



ABA Section of Labor and Employment Law
November 9-12, 2016

CHICAGO

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today and take
advantage of
substantial early
discounts!

10th Annual Labor and Employment Law Conference

Conference Highlights

- Informative and Thought-Provoking Plenary Sessions:
 - Closing the Gap: Do Women and Men Need to “Lean In” Together?
 - Maximizing the Millennial Workforce
 - Law Enforcement Labor Relations Post-Ferguson
 - Recent and Upcoming Supreme Court Labor and Employment Law Rulings, Featuring Tom Goldstein, Appellate Advocate and SCOTUSblog Co-Founder and Publisher
- 25 Years after the Civil Rights Act of 1991: Reflections on “Reform” Legislation
- Conversations with the NLRB General Counsel, Chairman, Members and Regional Directors
- Cutting-Edge Issues in Discrimination, Harassment and Retaliation
- In-Depth Explorations of Workplace Problems and Solutions
- Hot Topics in Litigation, Class Action, Wage and Hour and Whistleblowing



ABA Section of Labor and Employment Law

10th Annual Labor and Employment Law Conference

November 9-12, 2016 • Chicago, Illinois

We are excited to share with you an overview of featured activities planned for the 10th Annual Labor and Employment Law Conference. The Conference will be held from November 9-12, 2016 at the Sheraton Grand Hotel in downtown Chicago. Please make plans to attend the Conference and encourage your colleagues to join you.

Our 10th Annual Conference will include the many successful features of previous Annual Conferences, along with technological offerings to enhance your experience. At this year's Conference, you can expect:

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

The Section's 10th Annual Labor and Employment Conference will take place during an unusually interesting time, convening the day after the 2016 election. Our Conference presents a great opportunity to discuss potential government initiatives with agency representatives. Attendees also will have the chance to confer with top practitioners representing employees, employers, unions and government agencies, as well as neutrals, in-house counsel and academics.

We are so pleased to be hosting the Conference in Chicago, the ABA's hometown. Chicago is easily accessible to our members and is always one of the Section's favorite meeting locations. We look forward to showcasing the best of the City. Of particular note, the Diversity and Inclusion Networking Reception at the House of Blues on Thursday and the Section Reception at the Field Museum offer attendees great experiences for socializing with colleagues at unique Chicago venues.

You can review complete program details and registration information on the Section website at ambar.org/laborconference. We encourage you to register by September 21, 2016 to take advantage of substantial early registration discounts!

We look forward to seeing you in Chicago at the 10th Annual Labor and Employment Law Conference.



Wayne N. Outten
Chair
New York, New York



Gail Golman Holtzman
Chair-Elect,
Tampa, Florida

10th Annual Labor and Employment Law Conference Planning Committee

Conference Co-Chairs

Kristen H. Albertson, Employer
Denise Drake, Employer
Cara E. Greene, Employee
Jason C. Marsili,
Union & Employee

Conference Vice Chairs

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Louis Lopez, Public
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Section Chair-Elect

Gail Golman Holtzman, Employer


Section Vice Chairs

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Joseph E. Tilson, Employer

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

 Connect with other
attendees before, during
and after the Conference.

Link to the Conference webpage at
www.ambar.org/laborconference.



10th Annual Labor and Employment Law Conference Track Coordinators

Thomas D. Allison	Kevin M. McCarthy
James F. Allmendinger	Dennis M. McClelland
Alisa B. Arnoff	Myra L. McKenzie-Harris
Gary L. Bailey	Trina Mengesha
Lisa J. Banks	Stephen B. Moldof
Rachel M. Bien	D. Lynn Morison
James W. Bucking	Donald J. Munro
Judith P. Broach	Mary K. O'Melveny
Channah S. Broyd	Orlando J. Pannocchia
Marjorie Butler	Maryann Parker
Paul Callaghan	Hank N. Patterson, Jr.
Eunice H. Cho	Shontell Powell
Joseph M. Creed	Gregory T. Presmanes
Mike Delikat	Randy Rabinowitz
Monique R. Goughisha Doucette	David W. Ricksecker
Molly Gabel	Yona Rozen
Mark Grajski	Dustin Saldarriaga
Jonathan A. Grode	Cynthia N. Sass
John Henderson	Todd B. Seelig
Laura Ho	Amy Shulman
Thomas L. Holder	Robert J. Smith, Jr.
Al Holifield, Jr.	Rachhana T. Srey
Todd F. Jackson	Douglas L. Steele
Pamela Jeffrey	Robert B. Stulberg
Jolsna M. John	Brenda E. Sutton-Wills
Barbara L. Johnson	Alan A. Symonette
Mary L. Johnson	Tanja L. Thompson
Stephanie M. Jones	Cristina von Spiegelfeld
Daniel J. Kaspar	Marisa Warren
Scott R. Koch	Anne-Marie V. Welch
Brian E. Koncius	Michael J. Wolf
Robert D. Kraus	Rebecca Yee
Jennifer Kroll	Jeffrey N. Young
Betsy Lawrence	Jason Zuckerman
Heather Lindsay	
Tamika D. Lynch	
Mark Maxin	

10th Annual Labor and Employment Law Conference Program Schedule

Legend:

E = Ethics **F = Fundamentals**

Wednesday, November 9

• 4:30 – 5:00 pm

Law Student Orientation

Law student attendees are invited to mingle with each other and members of the Outreach to Law Students Committee and Section Leadership prior to the start of the Conference. This event will offer students a casual introduction to the ins and outs of the Annual Section Conference.

• 5:00 – 6:00 pm

First-Time Attendee/ New Section Member Orientation

If you are a new member of the Section of Labor and Employment Law or if this is your first Section meeting, join your peers for an overview of what you should know about the Section and how to get the most benefit from attending the Conference.

• 6:00 – 8:00 pm

Welcome Reception and Committee Expo

All attendees are invited to meet, greet and network during this opening reception at the Sheraton Grand Chicago Hotel. Section Committees will provide information about publications, services and programs they provide to labor and employment lawyers.

Thursday, November 10

Plenary Sessions

• 9:30 am – 9:45 am

Welcome and Introductions

• 9:45 am – 11:00 am

Closing the Gap: Do Women and Men Need to “Lean In” Together?

Cosponsored by ABA Commission on Women in the Profession

Fifty years after Title VII, women continue to strive to achieve equality at work, including with respect to compensation and leadership roles. Even though studies have shown that gender diverse teams achieve better results, women continue to be underrepresented in many industries. There is increasing recognition that both men and women have important roles to play in ensuring equality at work and at home and that cultural and social roles need to be reexamined in order to achieve true workplace equality. This session will identify and explore how to break down barriers to gender equality and will discuss what role the law plays in doing so.

MODERATOR:

Gail Golman Holtzman, *Jackson Lewis P.C., Tampa, FL*

PANELISTS:

Hon. Jenny R. Yang, *Chair, U.S. Equal Employment Opportunity Commission, Washington, DC*

Michelle Coleman Mayes, *The New York Public Library; Chair, ABA Commission on Women in the Profession, New York, NY*

Josh Levs, *Journalist and Author of All In: How Our Work-First Culture Fails Dads, Families, And Businesses – And How We Can Fix It Together, Atlanta, GA*

Joan C. Williams, *UC Hastings College of the Law; Co-Author of What Works for Women at Work: Four Patterns Working Women Need to Know, San Francisco, CA*



10th Annual Labor and Employment Law

- **4:00 pm – 5:15 pm**
Maximizing the Millennial Workforce

*Cosponsored by
ABA Young Lawyers Division*

The 75 million adults between ages 18 and 34 are now the largest age group in the American workforce. Some believe that these “Millennials” bring new expectations and values to the workplace about their careers, personal goals, and work/life issues, and that this has challenged leaders of the organizations in which they work. This panel will explore what Millennials value and the strategies that employers, including law firms, have adopted to address the issues unique to Millennial employees.

MODERATOR:

Julie A. Totten, *Orrick, Herrington & Sutcliffe LLP, Sacramento, CA*

PANELISTS:

Michael C. Hyter, *Korn Ferry, Washington, DC*

Katherine M. Larkin-Wong, *Latham & Watkins LLP; Immediate Past President, Ms. JD, San Francisco, CA*

Lauren Stiller Rikleen, *President, Rikleen Institute for Strategic Leadership; Author of You Raised Us, Now Work With Us: Millennials, Career Success, and Building Strong Workplace Teams, Wayland, MA*



- **Discrimination, Harassment and Retaliation**

- **8:00 am – 9:15 am**
When Immigration and Employee Protection Laws Collide: How Do We Protect Whistleblowers, Witnesses or Other Victims of Discrimination or Retaliation When they are Undocumented?

This panel will explore the unique challenges involved in litigating cases involving undocumented workers and will suggest practical ways to protect undocumented workers as well as the limits of doing so.

PANELISTS:

Channah Brody, *U.S. Department of Labor, Atlanta, GA*

Monica Guizar, *Weinberg, Rogers & Rosenfeld PC, Los Angeles, CA*

Michael R. Lied, *Howard & Howard, Peoria, IL*

Joshua Stehlik, *National Immigration Law Center, Los Angeles, CA*

- **11:15 am – 12:30 pm**
Religious Accommodation in Today's Workplace

Our country is a melting pot, meaning that our workplaces employ individuals with various customs and beliefs. Whether someone has religious beliefs or engages in religious practices that are less known to others, employers need to have a basic understanding of beliefs and customs in order to engage in the accommodation process. The panel will strive to educate the participants so they can better advise their respective clients on how to request, and respond to, a need for accommodation.

PANELISTS:

Eric L. Barnum, *Baker & Hostetter LLP, Atlanta, GA*

Chaim Book, *Moskowitz & Book, LLP, New York, NY*

Jeanne Goldberg, *U.S. Equal Employment Opportunity Commission, Washington, DC*

Harsiman Kaur, *The Sikh Institute, New York, NY*

Jon H. Rosen, *The Rosen Law Firm, Seattle, WA*

- **2:30 pm – 3:45 pm**
Return to Work Issues

There is a fine line between ensuring a safe and productive workplace and maintaining the legal, medical and privacy rights of employees and job applicants. Although an employer must have a legitimate, non-discriminatory reason to issue fitness for

duty exams, many employees and job applicants who must submit to such exams find them discriminatory. This panel will explore the legal boundaries of fitness for duty exams and how they can be implemented to meet the goal of ensuring workplace safety while safeguarding critical employee rights.

PANELISTS:

Jo Linda Johnson, *U.S. Department of Homeland Security – TSA, Washington, DC*

Lisa A. Krupicka, *Burch, Porter & Johnson, PLLC, Memphis, TN*

Cynthia N. Sass, *Law Offices of Cynthia N. Sass, Tampa, FL*

Retu Singla, *Transport Workers Union, New York, NY*

- **2:30 pm – 3:45 pm**
25 Years after the Civil Rights Act of 1991: Reflections on “Reform” Legislation

Amid heated debates about affirmative action and in response to several Supreme Court decisions widely viewed as undermining civil rights protections, Congress enacted the Civil Rights Act of 1991, the most sweeping civil rights legislation since the Civil Rights Act of 1964. The 1991 Act amended several procedural and substantive amendments to the statutes enforced by the EEOC. For example, the 1991 Act permitted parties for the first time to obtain jury trials and authorized plaintiffs to recover compensatory and punitive damages (subject to statutory caps) in Title VII and ADA lawsuits involving intentional discrimination. In addition, the 1991 Act codified the mixed-motives causation standard and the disparate-impact theory of discrimination. This panel of experts will address these changes to assess their ongoing impact since the passage of the Act.

PANELISTS:

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

Mario L. Barnes, *University of California, Irvine School of Law, Irvine, CA*

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

Carolyn Wheeler, *Katz, Marshall & Banks, LLP, Washington, DC*

- **Employee Benefits**

- **11:15 am – 12:30 pm**
Protection of Rights under ERISA and ACA: Claims of Interference, Discrimination and Retaliation

The question of whether it is legal to reduce an employee's hours to less than thirty hours

per week in order to make the employee ineligible for employer-sponsored health benefits is hotly debated. *Marin v. Dave & Buster's Inc.* alleges that the business strategy of reducing hours violates ERISA §510. Panelists will debate the issue as well as provide an update of how courts are analyzing causation in reference to the protection afforded by ERISA §510 and developments under ACA §1558. Plaintiffs, defendants and the government will provide perspectives on litigation of §510 cases, including discovery issues, trial issues and available remedies.

PANELISTS:

- Denise M. Clark**, *The Clark Law Group, Washington, DC*
- Marcelle J. Henry**, *Cohen, Weiss and Simon LLP, New York, NY*
- Al Holifield, Jr.**, *Holifield • Janich & Associates, PLLC, Knoxville, TN*
- Danielle L. Jaberg**, *U.S. Department of Labor, Washington, DC*

Labor-Management Relations

- 8:00 am – 9:15 am

Update on Purple Communications: Implementation Issues for Unions, Employees and Employers

The Board's December 2014 decision in *Purple Communications* left open many questions, and, as we all know, "the devil is in the details." For example, what are "special circumstances"? Can employers continue to monitor employee use of their email systems without exposing themselves to allegations of unlawful surveillance? How is "non-working time" construed? This panel will provide a nuts and bolts look at life under *Purple Communications*, almost two years out, to see if (and how) these questions have been answered and discuss the decision's practical implications.

PANELISTS:

- Jerry M. Hunter**, *Bryan Cave LLP, St. Louis, MO*
 - Pamela Jeffrey**, *Levy Ratner, P.C., New York NY*
 - Jayne Sopher**, *National Labor Relations Board, Washington, DC*
- 11:15 am – 12:30 pm

Meet the National Labor Relations Board: Insider's Perspective

The Board continues to make significant changes in the interpretation of, and the application of, the National Labor Relations Act. Join us for an enlightening discussion,

including a peek behind the curtain to observe a "day in the life of a Board Member" as the Board considers and make decisions.

MODERATORS:

- James W. Bucking**, *Foley Hoag LLP, Boston, MA*
- Gwynne A. Wilcox**, *Levy Ratner, P.C., New York, NY*

PANELISTS:

- Hon. Mark G. Pearce**, *National Labor Relations Board, Washington, DC*
- Hon. Philip A. Miscimarra**, *National Labor Relations Board, Washington, DC*
- Hon. Lauren McFerran**, *National Labor Relations Board, Washington, DC*
- Gary W. Shinnors**, *National Labor Relations Board, Washington, DC*

- 2:30 pm – 3:45 pm

A Conversation with the NLRB General Counsel and Deputy General Counsel

Hear a frank discussion about the National Labor Relations Board General Counsel's initiatives and hear his responses to probing questions from both union and management side practitioners.

MODERATORS:

- Susan Davis**, *Cohen, Weiss and Simon, LLP, New York, NY*
- Tanja L. Thompson**, *Littler Mendelson P.C., Memphis, TN*

PANELISTS:

- Hon. Richard F. Griffin, Jr.**, *National Labor Relations Board, Washington, DC*
- Jennifer Abruzzo**, *National Labor Relations Board, Washington, DC*

Litigation/Class Action

- 8:00 am – 9:15 am

Getting Paid: From Judgment or Settlement to the Bank

A monetary judgment or settlement that can't be collected is a hollow victory. This panel will cover strategies designed to maximize a litigant's chances of actually recovering on a monetary win or settlement, such as individual guarantors, confessions of judgment, post-judgment discovery and collection actions. The panel also will discuss the basic financial information one needs to be able to follow the money.

PANELISTS:

- Mark Crawford**, *BP America, London, United Kingdom*
- Greg Groeneveld**, *The Law Offices of Greg Groeneveld, San Francisco, CA*
- Janine Martin**, *Hammond & Shinnors PC, St. Louis, MO*

- 8:00 am – 9:15 am

Witness Examination

Cosponsored by ABA Young Lawyers Division

An effective witness examination or cross-examination can be the difference between winning or losing a case. This skills-based panel will demonstrate effective examination techniques and discuss best practices for preparing for and conducting an examination.

PANELISTS:

- Hon. LaShann DeArcy Hall**, *U.S. District Court for the Eastern District of New York, New York NY*
- Edward L. Friedman**, *Baker & Hostetler LLP, Houston, TX*
- Stephanie Jones**, *U.S. Equal Employment Opportunity Commission, Charlotte, NC*
- Laura S. Schnell**, *Eisenberg & Schnell LLP, New York, NY*
- Robert B. Stulberg**, *Broach & Stulberg LLP, New York, NY*

- 11:15 am – 12:30 pm

Class Action Settlements: Strategies in Pursuing and Negotiating Class and Collective Settlements

The settlement of class or collective claims is complicated and recent decisions have highlighted the role courts play in examining and policing class action settlements for fairness, including scrutiny of the relief afforded the class and the fees allocated to counsel. Given the complexity of class-wide settlements, both employee and management counsel often consider mediation to be the most effective and efficient way to resolve a case and reduce the cost of litigation. This panel will address considerations in pursuing and negotiating class settlements and presenting class settlements for court approval, including administration fees, use of expert testimony regarding the value of class relief, coupons vs. cash, addressing redemptions rates, attorney fee requests, and pickoff.

PANELISTS:

- Fred W. Alvarez**, *Jones Day, Palo Alto, CA*
 - Troy L. Kessler**, *Shulman Kessler LLP, Long Island, NY*
 - Heather Mitchell**, *JPMorgan Chase, Chicago, IL*
- 2:30 pm – 3:45 pm

Are You Smarter than a 1-L?

Though the bar exam may be long over, effective practitioners need to stay current on evidentiary and procedural rules in order to provide competent representation. This game show-inspired panel will pit seasoned

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practitioners against new lawyers, testing and refreshing their and the audience's FRE and FRCP rule knowledge.

MODERATOR/EMCEE:

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

PANELISTS:

Jessie Cardinale, *Pedowitz & Meister, LLP*,
New York, NY

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

Keith D. Frazier, *Ogletree Deakins*,
Nashville, TN

Sheena Hamilton, *Dowd Bennett*,
St. Louis, MO

Sarah Najj, *Slevin & Hart, Washington, DC*

- 2:30 pm – 3:45 pm

Recent Developments in Class Certification/Decertification

The class certification and decertification stage is where class actions live or die. This panel will discuss recent case law developments impacting class certification as well as new strategies that employers and class counsel are using to support or defend against class certification.

PANELISTS:

Hon. Fernando Gaitan, *U.S. District Court for the Western District of Missouri*,
Kansas City, MO

Steven W. Moore, *Constangy, Brooks, Smith & Prophete, LLP*,
Denver, CO

Brianna M. Primozić, *Posner & Rosner LLP*,
Los Angeles, CA

Anne B. Shaver, *Lieff Cabraser Heiman & Bernstein, LLP*,
Oakland, CA

Practice and Professionalism

- 8:00 am – 9:15 am

Diligence vs. Perfection: Maintaining High Ethical Standards While Avoiding Burnout (E)

Cosponsored by ABA Center for Professional Responsibility

The ethical obligation of diligence requires lawyers to pursue matters “despite opposition, obstruction or personal inconvenience” to the lawyer. Many lawyers strive for more than mere diligence – they shoot for perfection. As many of us know all too well, the quest for perfection can lead to severe anxiety and depression. Some lawyers turn to harmful behaviors such as substance abuse, while others suffer mental illnesses or suffer in silence. Many simply drop out of the profession. This panel will explore practical strategies for lawyers to fulfill their professional obligations while preserving their mental health and deriving satisfaction from the practice of law.

PANELISTS:

Barbara J. D'Aquila, *Norton Rose Fulbright*,
Minneapolis, MN

William D. Frumkin, *Frumkin & Hunter LLP*,
White Plains, NY

J.E. “Buddy” Stockwell, *Lawyers Assistance Program, Inc.*,
Mandeville, LA

Wage and Hour

- 8:00 am – 9:15 am

Who Is an Employer? Expansive Considerations of Coverage

Outsourcing, temporary employment, contracting and other changes throughout the economy have caused coverage issues under wage and hour laws to become increasingly complex. Experienced practitioners will discuss the latest developments with respect to coverage in the context of independent contractors, franchises, interns, volunteers and joint employment relationships, as well as address recent initiatives and positions taken by the Department of Labor and National Labor Relations Board on these issues.

PANELISTS:

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

Cheryl Jackson, *State Farm Insurance Company*,
Bloomington, IL

Linda Ringstad, *U.S. Department of Labor*,
Chicago, IL

Yona Rozen, *AFL-CIO*,
Washington, DC

- 11:15 am – 12:30 pm

New White Collar Exemption Regulations: Then and Now

Panelists will discuss the new white collar exemption regulations issued by the Department of Labor, identifying critical issues and differences from current law, and strategic considerations for lawyers handling these cases.

PANELISTS:

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

Eve H. Cervantes, *Altshuler Berzon LLP*,
San Francisco, CA

Gregory K. McGillivray, *Woodley & McGillivray LLP*,
Washington, DC

Dennie Mouser, *Walmart Stores, Inc.*,
Bentonville, AR

Christopher Wilkinson, *Orrick, Herrington & Sutcliffe LLP*,
Washington, DC

- 2:30 pm – 3:45 pm

Tipping Points: Should the Law on Tipping Stay or Go?

Social custom and etiquette have long-suggested that a tip is to be given to certain workers for the services they perform. Legal questions surrounding the concept's

definition, however, add complexity to the question of who has a right to the proceeds: the server, the shift-manager, the restaurant, the chef, the busboy, the bartender? This panel will discuss Section 3(m) and the regulation of wages of tipped workers and consider the question of whether the FLSA's regulation of tips actually benefits tipped workers.

PANELISTS:

Loren B. Donnell, *Burr and Smith, LLP*,
Tampa, FL

Hope Pordy, *Spivak Lipton LLP*,
New York, NY

Salvador P. Simao, *Ford & Harrison LLP*,
Berkeley Heights, NJ

Dane Steffenson, *U.S. Department of Labor*,
Atlanta, GA

Whistleblower

- 8:00 am – 9:15 am

Whistleblower Protections for Federal Workers

With a steady increase in the number of claims filed by employees blowing the whistle on waste, fraud and abuse in the federal government, there have been in recent years a number of significant legal developments affecting whistleblower protections for federal employees including changes made by the Whistleblower Protection Enhancement Act of 2012 and the Supreme Court's 2014 decision in *Dep't of Homeland Security v. MacLean*. The panel will discuss the current state of the law regarding whistleblower protections for federal employees and proposed legislation that could further change the landscape of federal whistleblower rights and agency responsibilities.

PANELISTS:

Joseph V. Kaplan, *Passman & Kaplan, P.C.*,
Washington, DC

Louis Lopez, *Office of Special Counsel*,
Washington, DC

Deborah Miron, *Merit Systems Protection Board*,
Washington, DC

Jeff Rosenblum, *U.S. Securities and Exchange Commission*,
Washington, DC

Workplace Problems and Solutions

- 8:00 am – 9:15 am

The New Standards on Sharing Wage and Other Confidential Information in the Workplace: Any Effect or Impact?

The OFCCP recently issued new regulations to enhance the sharing of wage and salary information in the workplace. The EEOC has likewise expressed a desire to protect

employees who share information in the workplace in furtherance of protected rights. The NLRB also has demonstrated strong support for collective activity in the represented and non-represented workplace to prevent retaliatory or other adverse acts against employees sharing information concerning wages and benefits and other working conditions. Social media and technology are simultaneously changing the landscape for exchanging information in the workplace including confidential employer information. This panel will explore the state of the law that affects sharing of information about working conditions including confidential information and examine the impact on employees, employers and unions.

PANELISTS:

Darrrious Baker, *South Carolina Department of Health and Environmental Control, Columbia, SC*

David S. Fortney, *Fortney & Scott LLC, Washington, DC*

Angie Cowan Hamada, *Allison, Slutsky & Kennedy, P.C., Chicago, IL*

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

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

• **11:15 am – 12:30 pm**
A Legal Primer on the Law and Practice of Corporate Governance (F)

Cosponsored by ABA Young Lawyers Division

What do employment lawyers need to know about corporate governance? Employment lawyers often face issues about corporate authority to act and need to identify the individuals or bodies that hold that authority. What is a board of directors really responsible for and how can corporate governance affect litigation or settlement of employment matters? How do corporations provide indemnification for individuals and what corporate governance rules apply? What is the interplay between corporate governance and liability insurance for officers and directors? This panel will address the fundamentals of corporate governance from the perspective of issues that are common to representing individuals, unions and management in employment matters.

PANELISTS:

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

Ty Hyderally, *Hyderally & Associates PC, Montclair, NJ*

Dale Pierson, *IUOE Local 150, Countryside, IL*

Eric D. Reicin, *MorganFranklin Consulting, LLC, Washington, DC*

• **11:15 am – 12:30 pm**
Reducing the Risk of Workplace Violence

Violence at the workplace, affecting the health of employees, is increasingly a concern for employers. Several states have adopted statutes regulating workplace violence, California's OSHA program has adopted a violence standard, and Federal OSHA relies on the general duty clause to address this hazard. Recently, the OSHRC has granted review in a case that will address whether OSHA can continue to cite employers for failing to reduce the risk of violence. This session will discuss the various federal and state approaches to this issue and what employers and employees should do to reduce the risk.

PANELISTS:

Carla J. Gunnin, *Jackson Lewis P.C., Atlanta, GA*

Orlando J. Pannocchia, *U.S. Department of Labor, Washington, DC*

George W. Woods, *The Science Advisors, Oakland, CA*

Stephen Yokich, *Dowd, Bloch, Bennett, Cervone, Auerbach and Yokich, Chicago, IL*

• **11:15 am – 12:30 pm**
The Yates Memorandum and Its Impact on Corporate Executives One Year Later

In 2015 Deputy Attorney General Sally Yates issued the "Individual Accountability for Corporate Wrongdoing" memorandum (often referred to as the "Yates Memorandum"), signaling the DOJ's intent to strengthen the pursuit of justice by holding corporate individuals accountable for criminal actions. This panel will examine the impact of the Yates Memorandum and its potential for criminal actions against individual corporate employees and executives. Will the potentially enhanced government efforts to seek prosecution of individuals change the behavior of individuals and executives during internal investigations? Are individuals seeking their own legal representation now given the potential for criminal accountability? This panel will explore the impact of the Yates Memorandum from the perspective of both individual and corporate representation during government investigations and other legal actions.

PANELISTS:

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

John Lausch, *Kirkland & Ellis, LLP, Chicago, IL*

James (Jim) C. McGovern, *Hogan Lovells US LLP, New York, NY*

• **2:30 pm – 3:45 pm**
Trends in Sick Leave Law at the State and Local Level

Increasingly, state and local laws are providing sick leave and similar benefits for many workers. Employers with widespread workforces must develop strategies to ensure their policies are compliant in multiple places. This panel will consider existing state and local laws governing paid and unpaid sick leave as well as the increasing trend for local legislation in this area. What steps are employers taking to respond to these developments? What trends are evident with enforcement and litigation efforts in this area? Our panel will address the latest legal trends affecting sick leave and related policies.

PANELISTS:

Bryan T. Arnault, *Blitman & King LLP, Syracuse, NY*

David S. Baffa, *Seyfarth Shaw LLP, Chicago, IL*

Jared Make, *A Better Balance, New York, NY*

Sandra Pullman, *Office of the New York State Attorney General, New York, NY*

• **2:30 pm – 3:45 pm**
What Every Labor and Employment Lawyer Needs to Know about Workers' Compensation (F)

Cosponsored by ABA Young Lawyers Division

Workers' compensation issues can have a significant impact on employees and employers, regardless of whether the issue involves how a workers' compensation claim impacts other legal rights or how to navigate the turbulent waters of overlapping state and federal laws on workplace injuries. Panelists will discuss how understanding this area of the law will allow management attorneys to better represent corporate clients and avoid workers' compensation issues before they become problems. Plaintiff's lawyers will learn how to spot potential areas of litigation that fall outside of standard discrimination based claims. Union lawyers will enhance their understanding of the challenges these types of issues present in the workplace.

PANELISTS:

Hon. George Andros, *Illinois Workers' Compensation Commission, Orland Park, IL*

Matthew B. Schiff, *Sugar Felsenthal Grais and Hammer LLP, Chicago, IL*

Catherine Tanaka Surbeck, *Freedman and Lorry, P.C., Philadelphia, PA*

Richard Swanson, *Macey Swanson and Allman, Indianapolis, IN*

Friday, November 11

Plenary Sessions

- 9:30 am – 9:45 am
Section Award Presentations

- 9:45 am – 11:00 am
**Recent and Upcoming
Supreme Court Labor and
Employment Law Rulings**

SCOTUSblog publisher and Supreme Court litigator Tom Goldstein will discuss the principal rulings from the last term involving labor and employment issues as well as significant cases on the horizon.

SPEAKER:

Tom Goldstein, *SCOTUSblog publisher and Supreme Court litigator, Goldstein & Russell, Bethesda, MD*

- 3:45 pm – 5:00 pm
**Law Enforcement Labor
Relations Post-Ferguson**

In recent years there have been numerous high profile controversies over police interactions with citizens, most particularly with those in the African-American community. Seasoned practitioners of labor law for public safety units will be joined by other experts to review the current state of policing as it relates to collective bargaining, officer training, and today's racial climate. This session also will explore the impact of recent events on the method and manner by which law enforcement approaches its duties and responsibilities.

MODERATOR:

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

PANELISTS:

Jennifer A. Dunn, *Franczek Radelet P.C., Chicago, IL*

Delrish Moss, *Chief of Police, Ferguson Police Department, St. Louis, MO*

John Rivera, *President, Florida and Dade County Police Benevolent Associations, Miami, FL*

Harry S. Stern, *Rains Lucia Stern, PC, San Francisco, CA*

Alternative Dispute Resolution

- 8:00 am – 9:15 am
**Arbitration of Statutory
Discrimination Claims**

Since the Supreme Court's decision in *14 Penn Plaza LLC v. Pyett*, which supported

the arbitration of employment discrimination claims against employers under collective bargaining agreements that provided for such adjudication, attorneys have made strides to respond to the holdings of *Pyett*. This panel will discuss the legal issues that have followed the Court's decision, the protocols used by parties for the arbitration of discrimination claims, and the effect on the resolution of discrimination claims.

PANELISTS:

Michael Z. Green, *Texas A&M University School of Law, Fort Worth, TX*

Ingrid Nava, *SEIU Local 32BJ, New York, NY*

Paul Salvatore, *Proskauer Rose LLP, New York, NY*

- 11:15 am – 12:30 pm
**Mediation of the Most Difficult
Cases and How They Settle**

Although current statistics continue to show that over 95 percent of cases settle before trial, the odds alone rarely aid in the resolution of the most difficult cases, which sometime require multiple sessions and a mediator's persistence. In this advanced program, experienced mediators will speak candidly about techniques and strategies utilized to settle very contentious and complex cases, answering questions posed by lawyer moderators.

MODERATORS:

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

Robert D. Kraus, *Kraus & Zuchlewski LLP, New York, NY*

PANELISTS:

Hon. Candace Cooper (Ret.), *JAMS, Los Angeles, CA*

Martin F. Scheinman, *Arbitrator/Mediator, New York, NY*

Hon. Diane M. Welsh (Ret.), *JAMS, Philadelphia, PA*

- 2:15 pm – 3:30 pm
**A New Tool for Today's
Complex Negotiations:
To Affinity and Beyond**

The Federal Mediation and Conciliation Service is using an innovative "Affinity Model" to push parties to focus on a problem solving approach to economic bargaining. Applying neuroscience principles, FMCS moves participants from a spontaneous emotional mind-set to a problem solving state of mind. Using flip charts, post-it notes and other visual aids, the Affinity Model actively engages parties to identify issues, clarify interests, and construct a zone of possible agreement. This panel will discuss the benefits of this new approach and explore its application to the resolution of labor and employment disputes.

PANELISTS:

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

Camille Grant, *Illinois Education Association – NEA, Chicago, IL*

Javier Ramirez, *Federal Mediation and Conciliation Service, Washington, DC*

Robert E. Riley, *Robbins, Schwartz, Nicholas, Lifton & Taylor, Chicago, IL*

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

Juan Salgado, *Instituto del Progreso Latino, Chicago, IL*

Discrimination, Harassment and Retaliation

- 8:00 am – 9:15 am
**Transgender Issues
in the Workplace**

Cosponsored by ABA Commission on Sexual Orientation and Gender Identity

While the public is more aware of transgender issues, bias and bigotry still exist, particularly in the workplace. Studies have shown that transgender individuals experience a more difficult time securing and maintaining employment despite their talents and abilities. Once an employee discloses their plan for gender transition, the workplace may become emotionally charged during this transition. For example, the issue of which bathroom a transgender employee can use is a hot topic for debate and litigation. This panel will discuss the latest developments in the law, including legal requirements for accommodating and protecting transgender employees while also addressing the concerns of co-workers and employers.

PANELISTS:

Duncan Crabtree-Ireland, *SAG-AFTRA, Los Angeles, CA*

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

Shannon Price Minter, *National Center for Lesbian Rights, San Francisco, CA*

Justin Mulaire, *U.S. Equal Employment Opportunity Commission, Chicago, IL*

Michele E. Phillips, *Jackson Lewis P.C., White Plains, NY*

- 11:15 am – 12:30 pm
**When Title VII Meets Title IX:
Gender-Related Classroom
Conflicts**

Cosponsored by ABA Commission on Women in the Profession

The number of cases filed under Title IX of the Education Amendments is exploding. Title IX provides that "No person in the United States shall, on the basis of sex, be

excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” At what point does a school employee have rights under both Titles VII and IX? The panel will discuss the extent these laws co-exist and diverge, when Title VII pre-empts Title IX, and strategies to be employed by both plaintiff and defense counsel in pursuing their respective interests.

PANELISTS:

Mohammed J. Lakhani, *Clark Hill PLC, Chicago, IL*

Emma Leheny, *NEA, Washington, DC*

Adele Rapport, *U.S. Department of Education, Chicago, IL*

Kim Turner, *Gender Equity & LGBT Rights Program and the Fair Play for Girls in Sports Project, San Francisco, CA*

Julie Heuberger Yura, *Lake Forest College, Lake Forest, IL*

- 2:15 pm – 3:30 pm

OFCCP:

A View from the Trenches

This panel will discuss the impact of OFCCP’s recent initiatives – such as the new LGBT rules, pay secrecy rules, and strengthened protections of veterans and people with disabilities – as well as OFCCP’s enforcement efforts. Topics of discussion will include: What trends are DOL seeing in its outreach, investigatory and litigation efforts? How have federal contractors responded? What advice should attorneys give to employers, unions, or employees in light of these developments?

PANELISTS:

Jon A. Geier, *Paul Hastings, Chicago, IL*

Elizabeth Nadeau, *Law Office of Elizabeth Nadeau, Washington, DC*

Consuela A. Pinto, *U.S. Department of Labor, Washington, DC*

Immigration and Human Trafficking

- 11:15 am – 12:30 pm

Compelling Companies to be Agents of Change: Regulations Requiring Human Trafficking Prevention and Disclosures

International Conventions and Laws prohibiting Trafficking in Persons, Child Labor and other forms of forced labor have prohibited and criminalized trafficking activities for years. Many business organizations, however, have not focused on how these issues relate to their own companies, employees, contractors and supply chains. Recent federal, state and international legislative and regulatory

developments now require the private sector, including federal contractors, to change their business methods or face significant penalties. Laws like the California Transparency in Supply Chains Act and the UK Modern Slavery Act, as well as federal contractor acquisition regulations, require many companies to take significant steps to prevent trafficking and to address conditions of employment of employees at all levels of their operations. This panel will outline strategies for protecting worker rights and ensuring effective legal compliance strategies.

PANELISTS:

TBA

- 2:15 pm – 3:30 pm

What Every Labor and Employment Lawyer Needs to Know about Immigration Law (F)

Cosponsored by ABA Young Lawyers Division

Whether it is a question arising from the completion of Form I-9 to the effect an acquisition has on an international workforce to discriminatory practices against foreign nationals, immigration law is a growing and pervasive part of every labor and employment law practice. This panel will discuss how understanding this area of the law will allow management attorneys to

better represent corporate clients and avoid immigration issues before they become problems. Plaintiffs’ lawyers will learn how to spot potential areas of litigation that fall outside of standard discrimination-based claims. Union lawyers will enhance their understanding of the challenges facing a diverse workforce. Stay ahead of the curve by understanding the immigration curve ball.

PANELISTS:

Jonathan Grode, *Green & Spiegel LLC, Philadelphia, PA*

Seema Nanda, *U.S. Department of Labor, Washington, DC*

Labor-Management Relations

- 8:00 am – 9:15 am

National Labor Relations Act Case Law Update

This program will provide a timely and thought-provoking review of the new and important unfair labor practice and representation decisions issued by the National Labor Relations Board, federal appellate courts and the U.S. Supreme Court.

PANELISTS:

Johnda Bontley, *SEIU, Washington, DC*

Anne Purcell, *National Labor Relations Board, Washington, DC*

Kelsey Sheldon, *David Wright Tremaine LLP, Bellevue, WA*



10th Annual Labor and Employment Law

- 8:00 am – 9:15 am

Negotiation, Mediation and Arbitration Under the Railway Labor Act

The panel will discuss and demonstrate the various phases and methods of reaching a collective bargaining agreement under the Railway Labor Act. In doing so, the presenters will review some of the common issues and obstacles that may arise in reaching agreement, including regressive bargaining, inability to pay and concessionary agreements, failed ratifications, and lack of authority to bargain. Neutrals will offer practical tips for overcoming such problems and reaching a deal.

PANELISTS:

Molly Gabel, *Alaska Airlines, Inc.*,
Seattle, WA

Stephen B. Moldof, *Cohen, Weiss and Simon LLP*, New York, NY

Donald J. Munro, *Jones Day*,
Washington, DC

Linda Puchala, *National Mediation Board*,
Washington, DC

Elizabeth A. Roma, *Guerrieri, Clayman, Bartos & Parcelli, P.C.*, Washington, DC

- 11:15 am – 12:30 pm

Independent Contractors and Contingent Workers Under the NLRA: Whose Employees Are They Anyway?

In *FedEx Home Delivery*, the Board refined its independent contractor test to



additionally consider a new “independent-business” factor to determine whether an individual is an independent contractor rather than an employee. Since then, how has the Board applied this new test in different contexts? In what ways have management and unions adapted to the new test in conducting labor relations, organizing or responding to organizing efforts? The panel also will discuss recent cases addressing the contingent workforce and offer practical strategies for managing these employees from the perspectives of employer, employee and union advocates.

PANELISTS:

Julie Gutman Dickinson, *Bush Gottlieb*,
Los Angeles, CA

John D. Doyle, *National Labor Relations Board*, Washington, DC

Daniel J. Hewitt, *CVS, Woonsocket, RI*

Marijana Matura, *Shulman Kessler*,
New York, NY

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

- 2:15 pm – 3:30 pm

Meet the NLRB Regional Directors: Get Practical Tips for Success Before the Regions

Our panel of Regional Directors will discuss what they find important in cases, how they make decisions, and what evidence they find to be most compelling. They will discuss regional practices in investigation and case-handling procedures – including the impact of the new R-case procedures in regional practice.

MODERATORS:

Benjamin Bodzy, *Baker, Donelson, Bearman, Caldwell & Berkowitz, PC*, Chicago, IL

Pamela Chandran, *SEIU Local 121 RN*,
Pasadena, CA

PANELISTS:

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

Cornele A. Overstreet, *National Labor Relations Board*, Albuquerque, NM

Mori Rubin, *National Labor Relations Board*,
Los Angeles, CA

Litigation/Class Action

- 8:00 am – 9:15 am

Tyson and the New FRCP Proportionality Standards: Their Impact on Class and Collective Actions

This past year has had potentially dramatic effects for class and collective action practitioners. First, amendments to FRCP Rule 26 took effect requiring the courts

to consider proportionality in discovery. Second, the Supreme Court issued its decision in *Tyson* addressing the use of statistics in class and collective actions. Have these developments changed class and collective action practice and in what way?

PANELISTS:

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

Molly Elkin, *Woodley & McGillivray LLP*,
Washington, DC

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

Rae Vann, *Norris, Tyse, Lampley & Lakis*,
Washington, DC

- 11:15 am – 12:30 pm

Taking and Defending 30(b)(6) Depositions

30(b)(6) depositions are among the most powerful tools in discovery. This session will address the nuts and bolts of preparing for, taking and defending a 30(b)(6) deposition. Panelists will discuss notice requirements, topic identification, witness designation, witness preparation, logistical considerations, and use of the deposition at summary judgment and trial.

PANELISTS:

Shalanda Ballard, *3M*, Minneapolis, MN

Eric Kinder, *Spilman Thomas & Battle, PLLC*, Charleston, WV

Matthew H. Morgan, *Nichols Kaster, LLP*,
Minneapolis, MN

Practice and Professionalism

- 8:00 am – 9:15 am

How to Manage Internal Communications with a Represented Party (E)

Cosponsored by ABA Center for Professional Responsibility

Some employees choose to raise employment concerns and fight their battles on two fronts—using internal reporting mechanisms and using engaged counsel. That can create a sticky wicket for corporate clients—and in-house counsel. ABA Model Rule of Professional Conduct Rule 4.2 addresses communicating with represented parties, and attorneys must be mindful of their obligations under that Rule and the advice they give their clients on communicating with represented employees. Panelists will discuss best practices and, through vignettes, offer advice on how clients can engage in effective internal dispute resolution methods and avoid violations of the Rule.

PANELISTS:

Tiffanie Benfer, *Hardwick Benfer, LLC, Doylestown, PA*
Michelle D. Craig, *Transcendent Legal, New Orleans, LA*
Scott R. Koch, *JPMorgan Chase, Chicago, IL*
Brenda Sutton-Wills, *California Teachers Association, Santa Fe Springs, CA*

- **11:15 am – 12:30 pm**
The Law Firm as an Employer: Employee vs. Contractor and Exempt vs. Non-Exempt

Lawyers need to be smart about hiring decisions and the employment status of those working for your law firm to avoid serious legal hurdles down the road. This presentation will help you steer clear of potential pitfalls and in particular an audit by the U.S. Department of Labor. What is the test for this? When must you pay overtime to a staff person? Can paralegals or administrative assistants ever be considered exempt? Other concerns arise when you use a contract worker as opposed to an employee, including malpractice insurance, confidentiality and ethics issues. Cutting costs may be important, but it requires care. Learn how to avoid some serious pitfalls.

PANELISTS:

Hon. M. Patricia Smith, *U.S. Department of Labor, Washington, DC*
Amber L. Cox, *Laner Muchin, Chicago, IL*
Ryan A. Hagerty, *Asher Gittler & D'Alba, Ltd., Chicago, IL*
Kevin J. Stoops, *Sommers Schwartz, P.C., Southfield, MI*

Public Sector

- **2:15 pm – 3:30 pm**
Bargaining in Post-Recession Years

The 2008 Great Recession brought us public budget tightening, reductions in force and shared sacrifices in wages and benefits. Now that the economy has leveled, what has been the impact in public sector negotiations? How have state laws changed with respect to subjects of bargaining in response to the recession? What has been the effect of the increase in the number of “right to work” states? How will the decision by the US Supreme Court in *Friedrichs v. California Teachers Association* regarding the constitutionality of fair share provisions in public sector collective bargaining agreements impact how unions are financed, how unions deliver services, and which party is successful in national partisan politics? What is different about negotiating in 2016 from 2006 and what strategies have both

management and labor employed to their satisfaction? Has there been any impact in impasse resolution decisions?

PANELISTS:

Timothy T. Gardner, *Thrun Law Firm, East Lansing, MI*
Martin H. Malin, *IIT Chicago-Kent College of Law, Chicago, IL*
Brenda Pryor, *Cook County College Teachers Union, Chicago, IL*

Wage and Hour

- **8:00 am – 9:15 am**
Current Implications of the Fissured Workplace

The Fissured Workplace argues that corporations have used outsourcing to shed obligations that they previously had as direct employers, resulting in less safe, more unequal workplaces. Since the book’s release, cases like *Uber* and *Browning Ferris* have focused attention on the question of who is an employer. This panel will discuss the costs and benefits of the “on-demand economy” and tackle the question of whether this is the new way of work or just a repackaging of the age-old problem of misclassification.

PANELISTS:

Dr. David Weil, *U.S. Department of Labor, Washington, DC*
Aaron D. Kaufmann, *Leonard Carder, Oakland, CA*
Debra Nahrstadt, *BP America, Inc., Chicago, IL*
Maneesh Sharma, *AFL-CIO, Washington, DC*

- **11:15 am – 12:30 pm**
Calculating Overtime Damages in Wage and Hour Cases

Experienced practitioners discuss court rulings applying different approaches to calculating damages in wage and hour cases, including how to calculate damages in preparation for mediation, whether overtime pay damages in misclassification cases should be calculated at a half-time or one and one-half time rate.

PANELISTS:

J. Derek Braziel, *Lee & Braziel, LLP, Dallas, TX*
David M. Ricksecker, *Woodley & McGillivray LLP, Washington, DC*
David J. Tanury, *U.S. Department of Labor, Chicago, IL*
Jennifer T. Williams, *Cozen O'Connor, Miami, FL*

- **2:15 pm – 3:30 pm**
Compensable Time

In this advanced level program, wage and hour experts will discuss the evolution of

compensable time under the Fair Labor Standards Act and Portal-to-Portal Act over the last ten years, including the major court decisions (*Alvarez*, *Sandifer* and *Busk*) during that period, and discuss considerations related to the trail of class cases on these issues. Will new technology like email, text messages and smartphones bring about a new generation of compensable time cases?

PANELISTS:

James Kan, *Goldstein, Borgen, Dardarian & Ho, Oakland, CA*
Jennifer Keating, *Leonard Carder, LLP, Oakland, CA*
Jackie Rolfs, *Honeywell International, Inc., Golden Valley, MN*
Kevin Wilemon, *U.S. Department of Labor, Chicago, IL*

Whistleblower

- **2:15 pm – 3:30 pm**
Advising Clients throughout the Whistleblower Investigation: A Candid Discussion Regarding the Complex Issue of How Lawyers Work with their Clients

Highly experienced panelists have agreed to candidly discuss complex issues that arise with their clients throughout the whistleblower investigative process, especially when a private whistleblower retaliation case runs parallel to a government investigation. The panel will address: 1) how they prepare their clients to participate in an investigative interview, internally or with the government; 2) how they work with their clients regarding document preservation and presentation during an investigation; 3) when they decide to be visibly involved in the investigative process, in contrast to providing background advice; 4) how they decide the path a complaint should take; 5) how they advise their clients to respond to agency inquiries without waiving privilege; and 6) whether and how they advise their clients to take remedial actions, as well as determining the timing for and communications about those actions.

PANELISTS:

Lynne Bernabei, *Bernabei Kabat, PLLC, Washington, DC*
Mark Hanna, *Murphy Anderson PLLC, Washington, DC*
Daniel J. Hurson, *Law Offices of Daniel J. Hurson, Washington, DC*
Arian June, *WilmerHale, Washington, DC*
Marcia Narine, *St. Thomas University School of Law, Miami, FL*

(Continued on page 14)

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Wednesday, November 9

2:00 – 8:00 pm

Conference Registration

4:30 – 5:00 pm

Law Student Orientation *page 3, 18*

5:00 – 6:00 pm

**First-Time Attendee/
New Section Member
Orientation** *page 3, 18*

6:00 – 8:00 pm

**Welcome Reception
and Committee Expo** *page 3, 18*

Thursday, November 10

7:00 – 8:00 am

**Continental Breakfast
and Registration**

8:00 – 9:15 am

- **Diligence vs. Perfection: Maintaining High Ethical Standards While Avoiding Burnout (E)** *page 6*
- **Getting Paid: From Judgment or Settlement to the Bank** *page 5*
- **The New Standards on Sharing Wage and Other Confidential Information in the Workplace: Any Effect or Impact?** *page 6*
- **Update on Purple Communications: Implementation Issues for Unions, Employees and Employers** *page 5*
- **When Immigration and Employee Protection Laws Collide** *page 4*

- **Whistleblower Protections for Federal Workers** *page 6*
- **Who Is an Employer? Expansive Considerations of Coverage** *page 6*
- **Witness Examination** *page 5*

9:45 – 11:00 am

**Plenary Session: Closing the Gap:
Do Women and Men Need to
“Lean In” Together?** *page 3*

9:30 – 9:45 am

Welcome and Introductions

11:15 am – 12:30 pm

- **Class Action Settlements: Strategies in Pursuing and Negotiating Class and Collective Settlements** *page 5*
- **A Legal Primer on the Law and Practice of Corporate Governance (F)** *page 7*
- **Meet the National Labor Relations Board: Insider’s Perspective** *page 5*
- **New White Collar Exemption Regulations: Then and Now** *page 6*
- **Protection of Rights under ERISA and ACA: Claims of Interference, Discrimination and Retaliation** *page 4*
- **Reducing the Risk of Workplace Violence** *page 7*
- **Religious Accommodation in Today’s Workplace** *page 4*
- **The Yates Memorandum and Its Impact on Corporate Executives One Year Later** *page 7*

12:30 pm – 2:15 pm

Diversity Luncheon

2:30 – 3:45 pm

- **Are You Smarter than a 1-L?** *page 5*
- **A Conversation with the NLRB General Counsel and Deputy General Counsel** *page 5*
- **Recent Developments in Class Certification/Decertification** *page 6*
- **Return to Work Issues** *page 4*
- **Tipping Points: Should the Law on Tipping Stay or Go?** *page 6*
- **Trends in Leave Law at the State and Local Level** *page 7*
- **25 Years after the Civil Rights Act of 1991: Reflections on “Reform” Legislation** *page 4*
- **What Every Labor and Employment Lawyer Needs to Know about Workers’ Compensation (F)** *page 7*

4:00 – 5:15 pm

**Plenary Session: Maximizing the
Millennial Workforce** *page 4*

5:15 – 6:00 pm

**Standing Committee Business
Meetings** *page 18*

6:30 – 7:00 pm

**Young Lawyers Networking
Reception** *page 18*

7:00 – 10:00 pm

**Diversity and Inclusion
Networking Reception at
House of Blues** *page 18*

Friday, November 11

7:00 – 8:00 am

**Continental Breakfast
and Registration**

8:00 – 9:15 am

- **Arbitration of Statutory Discrimination Claims** *page 8*
- **Defending and Attacking a Restrictive Covenant** *page 14*
- **How to Manage Internal Communications with a Represented Party (E)** *page 10*
- **Current Implications of the Fissured Workplace** *page 11*
- **National Labor Relations Board Case Law Update** *page 9*

Law Conference Program At-A-Glance

- Negotiation, Mediation and Arbitration Under the Railway Labor Act *page 10*
- Transgender Issues in the Workplace *page 8*
- *Tyson* and the New FRCP Proportionality Standards: Their Impact on Class and Collective Actions *page 10*

9:30 – 9:45 am

- Plenary Session: Presentation of 2016 Section Awards *page 8*

9:45 – 11:00 am

Plenary Session: Recent and Upcoming Supreme Court Labor and Employment Law Rulings *page 8*

11:15 am – 12:30 pm

- Calculating Overtime Damages in Wage and Hour Cases *page 11*
- Compelling Companies to be Agents of Change: Regulations Requiring Human Trafficking Prevention and Disclosures *page 9*
- Independent Contractors and Contingent Workers Under the NLRA: Whose Employees Are They Anyway? *page 10*
- “Just Culture” Policies: What You Need to Know *page 14*
- The Law Firm as an Employer: Employee vs. Contractor and Exempt vs. Non-Exempt *page 11*
- Mediation of the Most Difficult Cases and How They Settle *page 8*
- Taking and Defending 30(b)(6) Depositions *page 10*
- When Title VII Meets Title IX: Gender-Related Conflicts *page 8*

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

- Advising Clients throughout the Whistleblower Investigation: A Candid Discussion Regarding the Complex Issue of How Lawyers Work with their Clients *page 11*
- Bargaining in Post-Recession Years *page 11*

- Compensable Time *page 11*
- Meet the NLRB Regional Directors: Get Practical Tips for Success Before the Regions *page 10*
- A New Tool for Today’s Complex Negotiations: To Affinity and Beyond *page 8*
- OFCCP: A View from the Trenches *page 9*
- Pay Equity in Practice: What Works? *page 14*
- What Every Labor and Employment Lawyer Needs to Know about Immigration Law **(F)** *page 9*

3:45 – 5:00 pm

Plenary Session: Law Enforcement Labor Relations Post-Ferguson *page 8*

6:00 – 8:00 pm

Conference Reception at The Field Museum *page 18*

Saturday, November 12

7:00 – 8:00 am

Continental Breakfast and Registration

8:00 – 9:15 am

- Confidentiality, Waivers and Similar Settlement Agreement Provisions Under Scrutiny: Tell Me about Your Separation Agreement *page 17*
- The Evolving Law of Successorship in Business Transactions *page 15*
- The Gig Economy: Alternative Working Relationships around the Globe *page 15*
- How the December 2015 FRCP Revisions Have Impacted, Changed and Affected Discovery Practice *page 16*
- Litigating/Arbitrating Collective and Class Action Wage and Hour Cases *page 16*
- Managing Employees with Discrimination and Other Complaints *page 14*
- Off-Duty Conduct of State and Local Government Employees *page 16*

9:30 – 10:45 am

- Mergers, Integrations and RIFs: Strategies from Employer, Unions and Employee Representatives *page 17*

Legend:

E = Ethics F = Fundamentals

- Paid Leave and Other Protections for Employees with Caregiver Responsibilities *page 15*
- The Pursuit of Compromise: An Examination of Settlement Strategies and Techniques in Single-Plaintiff Litigation **(F)** *page 16*
- Rebooting Harassment Prevention: A Call to Action *page 14*
- Recent Developments in Whistleblower Protection Law *page 17*
- The NLRB Returns to *M.B. Sturgis: Miller & Anderson* Says Bargaining Units May Include More than One Employer *page 16*
- Title VII Litigation and Employee Benefit Issues: What Every Employment Attorney Should Know **(F)** *page 15*

11:00 am – 12:15 pm

- Bias, Prejudice & Harassment in the Legal Profession: A Proposal for a New Rule **(E)** *page 16*
- Employment Law Issues for Veterans in the Workforce **(F)** *page 17*
- Helping Your Clients Understand and Accommodate Invisible Disabilities *page 14*
- Investigating Class and Systemic Claim *page 16*
- Legal Issues in an Aging Workforce: Beyond the ADEA *page 15*
- Trying Whistleblower Retaliation Cases *page 17*
- Whistleblowing Legislation in the U.S. and Canada: A Comparative Analysis *page 15*

12:30 – 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 *page 18*

12:30 – 2:00 pm

The College of Labor and Employment Lawyers

- A Theatrical Post-Trial View of a Sexual Harassment Case: Perspectives **(E)** *page 17*

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(Continued from page 11)

Workplace Problems and Solutions

• 8:00 am – 9:15 am

Defending and Attacking a Restrictive Covenant

There are many considerations that can affect the terms and provisions of a restrictive covenant. However, if the intent is to create the greatest likelihood of enforceability, what considerations would be paramount in this process? Similarly, how should legal counsel for an individual approach these same issues? This panel of skilled practitioners will address the more advanced issues in creating and defending covenants based on the litigation perspective, including issues like choice of law, nature of the restriction, and defining the protected interest.

PANELISTS:

Hon. Bernice B. Donald, *U.S. Court of Appeals for the Sixth Circuit, Memphis, TN*
Katie Bunch, *JPMorgan Chase, Chicago, IL*
Stephen E. Fox, *Polsinelli, Dallas, TX*
Marisa Warren, *Pedowitz & Meister, LLP, New York, NY*

• 11:15 am – 12:30 pm

“Just Culture” Policies: What You Need to Know

Employers are increasingly implementing “Just Culture” or similar policies intended to promote safe practices and behavior in the workplace. Some of these programs have replaced “zero tolerance” and similar programs that have been used to promote safe and compliant behavior by employees. What are Just Culture programs about, who uses them, and what legal issues are involved in supporting or challenging “Just Culture”-style programs. What are the criticisms of such programs from the perspective of employee and union representatives? Do these programs present a developing trend in the relationship between employers, employees and unions?

PANELISTS:

Alexandra Freemire, *SG Collaborative Solutions, LLC, Framingham, MA*
Gregory A. Hearing, *Thompson, Sizemore, Gonzalez & Hearing, P.A., Tampa, FL*
Megann McManus, *Meyer, Suozzi, English and Klein, P.C., New York, NY*
Maranda Rosenthal, *Alaska Airlines, Inc., Seattle, WA*
Kathleen A. Yodice, *Law Offices of Yodice Associates, Frederick, MD*

• 2:15 pm – 3:30 pm

Pay Equity in Practice: What Are Employers Doing, What Can They Do, and What Works?

For many employers today, there is a large focus on providing both diversity in the workplace and demonstrating pay equity practices to employees and the general public. This panel will explore specific practices that are implemented both to comply with federal, state or local laws as well as the legality of additional practices that may go beyond those requirements.

PANELISTS:

Rachel Geman, *Lieff Cabraser Heimann & Bernstein, LLP, New York, NY*
Samantha C. Grant, *Mitchell Silberberg & Knupp LLP, Los Angeles, CA*
Wendy L. Kahn, *Zuerdling, Paul, Kahn & Wolly PC, Washington, DC*
Tamika Lynch, *Siemens, Buffalo Grove, IL*
Paul F. White, *Resolution Economics, Washington, DC*

Saturday, November 12

Discrimination, Harassment and Retaliation

• 8:00 am – 9:15 am

Managing Employees with Discrimination and Other Complaints

This program will discuss the challenges associated with current employees who have reported allegations of discrimination or are considered whistleblowers. The panelists will provide recommendations regarding do’s and don’ts for current employees who wish to stay and tactics for negotiating exit strategies for those who wish to leave. The panelists also will discuss ways that employers can manage the risk associated with retaliation and the impact of recent court decisions applying the cat’s paw theory of liability to retaliation cases.

PANELISTS:

Stacey A. Campbell, *Campbell Litigation, P.C., Denver, CO*
Virginia “Ginger” Hardwick, *Hardwick Benfer, LLC, Doylestown, PA*
Donna Hughes, *Impax Laboratories, New York, NY*
Rebecca Yee, *SEIU Local 721, Los Angeles, CA*

• 9:30 am – 10:45 am

Rebooting Harassment Prevention: A Call to Action

In June 2016, EEOC Commissioners Chai R. Feldblum and Victoria A. Lipnic issued a report as Co-Chairs of the Select Task Force on the Study of Harassment in the Workplace. The report presents a sober picture of harassment in the workplace, the failure of most employees to complain, and some limitations of current anti-harassment training. The report also offers compelling reasons to fight harassment and suggests concrete ways to do so, including identifying best practices for policies and procedures and suggestions for new training. Several members of the Select Task Force, together with Commissioner Feldblum, will discuss the report and ideas aimed at “rebooting” harassment prevention efforts.

PANELISTS:

Hon. Chai R. Feldblum, *U.S. Equal Employment Opportunity Commission, Washington, DC*
Manuel Cuevas-Trisán, *Motorola Solutions, Inc., Chicago, IL*
Brenda Feis, *Feis Goldy LLC, Chicago, IL*
Joseph M. Sellers, *Cohen Milstein Sellers & Toll PLLC, Washington, DC*
Patricia A. Wise, *Niehaus, Wise & Kalas Ltd, Toledo, OH*

• 11:00 am – 12:15 pm

Helping Your Clients Understand and Accommodate Invisible Disabilities

Do we as counsel really understand what invisible, or hidden disabilities, are? Do we understand chronic illness? Chronic pain? Do we know how to successfully manage them in our own workplaces? As our workforce ages, this issue grows even more crucial. The panel will introduce the most common hidden disabilities to the participants, discuss appropriate ways to engage with employees with hidden disabilities and offer various accommodation techniques and resources. Participants should leave having a “toolkit” to address these issues on a broad spectrum.

PANELISTS:

Alisa Arnoff, *Scalambrino & Arnoff LLP, Chicago, IL*
Kathleen Phair Barnard, *Schwerin Campbell Barnard Iglitzin & Lavitt LLP, Seattle, WA*
Tracie DeFreitas, *Job Accommodation Network, Morgantown, WV*
John Henderson, *U.S. Equal Employment Opportunity Commission, Baltimore, MD*
Brett Rawitz, *U.S. Foods, Chicago, IL*

- 11:00 am – 12:15 pm

Legal Issues in an Aging Workforce: Beyond the ADEA

This panel will discuss the legal issues associated with an aging workforce and provide practical and creative strategies for addressing aging employees with declining physical and/or mental capabilities, age bias and assumptions regarding aging employees' abilities, and the application of the ADEA and the ADA.

PANELISTS:

- Brent D. Garren**, *SEIU 32BJ, New York, NY*
Nesheba M. Kittling, *Fisher & Phillips LLP, Chicago, IL*
Daniel B. Kohrman, *AARP Litigation, Washington, DC*
Diane L. Smason, *U.S. Equal Employment Opportunity Commission, Chicago, IL*
George L. Washington, Jr., *Orange Business Services, Washington, DC*

Employee Benefits

- 9:30 am – 10:45 am

Title VII Litigation and Employee Benefit Issues: What Every Employment Attorney Should Know (F)

Cosponsored by ABA Young Lawyers Division

The purpose of this program is to assist employment attorneys in identifying and addressing employee benefit issues and claims that arise during Title VII cases.

PANELISTS:

- Robert W. Rachal**, *Proskauer Rose LLP, New Orleans, LA*
Joanne Roskey, *U.S. Department of Labor, Washington, DC*
Mary Ellen Signorille, *AARP Litigation, Washington, DC*

International

- 8:00 am – 9:15 am

The "Gig" Economy: Alternative Working Relationships around the Globe

Ever since "app-driven" business models "disrupted" the taxi industry, significant attention has shifted to businesses that rely on "zero hours" contracts, contingent workers, or "on-demand" models (which claim to have no employees at all). These businesses, which challenge fundamental tenets of the employer/employee relationship, have been praised but also have encountered a firestorm of opposition from government regulators, class action litigators, labor unions and others who regard the "gig" economy as an expanding threat to worker

security and workplace stability. This panel will analyze the future of these alternative work models in various countries in light of these clashing interests.

PANELISTS:

- Rubén Agote**, *Cuatrecasas Gonçalves Pereira SLP, Barcelona, Spain*
Sharon Block, *U.S. Department of Labor, Washington, DC*
Danny J. Kaufer, *Borden Ladner Gervais, Montréal, QC*
Loni Mahanta, *Lyft, San Francisco, CA*
Saerom Park, *SEIU, Washington, DC*
Steven M. Swirsky, *Epstein Becker Green, New York, NY*

- 9:30 am – 10:45 am

Paid Leave and Other Protections for Employees with Caregiver Responsibilities under Laws, Employment Contracts and Collective Bargaining Agreements around the World

A movement is underway in the United States to promote caregiver rights in the workplace. At the same time, there is much discussion in the United Kingdom regarding work/life balance. This panel will discuss the laws and employer practices impacting caregivers at work around the world, including: What legal standards exist concerning caregiver rights in different countries? What actions are employer and advocacy groups taking that impact these rights? How do employment agreements and collective bargaining agreements impact such rights?

PANELISTS:

- Susanne Burri**, *Utrecht Law School, Utrecht, Netherlands*
Bryan Dunne, *Matheson, Dublin, Ireland*
Bronwyn McKenna, *UNISON, London, United Kingdom*
Devjani Mishra, *Alexion Pharmaceuticals, Inc., New Haven, CT*
Clare Murray, *CM Murray LLP, London, United Kingdom*
Catherine K. Ruckelshaus, *National Employment Law Project, New York, NY*

- 11:00 am – 12:15 pm

Whistleblowing Legislation in the U.S. and Canada: A Comparative Analysis

The panel will present a comparative analysis of whistleblower statutes and case law in Canada and the United States, in both the public and private sectors, with a discussion including management and union/employee representatives from both jurisdictions. The panelists also will address specific issues and challenges for workplace parties in both countries.

PANELISTS:

- Mike Delikat**, *Orrick Herrington & Sutcliffe LLP, New York, NY*
Danilo Di Vincenzo, *Le Corre and Associates, LLP, Montréal, QC*
Ronald A. Pink, *Pink Larkin, Halifax, NS*
Jordan A. Thomas, *Labaton Sucharow, New York, NY*

Labor-Management Relations

- 8:00 am – 9:15 am

The Evolving Law of Successorship in Business Transactions

As business transactions become more global and complex, is labor law keeping pace? In the context of a merger, acquisition or asset sale, does a unionized employer have a duty to pass on the collective bargaining agreement to the successor company? What are the labor law obligations of the successor to hire employees, recognize the union, bargain before setting initial terms of employment, or assume the CBA?

PANELISTS:

- M. Jefferson Starling III**, *Balch & Bingham LLP, Birmingham, AL*
Marilyn S. Teitelbaum, *Schuchat, Cook & Werner, St. Louis, MO*
Genaira Tyce, *National Labor Relations Board, Brooklyn, NY*



10th Annual Labor and Employment Law

• 9:30 am – 10:45 am

The NLRB Returns to *M.B. Sturgis*: Miller & Anderson Says Bargaining Units May Include More than One Employer

On the heels of the NLRB's *Browning-Ferris* decision (changing the joint employment standard), the NLRB recently overturned its *Oakwood Care Center* decision in *Miller & Anderson*. This panel will explore the implications of the Board's decision to return to the *M.B. Sturgis* bargaining unit standard, which allows a single bargaining unit to include employees of both a "user employer" and "supplier employer."

PANELISTS:

Stanley A. Gosch, *Rosenblatt & Gosch PLLC, Greenwood Village, CO*
Lindbergh Porter, *Little Mendelson PC, San Francisco, CA*
Fredric Roberson, *National Labor Relations Board, Indianapolis, IN*

Litigation/Class Action

• 8:00 am – 9:15 am

How the December 2015 FRCP Revisions Have Impacted, Changed and Affected Discovery Practice, including E-Discovery

This program will discuss how the December 2015 changes to the FRCP have impacted and changed discovery and will provide guidance regarding litigation strategies for obtaining, limiting, and negotiating the scope of discovery in light of the new rules, with a special eye towards e-discovery requests in the ESI era.

PANELISTS:

Hon. Jay C. Gandhi, *U.S. District Court for the Central District of California, Los Angeles, CA*
Daniel L. Bonnett, *Martin & Bonnett PLLC, Phoenix, AZ*
Gary B. Eidelman, *Saul Ewing LLP, Baltimore, MD*
Richard T. Seymour, *Law Offices of Richard T. Seymour, Washington, DC*

• 9:30 am – 10:45 am

The Pursuit of Compromise: An Examination of Settlement Strategies and Techniques in Single-Plaintiff Litigation (F)

*Cosponsored by
ABA Young Lawyers Division*

Although most claims are resolved through settlement, attention to effectively and efficiently steering a case toward a negotiated resolution often takes a back burner to the press of litigation. This panel will explore

settlement strategies in individual litigation, including the proper use, valuation and timing of offers of compromise, strategy and timing for alternative dispute resolution, how much pre-settlement formal and informal discovery is sufficient, insurance considerations and general negotiation strategies.

PANELISTS:

Lisa J. Banks, *Katz, Marshall & Banks, LLP, Washington, DC*
Brian J. LaClair, *Blitman & King LLP, Syracuse, NY*

• 11:00 am – 12:15 pm

Investigating Class and Systemic Claims

The stakes are high in class and systemic cases and for both the company and putative class counsel, and determining whether class claims or liability exists is crucial to charting a course of action. This panel will discuss how to properly investigate class claims and determine whether a viable class or collective action exists. The panel also will provide pre-litigation strategies for vetting potential class actions and discuss best practices.

PANELISTS:

Joan Fife, *Winston & Strawn LLP, San Francisco, CA*
Douglas L. Steele, *Woodley & McGillivray LLP, Washington, DC*
Roberta L. Steele, *U.S. Equal Employment Opportunity Commission, San Francisco, CA*
Janu Turner, *Outten & Golden LLP, New York, NY*

Practice and Professionalism

• 11:00 am – 12:15 pm

Bias, Prejudice & Harassment in the Legal Profession: A Proposal for a New Rule (E)

*Cosponsored by ABA Center
for Professional Responsibility*

The Comment to ABA Model Rule of Professional Conduct Rule 8.4 states that an attorney who, in the course of representing a client, manifests bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, may be unethical. Some states have incorporated this language into their versions of the misconduct rule. At the other extreme, some critics state that the comment lacks sufficient breadth or clarity, and that it serves no purpose because any words or conduct that are prejudicial to the administration

of justice violate the misconduct rule. The ABA Standing Committee on Ethics and Professional Responsibility is currently considering an amendment that would substantially change this language in several ways. The proposed amendment would move the text from the Comment to the Rule, more clearly describe the prohibited conduct, expand the reach of the Rule, and remove the exception for conduct that is not prejudicial to the administration of justice. Join this panel as it discusses the pros and cons and what practical impact the change would have on an attorney's responsibilities.

PANELISTS:

James F. Allmendinger, *NEW Hampshire, Concord, NH*
Paula J. Frederick, *State Bar of Georgia, Atlanta, GA*
Wendi S. Lazar, *Outten & Golden LLP, New York, NY*
Myles V. Lynk, *Arizona State University College of Law, Phoenix, AZ*
Dayna E. Underhill, *Holland & Knight LLP, Portland, OR*

Public Sector

• 8:00 am – 9:15 am

Off-Duty Conduct of State and Local Government Employees

Public employees are under such constant scrutiny that regulation of off-duty conduct is expected. But does the discipline differ if the employee who was arrested for DUI is a teacher, a water clerk or a police officer? Does it change if the charge is domestic violence? Public intoxication? The public might "expect more" from all public employees, but are there instances where that expectation is not just (as in "just cause")?

PANELISTS:

Emily H. Martin, *Washington Public Employment Relations Commission, Seattle, WA*
Gary L. Bailey, *Illinois FOP Labor Council, Western Springs, IL*
Mark L. Olson, *Buelow Vetter Buikema Olson Vliet, LLC, Milwaukee, WI*

Wage and Hour

• 8:00 am – 9:15 am

Litigating/Arbitrating Collective and Class Action Wage and Hour Cases

Panelists will discuss the most recent developments related to litigation of wage and hour collective and class action cases, which may include the overtime exception under FLSA §7(1), trial by representative proof, use/need for experts, trial by formula,

bifurcated trials, arbitration of independent contractor cases, and confirmation of awards in arbitration.

PANELISTS:

Nicholas J. Enoch, *Lubin and Enoch P.C., Phoenix, AZ*

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

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

Michael J. Loeb, *JAMS, San Francisco, CA*

Whistleblower

- 9:30 am – 10:45 am

Recent Developments in Whistleblower Protection Law

This panel will focus on the key developments in whistleblower retaliation claims, including: 1) the scope of protected whistleblowing under SOX and Dodd-Frank; 2) trends in jury verdicts in federal and state whistleblower litigation; 3) the SEC's role in combating whistleblower retaliation; 4) whistleblower protection for employees of government contractors; and 5) the SEC's bar against gag clauses in confidentiality agreements and policies.

PANELISTS:

Megan E. Guenther, *U.S. Department of Labor, Washington, DC*

Gregory Keating, *Choate Hall & Stewart LLP, Boston, MA*

Amy Shulman, *Broach & Stulberg LLP, New York, NY*

Jason Zuckerman, *Zuckerman Law, Washington, DC*

- 11:00 am – 12:15 pm

Trying Whistleblower Retaliation Cases

As whistleblowers obtain record verdicts under SOX and other federal and state whistleblower protection laws, more whistleblower cases are heading to trial. This panel will offer practical tips for prosecuting and defending whistleblower retaliation cases, including effective trial themes, the use of experts concerning the objective reasonableness of a whistleblower's alleged protected disclosures, and common evidentiary issues. In addition, the panel will address issues to explore in discovery.

PANELISTS:

Hon. Denise Page Hood, *U.S. District Court for the Eastern District of Michigan, Detroit, MI*

David deRubertis, *The deRubertis Law Firm, APC, Studio City, CA*

Robin Potter, *Robin Potter & Associates, P.C., Chicago, IL*

Janie F. Schulman, *Morrison & Foerster LLP, Los Angeles, CA*

Workplace Problems and Solutions

- 8:00 am – 9:15 am

Confidentiality, Waivers and Similar Settlement Agreement Provisions Under Scrutiny: Tell Me about Your Separation Agreement

Increasingly, enforcement and regulatory agencies are challenging confidentiality provisions as part of settlement or release agreements. This panel will explore whether certain waivers of rights, confidentiality, non-disparagement and covenants not to sue or cooperate are valid in light of recent decisions by the courts as well as actions taken by agencies such as the EEOC, SEC and NLRB. Our panel will review the state of the law as well as explore best practices to avoid further disputes about these types of provisions.

PANELISTS:

Lori L. Deem, *Outten & Golden LLP, Chicago, IL*

Gregory Gochanour, *U.S. Equal Employment Opportunity Commission, Chicago, IL*

Jennifer Kroll, *Martin and Bonnett PLLC, Phoenix, AZ*

Anne-Marie V. Welch, *Clark Hill PLC, Detroit, MI*

- 9:30 am – 10:45 am

Mergers, Integrations and RIFs: Strategies from Employer, Unions and Employee Representatives

This panel will review the current legal issues that arise when advising employers, unions and individuals when a business is undergoing a merger, consolidation or integration with another entity, and the reductions in force that often accompany such actions. The focus will be on practical tips for representing employers, unions and employees in these situations at various stages including from negotiations to implementation.

PANELISTS:

Carol J. Garvan, *Johnson Webbert Young, Bangor, ME*

Julie Stahr, *Schiff Hardin LLP, Chicago, IL*

Alvin Velazquez, *SEIU, Washington, DC*

Nicole M. Walthour, *International Paper, Memphis, TN*

- 11:00 am – 12:15 pm

Employment Law Issues for Veterans in the Workforce (F)

Cosponsored by ABA Young Lawyers Division

This panel will review the key fundamental protections afforded to veterans in the

workplace. The latest developments on USERRA including new regulations and compliance efforts as well as the federal contractor tool kit will be reviewed. What strategies are employers using to comply with the new standards as well as create employment opportunities for veterans? The panel also will explore the latest developments and legal trends for veterans with post-traumatic disorders, 9/11 recovery workers and veterans with other disabilities.

PANELISTS:

Andrew Braniff, *U.S. Department of Justice, Washington, DC*

Brian Clauss, *John Marshall Law School, Chicago, IL*

Kenneth R. Harrison, Sr., *Sugarman & Susskind, P.A., Coral Gables, FL*

Esther G. Lander, *Akin Gump Strauss Hauer & Feld LLP, Washington, DC*

Kathryn Piscitelli, *Attorney at Law, Orlando, FL*

- 12:30 pm – 2:00 pm

The College of Labor & Employment Lawyers A Theatrical Post-Trial View of a Sexual Harassment Case: Perspectives (E)

Through the vehicles of both a short one-act play featuring the participants in a sexual harassment trial and a moderator-led panel discussion among a judge, arbitrator, former litigant and attorneys representing employees and management, the program will explore the obligation of trial attorneys to fully understand how the courtroom participants (the judge, the jury, the attorneys and their clients, and the witnesses) view an emotionally charged trial, focusing, in important part, on the adverse effect of incivility and a lack of professionalism in the courtroom and the arbitration forum. The following interactive audience discussion will be directed toward eliciting "war stories" of the horrors about players in the litigation scenario losing appropriate "perspective."

MODERATOR:

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

PANELISTS:

Hon. Rebecca R. Pallmeyer, *U.S. District Court for the Northern District of Illinois, Chicago, IL*

Richard J. Gonzalez, *Chicago-Kent College of Law, Chicago, IL*

Kristen E. Michaels, *McDermott Will & Emery, Chicago, IL*

Lisa B. Moss, *Carmell Charone Widmer Moss & Barr, Ltd., Chicago, IL*

Jeanne Charles Wood, *Wood ADR, Chicago, IL and Miami, FL*

Networking and Social Events

Wednesday, November 9

- 4:30 – 5:00 p.m.

Law Student Orientation

Law student attendees are invited to mingle with each other and members of the Outreach to Law Students Committee and Section Leadership prior to the start of the Conference. This event will offer students a casual introduction to the ins and outs of the Annual Section Conference.

- 5:00 – 6:00 pm

First-Time Attendee/ New Section Member Orientation

If you are a new member of the Section of Labor and Employment Law or if this is your first Section meeting, join your peers for an overview of what you should know about the Section and how to get the most benefit from attending the Conference.

- 6:00 – 8:00 pm

Welcome Reception and Committee Expo

All attendees are invited to meet, greet and network during this opening reception at the Sheraton Grand Chicago Hotel. Section Committees will provide information about publications, services and programs they provide to labor and employment lawyers.

Thursday, November 10

- 5:15– 6:00 pm

Standing Committee Business Meetings

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

- 6:30 – 7:00 pm

Young Lawyers Networking Reception

Members of the ABA Young Lawyers Division are invited to a special networking reception from 6:30 – 7:00 p.m. in the Foundation Room at the House of Blues.

- 7:00 – 10:00 pm

Diversity and Inclusion Networking Reception

Presented by ABA Diversity in the Legal Profession Committee

Join us for a social and networking reception to support the Section's diversity and inclusion initiatives focusing on lawyers of color; female lawyers; lesbian, gay, bisexual and transgender lawyers; and lawyers with disabilities. The reception will take place at the House of Blues and will feature great food, drinks and live entertainment.

Friday, November 11

- 6:00 – 8:00 pm

Conference Reception at The Field Museum

Join with old friends and new to celebrate the 10th Annual Labor and Employment Law Conference at the magnificent Field Museum. Guests will be able to tour the wonderful exhibits from 6:00 pm until 9:00 pm.



Saturday, November 12

- 12:30 – 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.

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Patron Level

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COHEN, WEISS AND SIMON LLP **ERS Group** **FRANCZEK RADELET** **Law Office of Lori D. Ecker** **SWANSON, MARTIN & BELL, LLP**

Friend Level

ALLISON, SLUTSKY & KENNEDY, P.C. **Broach & Stulberg** **CLARK** **HB** **Hardwick Benfer, LLC** **MARK RISK, P.C.** **ROBIN, URANN, SPENCER, PICARD & CANGEMI**

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

FACULTY

ADR

Allison Beck, *Federal Mediation & Conciliation Service, Washington, DC*
Hon. Candace Cooper (Ret.), *JAMS, Los Angeles, CA*
Robert M. Goldich, *Greenberg Traurig LLP, Philadelphia, PA*
Camille Grant, *Illinois Education Association-NEA, Chicago, IL*
Michael Z. Green, *Texas A&M University School of Law, Forth Worth, TX*
Robert D. Kraus, *Kraus & Zuchlewski LLP, New York, NY*
Ingrid Nava, *SEIU Local 32BJ, New York, NY*
Javier Ramirez, *Federal Mediation & Conciliation Service, Washington, DC*
Robert E. Riley, *Robbins Schwartz Nicholas Lifton & Taylor, Ltd., Chicago, IL*
Mark D. Risk, *Mark Risk P.C., New York, NY*
Juan Salgado, *Instituto del Progreso Latino, Chicago, IL*
Paul Salvatore, *Proskauer Rose LLP, New York, NY*
Martin F. Scheinman, *Cornell University, New York, NY*
Hon. Diane M. Welsh (Ret.), *JAMS, Philadelphia, PA*

Discrimination, Harassment and Retaliation

Hon. Chai R. Feldblum, *U.S. Equal Employment Opportunity Commission, Washington, DC*
Alisa Arnoff, *Scalambrino & Arnoff LLP, Chicago, IL*
Kathleen Phair Barnard, *Schwerin Campbell Barnard Iglitzin & Lavitt LLP, Seattle, WA*
Mario L. Barnes, *University of California, Irvine School of Law, Irvine, CA*
Eric L. Barnum, *Baker & Hostetter LLP, Atlanta, GA*
Chaim Book, *Moskowitz & Book, LLP, New York, NY*
Channah S. Brojde, *U.S. Department of Labor, Office of the Solicitor, Atlanta, GA*
Stacey A. Campbell, *Campbell Litigation, P.C., Denver, CO*
Duncan Crabtree-Ireland, *SAG-AFTRA, Los Angeles, CA*
Manuel Cuevas-Trisán, *Motorola Solutions, Inc., Chicago, IL*
Tracie DeFreitas, *Job Accommodation Network, Morgantown, WV*
Lori D. Ecker, *Law Office of Lori D. Ecker, Chicago, IL*
Brenda Feis, *Feis Goldy LLC, Chicago, IL*
Brent D. Garren, *SEIU 32BJ, New York, NY*
Jon A. Geier, *Paul Hastings, Chicago, IL*

Jeanne Goldberg, *U.S. Equal Employment Opportunity Commission, Washington, DC*
Monica Guizar, *Weinberg, Roger & Rosenfeld PC, Los Angeles, CA*
Virginia "Ginger" Hardwick, *Hardwick Benjer, LLC, Doylestown, PA*
John Henderson, *U.S. Equal Employment Opportunity Commission, Baltimore, MD*
Donna Hughes, *Impax Laboratories, New York, NY*
Jo Linda Johnson, *U.S. Department of Homeland Security-TSA, Washington, DC*
Harsiman Kaur, *The Sikh Institute, New York, NY*
Nesheba M. Kittling, *Fisher & Phillips LLP, Chicago, IL*
Daniel B. Kohrman, *AARP Litigation, Washington, DC*
Lisa A. Krupicka, *Burch, Porter & Johnson, PLLC, Memphis, TN*
Mohammed J. Lakhani, *Clark Hill PLC, Chicago, IL*
Emma Leheny, *NEA, Washington, DC*
Michael R. Lied, *Howard & Howard, Peoria, IL*
Donald R. Livingston, *Akin Gump Strauss Hauer & Feld LLP, Washington, DC*
Shannon Price Minter, *National Center for Lesbian Rights, San Francisco, CA*
Justin Mulaire, *U.S. Equal Employment Opportunity Commission, Chicago, IL*
Elizabeth Nadeau, *Law Office of Elizabeth Nadeau, Washington, DC*
Michelle E. Phillips, *Jackson Lewis P.C., White Plains, NY*
Consuela A. Pinto, *U.S. Department of Labor, Washington, DC*
Adele Rapport, *U.S. Department of Education, Chicago, IL*
Brett Rawitz, *U.S. Foods, Chicago, IL*
Jon H. Rosen, *The Rosen Law Firm, Seattle, WA*
Cynthia N. Sass, *Law Offices of Cynthia N. Sass, Tampa, FL*
Joseph M. Sellers, *Cohen Milstein Sellers & Toll PLLC, Washington, DC*
Retu Singla, *Transport Workers Union, New York, NY*
Diane L. Smason, *U.S. Equal Employment Opportunity Commission, Chicago, IL*
Joshua Stehlik, *National Immigration Law Center, Los Angeles, CA*
Kim Turner, *Gender Equity & LGBT Rights Program and the Fair Play for Girls in Sports Project, San Francisco, CA*
George L. Washington, Jr., *Orange, Washington, DC*
Carolyn Wheeler, *Katz, Marshall & Banks, LLP, Washington, DC*
Patricia A. Wise, *Niehaus, Wise & Kalas Ltd, Toledo, OH*

Rebecca Yee, *SEIU Local 721, Los Angeles, CA*
Julie Heuberger Yura, *Lake Forest College, Chicago, IL*

Employee Benefits

Denise M. Clark, *The Clark Law Group, Washington, DC*
Marcelle J. Henry, *Cohen, Weiss and Simon LLP, New York, NY*
Al Holifield, Jr., *Holifield Jamich & Associates, PLLC, Knoxville, TN*
Danielle L. Jaberg, *U.S. Department of Labor, San Francisco, CA*
Robert W. Rachal, *Proskauer Rose LLP, New Orleans, LA*
Joanne Roskey, *U.S. Department of Labor, Washington, DC*
Mary Ellen Signorille, *AARP Litigation, Washington, DC*

International

Rubén Agote, *Cuatrecasas Gonçalves Pereira SLP, Barcelona, Spain*
Sharon Block, *U.S. Department of Labor, Washington, DC*
Susanne Burri, *Utrecht Law School, Utrecht, Netherlands*
Mike Delikat, *Orrick, Herrington & Sutcliffe LLP, New York, NY*
Daniilo Di Vincenzo, *Le Corre and Associates, LLP, Montréal, QC*
Bryan Dunne, *Matheson, Dublin, Ireland*
Danny J. Kaufer, *Borden Ladner Gervais LLP, Montréal, QC*
Loni Mahanta, *Lyft, San Francisco, CA*
Bronwyn McKenna, *UNISON, London, United Kingdom*
Devjani Mishra, *Alexion Pharmaceuticals, Inc., New Haven, CT*
Clare Murray, *CM Murray LLP, London, United Kingdom*
Saerom Park, *SEIU, Washington, DC*
Ronald A. Pink, *Pink Larkin, Halifax, NS*
Catherine K. Ruckelshaus, *National Employment Law Project, New York, NY*
Steven M. Swirsky, *Epstein Becker & Green, P.C., New York, NY*
Jordan A. Thomas, *Labaton Sucharow LLP, New York, NY*

Labor-Management Relations

Hon. Richard F. Griffin, Jr., *National Labor Relations Board, Washington, DC*
Hon. Mark Gaston Pearce, *National Labor Relations Board, Washington, DC*
Hon. Philip A. Miscimarra, *National Labor Relations Board, Washington, DC*
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Wage and Hour

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General Information

Registration

The registration fees cover the Wednesday Welcome Reception, Thursday Diversity and Inclusion Reception, Friday Conference Reception, continental breakfasts, refreshment breaks and attendance at all CLE sessions. The Spouse/Guest fee of \$75 (no charge for children under 18) covers the Wednesday, Thursday and Friday evening receptions. You are encouraged to register online at www.ambar.org/laborconference. **The deadline for receipt of advance registration to appear on the Conference roster is October 14, 2016.**

Cancellations

Registration fees are refundable, less a \$50 administrative fee, for written cancellations received in the Section office by October 14, 2016.

Hotel Information

We have negotiated special rates at the Sheraton Grand Chicago Hotel:

Sheraton Grand Chicago Hotel
301 East North Water Street, Chicago IL 60611
Phone: 312.464.1000

Rooms are available at the group rate of \$249 for Traditional Rooms and \$309 for Sheraton Club Rooms. Reservations may be made by contacting the hotel directly at 312.464.1000 or via the hotel reservation link posted on the Conference website at www.ambar.org/laborconference. **The reservation deadline for the group rate is October 10, 2016.** After this date, or once the group room block has been consumed, the group rates will be subject to availability. Be sure to mention you are attending the “ABA 2016 Annual Section of Labor and Employment Law (LEL) Conference” to receive the special group rates.

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

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ABA Section of Labor and Employment Law

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10th Annual Labor and Employment Law Conference

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Mail: ABA Section of Labor & Employment Law
Attn: Service Center – Meeting/Event Registrations Dept.
321 North Clark Street, Chicago, IL 60654

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I am willing to serve as a Mentor at the Conference.

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- Employee/Plaintiff
- Government/Public
- In-House Corporate Counsel
- In-House Union Counsel
- Neutral
- Academic (Full Time)
- Law Student
- Judge
- Other

I Plan to Attend:

- Law Student Orientation
- First-Time Attendee/
New Section Member Orientation
- Welcome Reception
and Committee Expo
- Diversity Luncheon
- Diversity and Inclusion Reception
- Pro Bono Luncheon
- Conference Reception

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(Please circle the applicable rate.)

	ABA Section of LEL Member		ABA Member		Non-ABA Member	
	On or before 9/21/16	After 9/21/16	On or before 9/21/16	After 9/21/16	On or before 9/21/16	After 9/21/16
Registrant	\$525	\$625	\$725	\$875	\$975	\$1,075
YLD	\$425	\$525	\$525	\$625	–	–
Government	\$325	\$425	\$425	\$525	\$525	\$625
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Panelist/Moderator	\$295	\$295	\$295	\$295	\$295	\$295

- \$75 Spouse/Guest
- \$95 International Committee Dinner
- \$60 In-House Corporate Counsel Luncheon
(In-House Corporate Counsel only)
- \$75 State & Local Government
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Total: \$ _____

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- Enclosed check (made payable to American Bar Association)
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The deadline for receipt of advance registration forms to appear in the Conference roster is **October 19, 2016**.

Questions?

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 - Law Enforcement Labor Relations Post-Ferguson
 - Recent and Upcoming Supreme Court Labor and Employment Law Rulings, Featuring Tom Goldstein, Appellate Advocate and SCOTUSblog Co-Founder and Publisher
- Reflections on 25 Years after the Civil Rights Act of 1991: “Reform” Legislation
- Conversations with the NLRB General Counsel, Chairman, Members and Regional Directors
- Cutting-Edge Issues in Discrimination, Harassment and Retaliation
- In-Depth Explorations of Workplace Problems and Solutions
- Hot Topics in Litigation, Class Action, Wage and Hour and Whistleblowing