussion. There will be no written materials distributed about the topic and, due to the informal nature, this session is not approved for CLE credit.*
and operate as a protectionist visa on migration. While these initiatives focus on refugee and asylum applicants, they also impact global mobility for employment purposes. Key workers are being denied visas due to stringent adjudications and existing petitions are no longer approved routinely. This panel will address challenges employers and employees face as a result of these trends and provide legal strategies for best addressing narrowing borders.

**SPEAKERS:**
Jonathan A. Grode, Green and Spiegel, Philadelphia, PA
Sean G. Hanagan, Jackson Lewis P.C., White Plains, NY

**CONCURRENT PROGRAMS: TRACK 1**

- **9:00 – 10:00 a.m.**  
  *Litigation Roadmap: Issues Relating to Class Representatives*  
  **Presented by the Complex Litigation Subcommittee**  
  This program will cover a range of issues when dealing with selecting and challenging class representatives, including class certification and challenges, decertification, requirements of FRCP 23, filing appeals relating to class certification issues, conducting discovery relating to both the class and the representative plaintiff(s), as well as the impact of challenges to the representative case/defenses applicable to the representative plaintiff(s).

  **MODERATOR:**
  Stephen E. Fox, Sheppard, Mullin, Richter & Hampton LLP, Dallas, TX

  **SPEAKERS:**
  Reena I. Desai, Nichols Kaster, PLLP, Minneapolis, MN
  Cathi “CJ” Hunt, Advanced Sterilization Products, Seattle, WA
  Jason C. Marsili, Rosen Marsili Rapaport LLP, Los Angeles, CA

- **10:00 – 10:15 a.m.**  
  *Refreshment Break*

- **10:15 – 11:30 a.m.**  
  **Presented by the Employee Privacy Subcommittee**  
  A growing number of states have legalized marijuana for medical purposes or, in some cases, even for non-medical use. In many states, employers are prohibited from taking adverse employment actions based on legal off-duty conduct. How are those potentially competing laws reconciled? On a related note, New York City is taking steps to prohibit pre-employment tests for cannabis. Will other jurisdictions follow? This program will include a survey of current state regulations of marijuana use, potential issues with federal disability laws and state medical marijuana legalization, and a summary of relevant state and federal statutes and regulations.

  **MODERATOR:**
  Wynter Allen, Alden Law Group LLC, Washington, DC

  **SPEAKERS:**
  Nancy N. Delogu, Littler Mendelson PC, Washington, DC
  Catherine “Cay” Thompson, Raytheon, Boston, MA
  Jeffrey Young, Johnson Webbert & Young LLP, Augusta, ME

- **11:30 a.m. – 12:45 p.m.**  
  *Untangling the Web of State and Local Paid Family and Medical Leave Laws*  
  **Presented by the Disabilities and Leaves of Absences and State Law Developments Subcommittees**  
  The Family and Medical Leave Act has changed little since its enactment in 1993, although state and local paid family and medical leave laws have exploded over the past several years. Each new law seems to increase the patchwork in this area that challenges even the most experienced practitioners. This panel will survey the leave landscape and offer compliance insights about what is a reasonable leave of absence, how to curb suspected FMLA abuse, how employees can protect their rights, and whether it is possible to have a single national policy.

  **MODERATOR:**
  Devjani Mishra, Littler Mendelson PC, New York, NY

  **SPEAKERS:**
  John Madden, O’Malley & Madden PC, Chicago, IL
  Sandra Pullman, New York State Office of the Attorney General, New York, NY
  Amy Shulman, Outten & Golden LLP, New York, NY
  Bobby Simpson, General Electric, Louisville, KY

**CONCURRENT PROGRAMS: TRACK 2**

- **9:00 – 10:00 a.m.**  
  *Incapacitated Clients: Navigating the Ethical Obligations and Protecting the Attorney Client Privilege*  
  **Presented by the Ethics and Professional Responsibility Subcommittee**  
  This panel will address the ethical issues in identifying and dealing with incapacitated clients. Incapacitation can come up in unexpected situations (sudden accident or illness and/or impairment due to alcohol or drugs, for example) or as a result of mental impairment due to the aging process. The panel will discuss an attorney’s responsibilities when a client is incapacitated or when an attorney thinks a client might be incapacitated. The implications for the attorney client privilege as well as best practices will be explored.

  **MODERATOR:**
  Glen D. Savits, Green Savits, LLC, Florham Park, NJ

  **SPEAKERS:**
  Yolanda M. Da Silveira, Da Silveira Law Office LLC, San Juan, PR
  M. Ana Hermosillo, U.S. Department of Labor, Seattle, WA

- **10:00 – 10:15 a.m.**  
  *Refreshment Break*

- **10:15 – 11:30 a.m.**  
  *The Impact of AI, Automation and Robotics in the Workplace*  
  **Presented by the Technology Subcommittee**  
  While automation, AI and robotics continue to transform businesses and contribute to economic growth, their performance of worker tasks raises significant questions about workplace transition and employee dislocation. Policymakers, business leaders and workers’ groups need to plan for the impact of these developments and to prepare for a workplace where humans increasingly work alongside machines. Panelists will discuss the latest developments in this area and what stakeholders should focus on to capitalize on opportunities and to meet challenges to come.
Saturday, March 21

11:30 a.m. – 12:45 p.m.
Whistleblower Protections for In-House Lawyers and Other Gatekeepers
Presented by the Whistleblower Subcommittee
This panel will address the issues that arise when an in-house lawyer blows the whistle on their employer/client, including the SEC’s up-the-ladder reporting requirements, preemption of federal law (17 CFR Part 205) over state ethics rules, DOL and federal court SOX decisions governing whether in-house lawyers can use confidential and even privileged information in prosecuting a retaliation claim, and the limitations on in-house lawyers using client information to seek a whistleblower reward/bounty.

MODERATOR:
Uche Egemonye, U.S. Department of Labor, Atlanta, GA

SPEAKERS:
Jonathan Ben-Asher, Ritz Clark & Ben-Asher LLP, New York, NY
Stacey Campbell, Campbell Litigation, P.C., Denver, CO
George L. Washington, Jr., Orange Business Services, Oak Hill, VA

12:45 – 1:00 p.m.
Committee Business and Feedback Meeting

1:00 – 5:00 p.m.
Optional Tour:
Old San Juan Historical Walking Tour

7:00 – 10:00 p.m.
Reception, Dinner and Dance

Ethical Implications of Legalized Cannabis for Labor and Employment Lawyers
Presented by the Ethics and Professional Responsibility Subcommittee
Given the increase in states legalizing the use of marijuana, lawyers are faced with a number of professional, ethical and counseling dilemmas. May attorneys provide legal advice to clients who are engaged in cannabis-related enterprises and are there safe harbors for those engaged in this business? Does the answer change if the clients are in related industries like banking and real estate? What are the implications when employees are engaging in marijuana use and does it matter if it is for recreation or medicinal purposes? What about when attorneys themselves are using? Do fellow lawyers have an obligation to report their colleagues’ use of marijuana when serving clients? If so, to whom? Panelists will discuss this developing landscape and give suggestions on how to handle the challenges that follow.

MODERATOR:
Ellyn Rosen, ABA Center for Professional Responsibility, Chicago, IL

SPEAKERS:
Myrna L. Maysonet, Greenspoon Marder LLP, Orlando, FL
Geoffrey A. Mort, Kraus & Zuchlewski LLP, New York, NY

4:00 – 9:00 p.m.
Optional Tour:
Catamaran Sunset Sail
We thank the following for their generous contributions in support of our 2020 Midwinter Meeting

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Employment Law and Litigation

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Subcommittee Descriptions

The Employment Rights & Responsibilities (ERR) Committee has 19 subcommittees, which embrace the wide spectrum of issues facing the labor and employment lawyer. ERR members are encouraged to participate in any of the various subcommittees. These subcommittees prepare and present a program each year at the Midwinter Meeting.

Alternatives to Litigation Subcommittee – assists employment lawyers dealing with various alternative dispute resolution forums outside the courtroom. This subcommittee addresses legal developments and provides practical assistance to members practicing arbitration, mediation or other forums.

Complex Litigation Subcommittee – Established in response to the increase in class and collective employment litigation, this subcommittee’s focus is on the latest developments, issues and practice points associated with complex litigation.

Contingent Work Force Subcommittee – addresses the issues that arise when an employer turns to a contingent work force to address its labor needs and explores practical solutions for those issues. This expanding tool used in the workplace presents developing legal questions and requires employment lawyers to address the risks, claims, advantages and disadvantages arising from the use of a contingent work force.

Contracts and Executive Compensation Subcommittee – covers developments concerning key areas of employment contracts and executive compensation, including trends in contract terms; negotiation strategy for both sides; litigation and arbitration of contract disputes; equity, deferred and bonus compensation; change in control agreements; and contracts and statutory issues for special professions.

Covenants Not to Compete and Trade Secrets Subcommittee – focuses on legal developments relating to disputes arising from the transition of employees from company to company, including issues where trade secrets and confidential information are likely to be exposed as part of that transition. The increasing frequency with which employers use non-disclosure and non-compete agreements, the disputes that arise from such agreements and state-by-state distinctions are explored by this subcommittee.

Disabilities and Leaves of Absences Subcommittee – addresses a broad and complex set of statutory and regulatory protections for employees who have medical issues and/or need leaves of absence from work, including the rights created by the ADA and FMLA. This subcommittee address the legal developments with respect to the intersection of various laws regulating how employers may treat employees with disabilities and employees using statutorily protected leave.

Diversity Outreach & Inclusion Taskforce (“DOIT”) – highlights diversity issues particular to both the legal profession as well as within the American workforce. DOIT addresses diversity and inclusion programs as well as the implicit bias in the legal profession and in society. This subcommittee updates the membership on cutting edge legislation broadening protections based on gender identity and sexual orientation as well as diversity initiatives designed to eliminate bias in the U.S. based on race, ethnicity, gender, sexual orientation, gender identity and disability status.

Employee Benefits Subcommittee – provides updates on ERISA and employee benefits as well as executive compensation developments of particular significance to employers and participants. This subcommittee also focuses on how benefits programs are addressed in the collective bargaining context and how legislation impacts benefits programs in union and non-union workplaces.

Employee Privacy Subcommittee – focuses on issues arising out of the intersection of privacy and employment law, including but not limited to background checks, security of human resources data, employee monitoring and surveillance, mobile device management, privacy of employee health information, and employer regulation of employee off work activities and conduct.

Employment at Will Subcommittee – keeps abreast of common law and statutory employment claims applicable to at-will employees throughout the U.S., including collateral torts (e.g., negligent hiring, retention, and supervision and personal harm torts), implied contract, whistleblower, wrongful discharge and public policy claims. The subcommittee’s focus is to identify trends and to report innovative or otherwise noteworthy cases to ERR membership.

Ethics & Professional Responsibility Subcommittee – examines ethics issues arising under the ABA Model Rules of Professional Conduct, and federal and state law, which particularly implicate the activities of labor and employment lawyers. The subcommittee focuses on traditional conflicts and other common ethics problems as well as emerging areas of interest involving the intersection of law and technology.

Insurance Subcommittee – focuses on legal issues and developments in EPLI products, specialized issues that arise in handling EPLI matters, and practical pointers for managing relationships with clients and their EPLI carriers.

International Law Subcommittee – addresses the increasing number of international issues faced by employment lawyers, including legal developments in the global environment, jurisdictional issues, conflicting laws, and developments in domestic and foreign employment law. Members include counsel from many countries.

State Law Developments Subcommittee – focuses on labor and employment issues that develop state-by-state, addressing state case law and statutory law regarding the employee-employer relationship. Where distinct from the federal approach to labor and employment issues, the subcommittee also reviews cutting edge state legislation and judicial interpretation of state and federal law.

Statutory Rights Subcommittee – maintains a broad focus on the varied state and federal laws governing the employment relationship, including Title VII, the ADEA, the ADA, and the Equal Pay Act; compensation issues under the FLSA; federal and state whistleblower and retaliation provisions, and state legislation impacting the employment relationship. This subcommittee also provides in-depth analysis of emerging trends regarding statutory interpretation of labor and employment statutes to assist with compliance and litigation avoidance.

Technology Subcommittee – examines how technological changes impact labor and employment law, litigation and the practice of law generally. Topics addressed by the subcommittee include social media at work, discovery of electronic documents, and privacy.

Trial and Appellate Advocacy Subcommittee – covers trial practices and procedures relating to labor and employment issues, including trial preparation issues, pretrial motions and conferences, selection and use of witnesses, expert witness issues, voir dire, jury selection, jury instructions, opening and closing arguments, and examination of witnesses.

Whistleblower Subcommittee – focuses on advanced compliance and litigation issues arising from protected activity by workers, including recent developments related to the variety of laws prohibiting retaliation against whistleblowers. Topics addressed by this subcommittee include burdens of proof, forum selection, alternative dispute resolution, and remedies as well as provide practical and strategic tips for litigators in this area.

Workplace Investigations Subcommittee – focuses on legal developments and compliance issues that trigger investigations as well as best practices in conducting prompt and thorough investigations. The subcommittee also focuses on the impact of investigations on evidentiary issues, available remedies where litigation occurs, and how investigations may support both claims and affirmative defenses.
Meeting Registration
The Midwinter Meeting registration fees cover the Tuesday and Wednesday Receptions and the Friday Reception, Dinner and Dance, continental breakfasts, and refreshment breaks during the meeting. The Spouse/Guest registration fee includes all evening events.

You are encouraged to register online at www.americanbar.org/groups/labor_law.html. You also may register by filling out the attached registration form and returning it with your payment to the ABA by March 3, 2020. Registration fees are refundable, less a $50 administrative fee, for cancellations received in the Section Office by March 3, 2020.

Hotel Accommodations
We have negotiated special group rates at the El San Juan Hotel of $279 for City View Rooms and $299 for Ocean View Rooms (single or double occupancy). The resort fee, which includes in-room WiFi, health club access and Brava nightclub admittance, has been waived for our group. The reservation deadline for the group rate is February 17, 2020. If necessary, cancellations must be made 14 days prior to the scheduled day of arrival to avoid a one-night cancellation charge. Reservations may be made online at http://group.curiocollection.com/aba or by calling the hotel at 787.791.1000. Be sure to mention you are attending the “ABA Employment Rights and Responsibilities Committee Midwinter Meeting” to receive the special group rate.

Social Events
• Welcome Reception
  The Welcome Reception will be held on Tuesday, March 17 from 6:00 to 7:00 p.m. All Midwinter Meeting attendees and registered guests are welcome to attend. Light snacks and an open bar will be served.

• Subcommittee Reception
  Following the Subcommittee Reception for First-Time Attendees, New ERR Committee Members and Subcommittee Co-chairs on Wednesday from 6:00 to 7:00 p.m., the Committee will host a Networking Reception from 7:00 to 8:30 p.m. at the El San Juan Hotel.

• Dine-Around
  On Thursday, March 19, you are invited to join your colleagues for an organized “dine-around” at some of San Juan’s best restaurants. Sign-up sheets will be available at the ABA Registration Desk beginning Tuesday, March 17.

• Friday Old San Juan Historical Walking Tour
  This optional guided tour is perfect for culture and history enthusiasts who like to get up close to the sites and examine the past first-hand. Stroll through Old Spanish cathedrals and forts, such as San Cristobal, where you will see and learn how the Spanish built and defended their city. Afterwards, you will have an opportunity to do some shopping and have lunch on your own in Old San Juan. The cost for this optional tour is $65 per person.

• Friday Reception, Dinner and Dance
  You will not want to miss our Friday dinner party for meeting attendees and registered guests. The evening will feature great food, drinks and wonderful entertainment. The cost of this event is included in the registration fees.

• Saturday Catamaran Sunset Sail
  After the meeting has concluded, indulge in an enchanted evening relaxing on a catamaran sailboat enjoying the incredible sunsets as you glide through the Fajardo channel. You will encounter the magnificent burnt-orange horizon that makes Puerto Rico sunsets so famous. While you watch the distant hillsides disappear with the sun, snacks and open bar service will be provided. The cost of this event is $150 per person and includes roundtrip transportation to the dock in Fajardo.

Continuing Legal Education Credit
The ABA will seek 16.25 hours of CLE credit in 60-minute states (including 3.25 ethics hours), and 18.3 hours of CLE credit for this program in 50-minute states (including 3.9 hours of CLE specialty credit). Credit hours are estimated and are subject to each state’s approval and credit rounding rules. Visit the Midwinter Meeting webpage for CLE details or visit www.americanbar.org/mcle for general information on CLE at the ABA.

Financial Assistance
Visit the Section of Labor and Employment Law website at www.americanbar.org/labor for information about the Section Development Fund and Government and YLD Fellowship Program opportunities. Full or partial fee waivers may be available based on financial hardship. For registration fees over $500, qualifying attorneys could receive at least a 50% reduction in the course fee. This does not include any reduction in meals, lodging or travel costs associated with the course. Please send written requests to laborempllaw@americanbar.org.

Persons with Disabilities
Services for persons with disabilities are available. If special arrangements are required, please notify Judy Stofko at Judy.Stofko@americanbar.org at least four weeks prior to the meeting.
Registration Form

ABA Section of Labor and Employment Law
Midwinter Meeting
Employment Rights and Responsibilities Committee
March 17–21, 2020 • El San Juan Hotel • San Juan, Puerto Rico

Registration Deadline: March 3, 2020

ONLINE: www.ambar.org/lelmidwinter
(Credit card payments accepted online only.)

MAIL: ABA Section of Labor & Employment Law
Attn: Service Center – Meeting/Event Registrations Dept.
321 North Clark Street, Chicago, IL 60654
☐ Enclosed check (payable to “American Bar Association”)

NAME

NICKNAME/BADGE NAME

FIRM/ORGANIZATION

STREET ADDRESS

CITY

STATE/PROVINCE

POSTAL CODE

PHONE

FAX

E-MAIL ADDRESS

NAME OF ATTENDING SPOUSE/GUEST(S)

Affiliation:
☐ Employer/Management  ☐ Employee/Plaintiff  ☐ Union & Employee  ☐ Public/Government  ☐ Neutral  ☐ Other
☐ First-Time Attendee

Registration Fees:

Early Section Member Discount (on or before 1/15/20)  
* Section Member (after 1/15/20)

ABA #__________________________

ABA Member

@ $795 $

Non-ABA Member

@ $895 $

Government Agency, Full-Time Academic or Non-Profit

@ $395 $

First-Time Attendee

@ $495 $

Spouse/Guest(s)

@ $225 $

Children (12–18)

@ $75 $

Children (<12)

No Charge

Social Events:

Tuesday Welcome Reception

(included in registration fees)

Wednesday Networking Reception

(included in registration fees)

Thursday Beach Volleyball

(included in registration fees)

Friday Optional Tour: Old San Juan

@ $65/person

Friday Reception and Dinner

(included in registration fees)

Saturday Optional Tour: Catamaran Sunset Sail

@ $150/person

Total Enclosed: $__________________

* Not a Section of LEL member?

Join online at www.americanbar.org/join/ to register for the meeting at the Section Member rate.

If any special arrangements are required under the ADA, contact the Section Office at (312) 988-5813.