Conference Highlights

- Informative and Thought-Provoking Plenary Sessions:
  - The Aging Workforce: Surfing the Workplace Silver Tsunami
  - Marriage Equality and Religious Liberty: The Crossroads or Crosshairs of the First Amendment
  - Supreme Court Update
- Meet Secretary of Labor R. Alexander Acosta
- The Impact of the Trump Administration on Labor and Employment Law
- Developments in Labor-Management Relations, plus Conversations with the NLRB
- Cutting-Edge Issues in Discrimination, Harassment and Retaliation, including Intersectionality
- Meet the Equal Employment Opportunity Commission
- Hot Topics in Litigation and Class Action, with programs addressing Big Data and Effective Oral Arguments
- In-Depth Explorations of Workplace Problems and Solutions

Register today and take advantage of substantial early discounts!
ABA Section of Labor and Employment Law

11th Annual Labor and Employment Law Conference

November 8–11, 2017 • Washington, DC

We are very pleased to share this outline of the activities planned for the 11th Annual Labor and Employment Law Conference, which will be held from November 8–11, 2017 at the Washington Hilton. Please make plans to attend the Conference and encourage your colleagues to join you!

Our 11th Conference will include the features that contributed to the success of our previous Annual Conferences, including technological offerings to enhance your experience. At this year’s Conference, you can expect:

• Prominent speakers and exciting and balanced panels
• A full year’s worth of CLE credit at a price that can’t be beat
• A curriculum covering all aspects of your labor and employment law practice
• A multi-level program that will be of value regardless of your degree of experience
• Opportunities for you to meet with colleagues representing all perspectives in the labor and employment arena

The Conference takes place during an exciting time in the practice of labor and employment law. A change in administrations always brings interesting developments to the labor and employment field. This Conference will highlight the changes that have occurred from the Obama to the Trump Administration. Where better to discuss the new initiatives being implemented than Washington, D.C.? We are excited to bring together so many private practitioners and government agency representatives for robust panels and dialogues. Attendees will have the opportunity to confer with top practitioners representing employees, employers, unions and government agencies, as well as neutrals, in-house counsel and academics.

We plan to take full advantage of being in our nation’s capital. Not only will the location facilitate interaction with an increased number of government practitioners than might otherwise occur, but it will also provide opportunities for networking in locations steeped in history. To that end, we are eagerly looking forward to our Section Reception at the National Museum of American History. In addition, attendees will have the opportunity to visit various government agencies and to learn about labor and employment law initiatives. Also, the Conference will include our first-ever dine-around dedicated to new practitioners.

A committee of extraordinary member volunteers has worked tirelessly during this past year to make this the preeminent labor and employment Conference. You will not want to miss any of it. Additional program details and registration information are available on the Section website at ambar.org/laborconference. Please register by September 22, 2017 to take advantage of substantial early registration discounts!

We look forward to visiting with you at the 11th Annual Labor and Employment Law Conference.

Gail Golman Holtzman
Chair
Tampa, Florida

Don Slesnick
Chair-Elect,
Coral Gables, Florida

www.ambar.org/laborconference
Wednesday, November 8

• 12:00 noon – 2:00 pm
Inside the Beltway: Government Agency Brown Bag Lunch Programs
This program will enable participants to meet at government agency headquarters with officials and senior staff members in an informal brown bag lunch format. Don’t miss this opportunity to talk with agency staff, learn how the agencies operate, see the decision making machinery up close, hear what is on the agenda, and visit with officials and staff at the National Labor Relations Board, U.S. Equal Employment Opportunity Commission, U.S. Department of Labor, and National Mediation Board. Space for each agency visit will be limited, so register early for the best chance to participate.

• 4:30 pm – 5:00 pm
Law Student Orientation
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 – 6:00 pm
First-Time Attendee/ New Section Member Orientation
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
All attendees are invited to meet, greet and network during this opening reception at the Washington Hilton. Section Committees will provide information about publications, services and programs they provide to labor and employment lawyers.
Thursday, November 9

7:00 am – 8:00 am
VALUES TRACK
Mindfulness: More Than the Latest Trend
It is hard to avoid frequent references today extolling the virtues of mindfulness, ranging from advertising to business gurus and even popular athletes. What is mindfulness in theory and in practice? How could lawyers use mindfulness in their daily work for their own benefit as well as the benefit of clients and our legal system? We are pleased to present Héctor Bolaños, the founder of Aprende Mindfulness and a well-known teacher and mindfulness coach, who will present the fundamentals of mindfulness in our lives. Joining Hector will be Debi Galler, a Florida-based lawyer who uses mindfulness in her own practice and has taught mindfulness techniques to many lawyers and judges.

SPEAKERS:
Héctor Bolaños, Aprende Mindfulness, Mexico City, Mexico
Debi Galler, Green Street Solar Power, Tallahassee, FL

Plenary Sessions

9:30 am – 10:00 am
Welcome, Introductions and Meet Secretary R. Alexander Acosta

10:00 am – 11:15 am
The Aging Workforce: Surfing the Workplace Silver Tsunami
While Millennials garner their share of attention and media coverage, it is projected that 25 percent of workers will be over age 55 by the year 2020. Just in time for the 50th anniversary of the Age Discrimination in Employment Act, our experts will discuss the fastest growing segment of the workforce, similarities and differences between this group and others, as well as the efforts both employers and employees must make to take advantage of this vibrant “older” labor pool.

MODERATOR:
Denise K. Drake, Polsinelli PC, Kansas City, MO

4:00 pm – 5:15 pm
Marriage Equality & Religious Liberty: The Crossroads or Crosshairs of the First Amendment?
Cosponsored by ABA Commission on Sexual Orientation and Gender Identity
Following the Supreme Court’s 2015 decision in Obergefell v. Hodges in which the Court first acknowledged a fundamental right under the Fourteenth Amendment to marriage equality, several states and municipalities have enacted laws and ordinances protecting the free exercise of religious beliefs that oppose same-sex marriage. The First Amendment Defense Act (FADA), as well as contemplated executive orders, have since followed and threaten to protect anti-LGBTQ discrimination if predicted upon particular religious beliefs or moral convictions. With inevitable implications on employment practices, a sound understanding of the constitutional principles underlying this issue will assist practitioners addressing these issues in the workplace. Join these constitutional mavens as they acquaint attendees to the purported constitutional conflict and discuss its impact in the employment setting.

MODERATOR:
Jason C. Marsili, Posner & Rosen, L.L.P., Los Angeles, CA

PANELISTS:
Jennifer C. Pizer, Lambda Legal, Los Angeles, CA
David B. Rivkin Jr., Baker & Hostetler LLP, Washington, DC

8:00 am – 9:15 am
An Update for Federal Contractors: What Has Changed and What Remains the Same
Through Executive Orders, DOL regulations increased funding and aggressive agency leadership, the Obama Administration placed substantial additional obligations on federal contractors. Nearly a year into the new administration, what has changed at the OFCCP, and what remains the same? This interactive program will include a discussion of new leadership, policy changes, budgetary expectations and their potential impact, and a report on what contractors are seeing in the field when it comes to audits. It also will include a discussion of best practices and priorities for compliance.

PANELISTS:
David S. Fortney, Fortney & Scott LLC, Washington, DC
Robert J. O’Hara, United Technologies Corporation, Hartford, CT
Consuela Pinto, U.S. Department of Labor, Washington, DC

www.ambar.org/laborconference
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<td>11:30 am – 12:45 pm</td>
<td>Meet the Equal Employment Opportunity Commission: An Insider’s Perspective</td>
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<td>11:30 am – 12:45 pm</td>
<td>When Federal Sector Employment Law Drives the Development of Private-Sector Doctrine</td>
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<td>2:30 pm – 3:45 pm</td>
<td>How to Prepare and Win and/or Defend a Single Plaintiff Discrimination Suit: Top 20 Tips from an Associate’s Perspective (Fundamentals)</td>
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<tr>
<td>2:30 pm – 3:45 pm</td>
<td>Federal Employee Rights and Responsibilities in a Changing Civil Service Landscape</td>
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### Federal Sector

**When Federal Sector Employment Law Drives the Development of Private-Sector Doctrine**

While many people think of the laws governing the federal workforce as *sui generis* or pale reflections of their private-sector counterparts, the unique institutions governing federal employees have created legal doctrines that later expanded to the private sector. This panel will discuss this trend, including the EEOC’s recent use of its exclusive jurisdiction over federal-sector EEO to reinterpret Title VII to cover sexual orientation discrimination; the Supreme Court’s decision in *Green v. Brennan*, which used federal sector counseling procedures to resolve a circuit split over filing deadlines; telework as collective bargaining subject and ADA reasonable accommodation; and the FLRA’s contract coverage doctrine, which the D.C. Circuit expanded to NLRA law. Private practitioners will understand why federal sector employment law matters.

**Panelists:**
- John E. Higgins, Jr., *The Catholic University of America Columbus School of Law*, Washington, DC

### Immigration and Human Trafficking

**Creative Responses to Gender-Based Violence in the Workplace and in Global Supply Chains**

Gender-based violence is a severe workplace issue that often leaves women workers more vulnerable to human trafficking. The International Labor Organization’s June 2017 Dialogue on Violence Against Women and Men in the Workplace offered a broad range of creative proposals to benefit practitioners from every perspective. This program will provide best practices for employers, trade unions and other stakeholders to identify and eliminate gender-based violence within global supply chains. Panelists will review available U.S. legal frameworks, including worker protection and civil rights statutes and criminal penalties, as well as seizure and criminal remedies available under the recently amended Tariff Act to prevent importation of goods produced in whole or in part with forced labor.

**Panelists:**
- Derek Baxter, *U.S. Department of Labor*, Washington, DC
- Cathy Feingold, *AFL-CIO*, Washington, DC
- Gerald T. Hathaway, *Drinker Biddle & Reath LLP*, New York, NY
- Rachel Micah-Jones, *Centro de los Derechos del Migrante*, Inc., Baltimore, MD
- Jennifer (JJ) Rosenbaum, *Yale Law School*, New Haven, CT
International

• 2:30 pm – 3:45 pm
Brexit, the Trump Administration and the Cross-Border Workplace: The View from Abroad

Accepted standards of workplace governance and law across the globe are under scrutiny internationally, as the U.K. prepares to exit from the EU, the Trump Administration seeks dramatic changes in labor and employment policy, and populist and/or isolationist movements emerge abroad. This panel will examine, from an international labor and employment law perspective, how these political upheavals will practically affect cross-border workplaces, labor standards and structures, union organization and international labor and employment law practice.

PANELISTS:
Colleen Cleary, CC Solicitors, Dublin, Ireland
Danilo Di Vincenzo, Le Corre Lawyers, LLP, Montréal, QC
Owen Herrnstadt, IAMAW, Upper Marlboro, MD
Marley Weiss, University of Maryland School of Law, Baltimore, MD
Nicola Whiteley, Orrick, Herrington & Sutcliffe LLP, London, United Kingdom

Labor-Management Relations

• 8:00 am – 9:15 am
Key Differences and Similarities between the Railway Labor Act and Its Younger Cousin, the National Labor Relations Act

While the Supreme Court has said that analogies from the NLRA may be helpful in deciding cases under the RLA, it also has warned that a practitioner must have “due regard” for the many differences between the statutory schemes. This panel will explore the main differences and similarities between the NLRA and the RLA at all phases of the labor-management relationship, including representation, collective bargaining and self-help, through a discussion of recent legal developments pertaining to airline service providers (e.g., baggage-handling companies) and whether such companies are subject to the RLA or the NLRA.

PANELISTS:
Dan Collopy, National Labor Relations Board, Washington, DC
Maria-Kate Dowling, National Mediation Board, Washington, DC
Douglas W. Hall, Jones Day, Washington, DC
Robert L. Jones, Jr., American Airlines, Dallas, TX
Elizabeh Roma, Guercieri, Clayman, Bartos, Parelli & Roma, PC, Washington, DC
Carla Siegel, IAMAW, Upper Marlboro, MD

• 8:00 am – 9:15 am
Litigating the Labor-Management Relations Act Case

Workers covered by a collective bargaining agreement expect the union to handle their grievances and management to abide by the terms of a collective bargaining agreement. When this does not happen, claims may arise under the Labor-Management Relations Act and both the union and employer may find they are named as defendants in a federal court action. This panel will discuss possible claims and defenses for breach of the collective bargaining agreement and the duty of fair representation in such actions, pre-litigation requirements and procedures, administrative exhaustion, preemption and available remedies, and the interplay between LMRA and other potential causes of action.

PANELISTS:
Hon. Rebecca R. Pallmeyer, U.S. District Court for the Northern District of Illinois, Chicago, IL
Michelle Bell, MC Bell Law PLLC, Washington, DC
Nicholas J. Enoch, Lubin & Enoch, P.C., Phoenix, AZ
Henry Platt, Saul Ewing LLP, Washington, DC

• 11:30 am – 12:45 pm
View from the National Labor Relations Board

This panel will present practitioners with their first opportunity to meet the new Board members, who will discuss recent cases, practice issues and Board processes.

MODERATORS:
Stanley M. Gosch, Rosenblatt & Gosch, Denver, CO
Joseph J. Torres, Winston & Strawn, Chicago, IL

PANELISTS:
Philip A. Miscimarra, National Labor Relations Board, Washington, DC
Mark Gaston Pearce, National Labor Relations Board, Washington, DC
Lauren McFerran, National Labor Relations Board, Washington, DC

• 2:30 pm – 3:45 pm
Advocacy Pointers from Regional Directors and Administrative Law Judges

Veteran regional directors and an administrative law judge will discuss what they look for from practitioners and what they think may (or may not) change under a new Board and general counsel.

PANELISTS:
Hon. Robert Gianasini, National Labor Relations Board, Washington, DC
Susan Davis, Cohen, Weiss and Simon LLP, New York, NY
Kathy Dree King, National Labor Relations Board, Brooklyn, NY
Peter S. Ohr, National Labor Relations Board, Chicago, IL
Tanja L. Thompson, Littler Mendelson FC, Memphis, TN

Litigation/Class Action

• 8:00 am – 9:15 am
Handling an Oral Argument in an Employment Case on Appeal

This program will discuss the mechanics of structuring an effective oral argument for an employment case on appeal. Topics to be covered will include mechanics of an effective oral argument, structuring of the arguments, suggestions for dealing with weaknesses in your case, and effectively responding to questions by the court. A demonstration will be put on by the panel advocates based on a noteworthy current employment case of general interest.

PANELISTS:
Sean R. Gallagher, Polsinelli PC, Denver, CO
Tom Golstein, Goldstein & Russell, P.C., Bethesda, MD
Eric Schnapper, University of Washington School of Law, Seattle, WA

• 8:00 am – 9:15 am
Litigating the Labor-Management Relations Act Case

Workers covered by a collective bargaining agreement expect the union to handle their grievances and management to abide by the terms of a collective bargaining agreement. When this does not happen, claims may arise under the Labor-Management Relations Act and both the union and employer may find they are named as defendants in a federal court action. This panel will discuss possible claims and defenses for breach of the
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**Panelists:**
- Stacey A. Campbell, Campbell Litigation, Denver, CO
- Daniel J. Kaspar, National Treasury Employees Union, Chicago, IL
- Louis Lopez, Office of Special Counsel, Washington, DC
- Jason Zuckerman, Zuckerman Law, Washington, DC

- **11:30 am – 12:45 pm**
  **Building an Effective Compliance and Organizational Ethics Program**
  This panel will provide practical tips for building an effective compliance program, including best practices for encouraging internal disclosures, avoiding retaliation against whistleblowers, and effectively investigating and responding to employee concerns.

  **Panelists:**
  - Megan E. Guenther, U.S. Department of Labor, Washington, DC
  - Mark Hanna, Murphy Anderson PLLC, Washington, DC
  - Donna M. Hughes, Impax Laboratories, New York, NY
  - Daniel J. Hurson, The Law Offices of Daniel J. Hurson, LLC, Washington, DC
  - Eric A. Tate, Morrison & Foerster LLP, San Francisco, CA

- **2:30 pm – 3:45 pm**
  **Navigating the Interplay of Whistleblower Reward and Whistleblower Retaliation Claims**
  This topic will address the complex interplay of whistleblower reward and retaliation claims, including litigating a whistleblower reward claim without violating the seal in False Claims Act and Bivona actions, settling a retaliation claim without waiving eligibility for a whistleblower award, dealing with privilege issues regarding a whistleblower’s submissions to prosecutors or enforcement agencies, and addressing the challenges posed by parallel proceedings.

  **Panelists:**
  - Lloyd B. Chinn, Proskauer Rose LLP, New York, NY
  - Debra Katz, Katz Marshall & Banks LLP, Washington, DC
  - Scott R. Koch, JPMorgan Chase, Chicago, IL
  - Jane Norberg, U.S. Securities & Exchange Commission, Washington, DC (invited)
  - Linda Wawzenski, U.S. Attorney’s Office, Northern District of Illinois, Chicago, IL
Workplace Problems and Solutions
• 8:00 am – 9:15 am
Dealing with Social Media in the Workplace
Enacting and enforcing social media policies continues to be a vexing exercise for HR professionals and employment counsel alike. In our nonstop world of posts, tweets, grams and chats, how can an employer protect its trade secrets, strategy, legal exposure and brand without running afoul of the NLRA, privacy laws or the First Amendment? This panel will explore the ever evolving law in this area and offer tips for practitioners trying to navigate it. Issues will include concerted activity and recent NLRA rulings, employee off duty misconduct, defamation, intellectual property and emerging social media platforms and other mediums.

**Panelists:**
- Melinda C. Burrows, NetScout Systems, Inc., Westford, MA
- Julia Campins, Campins Benham-Baker, PC, Lafayette, CA
- Joilsa John Thomas, Austin, TX
- Joane Si Ian Wong, National Labor Relations Board, Brooklyn, NY

• 11:30 am – 12:45 pm
The 411 on the 420: Clearing the Smoke around Marijuana Laws
More and more states—over half and counting—have begun to decriminalize marijuana, either for medicinal use or recreation, though marijuana remains an illegal drug under federal law. This changing landscape creates challenges for workplace policies in a variety of ways. Employees may face difficult choices balancing health care, individual freedom and active employment. Legal practitioners and employers must consider the application of discrimination laws and the duty to provide reasonable accommodation to medicinal marijuana users, balanced against employer policies and collective bargaining agreements. Panelists will discuss the interplay between state and federal laws, private and public employers, the ADA and drug testing, and how recent laws impact wellness programs, fitness for duty exams and an employee’s right to privacy related to off duty lawful conduct.

**Panelists:**
- Lorraine Sanchez Hayes, United Parcel Service, Inc., Atlanta, GA
- Katherine “Kat” Judd, Clyde, Snow & Sessions, Salt Lake City, UT
- Ellen M. Kelman, The Kelman Buescher Firm, Denver, CO
- Michael C. Subit, Frank Freed Subit & Thomas LLP, Seattle, WA

• 2:30 pm – 3:45 pm
A Gender Transition Primer (Fundamentals)
Cosponsored by ABA Young Lawyers Division and ABA Commission on Sexual Orientation and Gender Identity
Eighteen states have enacted clear prohibitions on gender identity discrimination in employment, and many more may follow suit. These legal developments recognize the complexities that may arise when a person transitions in the workplace. What are an employee’s rights and an employer’s responsibilities in this context? How does one balance the personal privacy interests of employees with the desire to maintain a diverse, inclusive and discrimination-free work environment? This panel will address some of the most common challenges and questions that may arise during a gender transition and provide practical guidance on proactive and appropriate handling of transition-related issues.

**Panelists:**
- Melissa Brand, Consumer Financial Protection Bureau, Washington, DC
- Duncan Crabtree-Ireland, SAG-AFTRA, Los Angeles, CA
- Christina Hanna, Virgin America, San Francisco, CA
- Sharon McGowan, Lambda Legal, Washington, DC

Friday, November 10
• 7:00 am – 8:00 am
VALUES TRACK
Practical Wisdom: The Right Way to Do the Right Thing
Aristotle identified “practical wisdom”—the ability to make sound judgments through the improvisational application of rules to complex real life situations—as the highest of the virtues. We often recognize our exercise of this skill as our most valuable contribution to our clients. But has the development of practical wisdom been devalued in our profession, to the detriment of the next generation of lawyers and our own job satisfaction? Social psychologist, author and TED lecturer Professor Barry Schwartz will discuss the importance of a professional culture that fosters the development of practical wisdom skills and how such a culture can be restored.

**Speaker:**
- Barry Schwartz, Emeritus Professor of Psychology, Swarthmore College and Visiting Professor, Haas School of Business, UC Berkeley, Berkeley, CA

Plenary Sessions
• 9:30 am – 9:45 am
Section Award Presentations
• 9:45 am – 11:00 am
Labor and Employment Law in the U.S. Supreme Court: The 2016 Term and Beyond
The Section Secretary will discuss the principal rulings from the last term involving the law of the workplace as well as significant cases on the horizon.
Discrimination, Harassment and Retaliation

**8:00 am – 9:15 am**

**Update on Retaliation Claims**

With the EEOC updating its guidance on retaliation claims in August 2016, this update will address how the courts are defining protected activity and adverse action. The panel will review the manager rule and the impact it has had on retaliation claims by safety officials, HR professionals, in house attorneys and other employees whose jobs it is to make sure their employers comply with the discrimination laws. Panelists also will provide advice on drafting jury instructions in retaliation cases.

**Panelists:**
- Kathleen Phair Barnard, Schuverin Campbell Barnard Iglesiz & Lavitt LLP, Seattle, WA
- Tiffany Buckley-Norwood, Jackson Lewis P.C., Southfield, MI
- Jillian Cutler, Frank Freed Subit & Thomas, LLP, Seattle, WA
- Tamika Lynch, Siemans, Buffalo Grove, IL

**11:15 am – 12:30 pm**

**Sexual Orientation Workplace Protections at the Crossroads**

Cosponsored by ABA Commission on Sexual Orientation and Gender Identity

Historically, federal courts have been reluctant to interpret Title VII as protecting claims based on sexual orientation discrimination. Relying on longstanding Supreme Court precedent, however, the EEOC recently has argued for robust safeguards for workers of all sexual orientations under the sex discrimination prohibitions in Title VII. And the Seventh Circuit en banc has ruled that Title VII prohibits sexual orientation discrimination. What does the future hold for sexual orientation discrimination claims in the workplace? What effect, if any, will the legal developments for transgender workers have on this issue? This panel will focus on the dynamic legal landscape relating to sexual orientation discrimination, with special attention to recent court rulings, updates to EEOC guidance, and trends with in-house counsel.

**12:30 pm – 1:45 pm**

**Discovery of Electronically Stored Information under the Amended Federal Rules**

The 2015 amendments to Rule 26 of the Federal Rules of Civil Procedure were thought to give courts greater latitude to limit requests for extensive discovery. This change has been of particular interest to lawyers in single plaintiff Title VII litigation, where the limited size of many cases, measured in dollar value, may give rise to arguments by defendants for less discovery of ESI. Lawyers and judges will discuss this and other developments under the amended rules, and strategies for both plaintiffs and defendants in Title VII cases.

**Panelists:**
- Hon. Andrew J. Peck, U.S. District Court for the Southern District of New York, New York, NY
- Brian E. Koncious, Bogas & Koncious P.C., Bingham Farms, MI
- Esther Lander, Akin Gump Strauss Hauer & Feld LLP, Washington, DC
- Devki V. Virk, Bredhoff & Kaiser PLLC, Washington, DC

**3:45 pm – 5:00 pm**

**“Intersectionality” and Discrimination Claims Involving Multiple Categories**

From its origins in critical race theory, the idea of “Intersectionality,” holds that the classical categories of oppression (race, gender, class, sexual orientation, etc.) do not operate independently, but rather intersect to create multiple, non-discrete forms of discrimination. The law’s embrace of discrimination claims, however, based on “multiple protected categories” has been partial and uneven and awkward to apply (for example, when different bases of discrimination have different statutes of limitations and different burdens of proof). The panel will consider the evolution of judicial treatment and litigation of such claims against the social science theory and the practical experiences of workers and employers.
## Labor-Management Relations

**8:00 am – 9:15 am**

**Traditional Versus Alternative Organizing Approaches**

This panel will explore current organizing trends that are unfolding in the on demand or gig economy. Along more traditional lines, labor organizations continue to pursue petitions for representation on behalf of these workers, raising new questions about what is an appropriate unit and whether on-demand workers are employees or independent contractors. In alternative contexts, labor organizations and management are exploring non-collective bargaining agreements to govern their relations. Different approaches to organizing Uber drivers will be a starting point for the discussion.

**PANELISTS:**
- Johnda Bentley, SEIU, Washington, DC
- Harry I. Johnson III, Morgan Lewis & Bockius LLP, Los Angeles, CA
- Zubin Soleimany, New York Taxi Workers Alliance, New York, NY
- Kimberly Walters, National Labor Relations Board, New York, NY

**11:15 am – 12:30 pm**

**Mock R-Case Trial**

This practicum, featuring experienced practitioners, will focus on preparing and responding to a petition and handling an R-case hearing.

**PANELISTS:**
- Dolores Boda, National Labor Relations Board, Washington, DC
- Julie Gutman Dickinson, Bash Gottlieb, Los Angeles, CA
- John D. Doyle, Jr., National Labor Relations Board, Washington, DC
- Amanda Jaret, National Labor Relations Board, Washington, DC
- Genaira Tyce, National Labor Relations Board, Brooklyn, NY
- Amy J. Zdarevsky, Miller, Canfield, Paddock and Stone, PLLC, Detroit, MI

## Federal Courts and the National Labor Relations Act

**2:15 pm – 3:30 pm**

**Meet the National Labor Relations Board General Counsel and Deputy General Counsel (tentative)**

Through this popular interactive program, the general counsel and deputy general counsel will provide a review of recent case developments and initiatives and identify any changes that have been or may be implemented.

**MODERATORS:**
- James W. Bucking, Foley Hoag LLP, Boston, MA
- Samantha Dulaney, IATSE, New York, NY

## Litigation/Class Action

**8:00 am – 9:15 am**

**Litigating Claims for Damages in Employment Cases (Fundamentals)**

Cosponsorship by ABA Young Lawyers Division

Many typical employment cases include claims for basic damages and reinstatement. This panel will explore the strategies used in litigating basic damage claims including issues of proof, expert witness strategies and trial presentation strategies for presenting or defending damages claims. The panel will present some of the best litigation tactics for plaintiffs and defendants both in pretrial preparations as well as during trial.

**PANELISTS:**
- Barbara J. D’Aquila, Norton Rose Fulbright US LLP, Minneapolis, MN
- Diane Smason, U.S. Equal Employment Opportunity Commission, Chicago, IL
- Brooke Timmer, Friedler & Timmer, PLLC, Des Moines, IA

**3:45 pm – 5:00 pm**

**Examination of Witnesses, Whether During Direct or Cross-Examination**

This fascinating body of science is an aspect of our lives, including the legal profession. “Big data” analytical tools—such as resume screens and social media searches—may bring concerns about compliance with discrimination, privacy and other aspects of the law. "Big Data" is really about data analytics. This fascinating body of science is having a major impact on virtually every aspect of our lives, including the legal profession. "Big data" analytical tools—such as resume screens and social media aggregators—may help employers improve their decision-making processes, but they may bring concerns about compliance with discrimination, privacy and other

**PANELISTS:**
- Diane Smason, U.S. Equal Employment Opportunity Commission, Chicago, IL
- Brooke Timmer, Friedler & Timmer, PLLC, Des Moines, IA

**11:15 am – 12:30 pm**

**Use and Admissibility of Electronically Stored Information**

This program will focus on issues involved in the admissibility of electronically stored information (ESI) as well as its use and misuse in the courtroom. A federal district court judge and experienced trial practitioners will provide practical guidance using real case scenarios addressing the more complex and difficult issues typically faced when presenting ESI at trial. A perspective on best practices and trial techniques will be presented.

**PANELISTS:**
- Hon. Kaleni Grider, U.S. District Court for the District of Maryland, Baltimore, MD
- Steven E. Fox, Polsinelli PC, Dallas, TX
- Jahan Sagafi, Outten & Golden LLP, San Francisco, CA
- Allison Stanton, U.S. Department of Justice, Washington, DC

**2:15 pm – 3:30 pm**

**Witness Examination Skills at Depositions and Trials**

Examination of witnesses, whether during deposition or trial, whether on direct or cross-examination, is a skill that it is critical to the success of your case. You must know what to ask and how to ask it in order to gather the evidence and information you need to be successful. Watch experienced practitioners demonstrate proven and effective witness examination techniques, with commentary and discussion along the way about what works, what doesn’t, and why.

**PANELISTS:**
- Eve Cervone, Auerbach and Yokich, Chicago, IL
- Jahan Sagafi, Outten & Golden LLP, San Francisco, CA
- Jeffrey Dreter, Fisher & Phillips LLP, Boston, MA
- Stephen Yokich, Dowd, Bloe, Bennett, Cervone, Auerbach and Yokich, Chicago, IL
laws. This program will examine how big data is used in general and how it affects discovery, research, billing and strategy.

**Panelists:**
- James M. Finberg, Altschuler Berzon LLP, San Francisco, CA
- Darrell Gay, Arent Fox, New York, NY
- Kathleen K. Lundquist, Aptmetrics Inc., Davie, FL
- Steven Teppler, Abbott Law Group, Jacksonville, FL

**OSHA**

- **2:15 pm – 3:30 pm**
  - All You Ever Wanted to Know About OSHA Practice and Procedures (Fundamentals)
  - Cosponsored by ABA Young Lawyers Division
  - This introduction to the fundamentals of OSHA practice will provide practitioners with a helpful overview of the Occupational Safety and Health Administration and the independent OSHA Review Commission. The panel will examine the statutes involved in OSHA practice, how the agency promulgates and enforces the standards and regulations under those statutes, what to expect during an OSHA inspection, commonly cited hazards, the role of the Commission and the courts of appeals in deciding OSHA citations, and the standard of judicial review. The session also will address practice differences before state OSHA agencies.
  - **Panelists:**
    - Tressi L. Cordaro, Jackson Lewis P.C., Reston, VA
    - Orlando J. Panuccio, U.S. Department of Labor, Washington, DC
    - Randy Rabonowitz, OSH Law Project, Washington, DC

- **3:45 pm – 5:00 pm**
  - Recent Developments Concerning OSHA’s Injury and Illness Electronic Reporting and Anti-Retaliation Requirements
  - OSHA has expanded the use of its recordkeeping authority to further its enforcement agenda. For example, OSHA issued a new rule requiring employers to file injury and illness records with OSHA and preventing employers from retaliating against employees who report an injury or illness. The new rule may have significant implications to safety incentive programs and post-accident drug testing. The anti-retaliation provisions went into effect on December 1, 2016. Several trade associations challenged the new rule in court, asserting that OSHA does not have the authority to enforce retaliation and discrimination under a recordkeeping rule. Panelists will debate this issue and provide an update on the litigation.
  - **Panelists:**
    - Douglas L. Parker, WorkSafe, Oakland, CA
    - Shontell D. Powell, Ogletree, Drakins, Nash, Smoak & Stewart, P.C., Atlanta, GA

**Practice and Professionalism**

- **8:00 am – 9:15 am**
  - When Co-Counseling Goes Awry: The Ethics Dilemmas Associated with the Co-Counsel Relationship
  - Despite our best intentions, co-counseling a case with another law firm can seem like a good idea . . . at first. However, ethical and legal issues abound when co-counsel disagree about the strategy, co-counsel realizes that they do not work well together or one co-counsel simply disappears. This panel will explore the ethical implications of lawyers who, while still engaged in a case, decide they can no longer work together. It will explore the mechanisms and/or agreements that should be put in place prior to starting the case, and it will explore the ethical challenges of unraveling the relationship while still upholding all duties to the client.
  - **Panelist:**
    - Lisa J. Banks, Katz, Marshall & Banks LLP, Washington, DC

- **3:45 pm – 5:00 pm**
  - Technology in Litigation: The Latest and Greatest Tools that Can Enhance Your Practice
  - Technology continues to be the great equalizer of the small and large firms. As the use of technology continues to level the playing field, lawyers must stay abreast of the latest technological advances that can assist them in the profession. The panel will focus on tools that can help lawyers organize their practice, that can assist with discovery and can assist in the overall presentation of a case at trial.
  - **Panelists:**
    - Matthew Aibel, Epstein Becker & Green, PC, New York, NY
    - David M. Cook, Cook & Logothetis, LLC, Cincinnati, OH
    - Amanda A. Farahany, Barrett & Farahany, LLP, Atlanta, GA

**Public Sector**

- **2:15 pm – 3:30 pm**
  - The Latest Developments in Pension and Healthcare Benefits for Public Employees
  - The panel will discuss the latest developments regarding public employee health care and pension benefits, with a special emphasis on post-employment health care benefits. Why have major American cities, such as Dallas, considered municipal bankruptcy to address a public employee pension fund crisis? How have public employers and unions addressed such challenges at the bargaining table? To what extent are pension costs and post-employment health care issues negotiable? What creative solutions have been generated to control rising costs, and how might changes to the Affordable Care Act affect the current situation?
  - **Panelists:**
    - E. Theodore Clark, Clark Baird Smith LLP, Chicago, IL
    - Paul Green, Mooney, Green, Saindon, Murphy & Welch, Washington, DC
    - Emily Martin, Washington Public Employment Relations Commission, Kirkland, WA

- **3:45 pm – 5:00 pm**
  - Public Employee Free Speech Post-Garcetti
  - A panel of experts will discuss recent legal developments concerning the free speech rights of public employees, with a particular emphasis on whether public employee involvement in the political process is protected, and the extent to which First Amendment protection extends to social media communications by public employees.
  - **Panelists:**
    - James Casey, Slesnick & Casey LLP, Coral Gables, FL
    - Roxana Crasovan, Clark Baird Smith LLP, Chicago, IL
    - Michael Z. Green, Texas A&M University School of Law, Fort Worth, TX
    - Alice O’Brien, National Education Association, Washington, DC

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Inside the Beltway: Government Agency Brown Bag Lunch Programs page 3
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Conference Registration
4:30 pm – 5:00 pm
Law Student Orientation pages 3, 18
5:00 pm – 6:00 pm
First-Time Attendee/New Section Member Orientation pages 3, 18
6:00 pm – 8:00 pm
Welcome Reception and Committee Expo pages 3, 18
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Young Lawyers Division Dine-Around page 18

Thursday, November 9
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• Ethics Issues in Communications with People Receiving “Limited Scope” Representation page 7
• Handling an Oral Argument in an Employment Case on Appeal page 6
• Key Differences and Similarities between the Railway Labor Act and Its Younger Cousin, the National Labor Relations Act page 6
• Litigating the Labor-Management Relations Act Case page 6
• State of Whistleblower Protection Laws after One Year of the Trump Administration page 7
• An Update for Federal Contractors: What Has Changed and What Remains the Same page 4
9:30 am – 10:00 am
Welcome, Introductions and Meet Secretary of Labor R. Alexander Acosta page 4
10:00 am – 11:15 am
PLENARY SESSION
The Aging Workforce: Surfing the Workplace Silver Tsunami page 4
11:30 am – 12:45 pm
CONCURRENT PROGRAMS
• Building an Effective Compliance and Organizational Ethics Program page 7
• Creative Responses to Gender-Based Violence in the Workplace and in Global Supply Chains page 5
• The 411 on the 420: Clearing the Smoke around Marijuana Laws page 8
• Meet the Equal Employment Opportunity Commission: An Insider’s Perspective page 5
• View from the National Labor Relations Board page 6
• When Federal Sector Employment Law Drives the Development of Private-Sector Doctrine page 5
• Witness Prep Tutorial (Fundamentals) page 7
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Diversity and Inclusion Luncheon
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• Advocacy Pointers from Regional Directors and Administrative Law Judges page 6
• Brexit, the Trump Administration and the Cross-Border Workplace: The View from Abroad page 6
• Federal Employee Rights and Responsibilities in a Changing Civil Service Landscape page 5
• A Gender Transition Primer (Fundamentals) page 8
• How to Prepare and Win and/or Defend a Single Plaintiff Discrimination Suit: Top 20 Tips from an Associate’s Perspective (Fundamentals) page 5
• Navigating the Interplay of Whistleblower Reward and Whistleblower Retaliation Claims page 7
• Winning Your Case through Effective Use of Technology page 7
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Friday, November 10
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8:00 am – 9:15 am
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• Misclassification Claims that Every Employment Lawyer Needs to Recognize page 14
• Practical Strategies for Closing the Gender Wage Gap page 14
• Preparing for the Robot Takeover: “I’m Sorry, Dave. I’m Afraid I Can’t Do That.” page 9
• Traditional Versus Alternative Organizing Approaches page 10
• Update on Retaliation Claims page 9
• When Co-Counseling Goes Awry: The Ethics Dilemmas Associated with the Co-Counsel Relationship page 10
9:30 am – 10:45 am
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CONCURRENT PROGRAMS
• The Challenges of Globalizing Corporate Diversity Initiatives and Overcoming Cultural Impediments page 9
• Class Arbitrability and Class Waiver page 14
• Forbidden Love: Managing Employee Romantic Relationships to Prevent Litigation page 14
• Mock R-Case Trial page 10
• Sexual Orientation Workplace Protections at the Crossroads page 9
• Top Ten Things Labor and Employment Lawyers Need To Know About Workers’ Compensation (Fundamentals) page 14
12:30 pm – 2:00 pm
Pro Bono Luncheon
12:30 pm – 2:00 pm
In-House Corporate Counsel Luncheon
(In-House Corporate Counsel only)
2:15 pm – 3:30 pm
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• Best Practices to Avoid Legal Traps Associated with Affinity Groups page 15
• Discovery of Electronically Stored Information under the Amended Federal Rules page 9
• The Latest Developments in Pension and Healthcare Benefits for Public Employees page 10
• Meet the National Labor Relations Board General Counsel and Deputy General Counsel (tentative) page 10
• Representative Evidence in Class Actions after Tyson page 14
• Witness Examination Skills at Depositions and Trials page 10
3:45 pm – 5:00 pm
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• Everything a Litigator Needs to Know About Big Data page 10
• Federal Courts and the National Labor Relations Act page 10
• “Intersectionality” and Discrimination Claims Involving Multiple Categories page 9
• Public Employee Free Speech Post-Garcetti page 10
• Recent Developments Concerning OSHA’s Injury and Illness Electronic Reporting and Anti-Retaliation Requirements page 10
• Technology in Litigation: The Latest and Greatest Tools That Can Enhance Your Practice page 10
5:00 pm – 6:00 pm
Exhibitor Happy Hour Reception
7:00 pm – 11:00 pm
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Saturday, November 11
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Resiliency: Mental Well-being and Your Performance page 15
9:15 am – 10:30 am
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• Ethics Issues in Handling Disruptive or Dishonest Clients page 17
• The Future of Wage and Hour under Trump page 17
• Intermittent Strikes: Lawful or Not? page 16
• Litigating Non-Compete and Trade Secret Cases page 17
• A Practical Guide to Arbitration: The Dos and Do Nots page 15
• What Are the Impacts of the Trump Administration on Employee Benefits? page 16
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CONCURRENT PROGRAMS
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• Med-Arb: Can We Do Better than “Everyone Walks Away Unhappy”? page 15
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Careers in Labor and Employment Law: A “How To” Exploration of Options and Advice for Law Students on Finding the Right Job page 18
12:30 pm – 2:00 pm
College of Labor and Employment Lawyers Program
Wage and Hour

- **8:00 am – 9:15 am**
  Misclassification Claims that Every Employment Lawyer Needs to Recognize
  The rapidly changing models of industry present evolving and perplexing questions of classification that determine a worker’s right to overtime pay under the FLSA and state laws. Exotic dancers, college students and ride-sharing service drivers are among the myriad of individuals that challenge companies who seek proper classification. This panel will provide updates on the independent contractor/employee debate and developments in the more familiar white collar exemptions, both of which promise to spawn litigation in 2017 and beyond.

  **PANELISTS:**
  Jennifer Brand, U.S. Department of Labor, Washington, DC
  Tracey Holmes Donesky, Stinson Leonard Street LLP, Minneapolis, MN

- **11:15 am – 12:30 pm**
  Class Arbitrability and Class Waiver
  Where are we now and where will we go from here? With a circuit split looming and the U.S. Supreme Court having passed on the issue in recent years, will there be a new vehicle to consider class arbitrability? Also, in January, the U.S. Supreme Court agreed to consolidate three cases (Murphy Oil USA, Inc., Epic Systems v. Lewis, and Ernst & Young LLP v. Morris) and take up the contentious class action waiver issue. What can practitioners prepare to hear with a new U.S. Supreme Court make up and possibly executive action on related regulations?

  **PANELISTS:**
  Louise Betts, U.S. Department of Labor, Washington, DC
  Bob DeRose, Barkan Mezlish, LLP, Columbus, OH
  Bernard R. Mazaheri, Morgan & Morgan, Lexington, KY
  Trishanda Treadwell, Parker Hudson Rabin & Dobbs LLP, Atlanta, GA

- **2:15 pm – 3:30 pm**
  Representative Evidence in Class Actions after Tyson
  Last year, in Tyson Foods v. Bouaphakeo, the U.S. Supreme Court allowed for the use of statistical “representational evidence” to prove FLSA liability after previously upholding the use of such evidence to prove damages. However, clear limitations exist as to the type of evidence that will be admissible and the factual circumstances that will dictate the extent to which such evidence may be used. Practitioners from each constituency will discuss the multiple stages at which representative evidence may be used, how each side uses these rulings to their advantage, practical pointers for prosecuting and defending these cases, and what we might expect in the future.

  **PANELISTS:**
  Ryan Hagerty, Asher Gittler & D’Alba Ltd., Chicago, IL
  John Ho, Cozen O’Connor, New York, NY
  Brian Kriegler, Econ One Research Inc., Los Angeles, CA
  Rachana T. Srey, Nichols Kaster PLLP, Minneapolis, MN

- **3:45 pm – 5:00 pm**
  Discovery in Wage and Hour Class Actions
  Discover what makes for effective discovery in wage and hour class actions. How do you craft and execute a meaningful discovery plan to reach your goals? What are the differences that you will encounter in discovery in a wage and hour class action that you do not find in other employment claims?

  **PANELISTS:**
  Naveen Kahir, Costasagy, Brooks, Smith & Prophete, LLP, New York, NY
  Jason C. Marsili, Posner & Rosen LLP, Los Angeles, CA
  Dane Steffenson, U.S. Department of Labor, Atlanta, GA
  Kevin J. Stoops, Sommers Schwartz, P.C., Southfield, MI

Workplace Problems and Solutions

- **8:00 am – 9:15 am**
  Practical Strategies for Closing the Gender Wage Gap
  Scrutiny of the national gap in wages between men and women for comparable work has remained intense. But eliminating discrimination is not easy or simple. How should the wage gap be measured? What practical steps do companies and counsel take to identify problem areas? What causes the wage gap, and how many of those causes are redressable by individual employers? What can be done at the hiring stage, such as preclusion of information about starting salary, pre-established salary scales, limitations on negotiation, and other techniques? For incumbents, what solutions are available, such as lockstep salary increases, limits on performance evaluations and subjective incentive pay, and internal audits? How much of a role does culture play? Join us for a robust facilitated conversation about specific approaches that leaders in various industries—including the legal profession—are taking or could take to eliminate pay disparities, and the responsibilities of government, employers and society in addressing this important issue.

  **PANELISTS:**
  Lauri A. Danrell, Orrick, Herrington & Sutcliffe LLP, Sacramento, CA
  Wendy L. Kahn, Zwerdling, Paul, Kahn & Woly, Washington, DC
  Lindsey Wagner, Scott Wagner and Associates, PA, Jupiter, FL
  George L. Washington, Jr., Orange Business Services, Oak Hill, VA

- **11:15 am – 12:30 pm**
  Forbidden Love: Managing Employee Romantic Relationships to Prevent Litigation
  Companies fear the worst from workplace romances: sexual harassment complaints; defamation, assault and battery; false imprisonment and other torts; claims of favoritism, hurt feelings, gossip, and a myriad of other possible negative outcomes. In an attempt to lessen this fear, more and more companies are developing stricter workplace romance policies to address relationships between employees and their subordinates, perceived subordinates, coworkers, competitors and clients. This panel will discuss creative ways companies have managed workplace romances while still respecting employees’ rights to engage in off duty conduct.

  **PANELISTS:**
  Katie E. Bunch, JPMorgan Chase, Chicago, IL
  Kimberly Geisler, Scott Dukes & Geisler, P.C., Birmingham, AL
  Scott Pollins, Pollins Law, Philadelphia, PA
  Hope Singer, Bush Gottlieb, Glendale, CA

- **11:15 am – 12:30 pm**
  Top Ten Things Labor and Employment Lawyers Need To Know About Workers’ Compensation (Fundamentals)
  Cosponsored by ABA Young Lawyers Division
  What you don’t know can hurt you and your client. For example, did you know that it is common to include a release
of all employment and non-workers’ compensation claims when settling a workers’ compensation claim, often including a resignation and agreement not to reapply? Don’t miss your chance to be involved and protect your clients. Panelists will lead an interactive discussion with the audience regarding the top ten things to know about how workers’ compensation claims can impact employment law claims and how to manage both claims and global settlements of claims.

PANELISTS:
Ann Dalton, Hammond & Shinner PC, St. Louis, MO
Stewart S. Manela, Arent Fox, Washington, DC
Andrew J. Reinhardt, Reinhardt Harper Davis, PLC, Richmond, VA
James J. Szablewicz, Virginia Workers’ Compensation Commission, Richmond, VA

• 2:15 pm – 3:30 pm
Best Practices to Avoid Legal Traps Associated with Affinity Groups
Organizations are increasingly attempting to allow for employee engagement and inclusion through affinity groups. Frequently, affinity groups are built around protected characteristics, such as race, gender and sexual orientation, and financially supported by the organization. Organizations also are seeing more organic, employee-formed affinity groups that may allow anonymous participation through the Internet. Improperly structured and rogue affinity groups may be exclusionary and unlawful. Disciplining employees for engaging in affinity group related activities also may be unlawful. This panel will discuss hypotheticals that highlight some of the legal and business risks of affinity groups and provide recommendations on how to manage them.

PANELISTS:
Georgia Coffey, U.S. Veterans Administration, Washington, DC
Jennifer Kroll, Martin & Bonnett PLLC, Phoenix, AZ
Michele Meyer-Shipp, Prudential Financial, Los Angeles, CA
Heidi T. Sharp, Burgess Sharp & Golden, PLLC, Clinton Township, MI
Anne-Marie Vercruysse Welch, Clark Hill, Detroit, MI

Saturday, November 11
• 8:00 am – 9:00 am
VALUES TRACK
Resiliency: Mental Well-being and Your Performance
The modern workplace produces undeniable stress and pressure for many, due in part to advances in evolving technology. The almost constant demand for attention has a profound impact on mental and physical well-being for so many of us. Resiliency programs are science-based and are designed to help individuals and work groups understand both the physical and mental side of workplace pressure. Dr. Philip Hopley, a psychiatrist and Managing Director of Cognacity, specializes in studying the workplace and individuals and presenting strategies to manage individual performance in a stressful and hectic world. Cognacity has studied many workplaces including law firms and you will find the results both fascinating and insightful to help understand how and why stress can have such a significant impact on your performance and well-being.

SPEAKER:
Dr. Philip Hopley, Cognacity, London, United Kingdom

• 9:15 am – 10:30 am
A Practical Guide to Arbitration: The Dos and Do Nots
Arbitration filings have increased over the last decade, making it crucial for labor and employment attorneys to be comfortable practicing in an arbitration setting. Although many principles apply the same in both arbitrations and the courts, arbitration exposes litigators to unique challenges. Learn how to approach the process, how to present your case (along with what mistakes to avoid), and how to use technology to your advantage, to most effectively represent your clients in this alternative forum.

PANELISTS:
George S. Crisci, Zashin & Rich, Cleveland, OH
Raquel Fas Bravo, The Law Office of Raquel Fas Bravo, Boynton Beach, FL
Kristian G. Parker, Teamsters 705, Chicago, IL
Alan A. Symonette, Arbitrator, Philadelphia, PA

• 10:45 am – 12:00 noon
Med-Arb: Can We Do Better than “Everyone Walks Away Unhappy”?
With the cost of arbitration soaring, this hybrid process may provide an answer.

Speaker:
Dr. Philip Hopley, Cognacity, London, United Kingdom
Challenges to the process can, however, deter lawyers from using it. Learn how to fully and effectively engage in this process to reach the best results for your clients. Practitioners and mediators/arbitrators will discuss how to craft the process to ensure that the benefits of mediation and arbitration will not be lost to the hybrid process where confidential and open and honest discussion of concerns of the parties positions required to lead to resolution may lead to knowledge of the decision maker that the opposing party is not aware of and cannot refute.

**Discrimination, Harassment and Retaliation**

- **9:15 am – 10:30 am**
  **Addiction under the ADA**
  Drug addiction is on the rise, including in working class communities where industrial jobs have disappeared. The ADA’s treatment of addiction issues is complex—status as an addict is protected, “current” use of drugs is not, an addict in rehab is protected, a casual user of drugs is not. How have courts applied these principles and made these distinctions in real cases to determine whether an employee with an alcohol or substance problem get statutory protection?

  **PANELISTS:**
  - Tiffanie Benfer, Hardwick and Benfer, Doylestown, PA
  - Katherine Hubonhoa, Grube, Brown and Gold, San Francisco, CA
  - Wesley Kennedy, Allison, Slavsky & Kennedy, PC, Chicago, IL
  - Kathryn Widmayer, University of Maryland Medical Center, Baltimore, MD

**Employee Benefits**

- **9:15 am – 10:30 am**
  **What Are the Impacts of the Trump Administration on Employee Benefits?**
  Employee benefits, especially health insurance and the Affordable Care Act, were a hot topic during the 2016 election cycle. Attorneys predicted drastic changes. A year after the election, what has happened to employee benefits? This panel will discuss the impact of the Trump Administration on the ACA, the new EBSA fiduciary rule, and the new disability regulations. Panelists also will cover other anticipated changes the new administration (likely?) will make to employee benefits.

  **PANELISTS:**
  - Ada Dolph, Seyfarth Shaw LLP, Chicago, IL
  - Karin Feldman, AFL-CIO, Washington, DC
  - G. William Scott, U.S. Department of Labor, Washington, DC
  - Mary Ellen Signorille, AARP Foundation Litigation, Washington, DC

- **10:45 am – 12:00 noon**
  **Mock ERISA Mediation Session: Getting the Results for Your Client**
  Using a hypothetical based on a current ERISA fee case involving multiple parties and cutting edge issues, the panel will act out a mock mediation highlighting the substantive legal interests of each party and the strategies utilized in the mediation, including pre-mediation considerations, opening statements, opening round of mediation passes, bridging the gap and closing the deal. The panelists will lead an interactive discussion of the mediation process where confidential and open and honest discussion of concerns of the parties positions required to lead to resolution may lead to knowledge of the decision maker that the opposing party is not aware of and cannot refute.

  **PANELISTS:**
  - Joseph Barton, Block & Leviton LLP, Washington, DC
  - Ruben Chapa, U.S. Department of Labor, Chicago, IL
  - John Harney, O’Donoghue & O’Donoghue, Washington, DC
  - Ira F. Jaffe, Arbitrator and Mediator, Washington, DC
  - M’Alyssa Mecenas, Paul Hastings LLP, Los Angeles, CA

**Immigration and Human Trafficking**

- **10:45 am – 12:00 noon**
  **Immigration Enforcement in a New Era: The View from Home**
  Surprising electoral results in the United States and Britain’s Brexit vote were at least partially due to anxieties about global migration and its effect on labor markets. This program will feature nationally recognized experts who have analyzed these developing issues closely from a domestic standpoint. Panelists will discuss current trends in worksite enforcement under the Trump Administration, focusing on the updated Operating Instruction on immigration enforcement in labor disputes and the current status of the Memorandum of Understanding between the Department of Homeland Security and the Department of Labor, the Equal Employment Opportunity Commission and the National Labor Relations Board.

  **PANELISTS:**
  - Matt Ginsburg, AFL-CIO, Washington, DC
  - Jonathan A. Grode, Green and Spiegel, Philadelphia, PA
  - Laura Hinz, National Employment Law Project, Washington, DC
  - Randel K. Johnson, U.S. Chamber of Commerce, Washington, DC

**Labor-Management Relations**

- **9:15 am – 10:30 am**
  **Intermittent Strikes: Lawful or Not?**
  Increasingly, retail, fast food and other non-union workers are engaging in one-day work stoppages to protest wages, hours and working conditions. In this program, panelists will discuss the current state of Board law (as well as comparison to the RLA) pertaining to intermittent and partial strikes, recent decisions such as Walmart and Burger King, and how this tactic has been used in the fight for a $15 minimum wage.

  **PANELISTS:**
  - Colleen Breslin, National Labor Relations Board, Washington, DC
  - Mark A. Hutcheson, Davis Wright Tremaine LLP, Seattle, WA
  - Pamela Jeffrey, Levy Ratner, P.C., New York, NY
  - Jessica Kimbrough, United Airlines, Chicago, IL

- **10:45 am – 12:00 noon**
  **Trends in NLRA Remedies**
  This program will address a number of recent cases, such as King Soopers, Pacific Beach Hotel and Columbia College, provide an update on current trends in remedial issues, and discuss what to expect in the coming years.

  **PANELISTS:**
  - Jennifer Abruzzo, National Labor Relations Board, Washington, DC
  - Amber Rogers, Hunton & Williams LLP, Dallas, TX
  - Kate M. Swarengen, Cohen, Weiss and Simon LLP, New York, NY
Litigation/Class Action
- 9:15 am – 10:30 am
  Litigating Non-Compete and Trade Secret Cases
Successfully litigating non-compete and trade secret cases requires special litigation skills. Unlike most litigation that takes months or years for resolution, non-compete and trade secret cases move at a dizzying pace—often starting with the filing of a request for a temporary injunction within days after the trial lawyer learns about the dispute. This session will provide practical guidance on how to present a case for injunctive relief as well as strategies to resolve these cases outside the courtroom.

PANELISTS:
Hon. Bernice B. Donald, U.S. Court of Appeals for the Sixth Circuit, Memphis, TN
Elizabeth Pannill Fletcher, Ahmed, Zavitsanos, Angiulos, Alavi & Mensing PC, Houston, TX
Paul E. Starkman, Clark Hill, Chicago, IL

- 10:45 am – 12:00 noon
  Handling the Title IX Employment Case
This program will focus on the employer/employee relationship within the context of Title IX. Panelists will discuss how to evaluate, litigate and defend the employment discrimination case brought under Title IX including proper plaintiffs and defendants, possible claims and defenses, administrative actions and remedies, burdens of proof and recoverable damages. Panelists will cover both private party actions as well as claims brought by federal government agencies seeking enforcement and relief for individuals and also will analyze potential claims under other employment discrimination statutes. Recent trends in Title IX enforcement and litigation will be addressed from the perspective of claimants, educational institutions and government enforcement.

PANELISTS:
Lubna Alam, National Education Association, Washington, DC
Candice E. Jackson, U.S. Department of Education, Washington, DC
Mohammed Lakhani, Del Gado Law Group, LLC, Chicago, IL
Risa L. Lieberwitz, Cornell University, Ithaca, NY

Practice and Professionalism
- 9:15 am – 10:30 am
  Ethics Issues in Handling Disruptive or Dishonest Clients
Certain problem clients pose extreme challenges. This panel will explore ethical tensions created and the prudent and ethical measures that lawyers can take in mind the gap between ethical obligations under the model rules and the societal expectations that attorneys serve as gatekeepers. Panelists will discuss situations and best practices, including good practices guidance and due diligence to handle clients acting illegally or against their own best interests.

PANELISTS:
Paula J. Frederick, State Bar of Georgia, Atlanta, GA
Janine M. Martin, Hammond & Skinner PC, St. Louis, MO
Jeffrey D. Patton, Spilman Thomas & Battle PLLC, Charlotte, NC
Michael A. Williams, Williams Dirks Dummeron LLC, Kansas City, MO

- 10:45 am – 12:00 noon
  Ethics Issues in Handling the Dissolution of Firms
This panel explores the many questions that arise upon the breakup of a firm. The Model Rules will be examined and best practices will be discussed against the turbulent backdrop that can occur to information? How will work best be transferred from one firm to another? What information should a lawyer who has played a principal role in representation provide open departing; and when should it be provided? What conflicts of interest are present?

PANELISTS:
Dennis P. Duffy, Baker & Hostel LLP, Denver, CO
Andrew H. Friedman, Helmer Friedman LLP, Culver City, CA
Richard E. Molan, Molan Law Office PLLC, Manchester, NH
Stephanie Padilla, Johns Manville, Denver, CO
Dayna E. Underhill, Holland & Knight LLP, Portland, OR

Wage and Hour
- 9:15 am – 10:30 am
  The Future of Wage and Hour under Trump
In the last part of the Obama Administration, the Department of Labor, and in particular the Wage and Hour Division, passed significant regulations. President Trump has vowed to undo regulations like these that Republicans say are burdensome to businesses. To what extent are wage and hour regulations a target? How vulnerable are the various regulations? What should business clients and the lawyers on both sides look for in the President’s first term? The panelists will bring their insight and experience to suggest answers to these questions and share concerns and opportunities seen by each constituency as they proceed forward.

PANELISTS:
Jeremy J. Glenn, Cozen O’Connor, Chicago, IL
Hope Pordy, Spivak Lipton LLP, New York, NY
M. Patricia Smith, National Employment Law Project, Washington, DC

- 10:45 am – 12:00 noon
  Surviving Shrewd Scrutiny of FLSA Settlements
Overwhelming odds predict that FLSA collective actions will settle before trial. After the parties agree to a settlement, however, court approval is required to validate the release of claims and distribute the proceeds. Recent decisions remind counsel that the approval process is not merely a rubber stamp. This panel will explore the common missteps that prompt judges to deny approval and send the lawyers back to the drawing board. The panel also will explore from the perspective of plaintiffs and defendants the particular strategies that impact settlement timing and terms.

PANELISTS:
Andrez Carberry, US Foods, Inc., Rosemont, IL
Sara Faulman, Woodley & McGillivray LLP, Washington, DC
Lawrence Morales II, The Morales Law Firm, P.C., San Antonio, TX
Michael Russell, Wallace Lansden Dortch & Davis, LLP, Nashville, TN
Sabrina L. Shadi, Baker & Hostel LLP, Los Angeles, CA
Networking and Social Events

Wednesday, November 8

• 4:30 pm – 5:00 p.m.
  Law Student Orientation
  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
  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
  All attendees are invited to meet, greet and network during this opening reception at the Washington Hilton. Section Committees will provide information about publications, services and programs they provide to labor and employment lawyers.

• 8:00 pm – 10:00 pm
  Young Lawyers Division Dine-Around
  Members of the ABA Young Lawyers Division are invited to participate in an organized “dine-around” at several of D.C.’s wonderful restaurants. Sign-up information and further details will be provided to YLD registrants.

Thursday, November 9

• 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.

• 6:00 pm – 7:30 pm
  Diversity and Inclusion Networking Reception
  Presented by ABA Diversity and Inclusion in the Legal Profession Committee
  Join us for a social and networking reception to support the Section’s diversity and inclusion initiatives focusing on lawyers of color; female lawyers; lesbian, gay, bisexual and transgender lawyers; and lawyers with disabilities.

Friday, November 10

• 7:00 pm – 11:00 pm
  Conference Reception at the National Museum of American History
  Join with old friends and new to celebrate the 11th Annual Labor and Employment Law Conference at the magnificent National Museum of American History. Guests will be able to tour the wonderful exhibits from 7:00 pm until 11:00 pm.

Saturday, November 11

• 12:00 noon – 1:30 pm
  Careers in Labor and Employment Law: A “How To” Exploration of Options and Advice for Law Students on Finding the Right Job
  If you are considering a career in labor and employment law, come meet, talk and have lunch with leading labor and employment lawyers who will share their diverse perspectives and their real-life experiences practicing on behalf of management, unions and plaintiffs or serving as government attorneys or neutrals. Not only will you learn about the extremely varied career options open to labor and employment lawyers, you will receive concrete practical advice on how to get into the area that interests you, whether it is a big firm practice, a union legal staff, a boutique management or plaintiff’s firm, a federal or state regulatory agency or an in-house corporate position.
Platinum Level

Bloomberg Law

Gold Level

Epstein Becker Green

Jackson Lewis

Outten & Golden LLP

Silver Level

Akin Gump Strauss Hauer & Feld LLP

BakerHostetler

Cozen O’Connor

FordHarrison

GreenbergTraurig

Jones Day

JONES DAY

Morgan Lewis

Paul Hastings

Polsinelli

Practical Law

Proskauer

Saul Ewing

Winston & Strawn LLP

Bronze Level

Alaska Airlines

Bogas & Koncius

American Arbitration Association

Butler Snow

Edgeworth Economics

Emond Harnden

Fisher Phillips

Lief Cabraser Heiman

Morrison & Foerster

Mullen & Tenenbaum

Morgan Lewis

Morrison & Foerster

O’Melveny

OPF

Ogletree Deakins

Orick

Sheppard Mullin

Patron Level

American Arbitration Association

Akin Gump Strauss Hauer & Feld LLP

BakerHostetler

Butler Snow

Emond Harnden

Fisher Phillips

Lief Cabraser Heiman

Morrison & Foerster

Mullen & Tenenbaum

O’Melveny

OPF

Ogletree Deakins

Orick

Sheppard Mullin

Pedowitz & Meister, LLP

Phelps Dunbar

Law Offices of Slesnick & Casey, LLP

Cohen Weiss Simon

Cohen Weiss Simon

Law Office of Lori D. Ecker

Law Office of Lori D. Ecker

Friend Level

Broach & Stulberg

Frank Freed Sub & Thomas

HB

Hornbeck & Filer, LLC

Rosenblatt & Gosch, PLLC

Scott Dukes & Geisler PC

Law Offices of Slesnick & Casey, LLP

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*If you are interested in sponsoring the Conference, contact Elizabeth Sherman at Elizabeth.Sherman@americanbar.org, 312-988-6142.

11th Annual Labor and Employment Law Conference • November 8–11, 2017 • Washington, DC
Registration
The registration fees cover the Wednesday Welcome Reception and Committee Expo, Thursday Diversity and Inclusion Networking Reception, Friday Conference Reception, breakfasts, refreshment breaks and attendance at all CLE sessions. The Spouse/Guest fee of $75 (no charge for children under 18) covers the Wednesday, Thursday and Friday evening receptions. You are encouraged to register online at www.ambar.org/laborconference. Early registration discounts are available for registrations received in the ABA Office by September 22, 2017. The deadline for receipt of advance registration to appear on the Conference roster is October 13, 2017.

Cancellations
Registration fees are refundable, less a $50 administrative fee, for written cancellations received in the Section office by October 13, 2017. Substitutions are allowed in lieu of cancellation.

Hotel Information
We have negotiated a special hotel rate for Conference attendees at the Washington Hilton:
**Washington Hilton**
1919 Connecticut Avenue NW
Washington, DC 20009
202.483.3000

Rooms are available at the group rate of $239. Reservations may be made by contacting the hotel directly at 202.483.3000 or online at https://aws.passkey.com/go/sectionoflaborandemployment.

The reservation deadline for the group rate is October 2, 2017. After this date, or once the room block has been consumed, the group rate will be subject to availability. Be sure to mention you are attending the "ABA Section of Labor and Employment Law Conference" to receive the special rate.

Travel Information
With ABA Egencia*, you can automatically obtain ABA negotiated airfare discounts for travel to the ABA Meetings. ABA Egencia enables you to purchase the best airfare at the time of booking, by providing you with the ability to search for and compare fares from virtually every airline serving the destination. Reservations with ABA Egencia can be made online or offline. For offline reservations, call (877) 833-6285. ABA Egencia is available online at www.egencia.com via ABA Travel Services*. ABA airfare discounts on some carriers may also be obtained by purchasing your tickets under the ABA Discount Codes directly from the airline or through your travel agent.

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Online Discount Code: ZXDR621691

**Delta Airlines**  
ABA File Global Meeting Code: NMP56  
Discount available at www.delta.com  
Online Meeting Event Code: NMP56

* A Travel Profile is required when booking airline reservations with ABA Egencia.

Continuing Legal Education
The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, ME, MN, MS, MO, MT, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, 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 18 credit hours (including 6 ethics hours) in 50-minute states. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit www.americanbar.org/cle/mandatory_cle.html.

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 Conference.

Financial Assistance
Visit the Section of Labor & Employment Law website at www.americanbar.org/laborlaw for information about the Section Development Fund and YLD Fellowship Program opportunities. Full or partial fee waivers may be available based on financial hardship. 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.

www.ambar.org/laborconference
Registration Form

ABA Section of Labor and Employment Law

11th Annual Labor and Employment Law Conference
November 8–11, 2017 • Washington Hilton

Mail: American Bar Association
Attn: Service Center – Meeting/Event Registrations Dept.
321 North Clark Street, Chicago, IL 60654

(Please print or type.)

Name____________________________________________________

ABA Membership ID_______________________________________

Firm/Organization________________________________________________________________________________________________________

Address________________________________________________________________________________________________________________

City______________________________________________ State/Province_______________________________ Postal Code_________________

Email__________________________________________________________________________________________________________________

Spouse/Guest Name(s)____________________________________________________________________________________________________

☐ I am a First-Time Attendee.
☐ I am willing to serve as a Mentor at the Conference.

Affiliation
(Please select ONE affiliation that best describes your practice.)
☐ Employer/Management
☐ Union & Employee
☐ Employee/Plaintiff
☐ Government/Public
☐ In-House Corporate Counsel
☐ In-House Union Counsel
☐ Neutral
☐ Academic (Full Time)
☐ Law Student
☐ Judge
☐ Other

* Not a Section of LEL Member? Join online at www.americanbar.org/groups/labor_law.html to register for the Conference at the Section of LEL Member rate.

Questions?
Call the Section Office at 312-988-5523 or email laborempllaw@americanbar.org.

Registration Rates

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<th>After 9/22/17</th>
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<td>Small Firm (&lt;20 lawyers)/In-House Corporate Counsel/YLD Member/Section of LEL Council Member</td>
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Method of Payment
☐ Enclosed check
   (made payable to American Bar Association)
   (Credit card payments accepted online only)

The deadline for receipt of advance registration forms to appear in the Conference roster is October 13, 2017.

Events

Government Agency Brown Bag Lunch Programs—Select ONE
☐ EEOC/MSPB/OSC/FLRA at EEOC
☐ EEOC/OFCCP/DOJ/ODEP at EEOC
☐ ERISA/Employee Benefits at DOL
☐ NLRB/FMCS at NLRB
☐ NMB
☐ OSHA/MSHA/FMSHRC/OSHRC at DOL
☐ Wage and Hour at DOL

☐ Law Student Orientation
☐ First-Time Attendee/New Section Member Orientation
☐ Welcome Reception and Committee Expo
☐ Diversity & Inclusion Luncheon
☐ Pro Bono Luncheon
☐ Diversity & Inclusion Networking Reception
☐ Conference Reception
☐ $60 In-House Corporate Counsel Luncheon
☐ $95 International Labor & Employment Law Committee Dinner
☐ $75 State & Local Government Bargaining & Employment Law Committee Dinner

Total: _____________________________________________
Conference Highlights

• Informative and Thought-Provoking Plenary Sessions:
  – The Aging Workforce: Surfing the Workplace Silver Tsunami
  – Marriage Equality and Religious Liberty: The Crossroads or Crosshairs of the First Amendment
  – Supreme Court Update
• Meet Secretary of Labor R. Alexander Acosta
• The Impact of the Trump Administration on Labor and Employment Law
• Developments in Labor-Management Relations, plus Conversations with the NLRB
• Cutting-Edge Issues in Discrimination, Harassment and Retaliation, including Intersectionality
• Meet the Equal Employment Opportunity Commission
• Hot Topics in Litigation and Class Action, with programs addressing Big Data and Effective Oral Arguments
• In-Depth Explorations of Workplace Problems and Solutions

Inside the Beltway: Government Agency Brown Bag Lunch Programs

These special programs will enable participants to meet at government agency headquarters with officials and senior staff members in an informal brown bag lunch format. Don’t miss this opportunity to talk with agency staff, learn how the agencies operate, see the decision making machinery up close, hear what is on the agenda, and visit with officials and staff at the National Labor Relations Board, U.S. Equal Employment Opportunity Commission, U.S. Department of Labor, and National Mediation Board.

Values Track

We are excited to present a “Values Track” this year that will address mental well-being and its impact upon not only our practice of law but also our lives and the lives of those with whom we interact. The track will feature presentations by speakers from other disciplines focusing on Mindfulness, Practical Wisdom and Resiliency.