American Bar Association  
Section of Labor and Employment Law  
Federal Labor Standards Legislation Committee Midwinter Meeting  
Los Cabos, Mexico  
February 19-21, 2020

PROGRAM AGENDA

Wednesday, February 19

4:00 pm – 5:45 pm  Registration (Mila Ballroom Foyer)

4:30 pm – 4:45 pm  Welcome and Introductions (Mila Ballroom)
Laura Ho, Goldstein, Borgen, Dardarian & Ho, Employee Co-chair
Ryan Haggerty, Asher, Gittler & D’Alba, Ltd., Union & Employee Co-chair
Lawrence Peikes, Wiggin and Dana LLP, Employer Co-chair
Dane Steffenson, U.S. Department of Labor, Public Co-chair

4:45 pm – 5:45 pm  The Trump Department of Labor: What Has Been Done and Undone?
Speakers will engage in a debate on the Trump DOL’s various initiatives and actions.

Moderator:  Ellen Kearns, Constangy Brooks Smith & Prophete, Boston, MA

Speakers:  M. Patricia Smith, National Employment Lawyers Project, Washington, DC
Reed Russell, Phelps Dunbar, Tampa, FL

6:00 pm – 6:30 pm  Reception for First Time Attendees and Mentors (Kepe Gazebo)

6:30 pm – 8:00 pm  Welcome Reception at JW Marriott Los Cabos Beach Resort (Kepe Gazebo)

Thursday, February 20

7:00 am – 8:00 am  Breakfast Buffet (Amet Terrace)

8:00 am – 9:30 am  The Largest Settlements and Judgments and the Most Important Defense Victories in State Law
The biggest judgments and changes affecting employers and employees are occurring under state laws: independent contractors, expense reimbursement class actions, increased penalties and statutes of limitations, airline worker litigation, and many other rapidly changing areas applying worker wage and hour protections. Panelists will discuss the most significant changes in 2019.

Speakers:  Jason Marsili, Rosen Marsili Rapp, LLP, Los Angeles, CA
Peter Winebrake, Winebrake & Santillo LLC, Dresher, PA
9:30 am – 10:30 am  What’s New at the EEOC: New Initiatives and Notable Cases
EEOC Commissioner Charlotte Burrows will discuss the EEOC’s latest initiatives to enhance equal opportunity in the workplace, the state of pay data collection for purposes of compliance with Component 2 of Form EEO-1, settlements and key court decisions in employment discrimination cases litigated by the EEOC as well as private plaintiffs, and the issues at stake in, and status of, EEOC lawsuits currently winding their way through the courts. In addition, she will talk about the EEOC’s position on the question pending before the U.S. Supreme Court as to whether Title VII protection extends to sexual orientation and address the inter-agency conflict with DOJ on this important issue. Commissioner Burrows’ insights should prove invaluable to management-side, union-side, and employee-side practitioners alike as she sheds light on the EEOC’s agenda, mission and recent accomplishments.


10:30 am – 10:45 am  Refreshment Break (Amet Terrace)

10:45 am – 11:45 am  FLSA Hot Topics
No time to read the hundreds of pages summarizing FLSA cases in 2019? No problem! This panel will highlight what you need to know about the past year’s most significant FLSA decisions and regulations and their likely impact on future wage and hour litigation.

Speakers:  Allison Balus, Baird Holm LLP, Omaha, NE
Robert Boonin, Dykema Gossett PLLC, Ann Arbor, MI
David Ricksecker, McGillivary Steele Elkin LLP, Washington, DC

11:45 am – 12:45 pm  Arbitrating Individual FLSA Claims Under Compulsion
In the wake of employer efforts to decertify collective claims, a massive proliferation of arbitration agreements, and SCOTUS’ decision in Epic, arbitrations involving individual claimants have erupted on a never-before-seen scale. Panelists will discuss practical tips and best practices for handling wage and hour arbitrations.

Moderator:  Matthew Helland, Nichols Kaster PLLP, San Francisco, CA

Speakers:  Sally J. Abrahamson, Outten & Golden LLP, Washington, DC
Sheri Flame Eisner, JAMS, Los Angeles, CA
Brian Kriegler, EconOne, Los Angeles, CA

12:45 pm – 1:15 pm  Committee Business Meeting
   a.  Section Updates
   b.  Publications
   c.  Liaisons to Section Administrative Committees
   d.  Future Meetings

6:00 pm – 7:00 pm  Diversity & Inclusion Reception (Nak Grill/Pool Deck)

7:00 pm – 9:00 pm  Reception and Dinner at JW Marriott Los Cabos (Nak Grill/Pool Deck)
Friday, February 21

7:15 am – 8:15 am  Breakfast Buffet (*Amet Terrace*)

8:15 am – 9:15 am  **Update on the Equal Pay Act (Mila Ballroom)**
The Equal Pay Act proposes to provide an update on and analysis of *Rizo v. Yovino*, the long-running Ninth Circuit case that was recently remanded by the U.S. Supreme Court and involves whether prior salary is a legal basis for a wage differential under the EPA. Panelists also will discuss current trends in EPA litigation with a focus on the shifting scope of defenses available to employers under the EPA and other related state laws.

**Speakers:**
Susan E. Ellingstad, *Lockridge Grindal Nauen PLLP, Minneapolis, MN*
Gina K. Janeiro, *Jackson Lewis PC, Minneapolis, MN*
Richard Schramm, *Employment Rights Attorneys, Campbell, CA*

9:15 am – 10:15 am  **I’ll Take the FMLA for $1,000:**
**Update on the Family and Medical Leave Act**
Participants will be divided into teams and compete for prizes by playing through this unique answer-and-question format based on 2018 FMLA decisions summarized in the Midwinter Report. This hands-on exercise will demonstrate the complexities that employees and employers face when requesting or approving FMLA leave. Whether you consider yourself well-versed in the FMLA, or are just learning the ropes, you will leave this session with a new appreciation for the FMLA.

**Speakers:**
Sara Faulman, *McGillivary Steele Elkin LLP, Washington, DC*
C. Andrew Head, *Head Law Firm, LLC, Chicago, IL*
Jennifer Williams, *Cozen O’Connor, Miami, FL*

10:15 am – 10:30 am  **Refreshment Break (*Amet Terrace*)**

10:30 am – 11:30 am  **Update on the Age Discrimination in Employment Act and Whistleblower Developments**
Panelists will discuss recent appellate activity in the Second (*Anthropologie*), Sixth (*Hudson City Schools*), Seventh (*Ashley Furniture*) and Tenth (*HHS*) Circuits; the POWADA bill; recent jury verdicts and ADEA collective actions, including in the S.D.N.Y. (*IBM*) and conditional certification in the E.D. Tenn. (*Volkswagen*); disparate impact claims under the ADEA (CA DEFH enforcement action); but-for causation; and the impact of the age of decision-makers.

In addition, panelists will discuss the handling of internal complaints, compliance investigations, and disclosures, including how employees who raise concerns about fraud and other violations present both a risk and an opportunity for employers. How a company responds can mean the difference between saving millions of dollars and losing much larger sums to judgments, enforcement actions – not to mention tarnished reputations. Panelists will provide analysis on what to do – and what not to do – when an employee blows the whistle.

**Speakers:**
Sadina Montani, *Vedder Price, Washington, DC*
Hal Welford, *Littler Mendelson PC, St. Louis, MO*
Litigating as an Attorney of Color/LGBTQ Attorney

When attorneys think about preparing for depositions and trial, we commonly think about preparing our outlines, organizing our exhibits, prepping our witnesses and researching legal arguments that we will be making. But for attorneys of color and LGBTQ attorneys, there are extra forms of preparation to consider. Questions like “Will I be the only person of color in the courtroom?,” “How will I respond if this client is homophobic?” and “I am the same race as the workers and there are some racialized remarks about the workers in the record” come into play more often than many of us think. Even within the confines of our offices, the position of the attorneys of color and LGBTQ attorneys come into play. How many attorneys of color and/or LGBTQ attorneys are in positions of authority in our offices? What does it mean to be the only partner of color or LGBTQ supervisor? This panel will discuss the interplay between being a diverse attorney and how that impacts the practice of law inside and outside of the courtroom. The panelists will analyze and discuss ABA Model Rule 8.4(G) and similar anti-discrimination ethics rules adopted by states around the country. Panelists also will discuss caselaw examples of violations of such rules and the potential for judicial sanctions, and they will address how to avoid misconduct and ethical violations as well as best practices to promote diversity and inclusion in our law firms and in the practice of law.

Speakers: 
David Borgen, Goldstein Borgen Dardarian & Ho, Oakland, CA
Stephanie Sweitzer, Morgan Lewis & Bockius LLP, Chicago, IL
R. Nelson Williams, Thompson Coburn LLP, St. Louis, MO

Dinner at Los Tamarindos (optional ticketed event)
Buses will depart from the JW Marriott lobby at 6:30 pm.

Meeting papers and presentations are posted online at: [www.ambar.org/FLSLpapers](http://www.ambar.org/FLSLpapers).