



2013
New Orleans
November 6–9, 2013



ABA Section of Labor and Employment Law

7th Annual Labor and Employment Law Conference

November 6–9, 2013 🌸 **New Orleans, Louisiana**

Conference Highlights

- 🌸 **2012–2013 Supreme Court Labor and Employment Law Review**
- 🌸 **Conversations with the National Labor Relations Board Members and General Counsel**
- 🌸 **Equal Employment Opportunity Commission Leaders Discuss Latest Initiatives and Regulations**
- 🌸 **Overviews of The Patient Protection and Affordable Care Act**
- 🌸 **In-House Counsel Sessions**
- 🌸 **Hot Topics and Case Law Developments**
- 🌸 **Legislative Updates**

7th Annual Labor and Employment Conference Planning Committee

Conference Co-Chairs

David Borgen, *Employee*
Richard Rosenblatt,
Union and Employee
Julie A. Totten, *Employer*
George L. Washington, Jr.,
Employer

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Union and Employee
Virginia L. Hardwick, *Employee*
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Stewart S. Manela, *Employer*

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Joel A. D'Alba,
Union and Employee

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Section Vice Chairs

Joyce E. Margulies, *Employer*
Wayne N. Outten, *Employee*

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

 Follow us on Twitter

 Connect with us on Facebook

Connect with other Conference
attendees before, during and after
the meeting. Link to the pages
from the Conference webpage at
www.ambar.org/laborconference.

ABA Section of Labor and Employment Law

7th Annual Labor and Employment Law Conference

November 6–9, 2013 🌟 New Orleans, Louisiana

We are pleased to share with you this outline of the activities planned for the 7th Annual Labor and Employment Law Conference. The Conference will be held from November 6–9, 2013 at the Hilton New Orleans Riverside and Loews New Orleans. As you look through the overview, you'll see the broad range of issues that will be covered, addressing all aspects of the labor and employment law arena. Please make plans to attend the Conference and encourage a colleague to join you.

We will have the features that made our previous Annual Conferences so successful, as well as networking technology options and hands-on help to facilitate your participation in the Conference's technology offerings. 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 multitracked curriculum covering all aspects of your labor and employment law practice**
- 🌟 **A multilevel 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**

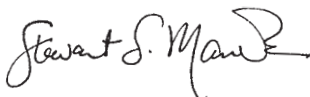
The Section's 7th Annual Labor and Employment Law Conference will enable you to learn about government initiatives from agency representatives and to confer with top practitioners representing employees, employers, unions, government agencies as well as neutrals, in-house counsel and academics. In addition to the substantive programs, our networking receptions at great New Orleans locations will allow you to mingle with colleagues in a relaxed atmosphere and enjoy some Southern hospitality.

For those of you who have attended prior Conferences, you may notice a change in the organization of the brochure. As usual we have a Program Schedule by date, time and areas of interest (formerly known as "Tracks") with descriptions (Pages 3–13 and 16–20). Since several programs fall into more than one area of interest, some are listed more than once. The Schedule-At-A-Glance (Pages 14–15) contains a list of programs in time slot order. Technology, Fundamentals and Ethics programs appear throughout the Conference; to locate them easily we have used the legend **E = Ethics**, **F = Fundamentals** and **T = Technology**. The Program Index (Pages 22–23) is a helpful list of programs by area of interest, including page number references to the program description and time slot.

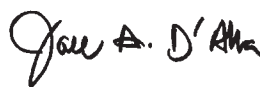
In addition to the continuing cosponsorship of the Fundamentals programs by the ABA Young Lawyers Division, we are pleased to welcome several new Conference program cosponsors: ABA Commission on Disability Rights, ABA Commission on Sexual Orientation and Gender Identity, ABA Commission on Women in the Profession and ABA Law Practice Management Section.

Complete program details and registration information is available on the Section website at <http://www.ambar.org/laborconference>. Register by September 13, 2013, to take advantage of substantial early registration discounts!

We look forward to seeing you in New Orleans at the 7th Annual Labor and Employment Law Conference.



Stewart S. Manela
Chair, ABA Section of Labor and Employment Law
Washington, D.C.



Joel A. D'Alba
Chair-Elect, ABA Section of Labor and Employment Law
Chicago, Illinois

www.ambar.org/laborconference

From the Host Committee

On behalf of all of our Section colleagues in the Crescent City, it is our pleasure to invite you to attend the ABA 7th Annual Section of Labor and Employment Law Conference. The headquarters for this year's Conference, the Hilton New Orleans Riverside, is ideally located to take advantage of all that New Orleans, a highly accessible city, has to offer. Everything you need to make your stay memorable is within walking distance or a short ride away. World-class cuisine, music, distinctly different neighborhoods, art, architecture, and a city full of rich history and culture are all a part of the New Orleans experience.

New Orleans is a city full of tradition and rich in culture. Experience this historic city with walking tours that will enlighten you on the city's colorful past. You can eat your way through the city with a culinary tour where you will indulge in classic New Orleans fare while learning the history of the cuisine. If you prefer, you can sip your way through the city with several tours offering you the history of local cocktail culture, and of course, a chance to taste test. Other tours, including those that will take you through historic cemeteries, will immerse you in the history of the aboveground tombs, stone sarcophagi and massive headstones.

The dozens of neighborhoods in New Orleans all offer a different feel, numerous attractions and sights to see. The French Quarter is home to the nightlife scene, historic landmarks, live music venues and is rich in Louisiana culture. The art scene in New Orleans is one that cannot be missed. Venture over to the Downtown/Art/Warehouse District to enjoy art galleries, museums and free concerts at Lafayette Square. If shopping is more up your alley, visit Magazine Street where this six-mile street is overflowing with retail shops, restaurants, art galleries and museums. On this street you can also visit the National World War II Museum where the exhibits and displays allow you to experience the war through the eyes of those who lived it. For family fun, you may wish to head over to St. Charles Avenue. Taking a streetcar down St. Charles is a great way to see many different sides of the city. On this avenue you can hop off at Audubon Park and take a shuttle to the Audubon Zoo. This zoo is home to the mysterious white alligators and the Louisiana Swamp and Jaguar Jungle.

If you like music, you have come to the right place. America's original art form, jazz, was born in New Orleans. From zydeco to gospel, no other city loves music more. Whether it's catching a concert at the New Orleans Arena or enjoying the sounds of local musicians in Jackson Square, there is something for everyone to enjoy.

Please visit the Host Committee link on the Conference webpage for additional information on places to visit, a list of events taking place, and recommended tours while you are in New Orleans. We look forward to welcoming you and helping you have an enjoyable and memorable experience in our beautiful city.

To explore more information regarding attractions, restaurants, shops, museums, theater, art galleries and more, visit www.neworleanscvb.com.

Your New Orleans Host Committee,

Julie Richard-Spencer, <i>Co-chair, Union and Employee</i>	Keith T. Hill, <i>Public</i>
Howard Shapiro, <i>Co-chair, Employer</i>	I. Harold Koretzky, <i>Employer</i>
Maria Cangemi, <i>Union and Employee</i>	Alexandra Mora, <i>Employee</i>
Michelle Craig, <i>Employer</i>	Lynne Rothschild Stern, <i>Neutral</i>
Monique Gougisha Douchette, <i>Employer</i>	Andrea Wilkes, <i>Public</i>

7th Annual Labor and Employment Conference Track Coordinators

David S. Adelstein	Wendi S. Lazar
James F. Allmendinger	Lindsay Lee
Gary L. Bailey	Heather F. Lindsay
Lisa J. Banks	Louis Lopez
Rachel M. Bien	Tamika D. Lynch
Maureen S. Binetti	Jason C. Marsili
Frank C. Botta	Gregory K. McGillivray
Earl V. Brown, Jr.	Myra L. McKenzie
Heidi R. Burakiewicz	Grace Mora
Melinda C. Burrows	Daniel Nielsen
Melinda J. Catherine	Margo Pave
J. Randall Coffey	Emily R. Perez
George S. Crisci	Nina T. Pirrotti
Kelly D. Bunting	Hope A. Pordy
Lori L. Deem	David D. Powell, Jr.
Monique Gougisha Douchette	Thomas E. Reinert, Jr.
Molly Eastman	Julie Richard-Spencer
Ashley Eddy	Mark D. Risk
Susan Nadler Eisenberg	Jennifer L. Sabourin
James M. Finberg	Jahan C. Sagafi
Adam S. Forman	Barbara Jaffe Sanford
Hal K. Gillespie	Donald L. Sapir
Cara E. Greene	Carla M. Siegel
Jonathan Grode	Hope J. Singer
William A. Herbert	Diane I. Smason
Mary "Ana" Hermosillo	Rebecca Smith
John S. Ho	Cassie M. Springer
Eric E. Hobbs	M. Jefferson Starling
James A. (Al) Holifield	Douglas L. Steele
Elana R. Hollo	Brenda Sutton-Wills
Todd Jackson	Alan A. Symonette
Mary Johnson	Richard J. Swanson
David R. Jury	Eric A. Tate
Danny J. Kaufer	Rayford H. Taylor
T. Scott Kelly	Steven K. Ury
Lori W. Ketcham	Angelia Wade
William M. Kinney	Marisa Warren
Hanan B. Kolko	Anna Wermuth
Brian E. Koncius	Gwynne A. Wilcox
Matthew W. Lampe	Michael J. Wolf
Kelly M. Lawson	Sheree C. Wright
	Stephen A. Yokich

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7th Annual Labor and Employment Law



Legend: E = Ethics F = Fundamentals T = Technology

Note: Programs may be listed in more than one area of interest.

among practitioners representing employers, employees, unions, the public sector and the judiciary in the context of the Section strengthen the ethical standards of practitioners. The speakers also will address practical pointers and lessons learned over the years.

MODERATOR:

Barry Hartstein, Littler Mendelson P.C., Chicago, IL

SPEAKERS:

Hon. Mark W. Bennett, U.S. District Court for the Northern District of Iowa, Sioux City, IA

Kelly M. Dermody, Lieff Cabraser Heimann & Bernstein, San Francisco, CA

Louis Lopez, U.S. Department of Justice, Civil Rights Division, Washington, DC

Cynthia E. Nance, Dean Emeritus and Nathan G. Gordon Professor, University of Arkansas School of Law, Fayetteville, AR

Julie Richard-Spencer, Robein, Urann, Spencer, Picard & Cangemi, New Orleans, LA

Howard Shapiro, Proskauer Rose LLP, New Orleans, LA

• 5:30 – 6:00 pm

First-Time Attendee/ New Section Member Reception

If you are a new member of the Section of Labor and Employment Law or if you've just never attended a Section meeting before, begin the Conference on the right foot by joining your colleagues at this reception.

• 6:00 – 8:00 pm

Welcome Reception and Committee Expo

All attendees are invited to meet, greet and network during this opening reception at the Hilton New Orleans Riverside. Section Standing Committees will provide information about publications, services and programs they provide to Section members.

Thursday, November 7

♣Plenary Session

• 11:00 – 11:15 am

Welcome, Introductions and Presentation of the 2013 Arvid Anderson Public Sector Labor and Employment Attorney of the Year Award

• 11:15 am – 12:30 pm

The Patient Protection and Affordable Care Act: Current Status and What Is to Come

This program is an essential for all labor and employment law practitioners. A panel of experts will provide a general overview of the Patient Protection and Affordable Care Act (PPACA) as of November 2013. The focus will be on up-coming issues and major developments to date.

MODERATOR:

Mary Ellen Signorille, AARP Foundation Litigation, Washington, DC

SPEAKERS:

Phyllis C. Borzi, U.S. Department of Labor, Washington, DC

Judith P. Broach, Broach & Stulberg LLP, New York, NY

Erin M. Sweeney, Dickstein Shapiro LLP, Washington, DC

♣Alternative Dispute Resolution

• 9:30 – 10:45 am

Ethics and Strategies in Labor and Employment Arbitration (E)

Many traditional labor practitioners have found themselves presenting matters in employment arbitration and vice versa. In addition, and thanks to *Pyett v. Peinn Plaza*, practitioners in labor arbitration are faced with litigating statutory rights issues as part of the arbitration clause of the collective bargaining agreement. This session

Wednesday, November 6

• 3:00 – 4:00 pm

Law Student Orientation

All law student attendees are invited to mingle with each other and members of the Law Student Outreach Task Force over coffee, tea and snacks prior to the start of the Conference. This event will offer students a very casual introduction to the ins and outs of the Section's Annual Conference. Students will also receive tips for making the most out of their Conference experience.

• 4:00 – 5:30 pm

The Benefits of Active Involvement in the ABA Section of Labor and Employment Law and Raising the Level of Ethics in Our Profession

This session will assist practitioners in their professional development by highlighting both substantive issues and practice development provided through the ABA Section of Labor and Employment Law. A particular focus will be legal ethics and the manner in which collegiality and partnering

Conference Program Schedule

will analyze the critical differences and similarities in labor and employment arbitration including but not limited to, arbitrator selection and disclosure under the UAA, AAA Rules and the Code of Professional Responsibility, the Due Process Protocol, discovery and motion practice, the hearing, and the enforcement of or challenge to arbitration awards.

MODERATOR:

Frank C. Botta, *Eckert Seamans Cherin & Mellott, LLC, Pittsburgh, PA*

SPEAKERS:

Gening Liao, *Schwartz, Steinsapir, Dohrmann & Sommers, LLP, Los Angeles, CA*

Laurence S. Moy, *Outten & Golden LLP, New York, NY*

Alan A. Symonette, *Arbitrator, Philadelphia, PA*

• 2:15 – 3:30 pm

Issues and Ethics of Mediation-Arbitration (“Med-Arb”) (E)

Mediation-Arbitration (“Med-Arb”) is a dispute resolution technique in which the parties agree in advance that, if mediation fails, the mediator turns arbitrator and issues a final and binding resolution. Learn about this ADR process under the tutelage of practitioners with Med-Arb expertise. Discussion will include when the process is most effectively utilized by and advantageous to the parties, the pros and cons of using it, techniques to help achieve the best resolution for your client, and ethical issues that arise when the neutral switches hats to resolve a dispute.

MODERATOR:

Donald L. Sapir, *Sapir Schragin LLP, White Plains, NY*

SPEAKERS:

Anthony J. Carpinello, *JAMS, New York, NY*

R. Theodore Clark, Jr., *Clark Baird Smith LLP, Rosemont, IL*

Gregg M. Corwin, *Gregg M. Corwin & Associates, Minneapolis, MN*

Stephen Goldberg, *Northwestern University Law School, Evanston, IL*

Jonathan S. Sack, *Sack & Sack, Attorneys at Law, New York, NY*

• 3:45 – 5:00 pm

Class and Collective Action Arbitration: An Update

Recent Supreme Court decisions changed the landscape in class and

collective action arbitration. In the wake of *Concepcion*, *In re Amex*, *D.R. Horton* and *Kilgore*, this panel will consider topics including the effect of class action bans in arbitration agreements, substantive rights to collective action under the NLRA and FLSA, whether state or federal statutory rights can be effectively vindicated in individual arbitration, unconscionability and procedural issues such as notice and discovery, court supervision and settlement.

MODERATOR:

Douglas L. Steele, *Woodley & McGillivray, Washington, DC*

SPEAKERS:

Norman Brand, *Arbitrator/Mediator, San Francisco, CA*

Thomas H. Christopher, *Kilpatrick Townsend & Stockton LLP, Atlanta, GA*

Michele R. Fisher, *Nichols Kaster, PLLP, Minneapolis, MN*

✦ **Discrimination and Retaliation**

• 9:30 – 10:45 am

Employer Use of Criminal Background Checks

The EEOC recently has focused on the use of criminal background checks in hiring. Some state and local governments likewise have enacted legislation limiting background checks. On the other hand, many employers continue to believe they need to consider conviction records to protect their businesses, employees, and customers. Join our panel for an update and discussion of best practices for employers using criminal background checks.

MODERATOR:

Donald R. Livingston, *Akin Gump Strauss Hauer & Feld LLP, Washington, DC*

SPEAKERS:

Hon. Victoria A. Lipnic, *U.S. Equal Employment Opportunity Commission, Washington, DC*

Sharon Dietrich, *Community Legal Services, Philadelphia, PA*

Tamara Ganes Mata, *Bank of America, New York, NY*

Richard McCracken, *Davis Cow and Bowe, San Francisco, CA*

• 2:15 – 3:30 pm

Unconscious Bias: Diving Deeper

Cosponsored by the ABA Commission on Women in the Profession

Can stereotypes and unconscious bias influence your practice—from case assessment to trial? This panel will discuss the use of evidence of unconscious bias in motions, trials, voir dire and jury selection. The panelists also will provide an understanding of how knowledge of unconscious bias can inform attorney best practices and litigation in the area of labor and employment law.

MODERATOR:

James M. Finberg, *Altshuler Berzon LLP, San Francisco, CA*

SPEAKERS:

Anthony G. Greenwald, *University of Washington, Seattle, WA*

Karen Jo Koonan, *NJP Litigation Consulting, San Francisco, CA*

Maurice Wexler, *Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Memphis, TN*

• 3:45 – 5:00 pm

Gender Pay Disparity: 50 Years after the Equal Pay Act

Cosponsored by the ABA Commission on Women in the Profession

Although passage of the Lilly Ledbetter Fair Pay Act in 2009 has renewed a focus on wage discrimination, policymakers are still fighting over the same questions: Does a gender pay disparity even exist? What is the best way to ensure pay equity? Do current laws provide adequate safeguards against pay discrimination, whether based on sex, or other protected categories? Join our panelists who will discuss the challenges associated with pursuing and defending pay discrimination claims, as well as the proposed Paycheck Fairness Act.

MODERATOR:

Mary K. O'Melveny, *Communication Workers of America, Washington, DC*

SPEAKERS:

Pamela Coukos, *U.S. Department of Labor, Washington, DC*

Adam T. Klein, *Outten & Golden LLP, New York, NY*

Dr. Stephanie Plancich, *NERA Economic Consulting, Washington DC*

Gary R. Siniscalco, *Orrick, Herrington & Sutcliffe LLP, San Francisco, CA*

7th Annual Labor and Employment Law Conference

✦ Employee Benefits

- 11:00 am – 12:30 pm

The Patient Protection and Affordable Care Act: Current Status and What Is to Come

This program is an essential for all labor and employment law practitioners. A panel of experts will provide a general overview of the Patient Protection and Affordable Care Act (PPACA) as of November 2013. The focus will be on up-coming issues and major developments to date.

MODERATOR:

Mary Ellen Signorille, AARP Foundation
Litigation, Washington, DC

SPEAKERS:

Phyllis C. Borzi, U.S. Department of Labor,
Washington, DC

Judith P. Broach, Broach & Stulberg LLP,
New York, NY

Erin M. Sweeney, Dickstein Shapiro LLP,
Washington, DC

- 2:15 – 3:30 pm

The Patient Protection and Affordable Care Act: Employer Responses and Litigation Trends

This panel will discuss potential litigation issues concerning (i) corporate restructurings designed to avoid “pay or play” obligations, including diminishing employee weekly hours to less than 30 and/or decreasing the number of employees to less than 50; (ii) companies’ compliance with coverage obligations and mandates; (iii) whistle blower protections; and (iv) key court decisions addressing challenges to independent review organization decisions.

MODERATOR:

Howard Shapiro, Proskauer Rose LLP,
New Orleans, LA

SPEAKERS:

Timothy D. Hauser, U.S. Department
of Labor, Washington, DC

Ellen M. Kelman, Buescher, Goldhammer
& Kelman, P.C., Denver, CO

Teresa Renaker, Lewis Feinberg Lee
Renaker & Jackson, PC, Oakland, CA

- 3:45 – 5:00 pm

The Patient Protection and Affordable Care Act: Compliance

The Patient Protection and Affordable Care Act (PPACA) requires insurers,

plan sponsors and administrators to make significant policy and plan changes in a very short time period. This session will address compliance issues to date, including maintaining grandfathered status, external reviews with Independent Review Organizations (“IRO’s”) and use of retiree plans to eliminate ACA coverage. The panel also will discuss important recent legislative, regulatory and other developments as well as best practices for insuring that your clients are prepared for the required changes leading up to 2014.

MODERATOR:

George H. Bostick, Department of the
Treasury, Washington, DC

SPEAKERS:

Joyce A. Mader, O’Donoghue &
O’Donoghue LLP, Washington, DC

Dr. Kathryn E. Moore, University of
Kentucky College of Law, Lexington, KY

Martha Jo (Marty) Wagner, Griffith &
Wheat PLLC, Washington, DC

✦ Ethical, Practical and Technological Issues in Managing a Labor and Employment Law Practice

- 8:00 – 9:15 am

Ethics of Social Media for Lawyers: It’s Not Just Clients Who Need to Worry (E)

Many attorneys are aware of the dangers that lurk for clients who participate in social media. But what about when it is the attorney using social media – whether for advertising, informal discovery or networking? This panel will discuss the ethics rules every lawyer needs to know when using Linked-In, Facebook, Google+, Twitter and other social media sites.

MODERATOR:

David D. Powell, Jr., Ogletree,
Deakins, Nash, Smoak & Stewart, P.C.,
Denver, CO

SPEAKERS:

David M. Cook, Cook and Logothetis, LLC,
Cincinnati, OH

Renee Newman Knake, Michigan
State University College of Law,
East Lansing, MI

Beth E. Terrell, Terrell Marshall Daudt
& Willie PLLC, Seattle, WA

- 2:15 – 3:30 pm

Apps for Labor and Employment Lawyers (T)

Cosponsored by the ABA Law
Practice Management Section

Apps for mobile devices are one of the technological advances revolutionizing the practice of law. They allow attorneys to be more efficient and effective even in court and allow the home to be an easy extension of the office. This program will provide recommendations from the perspectives of the practicing lawyer, law practice management and information systems management professionals in all practice settings, from large law firms to solo practitioners. Bring your tablet or smart phone, and discover the best apps for your practice.

MODERATOR:

James McKenna, Morrison & Foerster,
San Francisco, CA

SPEAKERS:

Natalie R. Kelly, Georgia State Bar
Law Practice Management Program,
Atlanta, GA

Jeffery E. Richardson, Adams and
Reese LLP, New Orleans, LA

Jeffery Taylor, Absolute Legal
Services, LLC, Oklahoma City, OK

- 3:45 – 5:00 pm

Marketing Your Practice to Secure Business and Recognition

Tooting your own horn shouldn’t cause the discomfort that it does when the potential rewards are so great. In this program, expert panelists will discuss ways to obtain business and recognition to achieve career advancement. Topics include using social media efficiently, overcoming stereotypes, tips for achieving media recognition for case settlements and victories, effective networking, advertising, and creative marketing ideas.

MODERATOR:

Traci Stuart, Blattell Communications,
San Francisco, CA

SPEAKERS:

Angie Davis, Baker, Donelson, Bearman,
Caldwell & Berkowitz PC, Memphis, TN

Rebecca Grey, The Grey Law Firm, PC,
San Francisco, CA

Matthew R. Robbins, The Previant
Law Firm, S.C., Milwaukee, WI

Catherine A. Yanni, JAMS,
San Francisco, CA

✦ Immigration

• 8:00 – 9:15 am

The National Labor Relations Board's Entry into Immigration Issues

This panel explores important substantive and procedural immigration related questions: What are the rights of undocumented workers who engage in protected concerted activities? Can they be threatened with deportation or discharge if they engage in protected concerted activity? Can they file charges? Are they protected from deportation during investigation? Do they have to prove lawful status during investigation? What remedies do they have available if terminated for protected Section 7 rights? Can an employer unilaterally implement E-verify? Should witnesses be required to testify to unlawful statements in their native language or in the language the statement was made?

MODERATOR:

Peter Ohr, *National Labor Relations Board*, Chicago, IL

SPEAKERS:

Katchen Locke, *32BJ SEIU*, New York, NY
Amy J. Zdravecky, *Franczek Radelet*, Chicago, IL

• 9:30 – 10:45 am

Comprehensive Immigration Reform

What are the processes and pitfalls for workers and businesses taking advantage of legalization? How will temporary worker programs change as we design a new “future flow” system? How will professional employees be advantaged? What are the implications for worksite enforcement? How are the various agencies, including the EEOC, dealing with these issues.

MODERATOR:

Jonathan Grode, *Green and Spiegel LLC*, Providence, RI

SPEAKERS:

Ana Avendano, *AFL-CIO*, Washington, DC
Marielena Hincapié, *National Immigration Law Center*, Los Angeles, CA
John Morton, *ICE*, Washington, DC
Seema Nanda, *U.S. Department of Justice*, Washington, DC
Mary E. Pivec, *Williams Mullen*, Washington, DC

• 2:15 – 3:30 pm

Causes of Action for Workplace Abuse of Immigrant Workers

Immigrant workers, including temporary foreign workers and workers with and without authorization, suffer workplace abuses unique to their status, and barriers to accessing the courts. What special causes of action and administrative claims can be brought on behalf of immigrant workers, including trafficked workers? Panelists will discuss actions under the Trafficking Victims Protection Act, RICO and other federal laws, as well as administrative actions under the Unfair Immigration Related Employment Practices Act. Further, the panel will discuss traditional employment actions and how they apply to immigrants present in the U.S. under various work-related visas, and without authorization.

MODERATOR:

Rebecca Smith, *National Employment Law Project*, Seattle, WA

SPEAKERS:

Hon. P. David Lopez, *U.S. Equal Employment Opportunity Commission*, Washington, DC
Brian S. Green, *Murthy Law Firm*, Owings Mills, MD
Yihong “Julie” Mao, *New Orleans Workers’ Center for Racial Justice*, New Orleans, LA
Naomi Ruth Tsu, *Southern Poverty Law Center*, Atlanta, GA

✦ International

• 9:30 – 10:45 am

Latin America on the Rise: The Impact of Legal Reforms and Labor Market Developments in China and Latin America

Many U.S., Canadian and EU companies are looking to Latin America as an alternative labor market in the wake of significant legal developments in the People’s Republic of China (such as labor dispatch, overtime, collective bargaining and unionization, and greater restrictions on non-competes). Employer-friendly reforms in Mexico, Brazil and elsewhere in Latin America make that region more flexible for multinationals. Speakers expert on labor law developments in these areas will explore the most recent changes in PRC and Latin American labor and

employment laws (including laws on restrictive covenants and trade secrets) and the implications of this shift.

MODERATOR:

Anne M. Radolinski, *Fredrikson & Byron P.A.*, Minneapolis, MN

SPEAKERS:

Carolina Tavares Rodrigues Davies, *Machado, Meyer, Sendacz e Opice Advogados*, São Paulo, Brazil
Benjamin N. Davis, *United Steelworkers*, Pittsburgh, PA
Oscar De la Vega, *Littler Mendelson*, Mexico City, Mexico
Erin R. Kuzz, *Sherrand Kuzz LLP*, Toronto, Ontario, Canada
David A. Lowe, *Rudy, Axelrod, Zieff & Lowe LLP*, San Francisco, CA

• 2:15 – 3:30 pm

Next Up for North American Employers and Unions? International Framework Agreements (IFAs) and Corporate Social Responsibility (CSR)

As unions face dwindling membership, “framework” agreements between multinational companies and global union federations provide an option for setting standards for treatment of employees. Through IFAs, international employers commit to respect certain workplace principles in all of the countries where they operate. Both IFAs and CSR have recently been adopted by North American employers, including the Ford Motor Company, which signed a detailed IFA that raises a whole host of questions for the company, its suppliers and its employees. This panel will discuss challenges that IFAs and CSRs present for North American employers and unions and what those parties can do to resolve them.

MODERATOR:

Joseph Z. Fleming, *Greenberg Traurig LLP*, Miami, FL

SPEAKERS:

Owen E. Herrnstadt, *International Association of Machinists and Aerospace Workers*, Upper Marlboro, MD
Christy Hoffman, *UNI Global Union*, Nyon, Switzerland
Danny J. Kaufer, *Heenan Blaikie*, Montréal, Québec, Canada
Gerlind Wisskirchen, *CMS Hasche Sigle*, Cologne, Germany

7th Annual Labor and Employment Law Conference



- 3:45 – 5:00 pm
International Perspectives on Managing the Risks of Alternate Workforces

Employers are expanding their use of alternate workforces as countries face austerity and companies require cost-cutting measures. Such workforces can include temporary employees supplied by third party vendors. What happens when the agency workforce stays months and even years? Despite best intentions, employers may encounter third-party suppliers who fail to make the necessary tax deductions or employer contributions. Who is responsible? Does the employer have to pay again? This panel will discuss how certain countries have answered this question and what U.S. employers and workers need to do to protect themselves.

MODERATOR:

Juliet Carp, *Speechly Bircham LLP*, London, England

SPEAKERS:

Earl V. Brown, Jr., *American Center for International Labor*, Washington, DC

Benjamin C. Hensler, *Worker Rights Consortium*, Washington, DC

Jeremy M. Mittman, *Proskauer Rose LLP*, Los Angeles, CA

- **Labor-Management Relations**

- 8:00 – 9:15 am
It's Always 1983 in the American Workplace: Constitutional Protections for Public Sector Employees

Unlike private sector employment, public sector employers, unions and individual employees live under a panoply of constitutional issues, including equal protection, procedural due process/property rights, First Amendment (including speech, religion and petitioning), and warrantless searches. These issues arise in all aspects of employment, including hiring, monitoring employment activities, union membership, dues/fair share fees deductions, discipline/discharge, drug testing, and searches of employees/property. This presentation will cover the major court decisions and legislative changes during the past five years that have shaped (and changed) employee rights and employer responsibilities.

SPEAKERS:

George S. Crisci, *Zashin & Rich Co., L.P.A.*, Cleveland, OH

Thomas H. Geoghegan, *Despres, Schwartz and Geoghegan Ltd*, Chicago, IL

Sheldon H. Nahmod, *IIT Chicago-Kent College of Law*, Chicago, IL

Jennifer K. Poltrock, *Poltrock & Poltrock*, Chicago, IL

- 8:00 – 9:15 am
The National Labor Relations Board's Entry into Immigration Issues

This panel explores important substantive and procedural immigration related questions: What are the rights of undocumented workers who engage in protected concerted activities? Can they be threatened with deportation or discharge if they engage in protected concerted activity? Can they file charges? Are they protected from deportation during investigation? Do they have to prove lawful status during investigation? What remedies do they have available if terminated for protected Section 7 rights? Can an employer unilaterally implement E-verify? Should witnesses be required to testify to unlawful statements in

their native language or in the language the statement was made?

MODERATOR:

Peter Ohr, *National Labor Relations Board*, Chicago, IL

SPEAKERS:

Katchen Locke, *32BJ SEIU*, New York, NY

Amy J. Zdravecky, *Franczek Radelet*, Chicago, IL

- 8:00 – 9:15 am
National Labor Relations Act Fundamentals for the Non-Union Workplace (F)

Cosponsored by the ABA Young Lawyers Division

This program will focus on employees' Section 7 rights in non-union and organizing settings, and the obligations of employers to recognize these rights. The panel will also emphasize the NLRB's emerging guidance on what constitutes Section 7 activity, and when employees can lose the protection of the Act. Topics to be covered include employer policies regarding confidentiality of compensation, employment-at-will, no solicitation/no distribution, and union access; use of company resources such as e-mail and bulletin boards; employee conduct both on and off duty including employer criticism and the duty of loyalty; employer monitoring of employee conduct; and investigation procedures regarding instructions not to discuss and employee representatives.

MODERATOR:

Karen N. Neilsen, *National Labor Relations Board*, Cleveland, OH

SPEAKERS:

Emily R. Perez, *Hammond and Shinnors, P.C.*, St. Louis, MO

Joseph J. Torres, *Winston & Strawn LLP*, Chicago, IL

- 9:30 – 10:45 am
The Constant Crisis: Public Sector Bargaining in the New Age

"Crisis in Public Sector Bargaining" is a headline in the tradition of "Congress Fails to Act." It will always be true. And yet, doesn't it seem different this time around? A panel of experts debates the proposition: "Is public sector collective bargaining broken? Can it be fixed? Should it be fixed?"

MODERATOR:

Marlene A. Gold, City of New York
Office of Collective Bargaining,
New York, NY

SPEAKERS:

Joseph E. Slater, University of Toledo
College of Law, Toledo, OH

James C. Franczek, Jr., Franczek Radelet,
Chicago, IL

David J. Strom, American Federation
of Teachers, Washington, DC

• 9:30 – 10:45 am

Has Specialty Healthcare Changed the Landscape in Organizing and Representation Proceedings?

Specialty Healthcare & Rehab. Ctr. Of Mobile, found that a smaller bargaining unit consisting of only certified nursing assistants (“CNAs”) was appropriate. *Riverview Health & Rehab. Ctr.*, applying *Specialty Healthcare*, also found that a small unit consisting solely of CNAs was appropriate. What has been the impact of *Specialty Healthcare*? Has the trend shown that it has applied mainly in micro-units or larger units? What impact has it had on unit determinations? What impact has it had on healthcare organizing? What about unit determinations in non-health care industries? Are companies doing anything different in response to *Specialty Healthcare*?

MODERATOR:

Andrea J. Wilkes, National Labor
Relations Board, New Orleans, LA

SPEAKERS:

William Haller, International Association
of Machinists and Aerospace Workers,
Upper Marlboro, MD

Tanja L. Thompson, Littler Mendelson,
Memphis, TN

• 2:15 – 3:30 pm

Bankruptcy and the Railway Labor Act

The 2012 and 2013 newsworthy events relating to the bankruptcy of American Airlines, renegotiation of labor agreements under Section 1113 of the Bankruptcy Code, abrogation of the pilots’ agreement, and preparations for a US Airways merger provide a case study of the complexity of the legal and labor relations forces on large airlines under the Railway Labor Act.

MODERATOR:

Thomas E. Reinert, Morgan, Lewis &
Bockius LLP, Washington, DC

SPEAKERS:

Darin M. Dalmat, James & Hoffman,
Washington, DC

Chris A. Hollinger, O’Melveny & Myers LLP,
San Francisco, CA

Carmen R. Parcelli, Guerrieri, Clayman,
Bartos & Parcelli, P.C., Washington, DC

• 2:15 – 3:30 pm

An Inside View of an NLRB Case: What They Were Thinking

What does the NLRB look for when deciding if an unfair labor practice case has merit? Our panel will offer a frank and open discussion about what is important in deciding a case.

MODERATOR:

John E. Higgins, Jr., Catholic University,
Washington, DC

SPEAKERS:

Hon. Celeste J. Mattina, National Labor
Relations Board, Washington, DC

Hon. Mary Miller Cracraft, National Labor
Relations Board, San Francisco, CA

Barry J. Kearny, National Labor Relations
Board, Washington, DC

M. Kathleen McKinney, National Labor
Relations Board, New Orleans, LA

• 3:45 – 5:00 pm

National Labor Relations Board Update

Panelists will discuss important issues before the NLRB as well as the potential impact of Noel Canning.

MODERATOR:

Christopher David Ruiz Cameron,
Southwestern Law School, Los Angeles, CA

SPEAKERS:

Susan Davis, Cohen, Weiss and Simon, LLP,
New York, NY

G. Roger King, Jones Day, Columbus, OH

✦ Litigation

• 8:00 – 9:15 am

Overcoming New Hurdles for Class Certification

Panelists will explore cutting edge issues in class action employment litigation and provide useful pointers for practitioners. Topics will include the Supreme Court’s *Comcast Corp. v. Behrend* decision, the Sixth Circuit’s *Serrano v. Cintas* decision, follow up on *Dukes v. Wal-Mart Stores*, and the impact, if any,

of *Genesis Healthcare Corp. v. Symczyk* on Rule 23 class certification motions.

MODERATOR:

Michael Rubin, Altshuler Berzon LLP,
San Francisco, CA

SPEAKERS:

Apalla U. Chopra, O’Melveny &
Myers LLP, Los Angeles, CA

Jocelyn D. Larkin, Impact Fund,
Berkeley, CA

• 9:30 – 10:45 am

Crafting an Effective Class Action Trial Plan

A panel of experienced practitioners who have litigated class action cases through trial share tips on planning to take a case through trial and executing on the plan. Topics will include selection and preparation of witnesses, use of representative evidence, expert testimony, pre-trial motions, jury instructions and use of exhibits (and how to introduce them).

MODERATOR:

Beth A. Ross, Leonard Carder, LLP,
Oakland, CA

SPEAKERS:

Evangeline C. Paschal, Hunton
& William LLP, Washington, DC

David W. Sanford, Sanford Heisler, LLP,
New York, NY

• 2:15 – 3:30 pm

The Patient Protection and Affordable Care Act: Employer Responses and Litigation Trends

This panel will discuss potential litigation issues concerning (i) corporate restructurings designed to avoid “pay or play” obligations, including diminishing employee weekly hours to less than 30 and/or decreasing the number of employees to less than 50; (ii) companies’ compliance with coverage obligations and mandates; (iii) whistle blower protections; and (iv) key court decisions addressing challenges to independent review organization decisions.

MODERATOR:

Howard Shapiro, Proskauer Rose LLP,
New Orleans, LA

SPEAKERS:

Timothy D. Hauser, U.S. Department
of Labor, Washington, DC

Ellen M. Kelman, Buescher, Goldhamer
& Kelman, P.C., Denver, CO

Teresa Renaker, Lewis Feinberg Lee
Renaker & Jackson, P.C., Oakland, CA

7th Annual Labor and Employment Law Conference



• 3:45 – 5:00 pm

eDiscovery Boot Camp (F)

This program will provide pragmatic guidance to practitioners new to the world of e-discovery. The discussion will include the basic legal framework, common definitions, collection points, collection types, e-discovery and the individual, small and mid-size client, when you need an expert and how to find one, costs and budgeting, educating the court; and trending e-discovery issues.

MODERATOR:

Cardelle B. Spangler, Winston & Strawn LLP, Chicago, IL

SPEAKERS:

David S. Adelstein, Bush, Gottlieb, Singer, López, Kohanski, Adelstein & Dickinson, Glendale, CA

Brian E. Koncius, Bogas, Koncius & Croson P.C., Detroit, MI

Marcy Norwood Lynch, Boies, Schiller & Flexner LLP, Orlando, FL

Clinton P. Sanko, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Chattanooga, TN

• 3:45 – 5:00 pm

Negotiating an FLSA Settlement Agreement: Legal and Practical Considerations

This experienced panel will discuss issues commonly associated with FLSA settlements in both the court-supervised context and out-of-court settlements. Topics will include, among others, the enforceability of private releases, confidentiality provisions, waiving the right to join a collective action, equitable allotment of back wages in a certified class, reversion of back wages for absent class members, and voluntary certification issues for settlement purposes. Through the use of competing settlement clauses, the panel will discuss from both the management and employee side perspective their ideal language for certain provisions and deal breakers.

MODERATOR:

Robert A. Boonin, Butzel Long, A Professional Corporation, Ann Arbor, MI

SPEAKERS:

John S. Ho, Bond Schoeneck & King, PLLC, New York, NY

Laura L. Ho, Goldstein, Borgen, Dardarian & Ho, Oakland, CA

Gregory K. McGillivary, Woodley & McGillivary, Washington, DC

Linda R. Singer, JAMS, Washington, DC

✦Special Interest

• 8:00 – 9:15 am

State Regulation of Occupational Safety and Health

In addition to the federal statute administered by the federal Occupational Safety and Health Administration, twenty seven states have their own occupational safety and health programs. These state programs must be “at least as effective” as the federal program. In fact, some states have implemented regulations that exceed those required by federal law. This session will examine the differences between the federal program and state programs and the differences among state programs. It also will examine whether there is any way to practically enforce the “at least as effective” requirement and new initiatives of the federal agency to monitor the activities of state programs.

MODERATOR:

Stephen A. Yokich, Cornfield and Feldman LLP, Chicago, IL

SPEAKERS:

Gregory J. Baxter, Occupational Safety and Health Administration’s Region VIII, Denver, CO

Nancy J. Guyott, AFL-CIO, Indianapolis, IN

John J. Howard, National Institute for Occupational Safety and Health, Irvine, CA

Susan F. Wiltsie, Hunton & Williams LLP, Washington, DC

✦Wage and Hour

• 3:45 – 5:00 pm

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supervised context and out-of-court settlements. Topics will include, among others, the enforceability of private releases, confidentiality provisions, waiving the right to join a collective action, equitable allotment of back wages in a certified class, reversion of back wages for absent class members, and voluntary certification issues for settlement purposes. Through the use of competing settlement clauses, the panel will discuss from both the management and employee side perspective their ideal language for certain provisions and deal breakers.

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Robert A. Boonin, Butzel Long, A Professional Corporation, Ann Arbor, MI

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Gregory K. McGillivary, Woodley & McGillivary, Washington, DC

Linda R. Singer, JAMS, Washington, DC

✦Workplace Problems and Solutions

• 8:00 – 9:15 am

Managing Employees with Discrimination or Other Complaints

Most practitioners, regardless of whether they represent employees, employers or unions, agree that managing situations involving current employees who have reported allegations of discrimination or are considered whistleblowers is tricky. This panel will explore addressing the “untouchable” employee and counseling and training management to minimize the risk of retaliation. The panel also will discuss creative solutions for negotiating settlements and employee exits.

MODERATOR:

Tamika D. Lynch, Siemens Industry, Chicago, IL

SPEAKERS:

Jonathan Ben-Asher, Ritz Clark & Ben-Asher LLP, New York, NY

Robert T. Bernstein, Laner, Muchin, Dombrow, Becker, Levin and Tominberg, Ltd., Chicago, IL

Paula R. Johnston, Teamsters Local 320, Minneapolis, MN

Friday, November 8

✦ Plenary Session

- 11:00 – 11:15 am
**Presentation of the
2013 Frances Perkins
Pro Bono Service Award**

- 11:15 am – 12:30 pm
Supreme Court Review

The Section Secretary will provide an informative review of the Supreme Court's 2012-2013 decisions that impact labor and employment law. Don't miss this must-see program.

SPEAKER:

Martin H. Malin, IIT Chicago-Kent
College of Law, Chicago, IL

✦ Discrimination and Retaliation

- 9:30 – 10:45 am
The ADA: Five Years Later (F)

**Cosponsored by the
ABA Commission on Disability Rights
and the ABA Young Lawyers Division**

Panelists will discuss the key issues and critical case law developments that concern the Americans with Disabilities Act Amendments Act of 2008. An in-depth discussion will include how the definitions of disability, accommodation and undue hardship have impacted the way we advise our clients and prosecute and defend these actions.

MODERATOR:

Eric W. Iskra, Spilman Thomas
& Battle, PLLC, Charleston, WV

SPEAKERS:

Michael J. Belo, Berenbaum Weinshienk PC,
Denver, CO

Ashley Eddy, MGM Resorts International,
Las Vegas, NV

Gary E. Phelan, Cohen & Wolf, P.C.,
Bridgeport, CT

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

- 9:30 – 10:45 am
**Caregiver Responsibility
Discrimination: Are You One Sick
Kid Away from Losing Your Job?**

**Cosponsored by the ABA Commission
on Disability Rights and the ABA
Commission on Women in the Profession**

It isn't quite gender discrimination, pregnancy discrimination or disability discrimination. It does not fall neatly under the categories of the ADA, FMLA, PDA or Title VII. Nonetheless, "caregiver responsibility discrimination" claims abound. This panel will explore the legal theories behind potential causes of action arising when employees believe they have been discriminated against because of their caregiver responsibilities for children, ill parents or a disabled family member. Issues for discussion include the employer's obligation, if any, to accommodate a pregnant employee or an employee with caregiving responsibility in the context of recent case law and the recent EEOC regulations.

MODERATOR:

Gail Golman Holtzman, Kass Shuler, P.A.,
Tampa, FL

SPEAKERS:

Peggy R. Mastroianni, U.S. Equal
Employment Opportunity Commission,
Washington, DC

Ann M. Schmidt, Hoffmann-La Roche Inc.,
Nutley, NJ

Joan C. Williams, UC Hastings College
of the Law, San Francisco, CA

Richard A. Williams, Jr., R.A. Williams
Law Firm, P.A., St. Paul, MN

- 2:15 – 3:30 pm
**Discrimination against LGBT
Individuals: Sex and Gender
Revisited under Title VII (F)**

**Cosponsored by the ABA Commission
on Women in the Profession, the ABA
Commission on Sexual Orientation and
Gender Identity and the ABA Young
Lawyers Division**

This panel will address the recent efforts by the EEOC to expand the protection of Title VII to LGBT individuals in spite of the jurisprudence reflecting that discrimination on the basis of sexual orientation is not "based on sex." In particular, this panel will examine the recent decision by the Commission, *Macy v. Holder* and how the law is transforming nationwide in ways that suggest "based on sex" may be redefined to be more inclusive.

MODERATOR:

Louis Lopez, U.S. Department of Justice,
Civil Rights Division, Washington, DC

SPEAKERS:

Edward J. Reeves, Stael Rives LLP,
Portland, OR

Jennifer B. Salvatore, Nacht Roumel
Salvatore Blanchard & Walker PC,
Ann Arbor, MI

Melissa S. Woods, Meyer, Suozzi,
English & Klein, P.C., New York, NY

- 2:15 – 3:30 pm
**Who Is a Qualified
Individual with a Disability?**

**Cosponsored by the ABA
Commission on Disability Rights**

The Americans with Disabilities Act (ADA) prohibits discrimination against a qualified individual on the basis of disability. The EEOC regulations and other guidance, as well as recent case law, have created a complex landscape to consider when evaluating whether an employee or an applicant is qualified. This panel will provide guidance on the meaning of qualified by weaving a review of recent case law and EEOC guidance into a discussion of a series of short hypothetical situations. The panel will focus on issues such as employment standards, essential functions, absenteeism and performance.

MODERATOR:

Eric L. Barnum, Schiff Hardin LLP,
Atlanta, GA

SPEAKERS:

Hon. Chai R. Feldblum, U.S. Equal
Employment Opportunity Commission,
Washington, DC

Joyce L. Collier, Hardwick Collier,
Doylestown, PA

Robert L. Jones, American Airlines,
Fort Worth, TX

Nicole R. Pollard, AFSCME,
Washington, DC

- 2:15 – 3:30 pm
**The Rising Tide of
Retaliation Claims**

Retaliation is the most common EEOC charge. This panel explores the most recent court decisions and legislation expanding protections against workplace retaliation, including post-Thompson third-party retaliation claims and retaliatory harassment. This panel also will undertake a practical examination of what conduct may be deemed retaliatory.

7th Annual Labor and Employment Law Conference



MODERATOR:

Marisa Warren, *Pedowitz & Meister LLP*,
New York, NY

SPEAKERS:

Jay Jaffe, *1199 SEIU United Health Care
Workers East*, New York, NY

Janie F. Schulman, *Morrison & Foerster LLP*,
San Francisco, CA

Carolyn Wheeler, *U.S. Equal
Employment Opportunity Commission*,
San Francisco, CA

- 3:45 – 5:00 pm

ADA, HIPAA and GINA: Disclosing Private Information

**Cosponsored by the ABA
Commission on Disability Rights**

ADA, HIPAA and GINA protect the privacy of certain employee and medical information and have proven at times to be misunderstood. Many practitioners have heard others invoke these statutory schemes as barring access to certain information when the statute may not apply, while other practitioners, who are unfamiliar with the limits imposed by existing law, have disclosed protected information. This panel will explore the uses and possible misuses of these statutes.

MODERATOR:

David M. Fusco, *Schwarzwald McNair
& Fusco LLP*, Cleveland, OH

SPEAKERS:

Howard D. Bye-Torre, *Stoel Rives LLP*,
Seattle, WA

Sharon M. Dostmann, *Cooper Health
System*, Philadelphia, PA

Christopher J. Kuczinski, *U.S. Equal
Employment Opportunity Commission*,
Washington, DC

- 3:45 – 5:00 pm

Disciplining Employees for Disability-Related Activities

**Cosponsored by the ABA
Commission on Disability Rights**

Some courts hold that employers are not required to accommodate “misconduct” that stems from a disability, while others hold that conduct resulting from a disability is to be considered part of the disability and not a separate basis for discipline. The issue is now especially pressing because the ADAAA expanded what constitutes a disability. Join the panel as they tackle key questions and discuss potential accommodations where such are required.

MODERATOR:

Hope J. Singer, *Bush Gottlieb Singer
López Kohanski Adelstein & Dickinson*,
Los Angeles, CA

SPEAKERS:

Brian East, *Texas Disability Rights*, Austin, TX

Barbara L. Johnson, *Paul Hastings LLP*,
Washington, DC

Myra L. McKenzie, *Wal-Mart Stores, Inc.*,
Bentonville, AR

Joyce Walker-Jones, *U.S. Equal Employment
Opportunity Commission*, Washington, DC

✦ **Employee Benefits**

- 8:00 – 9:15 am

The Practical Application of the Patient Protection and Affordable Care Act in the Public Sector

Some, but not all of the Patient Protection and Affordable Care Act (PPACA) survived constitutional challenge. However, other challenges are in the litigation pipeline. Major portions must be implemented by January 1, 2014. What collective bargaining obligations do unionized employers have as they attempt to comply with, and implement, PPACA's requirements? What changes in health benefits coverage should employers and unions be considering as they negotiate aspects of PPACA's requirements?

MODERATOR:

Donald D. Slesnick, II, *Law Offices of
Slesnick & Casey, LLP*, Coral Gables, FL

SPEAKERS:

Thomas G. Hancuch, *Vedder Price, P.C.*,
Chicago, IL

Brenda Sutton-Wills, *California Teachers
Association*, Sacramento, CA

- 2:15 – 3:30 pm

Bargaining under the Affordable Care Act in the Private Sector: A Different Kind of Health Insurance “Exchange”

The enactment of health care reform has profoundly changed the benefits landscape, creating numerous collective bargaining issues for employers, unions, and multiemployer funds. This presentation will cover bargaining considerations, tips, and “best practices” in light of this groundbreaking legislation. Specific issues will include the impact of grandfathering, the new definition of “full-time” employees, mandated plan changes, penalties, the “Cadillac” tax, etc., on collective bargaining negotiations, CBAs and collectively bargained plans.

MODERATOR:

Allison Beck, *Federal Mediation and
Conciliation Service*, Washington, DC

SPEAKERS:

Peter S. Dickinson, *Bush, Gottlieb, Singer,
Lopez, Kohanski, Adelstein & Dickinson*,
Glendale, CA

Ronald J. Kramer, *Seyfarth Shaw LLP*,
Chicago, IL

Jeffrey Stein, *1199 SEIU National Benefit
& Pension Funds*, New York, NY

✦ **Ethical, Practical and Technological Issues in Managing a Labor and Employment Law Practice**

- 8:00 – 9:15 am

Very Recent Changes in the Ethics Rules: Wrapping Up the ABA Commission on Ethics 20/20 (E)

Learn essential information about the August 2012 and February 2013 changes in the ABA Model Rules of Professional Conduct on admission by motion, performance of legal work by experienced attorneys pending admission to a new jurisdiction, *pro hac vice* admission, work by foreign in-house lawyers, unauthorized practice, multijurisdictional practice, registration

of in-house counsel, outsourcing work to lawyers and non-lawyers, choice of law on discipline, the confidentiality questions arising from new technology, and client development through new technology.

MODERATOR:

James F. Allmendinger, *NEA New Hampshire*, Concord, NH

SPEAKERS:

J.S. Chris Christie, Jr., *Bradley Arant Boult Cummings LLP*, Birmingham, AL

Stephen Gillers, *New York University*, New York, NY

Richard T. Seymour, *Law Office of Richard T. Seymour, P.L.L.C.*, Washington, DC

Nicole Walthour, *International Paper*, Memphis, TN

• 2:15 – 3:30 pm

BYOD: Bring Your Own Device or Bring Your Own Disaster?

Cosponsored by the ABA Law Practice Management Section

Use of employee-owned devices, such as smartphones, tablets and laptops for both personal and professional purposes presents a host of legal issues and employee-relations challenges. While the opportunities for security breaches and lost data make many employers cringe, companies that dictate which devices employees must use may find themselves at a competitive disadvantage. This panel will discuss important case law and legislative developments, privacy issues, unique liabilities in the wage-hour and discrimination contexts, preservation and discovery issues in litigation, what to do when an employee leaves, as well as critical “dos & don’ts” when crafting BYOD policies.

MODERATOR:

Heather A. Morgan, *Paul Hastings LLP*, Los Angeles, CA

SPEAKERS:

Amira Day Dallafior, *Facebook*, Menlo Park, CA

Troy L. Kessler, *Shulman Kessler LLP*, Long Island, NY

David A. Rosenfeld, *Weinberg Roger & Rosenfeld P.C.*, Alameda, CA

• 3:45 – 5:00 pm

Ethical Engagements: You Don’t Need a Ring, But You Might Want a Pre-Nup (E)

Many states’ ethics rules require that attorneys memorialize certain terms

at the beginning of a representation, such as the scope of representation and the fee arrangement. But are there other items that an attorney must or should communicate to a client from the onset of representation? This panel will discuss when an attorney-client relationship is formed and consider the ethics of engagement letters, covering topics like defining the scope of representation, explaining the grounds for terminating the representation, instructing clients about their preservation obligations, and warning clients about the risks of technology and social media use.

MODERATOR:

Cynthia E. Nance, *University of Arkansas*, Fayetteville, AR

SPEAKERS:

Nora L. Macey, *Macey Swanson and Allman*, Indianapolis, IN

Stephanie S. Padilla, *Johns Manville*, Denver, CO

Scott Pollins, *Willig, Williams & Davidson*, Philadelphia, PA

Dayna E. Underhill, *Hinshaw & Culbertson LLP*, Portland, OR

International

• 8:00 – 9:15 am

Obligations to Employees in Times of Crises in the U.S. and Abroad

“Duty of care” isn’t just about avoiding OSHA scrutiny anymore. Employers now have to deal with keeping their employees safe from political insurrections, hurricanes, typhoons and kidnapping attempts. Attendees will obtain valuable information regarding employee training and best practices from attorneys and experts who specialize in international disaster training and evacuation.

MODERATOR:

Marley S. Weiss, *University of Maryland Francis King Carey School of Law*, Baltimore, MD

SPEAKERS:

Suzanne Garber, *International SOS*, Houston, TX

Jeffrey S. Heller, *BP America Inc.*, Houston, TX

Robert B. Stulberg, *Broach & Stulberg, LLP*, New York, NY

Labor-Management Relations

• 8:00 – 9:15 am

The Practical Application of the Patient Protection and Affordable Care Act in the Public Sector

Some, but not all of the Patient Protection and Affordable Care Act (PPACA) survived constitutional challenge. However, other challenges are in the litigation pipeline. Major portions must be implemented by January 1, 2014. What collective bargaining obligations do unionized employers have as they attempt to comply with, and implement, PPACA’s requirements? What changes in health benefits coverage should employers and unions be considering as they negotiate aspects of PPACA’s requirements?

MODERATOR:

Donald D. Slesnick, II, *Law Offices of Slesnick & Casey, LLP*, Coral Gables, FL

SPEAKERS:

Thomas G. Hancuch, *Vedder Price, P.C.*, Chicago, IL

Brenda Sutton-Wills, *California Teachers Association*, Sacramento, CA

• 8:00 – 9:15 am

Meet the National Labor Relations Board

How have the national election results impacted the NLRB over the past year? Come meet the NLRB members as they discuss recent developments in the area of traditional labor law.

MODERATORS:

John J. Toner, *Seyfarth Shaw LLP*, Washington, DC

Gwynne A. Wilcox, *Levy Ratner P.C.*, New York, NY

• 9:30 – 10:45 am

Meet the National Labor Relations Board General Counsel

There will be a frank and candid discussion of issues faced by the General Counsel over the past year.

MODERATORS:

Jonathan C. Fritts, *Morgan, Lewis & Bockius LLP*, Washington, DC

N. Elizabeth Reynolds, *Allison, Slutsky & Kennedy, P.C.*, Chicago, IL

7th Annual Labor and Employment Law Conference



- 2:15 – 3:30 pm
Bargaining under the Affordable Care Act in the Private Sector: A Different Kind of Health Insurance “Exchange”

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Ronald J. Kramer, *Seyfarth Shaw LLP, Chicago, IL*

Jeffrey Stein, *1199 SEIU National Benefit & Pension Funds, New York, NY*

- 3:45 – 5:00 pm
Education Issues at the National Labor Relations Board

Issues in the education field are on the forefront with the NLRB. Are charter

schools political subdivisions within the meaning of Section 2(2) of the Act, and therefore exempt from the Board’s jurisdiction? Are university graduate student assistants performing services in connection with their studies statutory employees within the meaning of Section 2(3) of the Act? Should university faculty members be covered by the Act or excluded as managers? This panel will discuss these issues and other related issues involving the NLRB’s positions on education issues.

MODERATOR:

Wayne R. Gold, *National Labor Relations Board, Baltimore, MD*

SPEAKERS:

Jeffery R. Boxer, *Bush Gottlieb Singer López Kohanski Adelstein Dickinson, Glendale, CA*

Jennifer Platzkere Snyder, *Dilworth Paxon LLP, Philadelphia, PA*

♣ Litigation

- 8:00 – 9:15 am
Advanced eDiscovery: Litigating Today’s Employment Lawsuit

Panelists will provide experienced practitioners with an update regarding recent case law as well as a discussion of trends in all aspects of eDiscovery. The panelists also will explore various strategies that will allow practitioners to confidently address the many vital issues surrounding this aspect of litigation.

MODERATOR:

Helen Bergman Moure, *Lex Aperta PLLC, Seattle, WA*

SPEAKERS:

Hon. James C. Francis, *U.S. District Court for the Southern District of New York, New York, NY*

Michael J. Gray, *Jones Day, Chicago, IL*

John R. Mooney, *Mooney, Green, Saindon, Murphy & Welch, P.C., Washington, DC*

Marni J. Willenson, *Willenson Law LLC, Chicago, IL*

- 8:00 – 9:15 am
Trial by Formula and Defendants’ Due Process Rights

After *Dukes*, lower courts and state supreme courts are grappling with the contours of defendants’ due process rights to individualized fact

determinations in class actions. How do courts reconcile the requirements that all elements and damages be proved by a preponderance of the evidence with defendants’ due process rights in the context of class actions? How does defendants’ entitlement to assert individual affirmative defenses apply in the wage and hour context? What is the appropriate role of extrapolation? How can liability ever be determined or damages be awarded in class actions without individualized inquiries? What is inappropriate “trial by formula”?

MODERATOR:

Jason C. Marsili, *Posner & Rosen LLP, Los Angeles, CA*

SPEAKERS:

Reed L. Russell, *Phelps Dunbar LLP, Tampa, FL*

Guy B. Wallace, *Schneider Wallace Cottrell Konecny LLP, San Francisco, CA*

- 9:30 – 10:45 am
Jury Consultants and Focus Groups to Fit Many Budgets and Timeframes

Jury consultants can be a valuable tool in preparing for trial or positioning to settle. Consultants can help evaluate the strengths and weaknesses of a case with a more neutral eye. Beyond helping to choose a jury, the jury consultant can work with litigators prior to jury selection to help shape their case, using various methods that fit most budgets and timeframes including questionnaires, attitude surveys, focus groups and mock trials. A panel of seasoned practitioners and an experienced consultant discuss the use of jury consultants, including specific examples of how the use of such a consultant impacted real cases.

MODERATOR:

Lisa J. Banks, *Katz, Marshall & Banks, LLP, Washington, DC*

SPEAKERS:

Kathryn Burkett Dickson, *Dickson Geesman LLP, Oakland, CA*

Robert M. Goldich, *Greenberg Traurig LLP, Philadelphia, PA*

Carolyn S. Koch, *Jury Solutions, LLC, Fairfax, VA*

Yona Rozen, *Gillespie, Rozen & Watsky, P.C., Dallas, TX*

• 2:15 – 3:30 pm

Communications with Potential Class Members Before and After Complaint Filing: Ethics and More (E)

Ethics rules, the First Amendment, Rule 23 and the FLSA all implicate plaintiffs' and defendants' counsel's rights to speak with potential class members at various stages of the litigation. Since the Supreme Court's ruling in *Gulf Oil Co.*, the law regarding restrictions on potential class member communications has evolved inconsistently. Some courts have required preapproval of communications; others have ordered corrective communications. Class member declarations, releases and opt-outs have been invalidated based on findings of inappropriate communications. When counsel communicate with employees, what disclosures should or must they make? This panel will explore best practices in this murky area.

MODERATOR:

Jahan C. Sagafi, *Lieff Cabraser Heimann & Bernstein*, San Francisco, CA

SPEAKERS:

Philip Monrad, *Leonard Carder, LLP*, Oakland, CA

W. V. Bernie Siebert, *Sherman & Howard L.L.C.*, Denver, CO

Justin M. Swartz, *Outten & Golden LLP*, New York, NY

• 2:15 – 3:30 pm

Coordinating Criminal, Civil and Insurance Claims Associated with Employee Crime in the Workplace

Workplace crimes create the need for employers to coordinate the criminal prosecution, the civil claim/suit, and any insurance claims, as well as employment issues. A misstep in one of these areas can impact the success of the others. Examining a hypothetical embezzlement, this panel will address the best practices and practical ways in which these issues can be coordinated to take into account preservation of evidence for both the civil and criminal cases, confidentiality of criminal investigations, insurance policy requirements, and civil claims that may result. In addition, the panelists will address the management of the accompanying employment issues

MODERATOR:

Brian Bauman, *Hoffmann-La Roche Inc.*, Nutley, NJ

SPEAKERS:

Patrick E. Deady, *Hogan Marren, Ltd.*, Chicago, IL

Nicholas C. Harbist, *Blank Rome LLP*, Princeton, NJ

Ethan A. Levin-Epstein, *Garrison, Levin-Epstein, Richardson, Fitzgerald & Pirrotti, P.C.*, New Haven, CT

• 2:15 – 3:30 pm

Cross Examination: The Ten Commandments Reconsidered

The video of Irving Younger's "Ten Commandments of Cross Examination," now over 40 years old, is thought to be the most widely viewed CLE lecture of all time. It remains a classic in the pedagogy of cross examination, advocating a careful style-be brief, ask only questions to which you know the answer, leading questions only, don't quarrel with the witness. The Younger method is not beyond criticism, however, especially for experienced lawyers. We will screen the Younger video and follow with a discussion by experienced litigators.

MODERATOR:

Mark Risk, *Mark Risk, P.C.*, New York, NY

SPEAKERS:

Maureen S. Binetti, *Wilentz, Goldman & Spitzer P.A.*, Woodbridge, NJ

Barry A. Macey, *Macey Swanson and Allman*, Indianapolis, IN

Grace E. Speights, *Morgan, Lewis & Bockius LLP*, Washington, DC

• 3:45 – 5:00 pm

Summary Judgment Practice: Live or Die

A summary judgment motion is a key tool in the employment litigation arsenal as the case either lives or dies at this phase. Defense counsel must prepare for summary judgment at the early stages of the litigation, recognizing the impact that pleadings and discovery will have on the motion. Plaintiff's counsel must conduct discovery and prepare the plaintiff for deposition with summary judgment in mind. Utilizing a sexual harassment fact pattern, a panel of experienced practitioners, along with a trial judge, will discuss how to obtain summary judgment and how to avoid it.

MODERATOR:

Hal K. Gillespie, *Gillespie, Rozen & Watsky, P.C.*, Dallas, TX

SPEAKERS:

Hon. Ivan L. R. Lemelle, *U.S. District Court for the Eastern District of Louisiana*, New Orleans, LA

Hon. Jerry Smith, *U.S. Court of Appeals for the Fifth Circuit*, Dallas, TX

Katherine L. Butler, *Butler & Harris*, Houston, TX

Barbara Jean D'Aquila, *Norton Rose Fulbright*, Minneapolis, MN

• 3:45 – 5:00 pm

Trial by iPad

Cosponsored by the ABA Law Practice Management Section

This program will be a show-and-tell and demonstration of how lawyers are using tablets, such as iPads and other hardware and software products, to build a trial notebook, organize documents and present a case in trial or arbitration. Panelists will discuss cost effective tools that enable firms of all sizes to litigate on a "level playing field."

SPEAKERS:

Adam S. Forman, *Miller Canfield P.L.C.*, Detroit, MI

Todd M. Schneider, *Schneider Wallace Cottrell Konecky LLP*, San Francisco, CA

♣ Wage and Hour

• 8:00 – 9:15 am

Wage and Hour Boot Camp (F)

Cosponsored by the ABA Young Lawyers Division

This year's version of the popular Wage and Hour Boot Camp will focus on both substantive and procedural issues involved in litigating individual as well as class, collective and hybrid wage and hour cases. Specific topics to be covered will include the duties tests for the exemptions, the salary basis test, independent contractors, determining the regular rate and the meaning of "work" and compensable time, the "similarly situated" test under Section 216(b) for collective actions, as well as the opt-in process, discovery and decertification issues.

MODERATOR:

Tracey Holmes Donesky, *Leonard, Street and Deinard Professional Association*, Minneapolis, MN

SPEAKERS:

B. Craig Deats, *Deats Durst Owen & Levy, P.L.L.C.*, Austin, TX

James Kan, *Goldstein, Borgen, Dardarian & Ho*, Oakland, CA

Lawrence Peikes, *Wiggin and Dana LLP*, Stamford, CT

Continued on page 16

7th Annual Labor and Employment Law Conference

Wednesday, November 6

2:00 – 8:00 pm

Conference Registration

3:00 – 4:00 pm

Law Student Orientation

4:00 – 5:30 pm

The Benefits of Active Involvement in the ABA Section of Labor and Employment Law and Raising the Level of Ethics in Our Profession

5:30 – 6:00 pm

**First-Time Attendee/
New Section Member
Reception**

6:00 – 8:00 pm

**Welcome Reception
and Committee Expo**

Thursday, November 7

7:00 – 8:00 am

**Continental Breakfast
& Registration**

8:00 – 9:15 am

- Overcoming New Hurdles for Class Certification
- It's Always 1983 in the American Workplace: Constitutional Protections for Public Sector Employees
- The National Labor Relations Board's Entry into Immigration Issues
- Ethics of Social Media for Lawyers: It's Not Just Clients Who Need to Worry (E)
- National Labor Relations Act Fundamentals for the Non-Union Workplace (F)
- State Regulation of Occupational Safety and Health

- Managing Employees with Discrimination or Other Complaints

9:30 – 10:45 am

- Crafting an Effective Class Action Trial Plan
- The Constant Crisis: Public Sector Bargaining in the New Age
- Has *Specialty Healthcare* Changed the Landscape in Organizing and Representation Proceedings?
- Comprehensive Immigration Reform
- Latin America on the Rise: The Impact of Legal Reforms and Labor Market Developments in China and Latin America
- Ethics and Strategies in Labor and Employment Arbitration (E)
- Employer Use of Criminal Background Checks

11:00 – 12:30 pm

Plenary Session

11:00 – 11:15 am

- Welcome, Introductions and Presentation of the 2013 Arvid Anderson Public Sector Labor and Employment Attorney of the Year Award

11:15 – 12:30 pm

- The Patient Protection and Affordable Care Act: Current Status and What Is to Come

12:30 – 2:00 pm

Diversity Luncheon

2:15 – 3:30 pm

- The Patient Protection and Affordable Care Act: Employer Responses and Litigation Trends
- Bankruptcy and the Railway Labor Act
- An Inside View of an NLRB Case: What They Were Thinking
- Causes of Action for Workplace Abuse of Immigrant Workers
- Next Up for North American Employers and Unions? International Framework Agreements (IFAs) and Corporate Social Responsibility (CSR)

- Issues and Ethics of Mediation-Arbitration ("Med-Arb") (E)
- Unconscious Bias: Diving Deeper
- Apps for Labor and Employment Lawyers (T)

3:45 – 5:00 pm

- The Patient Protection and Affordable Care Act: Compliance
- eDiscovery Boot Camp (F)
- National Labor Relations Board Update
- Negotiating an FLSA Settlement Agreement: Legal and Practical Considerations
- International Perspectives on Managing the Risks of Alternate Workforces
- Class and Collective Action Arbitration: An Update
- Gender Pay Disparity: 50 Years after the Equal Pay Act
- Marketing Your Practice to Secure Business and Recognition

6:00 – 8:00 pm

Diversity Reception

Friday, November 8

7:00 – 8:00 am

**Continental Breakfast
& Registration**

8:00 – 9:15 am

- Wage and Hour Boot Camp (F)
- Trial by Formula and Defendants' Due Process Rights
- Meet the National Labor Relations Board
- Obligations to Employees in Times of Crises in the U.S. and Abroad
- The Practical Application of the Patient Protection and Affordable Care Act in the Public Sector
- Advanced eDiscovery: Litigating Today's Employment Lawsuit
- Very Recent Changes in the Ethics Rules: Wrapping Up the ABA Commission on Ethics 20/20 (E)

Schedule At-A-Glance

9:30 – 10:45 am

- The ADAAA: Five Years Later (F)
- Independent Contractors: Are They Misclassified?
- Meet the Acting National Labor Relations Board General Counsel
- Bullies in the Workplace
- Determining When the Attorney-Client Privilege and Work Product Doctrines Apply to Internal Communications
- Jury Consultants and Focus Groups to Fit Many Budgets and Timeframes
- Caregiver Responsibility Discrimination: Are You One Sick Kid Away from Losing Your Job?

11:00 – 12:30 pm

Plenary Session

11:00 – 11:15 am

- Presentation of the 2013 Frances Perkins Pro Bono Service Award

11:15 am – 12:30 pm

- Supreme Court Review

12:30 – 2:00 pm

Pro Bono Luncheon

12:30 – 2:00 pm

In-House Corporate Counsel Luncheon

(In-House Corporate Counsel only)

2:15 – 3:30 pm

- Discrimination against LGBT Individuals: Sex and Gender Revisited under Title VII (F)
- Communications with Potential Class Members Before and After Complaint Filing: Ethics and More (E)
- Who Is a Qualified Individual with a Disability?
- Coordinating Criminal, Civil and Insurance Claims Associated with Employee Crime in the Workplace
- Cross Examination: The Ten Commandments Reconsidered
- The Rising Tide of Retaliation Claims
- BYOD: Bring Your Own Device or Bring Your Own Disaster?

Legend:

E = Ethics F = Fundamentals T = Technology

- Bargaining under the Affordable Care Act in the Private Sector: A Different Kind of Health Insurance “Exchange”

3:45 – 5:00 pm

- Ethical Engagements: You Don’t Need a Ring, But You Might Want a Pre-Nup (E)
- Recent FLSA Developments
- Education Issues at the National Labor Relations Board
- ADA, HIPAA and GINA: Disclosing Private Information
- The Pitfalls of Employee Assistance Program Referrals: No Good Deed Goes Unpunished
- Summary Judgment Practice: Live or Die
- Disciplining Employees for Disability-Related Activities
- Trial by iPad

5:00 – 6:00 pm

Standing Committee Business Meetings

7:00 – 10:00 pm

Conference Reception at House of Blues

Saturday, November 9

7:00 – 8:00 am

Continental Breakfast & Registration

8:00 – 9:15 am

- Can Employees Be Disciplined for Out-of-Work Behavior
- What You Can Do with That Deposition In Court
- The Impact of Bankruptcy on Labor and Employment Law (F)
- The Ins and Outs of the Administrative Procedures Act: Why You Better Pay Attention to It

- Investigation Basics: Planning, Execution and Documentation (F)
- National Security: How Secure Is Too Secure?
- Do Lawyers Have an Ethical Duty to Learn about and Understand Technology? (E)

9:30 – 10:45 am

- Workplace Investigations: Getting to the Bottom of Complex Matters without Falling into a Trap
- Experts Discuss Tricky Evidentiary Issues in Employment Law
- Settlement Strategies: What Every Lawyer Needs to Know About Reimbursement of Medicare and Medicaid
- An Overview of Whistleblower Claims (F)
- The Business and Ethics of Hanging Out Your Shingle (E)
- Compensable Time in a Digital Age: Beyond Donning and Doffing
- A Forensic Tour of Portable Devices and the Secrets They Reveal (T)

11:00 – 12:30 pm

Plenary Session

11:00 – 11:15 am

- Presentation of the 2013 Federal Labor & Employment Attorney of the Year Award

11:15 am – 12:30 pm

- Emerging Work/Career Balance and Stereotyping Issues in the Workplace

12:45 – 2:00 pm

Careers in Labor and Employment Law: A “How To” Exploration of Options and Advice for Law Students on Finding the Right Job

12:45 – 2:00 pm

The College of Labor and Employment Lawyers Program

7th Annual Labor and Employment Law Conference



- 8:00 – 9:15 am

Trial by Formula and Defendants' Due Process Rights

After *Dukes*, lower courts and state supreme courts are grappling with the contours of defendants' due process rights to individualized fact determinations in class actions. How do courts reconcile the requirements that all elements and damages be proved by a preponderance of the evidence with defendants' due process rights in the context of class actions? How does defendants' entitlement to assert individual affirmative defenses apply in the wage and hour context? What is the appropriate role of extrapolation? How can liability ever be determined or damages be awarded in class actions without individualized inquiries? What is inappropriate "trial by formula"?

MODERATOR:

Jason C. Marsili, *Posner & Rosen LLP*,
Los Angeles, CA

SPEAKERS:

Reed L. Russell, *Phelps Dunbar LLP*,
Tampa, FL

Guy B. Wallace, *Schneider Wallace Cottrell Konecky LLP*, San Francisco, CA

- 9:30 – 10:45 am

Independent Contractors: Are They Misclassified?

In recent years, the issue of misclassification of independent contractors has been the focus of both federal and state legislation and has seen a significant increase in both government enforcement actions and private litigation. This panel will discuss the various tests used to determine independent contractor status in the wage and hour context, summarize government initiatives, address consequences of misclassification and discuss recent case developments in this area. Finally, the panel will provide practical advice on challenging and defending independent contractor status.

MODERATOR:

Susan N. Eisenberg, *Akerman Senterfitt LLP*, Miami, FL

SPEAKERS:

Hon. M. Patricia Smith, *U.S. Department of Labor*, Washington, DC

Aaron D. Kaufmann, *Leonard Carder*,
Oakland, CA

Eric D. Reicin, *Association of Corporate Counsel*, Potomac, MD

- 2:15 – 3:30 pm

Communications with Potential Class Members Before and After Complaint Filing: Ethics and More (E)

Ethics rules, the First Amendment, Rule 23 and the FLSA all implicate plaintiffs' and defendants' counsel's rights to speak with potential class members at various stages of the litigation. Since the Supreme Court's ruling in *Gulf Oil Co.*, the law regarding restrictions on potential class member communications has evolved inconsistently. Some courts have required preapproval of communications; others have ordered corrective communications. Class member declarations, releases and opt-outs have been invalidated based on findings of inappropriate communications. When counsel communicate with employees, what disclosures should or must they make?

This panel will explore best practices in this murky area.

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Jahan C. Sagafi, *Lieff Cabraser Heimann & Bernstein*, San Francisco, CA

SPEAKERS:

Philip Monrad, *Leonard Carder, LLP*,
Oakland, CA

W. V. Bernie Siebert, *Sherman & Howard L.L.C.*, Denver, CO

Justin M. Swartz, *Outten & Golden LLP*,
New York, NY

- 3:45 – 5:00 pm

Recent FLSA Developments

The law under the FLSA continues to develop, and 2013 had its share of interesting issues. This panel of experienced practitioners will summarize and analyze developments in the law as it pertains to FLSA issues as well as the practical implications of the law on suits in the future.

MODERATOR:

Jeremy J. Glenn, *Meckler Bulger Tilson Marick & Pearson LLP*, Chicago, IL

SPEAKERS:

Ryan A. Hagerty, *Asher, Gittler & D'Alba, Ltd.*, Chicago, IL

Matthew C. Helland, *Nichols Kaster, PLLP*,
San Francisco, CA

David A. Prather, *Ford and Harrison LLP*,
Memphis, TN

♣ Workplace Problems and Solutions

- 8:00 – 9:15 am

Obligations to Employees in Times of Crises in the U.S. and Abroad

"Duty of care" isn't just about avoiding OSHA scrutiny anymore. Employers now have to deal with keeping their employees safe from political insurrections, hurricanes, typhoons and kidnapping attempts. Attendees will obtain valuable information regarding employee training and best practices from attorneys and experts who specialize in international disaster training and evacuation.

MODERATOR:

Marley S. Weiss, *University of Maryland Francis King Carey School of Law*,
Baltimore, MD

SPEAKERS:

Jeffrey S. Heller, *BP America Inc.*,
Houston, TX

Robert B. Stulberg, *Broach & Stulberg, LLP*,
New York, NY
Suzanne Garber, *International SOS*,
Houston, TX

• 9:30 – 10:45 am

Bullies in the Workplace

Rotten bosses and co-workers are not illegal, but they greatly impact the workplace in terms of time, energy, money, productivity, morale, and claims. Statistics show that incidences of workplace bullying have risen dramatically in the past few years. In addition to providing an update on legal developments in this area, this program will explore the issue of workplace bullying from a practical perspective, with the goal of avoiding workplace bullying regardless of whether it creates a legal claim. It will address how to identify bullying and respond to it and how to create an environment designed to prevent it, in both the union and non-union contexts. Panelists will offer specific training suggestions.

MODERATOR:

Monique Gougisha Doucette, *Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*,
New Orleans, LA

SPEAKERS:

Melinda Burrows, *Outerwall, Inc.*,
Bellevue, WA

Brian J. LaClair, *Blitman & King LLP*,
Syracuse, NY

Nina T. Pirrotti, *Garrison, Levin-Epstein, Richardson, Fitzgerald & Pirrotti, P.C.*,
New Haven, CT

Lamont E. Stallworth, Ph.D., *Loyola University*, Chicago, IL

• 9:30 – 10:45 am

Determining When the Attorney-Client Privilege and Work Product Doctrine Apply to Internal Communications

In-house attorneys regularly provide legal advice to corporate officers, managers, and other representatives. A simple “cc” to in-house counsel does not automatically cloak written communications in the attorney-client privilege. Likewise, internal clients may assume that certain business communications are protected under the work product doctrine because the findings are self-critical and in-house counsel is included on the resulting memo. However, these beliefs are not always accurate. Panelists

will engage in an interactive dialogue around when the attorney-client privilege and work product doctrine apply and how in-house counsel should frame the analysis of their disclosure obligations.

SPEAKERS:

Hon. Martin C. Carlson, *U.S. District Court for the Middle District of Pennsylvania*,
Harrisburg, PA

Michael Z. Green, *Texas Wesleyan University School of Law*, Fort Worth, TX

Veronica G. Gromada, *Wal-Mart Stores, Inc.*, Bentonville, AR

Virginia “Ginger” Hardwick, *Hardwick Collier LLC*, Doylestown, PA

• 2:15 – 3:30 pm

Coordinating Criminal, Civil and Insurance Claims Associated with Employee Crime in the Workplace

Workplace crimes create the need for employers to coordinate the criminal prosecution, the civil claim/suit, and any insurance claims, as well as employment issues. A misstep in one of these areas can impact the success of the others. Examining a hypothetical embezzlement, this panel will address the best practices and practical ways in which these issues can be coordinated to take into account preservation of evidence for both the civil and criminal cases, confidentiality of criminal investigations, insurance policy requirements, and civil claims that may result. In addition, the panelists will address the management of the accompanying employment issues

MODERATOR:

Brian Bauman, *Hoffmann-La Roche Inc.*,
Nutley, NJ

SPEAKERS:

Patrick E. Deady, *Hogan Marren, Ltd.*,
Chicago, IL

Nicholas C. Harbist, *Blank Rome LLP*,
Princeton, NJ

Ethan A. Levin-Epstein, *Garrison, Levin-Epstein, Richardson, Fitzgerald & Pirrotti, P.C.*, New Haven, CT

• 3:45 – 5:00 pm

ADA, HIPAA and GINA: Disclosing Private Information

Cosponsored by the ABA Commission on Disability Rights

ADA, HIPAA and GINA protect the privacy of certain employee and

medical information and have proven at times to be misunderstood. Many practitioners have heard others invoke these statutory schemes as barring access to certain information when the statute may not apply, while other practitioners, who are unfamiliar with the limits imposed by existing law, have disclosed protected information. This panel will explore the uses and possible misuses of these statutes.

MODERATOR:

David M. Fusco, *Schwarzwald McNair & Fusco LLP*, Cleveland, OH

SPEAKERS:

Howard D. Bye-Torre, *Stoel Rives LLP*,
Seattle, WA

Sharon M. Dostmann, *Cooper Health System*, Philadelphia, PA

Christopher J. Kuczinski, *U.S. Equal Employment Opportunity Commission*,
Washington, DC

• 3:45 – 5:00 pm

The Pitfalls of Employee Assistance Program Referrals: No Good Deed Goes Unpunished

Employers may see referrals to EAP as an attractive option for dealing with “problem” employees. The speakers will explore the implications under the ADA and the FMLA of mandatory referrals to an EAP. Do these referrals constitute a medical exam? In light of recent case law and the growing use of employee wellness initiatives, how can employers reap the benefits of having these programs without creating inadvertent exposure? Can employees use a request for assistance under these programs to try to avoid adverse employment actions? Are the records kept in these programs protected under HIPAA or are they employment records?

MODERATOR:

Sheree C. Wright, *Vanderbilt University*,
Nashville, TN

SPEAKERS:

Glen D. Savits, *Green Savits & Lenzo LLC*,
Morristown, NJ

Laurie A. Vasichek, *U.S. Equal Employment Opportunity Commission*,
Minneapolis, MN

Eunice Washington, *SEIU Benefit Funds*,
Washington, DC

7th Annual Labor and Employment Law Conference

Saturday, November 9

✦Plenary Session

- 11:00 – 11:15 am
**Presentation of the 2013
Federal Labor & Employment
Attorney of the Year Award**

- 11:15 am – 12:30 pm
**Emerging Work/Career
Balance and Stereotyping
Issues in the Workplace**

How are employers creating more flexible work hours and workplaces to accommodate workers who face internal, as in personal and cultural, obstacles, maternal walls and care giving responsibilities? The panel will explore the reasons workers are holding themselves back from continuing their careers or advancing to more senior positions and will discuss how companies are dealing with them on the shop floor and in the corporate office. Additionally, many employers are dealing with the impact of employees asserting themselves on workplace issues, and the manner in which these become legal issues. The panel also will explore legal theories that employees may be using to challenge their employers in these areas.

SPEAKERS:
To Be Announced

✦Ethical, Practical and Technological Issues in Managing a Labor and Employment Law Practice

- 8:00 – 9:15 am
**Do Lawyers Have an Ethical
Duty to Learn about and
Understand Technology? (E)**

Cosponsored by the ABA Law
Practice Management Section

In a world critically dependent on technology, lawyers may have an obligation to move beyond the basics. The ABA recently approved changes to the Model Rules of Professional Conduct, clarifying that the requirement of “competence” includes keeping abreast of “the benefits and risks associated with

relevant technology.” This panel will examine core competency areas, such as protecting confidential and privileged information and communicating with prospective or existing clients, witnesses and jurors. The panel also will consider the ethical implications of lawyers’ use, misuse and non-use of emerging technologies, such as cloud repositories, automated litigation holds and document review platforms.

MODERATOR:

Carol M. Langford, Law Office of Carol M. Langford, Walnut Creek, CA

SPEAKERS:

Andrew Altschul, Buchanan Angeli Altschul & Sullivan LLP, Portland, OR
Sean R. Gallagher, Polsinelli Shughart PC, Denver, CO

- 9:30 – 10:45 am
**The Business and Ethics of
Hanging Out Your Shingle (E)**

Many lawyers dream of hanging out a shingle and opening their own firm. This program will address issues e.g., structuring a firm (such as solo practices, partnerships, and national practices), agreements and documents establishing the firm, developing a business plan, virtual offices, website development, initial marketing efforts, firm finances and amicably and ethically separating from your firm and bringing clients with you without burning bridges.

MODERATOR:

Cassie Springer, Springer & Roberts LLP, Oakland, CA

SPEAKERS:

Cara E. Greene, Outten & Golden LLP, New York, NY
Lawrence Morales II, The Morales Firm, P.C., San Antonio, TX
Michael P. Posner, Posner & Rosen LLP, Los Angeles, CA

✦Labor-Management Relations

- 8:00 – 9:15 am
**National Security:
How Secure Is Too Secure?**

As national security becomes more of a concern, this program will explore the ways in which government agencies determine which positions require security clearances; which security components are enough to eliminate

a position from coverage by a bargaining unit; and how agencies deal with the sharing of confidential information by employees. The panelists also will discuss retaliatory denials of security clearances, as well as the effect that Edward Snowden’s recent disclosure of NSA metadata collection will have on the granting of security clearances.

SPEAKERS:

Daniel J. Kaspar, National Treasury Employee Union, Chicago, IL
A.P. Williams, U.S. Army Research, Development and Engineering Command, Aberdeen, MD

✦Litigation

- 8:00 – 9:15 am
**What You Can Do with
That Deposition In Court**

Experienced practitioners and a trial judge will demonstrate various uses of depositions at trial (or arbitration) to illustrate both the legal requirements and most effective techniques. The discussion will include various techniques for impeachment by prior inconsistent statement, hearsay issues, refreshment of recollection, reading testimony directly into record, impeachment from video deposition, options for homemade video and software to synch video to transcript.

MODERATOR:

Paula Graves Ardelean, Butler, Snow, O’Mara, Stevens and Cannada, PLLC, Ridgeland, MS

SPEAKERS:

Hon. Mark W. Bennett, U.S. District Court for the Northern District of Iowa, Sioux City, IA
Robin Potter, Robin Potter & Associates PC, Chicago, IL
Lynne C. Hermle, Orrick, Herrington & Sutcliffe LLP, Silicon Valley, CA
Louis P. Malone III, O’Donoghue & O’Donoghue LLP, Washington, DC

- 8:00 – 9:15 am
**The Impact of Bankruptcy on
Labor and Employment Law (F)**
Cosponsored by the
ABA Young Lawyers Division

This panel will address the impact of bankruptcy proceedings on labor and employment claims. Whether the debtor is an employer or employee, the panel will discuss how practitioners can protect their clients’ interests

where bankruptcy is being considered or is occurring, including providing practical pointers for discovery and dispositive motions. The panel will address judicial estoppel and how it is established as well as navigating bankruptcy where the defendant is also a debtor. Additionally, the union perspective on the impact of employer bankruptcy on the collective bargaining agreement will be included.

MODERATOR:

Joseph C. Liburt, *Orrick, Herrington & Sutcliffe LLP, Silicone Valley, CA*

SPEAKERS:

Daniel A. Katz, *The Law Offices of Gary M. Gilbert & Associates, P.C., Silver Springs, MD*

Richard M. Seltzer, *Cohen, Weiss and Simon LLP, New York, NY*

• 8:00- 9:15 am

The Ins and Outs of the Administrative Procedures Act: Why You Better Pay Attention to It

If you practice before any federal employment administrative agency such as OSHA, Wage and Hour, MSPB and the OFCCP, an enforcement action will have you in an administrative proceeding before an ALJ governed by the Administrative Procedures Act and Civil Service Reform Act. Learn how practice in this area differs from practice in federal and state courts, with an emphasis on nuances and common mistakes made by less experienced practitioners. This session also will examine the standards of review and new proposed ALJ rules for the DOL.

MODERATOR:

T. Scott Kelly, *Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Birmingham, AL*

SPEAKERS:

Alan L. Bergstrom, *U.S. Department of Labor, Newport News, VA*

Wendy L. Kahn, *Zwerdling, Paul, Kahn & Wolly, P.C., Washington, DC*

Karen E. Mock, *U.S. Department of Labor, Atlanta, GA*

David Scher, *The Employment Law Group, P.C., Washington, DC*

• 9:30 – 10:45 am

Experts Discuss Tricky Evidentiary Issues in Employment Law

Here's your chance to discuss thorny evidentiary issues with experienced

trial attorneys and an evidence law professor. How can you get in character evidence? Are prior bad acts admissible? Is a sexual harassment victim's past sexual behavior relevant? How can you show that your opponent lacks credibility? How can you introduce prior inconsistent statements? Our panel of experts will discuss these and many more tricky questions that often arise under the Federal Rules of Evidence in real trials of employment cases and will address how litigators can effectively use motions in limine to handle these evidentiary issues.

MODERATOR:

George M. Strickler, Jr., *Tulane University Law School, New Orleans, LA*

SPEAKERS:

Gary B. Eidelman, *Saul Ewing LLP, Baltimore, MD*

Julie Richard-Spencer, *Robein, Urann, Spencer, Picard & Cangemi, APLC, New Orleans, LA*

Michael C. Subit, *Frank Freed Subit & Thomas LLP, Seattle, WA*

• 9:30 – 10:45 am

Settlement Strategies: What Every Lawyer Needs to Know About Reimbursement of Medicare and Medicaid

This panel will discuss issues related to obtaining reimbursement of Medicare and Medicaid payments, such as rights and responsibilities related to conditional Medicaid and Medicare payments and Medicare set asides, lawyers' responsibilities and liabilities, and how to draft settlement agreements that do not run afoul of these issues.

MODERATOR:

Rayford Taylor, *Casey Gilson P.C., Atlanta, GA*

SPEAKERS:

Joel Alpert, *Alpert & Alpert, Southfield, MI*

Terry Coriden, *Coriden Coriden Andrews & Glover, LLC, Columbus, IN*

Rafael Gonzalez, *Gould & Lamb, Tampa, FL*

• 9:30 – 10:45 am

A Forensic Tour of Portable Devices and the Secrets They Reveal (T)

Cosponsored by the ABA Law Practice Management Section

Have you ever wondered what a smart phone or tablet device might reveal

about a witness' "lost" communications or whereabouts during a critical period? A certified forensic examiner will reveal a few hidden gems of information that may be recoverable. This demonstration will show how seemingly non-existent but potentially critical information can be obtained from such devices.

MODERATOR:

Douglas E. Dexter, *Farella Braun + Martel LLP, San Francisco, CA*

SPEAKERS:

Gavin W. Manes, Ph.D., *Avansic, Tulsa, OK*
Laura S. Schnell, *Eisenberg and Schnell LLP, New York, NY*

Alvin Velazquez, *Service Employees International Union, Washington, DC*

✦Special Interest

• 9:30 – 10:45 am

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SPEAKERS:

Joel Alpert, *Alpert & Alpert, Southfield, MI*

Terry Coriden, *Coriden Coriden Andrews & Glover, LLC, Columbus, IN*

Rafael Gonzalez, *Gould & Lamb, Tampa, FL*

• 9:30 – 10:45 am

An Overview of Whistleblower Claims (F)

Cosponsored by the ABA Young Lawyers Division

Which federal environmental, safety, and securities laws protect whistleblowers? Panelists will compare procedures and remedies available to employees under a variety of laws enforced by the federal district courts, OSHA and other agencies.

MODERATOR:

Shalanda D. Ballard, *3M, St. Paul, MN*

7th Annual Labor and Employment Law Conference Program Schedule

Saturday, November 9



SPEAKERS:

Jeffrey C. Brodin, *Brodin HR Law*,
Phoenix, AZ

Mark Hanna, *Murphy Anderson PLLC*,
Washington, DC

Richard Renner, *Tate & Renner, Attorneys
at Law*, Silver Springs, MD

Beth S. Slavet, *U.S. Department of Labor*,
Washington, DC

✦Wage and Hour

- 9:30 – 10:45 am

Compensable Time in a Digital Age: Beyond Donning and Doffing

In the modern workforce, the issue of compensable time is evolving beyond simply donning and doffing. Many practitioners believe this area may present the next “big wave” of FLSA litigation. This panel will review both “traditional” compensable time issues, such as travel time and on-call time, while also discussing potential new claims, such as the use of handheld devices, remote access to work, and computer boot up time. In discussing whether such activities should be deemed legally compensable, the panel will explore issues such as *de minimis* work activities and provide practical advice on how to implement appropriate recordkeeping in the evolving workplace.

MODERATOR:

Joseph E. Tilson, *Meckler Bulger Tilson
Marick & Pearson LLP*, Chicago, IL

SPEAKERS:

J. Lindsay Johnston, Philadelphia, PA

Christine E. Webber, *Cohen Milstein*,
Washington, DC

Jennifer T. Williams, *Akerman Senterfitt*,
Miami, FL

Shane C. Youtz, *Youtz & Valdez, p.c.*,
Albuquerque, NM

✦Workplace Problems and Solutions

- 8:00 – 9:15 am

Can Employees Be Disciplined for Out-of-Work Behavior

Much has been discussed recently about disciplining employees for online activities, but what about other out-of-work behavior? Do employers have the right to discipline or fire employees for activities outside of the workplace that they find offensive? Does the answer to this question depend on the type of job the employee holds? What role, if any, do privacy and free speech rights play in this context? These and other questions will be explored in a lively debate among the panelists based upon both real cases and hypotheticals.

MODERATOR:

Melinda J. Caterine, *Fisher & Phillips LLP*,
Portland, ME

SPEAKERS:

Lori D. Ecker, *Law Office of Lori D. Ecker*,
Chicago, IL

Cathi Hunt, *Starbucks Coffee Company*,
Seattle WA

Marilyn S. Teitelbaum, *Schuchat, Cook
& Werner*, St. Louis, MO

- 8:00 – 9:15 am

Investigation Basics: Planning, Execution and Documentation (F)

Cosponsored by the
ABA Young Lawyers Division

This program, designed for attorneys with little or no investigation experience, will cover the basics of performing a defensible investigation into employee misconduct. Using a hypothetical discrimination claim, the panel will discuss: investigator selection and related privilege issues, investigation plan development, evidence collection, witness interviews, and report outs and documentation.

MODERATOR:

J. Randall Coffey, *Fisher & Phillips LLP*,
Kansas City, MO

SPEAKERS:

Jennie Clarke, *American Century
Investments*, Kansas City, MO

Lori L. Deem, *Abrahamson Vorachek
& Levinson*, Chicago, IL

Steven E. Starr, *Meyer, Suozzi, English
& Klein, P.C.*, New York, NY

- 9:30 – 10:45 am

Workplace Investigations: Getting to the Bottom of Complex Matters without Falling into a Trap

This program will address issues arising in complex, high stakes investigations. Using a hypothetical involving alleged CEO harassment and hush money paid with corporate funds, the panel will explore strategic and tactical decisions the company will face from the time the allegation is made until the matter is resolved. The discussion will include investigator selection, Board reporting, parallel agency investigations, NLRA requirements, evidence collection, witness interviews, press inquiries, privilege issues, and report outs and related documentation. Panelists also will address how (and whether) the investigation would differ in unionized and non-unionized workplaces.

MODERATOR:

Donna Hughes, *Actavis, Inc.*,
Parsippany, NJ

SPEAKERS:

Nancy Bornn, *Nancy Bornn Law*,
Playa del Ray, CA

Kirsten Scheurer Branigan, *Law Office of
Kirsten Scheurer Branigan, P.C.*, Nutley, NJ

Louis L. Robein, Jr., *Robein, Urann,
Spencer, Picard & Cangemi, APLC.*,
New Orleans, LA

Jennifer L. Sabourin, *Miller, Canfield,
Paddock and Stone, P.L.C.*, Detroit, MI

- 12:45 – 2:00 p.m.

College of Labor and Employment Lawyers Program: A Special Screening of *The Art and Science of Arbitration*

The Art and Science of Arbitration is the second documentary produced for The College of Labor and Employment Lawyers' Video History Project. This compelling piece focuses on arbitrators whose careers and contributions are landmarks in labor-management relations and in the resolution of industrial disputes. Featured are ten distinguished arbitrators, including Roberta Golick, George Nicolau, Ted St. Antoine, Jim Harkless and Secretary George Shultz. With humor and candor, they share their insights and experiences—revealing the joys, pitfalls, and great humanity of arbitration.

Networking and Social Events

Wednesday, November 6

- 3:00 – 4:00 pm

Law Student Orientation

All law student attendees are invited to mingle with each other and members of the Law Student Outreach Task Force over coffee, tea and snacks prior to the start of the Conference. This event will offer students a very casual introduction to the ins and outs of the Section's Annual Conference. Students will also receive tips for making the most out of their Conference experience.

- 5:30 – 6:00 pm

First-Time Attendee/ New Section Member Reception

If you are a new member of the Section of Labor and Employment Law or if you've just never attended a Section meeting before, begin the Conference on the right foot by joining your colleagues at this reception.

- 6:00 – 8:00 pm

Welcome Reception and Committee Expo

All attendees are invited to meet, greet and network during this opening reception at the Hilton New Orleans Riverside. Section Standing Committees will provide information about publications, services and programs they provide to Section members.

Thursday, November 7

- 12:30 – 2:00 pm

Diversity Luncheon

- 6:00 – 8:00 pm

Diversity Reception

Presented by the Diversity in the Legal Profession Committee

Join us for a social and networking reception for those who support the Section's vision of diversity and inclusion. The reception will begin at 5:30 pm at the Hilton New Orleans Riverside and proceed by Second Line parade to the Loews New Orleans Hotel. The reception will feature entertainment by Jazzfest favorite Glen David Andrews Band.

Friday, November 8

- 12:30 – 2:00 pm

Pro Bono Luncheon

The Pro Bono Luncheon will feature the 2013 Frances Perkins Award Recipient who will speak on the importance of pro bono work. In addition, attendees will be able to engage in discussions relating to providing pro bono services and to learn first-hand how the Pro Bono Work Committee interacts with the Section.

- 12:30 – 2:00 pm

In-House Corporate Counsel Luncheon (In-House Corporate Counsel only)

- 5:00 – 6:00 pm

Standing Committee Business Meetings

Section of Labor and Employment Law Standing Committees will conduct business meetings in an informal setting. Refreshments will be provided.

- 7:00 – 10:00 pm

Conference Reception at House of Blues

Sponsored by Proskauer Rose LLP

Join with old friends and new to celebrate the 7th Annual Labor and Employment Law Conference as you enjoy good food, drinks and entertainment by some of New Orleans' finest musicians.

Saturday, November 9

- 12:45 – 2:00 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 dine 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 a corporate in-house position.

7th Annual Labor and Employment Law Conference

Plenary Sessions

Cutting edge programs of wide general interest, including

- The Patient Protection and Affordable Care Act: Current Status and What Is to Come, *pages 2, 4*
- Supreme Court Review, *page 9*
- Emerging Work/Career Balance and Stereotyping Issues in the Workplace, *page 18*

Alternative Dispute Resolution

Programs focusing on developments in the field of alternative dispute resolution in the union and non-union settings

- Class and Collective Action Arbitration: An Update, *page 3*
- Ethics and Strategies in Labor and Employment Arbitration **(E)**, *page 2*
- Issues and Ethics of Mediation-Arbitration ("Med-Arb") **(E)**, *page 3*

Discrimination and Retaliation

Hot topics in the employment discrimination and retaliation arena

- The ADAAA: Five Years Later **(F)**, *page 9*
- ADA, HIPAA and GINA: Disclosing Private Information, *pages 10, 17*
- Caregiver Responsibility Discrimination: Are You One Sick Kid Away from Losing Your Job?, *page 9*
- Disciplining Employees for Disability-Related Activities, *page 10*
- Employer Use of Criminal Background Checks, *page 3*
- Gender Pay Disparity: 50 Years after the Equal Pay Act, *page 3*
- The Rising Tide of Retaliation Claims, *page 9*
- Discrimination against LGBT Individuals: Sex and Gender Revisited under Title VII **(F)**, *page 9*
- Unconscious Bias: Diving Deeper, *page 3*
- Who is a Qualified Individual with a Disability?, *page 9*

Legend: E = Ethics F = Fundamentals T = Technology

Note: Programs may be listed in more than one area of interest.

Employee Benefits

Programs focusing on the Patient Protection and Affordable Care Act

- Bargaining under the Patient Protection and Affordable Care Act in the Private Sector: A Different Kind of Health Insurance "Exchange", *page 10*
- The Patient Protection and Affordable Care Act: Compliance, *pages 2, 4*
- The Patient Protection and Affordable Care Act: Current Status and What Is to Come, *page 4*
- The Patient Protection and Affordable Care Act: Employer Responses and Litigation Trends, *pages 4, 7*
- The Practical Application of the Patient Protection and Affordable Care Act in the Public Sector, *pages 10, 11*

Ethical, Practical and Technological Issues in Managing a Labor and Employment Law Practice

Programs dealing with ethics issues, technology developments and marketing a law practice

- Apps for Labor and Employment Lawyers **(T)**, *page 4*
- BYOD: Bring Your Own Device or Bring Your Own Disaster?, *page 11*
- The Business and Ethics of Hanging Out Your Shingle **(E)**, *page 18*
- Do Lawyers Have an Ethical Duty to Learn About and Understand Technology? **(E)**, *page 18*
- Ethical Engagements: You Don't Need a Ring But You Might Want a Pre-Nup **(E)**, *page 11*
- Ethics of Social Media for Lawyers: It's Not Just Clients Who Need to Worry **(E)**, *page 4*
- Marketing Your Labor and Employment Practice to Secure Business and Recognition, *page 4*
- Very Recent Changes in the Ethics Rules: Wrapping Up the ABA Commission on Ethics 20/20 **(E)**, *page 10*

Immigration

Programs investigating critical issues in immigration law that affect all practice areas

- Causes of Action for Workplace Abuse of Immigrant Workers, *page 5*
- Comprehensive Immigration Reform, *page 5*
- The National Labor Relations Board's Entry into Immigration Issues, *page 5*

International

Programs devoted to lawyers with an interest in developments in union and non-union workplaces outside the United States

- International Perspectives on Managing the Risks of Alternate Workforces, *page 5*
- Next Up for North American Employers and Unions? International Framework Agreements (IFAs) and Corporate Social Responsibility (CSR), *page 5*
- Latin America on the Rise: The Impact of Legal Reforms and Labor Market Developments in China and Latin America, *page 5*
- Obligations to Employees in Times of Crises in the U.S. and Abroad, *pages 11, 16*

Labor-Management Relations

Programs exploring developments in traditional labor law, the Railway Labor Act, the public and federal sectors and traps for the unwary in the non-union workplace

- Bargaining under the Patient Protection and Affordable Care Act in the Private Sector: A Different Kind of Health Insurance "Exchange", *pages 10, 12*
- Bankruptcy and the Railway Labor Act, *page 7*
- The Constant Crisis: Public Sector Bargaining in the New Age, *page 6*
- Education Issues at the National Labor Relations Board, *page 12*

- Has Specialty Healthcare Changed the Landscape in Organizing and Representation Proceedings?, *page 7*
- An Inside View of an NLRB Case: What They Were Thinking, *page 7*
- It's Always 1983 in the American Workplace: Constitutional Protections for Public Sector Employees, *page 6*
- Meet the Acting NLRB General Counsel, *page 11*
- Meet the National Labor Relations Board, *page 11*
- National Labor Relations Act Fundamentals for the Non-Union Workplace **(F)**, *page 6*
- National Labor Relations Board Update, *page 7*
- The National Labor Relations Board's Entry into Immigration Issues, *page 6*
- National Security: How Secure is Too Secure?, *page 18*
- The Practical Application of the Patient Protection and Affordable Care Act in the Public Sector, *page 11*

Litigation

Programs emphasizing litigation skills, including developments in class actions

- Advanced eDiscovery: Litigating Today's Employment Lawsuit, *page 12*
- Communications with Potential Class Members Before and After Complaint Filing: Ethics and More **(E)**, *page 13*
- Coordinating Criminal, Civil and Insurance Claims: Claims Associated with Employee Crime in the Workplace, *page 13*
- Crafting an Effective Class Action Trial Plan, *page 7*
- Cross-Examination: The Ten Commandments Reconsidered, *page 13*
- eDiscovery Boot Camp **(F)**, *page 8*
- Experts Discuss Tricky Evidentiary Issues in Employment Law, *page 19*
- A Forensic Tour of Portable Devices and the Secrets They Reveal **(T)**, *page 19*
- The Impact of Bankruptcy on Labor and Employment Law **(F)**, *page 18*
- The Ins and Outs of the Administrative Procedures Act: Why You Had Better Pay Attention to It, *page 19*

- Jury Consultants and Focus Groups to Fit Many Budgets and Timeframes, *page 12*
- Negotiating an FLSA Settlement Agreement: Legal and Practical Considerations, *page 8*
- Overcoming New Hurdles for Class Certification, *page 7*
- The Patient Protection and Affordable Care Act: Employer Responses and Litigation Trends, *page 7*
- Settlement Strategies: What Every Lawyer Needs to Know About Reimbursement of Medicare and Medicaid, *page 19*
- Summary Judgment Practice: Live or Die, *page 13*
- Trial by Formula and Defendants' Due Process Rights, *pages 12, 16*
- Trial by iPad **(T)**, *page 13*
- What You Can Do with that Deposition in Court, *page 18*

Special Interest

- An Overview of Whistleblower Claims **(F)**, *page 19*
- State Regulation of Occupational Safety and Health, *page 8*
- Settlement Strategies: What Every Lawyer Needs to Know About Reimbursement of Medicare and Medicaid, *page 19*

Wage and Hour

With the explosion of wage and hour litigation, these programs will be of interest to all constituencies

- Communications with Potential Class Members Before and After Complaint Filing: Ethics and More **(E)**, *pages 13, 16*
- Compensable Time in a Digital Age: Beyond Donning and Doffing, *page 20*
- Independent Contractors: Are They Misclassified?, *page 16*
- Negotiating an FLSA Settlement Agreement: Legal and Practical Considerations, *page 8*
- Recent FLSA Developments, *page 16*
- Trial by Formula and Defendants' Due Process Rights, *page 16*
- Wage and Hour Boot Camp **(F)**, *page 13*



Workplace Problems and Solutions

Programs to help lawyers identify workplace problems and how to pursue, manage and find solutions for them

- ADA, HIPAA and GINA: Disclosing Private Information, *pages 10, 17*
- BYOD: Bring Your Own Device or Bring Your Own Disaster **(T)**, *pages 10, 11*
- Bullies in the Workplace, *page 17*
- Can Employees Be Disciplined for Out-of-Work Behavior?, *page 20*
- Coordinating Criminal, Civil and Insurance Claims: Claims Associated with Employee Crime in the Workplace, *page 17*
- Determining when the Attorney-Client Privilege and Work Product Doctrines Apply to Internal Communications, *page 17*
- Investigation Basics: Planning, Execution and Documentation **(F)**, *page 20*
- Managing Employees with Discrimination or Other Complaints, *page 8*
- Obligations to Employees in Times of Crises in the U.S. and Abroad, *pages 11, 16*
- The Pitfalls of Employee Assistance Program Referrals: No Good Deed Goes Unpunished, *page 17*
- Workplace Investigations: Getting to the Bottom of Complex Matters without Falling Into a Trap, *page 20*

FACULTY

Plenary Sessions

Phyllis C. Borzi, U.S. Department of Labor, Washington, DC
Judith P. Broach, Broach & Stulberg LLP, New York, NY
Martin H. Malin, IIT Chicago-Kent College of Law, Chicago, IL
Mary Ellen Signorille, AARP, Washington, DC
Erin M. Sweeney, Dickstein Shapiro LLP, Washington, DC

Alternative Dispute Resolution

Frank C. Botta, Eckert Seamans Cherin & Mellott, LLC, Pittsburgh, PA
Norman Brand, Arbitrator/Mediator, San Francisco, CA
Anthony J. Carpinello, JAMS, New York, NY
Thomas H. Christopher, Kilpatrick Townsend & Stockton LLP, Atlanta, GA
R. Theodore Clark, Jr., Clark Baird Smith LLP, Rosemont, IL
Gregg M. Corwin, Gregg M. Corwin & Associates, Minneapolis, MN
Michele R. Fisher, Nichols Kaster, PLLP, Minneapolis, MN
Stephen Goldberg, Northwestern University Law School, Evanston, IL
Gening Liao, Schwartz, Steinsapir, Dohrmann & Sommers, LLP, Los Angeles, CA
Laurence S. Moy, Outten & Golden LLP, New York, NY
Jonathan S. Sack, Sack & Sack, Attorneys at Law, New York, NY
Donald L. Sapir, Sapir Schragin LLP, White Plains, NY
Douglas L. Steele, Woodley & McGillivray, Washington, DC
Alan A. Symonette, Arbitrator, Philadelphia, PA

Discrimination and Retaliation

Hon. Chai R. Feldblum, U.S. Equal Employment Opportunity Commission, Washington, DC
Hon. Victoria A. Lipnic, U.S. Equal Employment Opportunity Commission, Washington, DC
Eric L. Barnum, Schiff Hardin LLP, Atlanta, GA
Michael J. Belo, Berenbaum Weinshienk PC, Denver, CO
Howard D. Bye-Torre, Stoel Rives LLP, Seattle, WA
Joyce L. Collier, Hardwick Collier, Doylestown, PA
Pamela Coukos, U.S. Department of Labor, Washington, DC
Sharon Dietrich, Community Legal Services, Philadelphia, PA
Sharon M. Dostmann, Cooper Health System, Philadelphia, PA

Brian East, Texas Disability Rights, Austin, TX
Ashley Eddy, MGM Resorts International, Las Vegas, NV
James M. Finberg, Altschuler Berzon LLP, San Francisco, CA
David M. Fusco, Schwarzwald McNair & Fusco LLP, Cleveland, OH
Anthony G. Greenwald, University of Washington, Seattle, WA
Gail Golman Holtzman, Kass Shuler, P.A., Tampa, FL
Eric W. Iskra, Spilman Thomas & Battle, PLLC, Charleston, WV
Jay Jaffe, 1199 SEIU United Health Care Workers East, New York, NY
Barbara L. Johnson, Paul Hastings LLP, Washington, DC
Robert L. Jones, American Airlines, Fort Worth, TX
Adam T. Klein, Outten & Golden LLP, New York, NY
Karen Jo Koonan, NJP Litigation Consulting, San Francisco, CA
Christopher J. Kuczinski, U.S. Equal Employment Opportunity Commission, Washington, DC
Donald R. Livingston, Akin Gump Strauss Hauer & Feld LLP, Washington, DC
Louis Lopez, U.S. Department of Justice, Civil Rights Division, Washington, DC
Peggy R. Mastroianni, U.S. Equal Employment Opportunity Commission, Washington, DC
Tamara Garnes Mata, Bank of America, New York, NY
Richard McCracken, Davis Cow and Bowe, San Francisco, CA
Myra L. McKenzie, Wal-Mart Stores, Inc., Bentonville, AR
Mary K. O'Melveny, Communication Workers of America, Washington, DC
Gary E. Phelan, Cohen & Wolf, P.C., Bridgeport, CT
Dr. Stephanie Plancich, NERA Economic Consulting, Washington DC
Nicole R. Pollard, AFSCME, Washington, DC
Edward J. Reeves, Stoel Rives LLP, Portland, OR
Jennifer B. Salvatore, Nacht Roumel Salvatore Blanchard & Walker PC, Ann Arbor, MI
Ann M. Schmidt, Hoffmann-La Roche Inc., Nutley, NJ
Janie F. Schulman, Morrison & Foerster LLP, San Francisco, CA
Hope J. Singer, Bush Gottlieb Singer López Kohanski Adelstein & Dickinson, Los Angeles, CA
Gary R. Siniscalco, Orrick, Herrington & Sutcliffe LLP, San Francisco, CA
Diane I. Smason, U.S. Equal Employment Opportunity Commission, Chicago, IL
Joyce Walker-Jones, U.S. Equal Employment Opportunity Commission, Washington, DC

Marisa Warren, Pedowitz & Meister LLP, New York, NY
Maurice Wexler, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Memphis, TN
Carolyn Wheeler, U.S. Equal Employment Opportunity Commission, San Francisco, CA
Joan C. Williams, UC Hastings College of the Law, San Francisco, CA
Richard A. Williams, Jr., R.A. Williams Law Firm, P.A., St. Paul, MN
Melissa S. Woods, Meyer, Suozzi, English & Klein, P.C., New York, NY

Employee Benefits

Allison Beck, Federal Mediation and Conciliation Service, Washington, DC
Phyllis C. Borzi, U.S. Department of Labor, Washington, DC
George H. Bostick, Department of the Treasury, Washington, DC
Judith P. Broach, Broach & Stulberg LLP, New York, NY
Peter S. Dickinson, Bush, Gottlieb, Singer, López, Kohanski, Adelstein & Dickinson, Glendale, CA
Thomas G. Hancuch, Vedder Price, P.C., Chicago, IL
Timothy D. Hauser, U.S. Department of Labor, Washington, DC
Ellen M. Kelman, Buescher, Goldhammer & Kelman, P.C., Denver, CO
Ronald J. Kramer, Seyfarth Shaw LLP, Chicago, IL
Joyce A. Mader, O'Donoghue & O'Donoghue LLP, Washington, DC
Dr. Kathryn E. Moore, University of Kentucky College of Law, Lexington, KY
Teresa Renaker, Lewis Feinberg Lee Renaker & Jackson, PC, Oakland, CA
Howard Shapiro, Proskauer Rose LLP, New Orleans, LA
Mary Ellen Signorille, AARP, Washington, DC
Donald D. Slesnick, II, Law Offices of Slesnick & Casey, LLP, Coral Gables, FL
Brenda Sutton-Wills, California Teachers Association, Sacramento, CA
Jeffrey Stein, 1199SEIU National Benefit & Pension Funds, New York, NY
Erin M. Sweeney, Dickstein Shapiro LLP, Washington, DC
Martha Jo (Marty) Wagner, Griffith & Wheat PLLC, Washington, DC

J.S. Chris Christie, Jr., Bradley Arant Boult Cummings LLP, Birmingham, AL
David M. Cook, Cook and Logothetis, LLC, Cincinnati, OH
Amira Day Dallafior, Facebook, Menlo Park, CA
Angie Davis, Baker, Donelson, Bearman, Caldwell & Berkowitz PC, Memphis, TN
Sean R. Gallagher, Polsinelli Shughart PC, Denver, CO
Stephen Gillers, New York University, New York, NY
Cara E. Greene, Outten & Golden LLP, New York, NY
Rebecca Grey, The Grey Law Firm, PC, San Francisco, CA
Renee Newman Knake, Michigan State University College of Law, East Lansing, MI
Natalie R. Kelly, Georgia State Bar Law Practice Management Program, Atlanta, GA
Troy L. Kessler, Shulman Kessler LLP, Long Island, NY
Carol M. Langford, Law Office of Carol M. Langford, Walnut Creek, CA
Nora L. Macey, Macey Swanson and Allman, Indianapolis, IN
James McKenna, Morrison & Foerster, San Francisco, CA
Lawrence Morales II, The Morales Firm, P.C., San Antonio, TX
Heather A. Morgan, Paul Hastings LLP, Los Angeles, CA
Cynthia E. Nance, University of Arkansas Fayetteville, AR
Stephanie S. Padilla, Johns Manville, Denver, CO
Scott Pollins, Willig, Williams & Davidson, Philadelphia, PA
Michael P. Posner, Posner & Rosen LLP, Los Angeles, CA
David D. Powell, Jr., Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Denver, CO
Jeffery E. Richardson, Adams and Reese LLP, New Orleans, LA
Matthew R. Robbins, The Previant Law Firm, S.C., Milwaukee, WI
David A. Rosenfeld, Weinberg Roger & Rosenfeld P.C., Alameda, CA
Richard T. Seymour, Law Office of Richard T. Seymour, P.L.L.C., Washington, DC
Cassie Springer, Springer & Roberts LLP, Oakland, CA
Traci Stuart, Blattell Communications, San Francisco, CA
Jeffery Taylor, Absolute Legal Services, LLC., Oklahoma City, OK
Beth E. Terrell, Terrell Marshall Daudt & Willie PLLC, Seattle, WA
Dayna E. Underhill, Hinshaw & Culbertson LLP, Portland, OR
Nicole Walthour, International Paper, Memphis, TN
Catherine A. Yanni, JAMS, San Francisco, CA

Ethical Practical and Technological Issues In Managing a Labor and Employment Law Practice

James F. Allmendinger, NEA New Hampshire, Concord, NH
Andrew Altschul, Buchanan Angeli Altschul & Sullivan LLP, Portland, OR

Immigration

Hon. P. David Lopez, U.S. Equal Employment Opportunity Commission, Washington, DC

Ana Avendãno, AFL-CIO, Washington, DC

Brian S. Green, Murthy Law Firm, Owings Mills, MD

Jonathan Grode, Green and Spiegel LLC, Providence, RI

Marielena Hincapié, National Immigration Law Center, Los Angeles, CA

Katchen Locke, 32BJ SEIU, New York, NY

Yihong “Julie” Mao, New Orleans Workers’ Center for Racial Justice, New Orleans, LA

John Morton, ICE, Washington, DC

Seema Nanda, U.S. Department of Justice, Washington, DC

Mary E. Pivec, Williams Mullen, Washington, DC

Peter S. Ohr, National Labor Relations Board, Chicago, IL

Rebecca Smith, National Employment Law Project, Seattle, WA

Naomi R. Tsu, Southern Poverty Law Center, Atlanta, GA

Amy J. Zdravecky, Franczek Radelet, Chicago, IL

International

Earl V. Brown, American Center for International Labor, Washington, DC

Juliet Carp, Speechly Bircham LLP, London, England

Carolina Tavares Rodrigues Davies, Machado, Meyer, Sendacz e Opice Advogados, São Paulo, Brazil

Benjamin N. Davis, United Steelworkers, Pittsburgh, PA

Oscar De la Vega, Littler Mendelson, Mexico City, Mexico

Joseph Z. Fleming, Greenberg Traurig LLP, Miami, FL

Suzanne Garber, International SOS, Houston, TX

Jeffrey S. Heller, BP America Inc., Houston, TX

Benjamin C. Hensler, Worker Rights Consortium, Washington, DC

Owen E. Herrnstadt, International Association of Machinists and Aerospace Workers, Upper Marlboro, MD

Christy Hoffman, UNI Global Union, Nyon, Switzerland

Danny J. Kaufer, Heenan Blaikie, Montréal, Québec, Canada

Erin R. Kuzz, Sherrand Kuzz LLP, Toronto, Canada

David A. Lowe, Rudy, Axelrod, Zieff & Lowe LLP, San Francisco, CA

Jeremy M. Mittman, Proskauer Rose LLP, Los Angeles, CA

Anne M. Radolinski, Fredrikson & Byron P.A., Minneapolis, MN

Robert B. Stulberg, Broach & Stulberg, LLP, New York, NY

Marley S. Weiss, University of Maryland Francis King Carey School of Law, Baltimore, MD

Gerlind Wisskirchen, CMS Hasche Sigle, Cologne, Germany

Labor-Management Relations

Hon. Mark G. Pearce, National Labor Relations Board, Washington, DC

Hon. Celeste J. Mattina, National Labor Relations Board, Washington, DC

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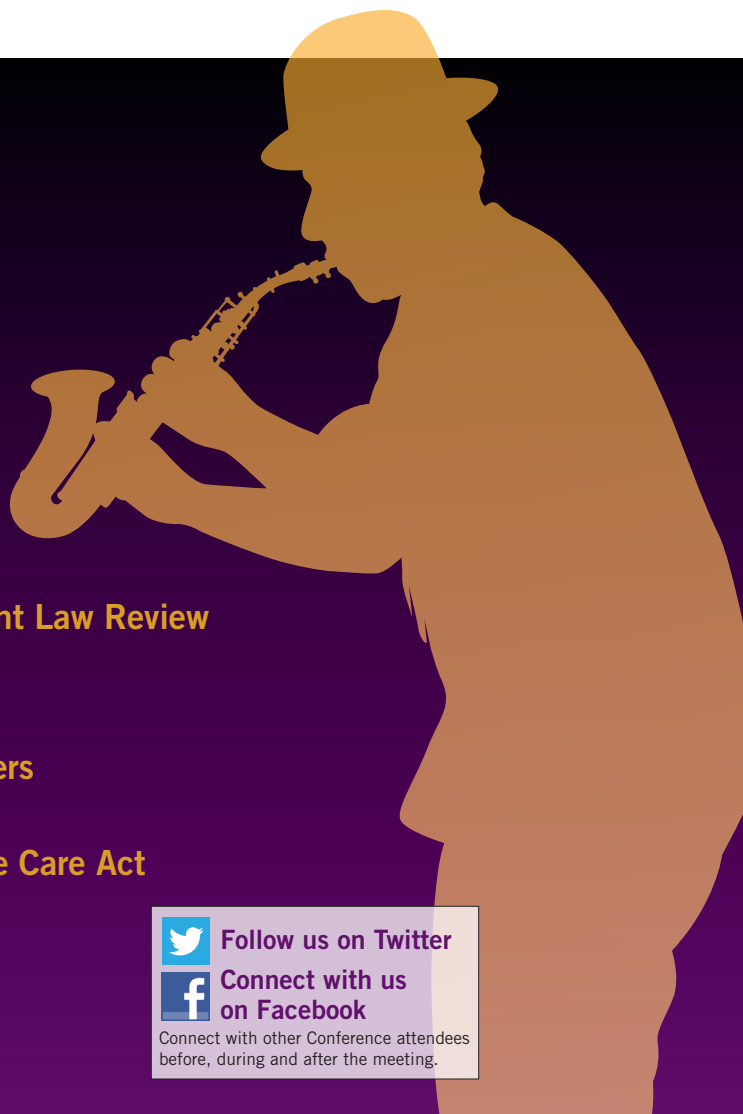
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