PROGRAM AGENDA

Wednesday, April 15

6:30 – 7:30 pm Welcome Reception at Marriott Marquis

Thursday, April 16

8:00 – 9:00 am Continental Breakfast

9:00 – 9:15 am Welcome and Introductions from Committee Co-Chairs
Felicia Davis, Paul Hastings LLP, Los Angeles, CA
Nicole Decter, Segal Roitman LLP, Boston, MA
Gail Glick, Alexander, Krakow + Glick LLP, Los Angeles, CA
David Gaston, National Labor Relations Board, Washington, D.C.

9:15 – 10:30 am Alexa, Manage My Workforce
Smart devices such as vocal recognition and facial recognition technology are making their way into the office, and are saving employers and employees alike significant time. These devices allow employees to perform certain tasks using their voice like scheduling meetings, swapping shifts with coworkers, confirming benefits, or requesting time off, all without having to log into a particular system. Facial recognition technology can be used to safeguard confidential information and control building access, and even help employers interview applicants. Still more applications of this type of technology in the workplace are under development. The future possibilities are endless and could potentially save companies substantial time and money. However, the use of voice and facial recognition in the workplace is not without pitfalls. It is well known that this type of artificial intelligence is prone to bias against minorities, females and people with disabilities. This panel will explore the benefits and legal pitfalls of the use of voice and facial recognition technology, how existing and pending laws address these issues, and how the law might evolve to adapt into the future.

10:30 – 10:45 am Refreshment Break

10:45 – 12:00 noon E-Sports: A Thin Line Between Work and Play
Once reserved for bedrooms, basements and college dorms, the world of professional online video gaming – or “Esports” – is now a billion-dollar industry. Significant attention has been paid to the business opportunities presented by Esports, but what about the employment issues likely to arise in this cutting-edge field? Are players employees or independent contractors? Does “work” include all of the time spent playing games practicing their craft or just organized competitions? What child labor laws are implicated? Are unions necessary to protect employee rights? What does it mean for women players in this male-dominated sport? Panelists will teach you everything you need to know about this emerging labor market.
12:00 - 1:00 pm Lunch

1:00 – 2:00 pm Marijuana in the Workplace
According to a 2018 Pew Research Survey, 62 percent of U.S. respondents said marijuana use should be legal, compared to 31 percent who supported legalization in the year 2000. Currently, thirty-three states and Washington, D.C. have legalized medical marijuana use, and 11 states and Washington, D.C. have legalized recreational marijuana use. Complicating matters further, products containing CBD are now legal and easy to obtain. However, these products are not regulated by the FDA. Despite advertising themselves as free of THC, they often contain THC and result in a positive drug screen, creating a quagmire for employees and employers alike. This panel will discuss the current landscape of marijuana and the workplace, with a focus on recent technological advances in marijuana products and drug testing.

2:00 - 3:15 pm Risk Management / Ethics for Lawyers vis-à-vis Technology
This panel will discuss the evolving universe of monitoring and surveillance technology used to track employees’ productivity, location, conduct, communication, expression and association, and its legality and ethical considerations for attorneys in advising their clients on these technologies.

3:15 - 3:30 pm Refreshment Break

3:30 – 4:30 pm Modern Timekeeping Technology and Its Impact on the De Minimis Doctrine
More than 70 years ago, the Supreme Court established the de minimis defense to wage claims by recognizing that some brief compensable tasks at the beginning or end of a shift may be disregarded when they are administratively difficult to record. A rich body of case law has developed around this doctrine, but largely in an era when paper timecards were the norm. Courts and litigants alike will need to grapple with what it means to be “administratively difficult” to record work time in an era when advances in timekeeping technology offer the ability to track employees’ work as never before. This panel will discuss the features of modern timekeeping platforms, how these technologies may be used to address the most common sources of alleged de minimis time in the modern workplace, the extent to which they place countervailing burdens on employees, and how timekeeping technology may affect de minimis jurisprudence moving forward.

6:30 – 9:30 pm Dinner

Friday, April 17

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

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

9:00 – 10:00 am Coders of the World Unite: Will Tech Workers Disrupt the NLRA?
As demonstrated by Google workers’ walkout in the wake of the #MeToo movement, many technology workers view concerted activity more broadly than just encompassing wages and work hours. Stated organizing objectives at new media companies include increasing workplace diversity, transparency
and closing pay equity gaps, in addition to more traditional bargaining subjects. Organizing in new media has also played out more publicly than in prior periods, as workers harness social media, job review sites, and online petitions to generate support, and employers use social media to respond to this activity. This panel will discuss how these new approaches and goals are playing out at the NLRB and the bargaining table, and what the future may look like for employers, employees and unions.

10:00 – 11:15 am Independent Contractors at a Crossroads
States like California and Massachusetts have made profound alterations to the independent contractor legal landscape. While some argue that the new laws provide greater, much-needed worker benefits and protections, others are concerned that the laws will decrease companies’ flexibility and stifle innovation. The panel will discuss the background and implications of these laws, the “gig” economy, the reaction of some employers to re-examine practices of piecemeal rates, on-demand work, or using unpaid “interns,” and the rise of automated solutions.

11:15 – 11:30 am Refreshment Break

11:30 – 12:45 pm Everything You Need to Know to Depose a Technology Expert
With technology becoming a pervasive part of our society, expertise in digital information is playing an increasingly pivotal role in litigation. Building the capabilities to meaningfully engage technology – and technology experts – is a critical practice skill, especially as the familiar strategies for managing electronic evidence increasingly fail to address changes in how, where and why users are creating digital information. This practical skills panel will cover depositions of technology experts related to e-discovery issues that arise throughout litigation, computer forensics, electronic signatures in arbitration agreements, as well as 30(b)(6) depositions. Panelists will discuss what you need to seek in discovery, how to successfully take and defend technology expert depositions, and how to best use digital evidence and technical testimony at trial.

12:45 – 1:15 pm Lunch

1:15 – 2:15 pm Ready Employee One: Virtual Reality in the Workplace
Virtual reality (“VR”) is a computer-generated environment designed to simulate a person’s physical presence in a specific virtual setting. Amidst the proliferation of VR technologies for videogaming and 3D cinema, VR has found a new niche in recent years—the workplace. Employers can use VR to train and educate employees without the real-world consequences of failing. The panel will explore the many uses of VR in the workplace, such as onboarding, anti-harassment training, on-the-job training, mock interviews and mock terminations. Panelists also will discuss why VR is (or is not) an effective workplace tool and survey the legal and other implications of using the technology at work.
Emerging Efforts to Regulate AI and Best Practices for Implementing this Developing Technology

As more and more companies turn to AI-driven solutions for everyday business challenges, legislators are trying to get their arms around this new technology, how it is used, and how it should be regulated. Illinois recently led the way with one of the first AI-focused laws impacting employers, but federal agencies and other states are discussing their own “solutions” to the problems they see with AI and how it is currently being used, including its impact on the workforce. This panel will review the various attempts to regulate the use of AI technology currently under consideration and discuss what companies need to do now to comply with upcoming legislation, as well as best practices for implementing AI in ways that impact the workforce.

The ABA will seek 11.25 hours of CLE credit in 60-minute states and 13.5 hours of CLE credit for this program in 50-minute states including 1 hour of ethics credit in 60-minute states and 1.2 hours of ethics CLE credit in 50minute states. Credit hours are estimated and are subject to each state’s approval and credit rounding rules. Visit www.americanbar.org/mcle for general information on CLE at the ABA.

Visit the Section of Labor & Employment Law website at www.americanbar.org/labor for information about the Section Development Fund and Government and YLD Fellowship Program opportunities.

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. Send requests to laborempllaw@americanbar.org.