

20<sup>TH</sup> ANNUAL

# LABOR AND EMPLOYMENT LAW CONFERENCE



May 16–17, 2013

AT&T Conference Center ▪ Austin, Texas

---

Litigation Strategies and Workforce Strategies Tracks

---

Earn up to 13.00 Hours of Credit Including 3.25 Hours of Ethics Credit

Specialization Credit Approved for Labor and Employment Law

PHR, SPHR and GPHR Recertification Credit Expected

20<sup>TH</sup> ANNUAL  
**LABOR AND EMPLOYMENT LAW CONFERENCE**

May 16–17, 2013 • AT&T Conference Center • Austin, Texas

Earn up to 13.00 Hours of Credit Including 3.25 Hours of Ethics Credit  
Specialization Credit Approved for Labor and Employment Law  
PHR, SPHR and GPHR Recertification Credit Expected

**THURSDAY MORNING, MAY 16, 2013**

**Presiding Officer:**

James H. Kizziar Jr., Bracewell & Giuliani LLP, San Antonio, TX

**7:30 a.m.** Registration Opens

Includes continental breakfast.

**8:20 a.m.** Welcoming Remarks

**8:30 a.m.** .75 hr

**State Employment Law Update:  
Texas and Beyond**

A review of employment-related developments under state law with a discussion of significant new cases.

Clara "C.B." Burns, Kemp Smith LLP, El Paso, TX

**9:15 a.m.** .50 hr

**Federal Employment Case Law and  
Legislative Update**

An analysis of significant federal case law and legislative developments.

Linda Ottinger Headley, Littler Mendelson P.C., Houston, TX

**9:45 a.m.** .50 hr

**Federal Regulatory Update**

Important new developments at the DOL, EEOC and other federal agencies.

Viane Lopez Braun, Buck Keenan LLP, Houston, TX

**10:15 a.m.** Break

**10:30 a.m.** .75 hr

**Not Your Grandfather's NLRA**

A review of recent developments at the National Labor Relations Board impacting policies and employment practices for unionized and non-union workplaces.

John V. Jansonius, Jackson Walker L.L.P., Dallas, TX  
Rod Tanner, Tanner & Associates, P.C., Fort Worth, TX

**11:15 a.m.** .75 hr

**Developments in Disability Discrimination Law**

Significant developments under the Americans with Disabilities Act with insight on emerging disability issues.

James H. Kizziar Jr., Bracewell & Giuliani LLP, San Antonio, TX

**12:00 p.m.** Lunch on Your Own

**THURSDAY AFTERNOON**

**Presiding Officer:**

James H. Kizziar Jr., Bracewell & Giuliani LLP, San Antonio, TX

**TECHNOLOGY AND  
THE WORKPLACE**

**1:15 p.m.** .75 hr including .25 hr ethics

**The Changing Workplace:  
New Questions under Old Laws**

Technology continues to change how, where and by whom work is performed. This session explores a range of legal issues created by the ongoing adoption of increasingly advanced technology in the workplace, including the contours of the virtual workplace under Title VII and similar non-discrimination statutes, the effect of technology on accommodation obligations and leave management, the challenge automation and information management solutions present to seemingly-settled FLSA concepts, and the implications of our gradual transition into a post-employment world. The ethical obligations of attorneys when dealing with technologically savvy clients are also addressed.

Jason Boulette, Boulette & Golden L.L.P., Austin, TX

**2:00 p.m.** .75 hr

**Changes in and New Technological  
Limitations on Workplace Privacy**

Workplace privacy once involved employee desks and lockers. Now with the internet, emails, cellphones, smartphones, iPads and laptops, the idea of workplace privacy has expanded greatly. This session explores the impact these new technologies have on workplace privacy and how they affect the employer-employee relationship.

Charles C. High Jr., Kemp Smith LLP, El Paso, TX

**2:45 p.m.** Break

**Concurrent Sessions**

**TRACK A: LITIGATION STRATEGIES**

**Presiding Officer:**

Laura M. Merritt, Wilson Sonsini Goodrich & Rosati, Austin, TX

**3:00 p.m.** .50 hr including .25 hr ethics

**Picking Your Jury**

*Voir dire*: Finding the bad jurors without losing the good ones, closing the cause coffin, keeping your powder dry, and more.

Rod Phelan, Baker Botts L.L.P., Dallas, TX

**3:30 p.m.** .50 hr including .25 hr ethics

**Witness Preparation**

The only thing harder than being a witness is preparing one. This session provides insights into successfully navigating the process. Ethical considerations are also addressed.

Michael W. Fox, Ogletree Deakins, Austin, TX

**4:00 p.m.** .50 hr ethics

**Attorney's Fees: Who, Why, When and How**

When there is a statutory basis for attorney's fees, proper preparation begins with the retainer agreement and continues at every step of the case, through final judgment and collection. Review key steps and issues to avoid at each phase in the process.

David T. Lopez, David T. Lopez & Assoc., Houston, TX

**4:30 p.m.** .75 hr

**Risky Business: The Employer  
Counterclaim against the Employee Claimant**

Confronted with a lawsuit by an employee or former employee, companies frequently want to "fire back" with counterclaims of their own. This presentation provides guidance and perspective as to whether, and under what circumstances, it is appropriate and beneficial to file a counterclaim against an employee, what the key considerations are, and what the risks are in so doing.

Edward L. Friedman, Baker & Hostetler LLP, Houston, TX

**5:15 p.m.** Adjourn

## Concurrent Sessions

### TRACK B: WORKFORCE STRATEGIES

#### Presiding Officer:

Thomas A. Nesbitt, DeShazo & Nesbitt LLP, Austin, TX

3:00 p.m. .50 hr

#### Developments and Strategies for Employee Leaves of Absence

Hear the latest tips, tricks and strategies for managing complicated leave issues under the FMLA, ADA and USERRA, as well as Workers' Compensation statutes.

Katrina Grider, Attorney at Law, Cypress, TX

3:30 p.m. .50 hr

#### Hire Power: Developments in Hiring Practices

From developing the job description to on-boarding a new hire, there are plenty of tricks and traps for the unwary employer who is hiring. This session summarizes the process for identifying the best candidates for your organization's needs, while avoiding costly mistakes, and may save you money through tax breaks and other employer assistance programs.

Audrey E. Mross, Munck Wilson Mandala, LLP, Dallas, TX

4:00 p.m. .50 hr

#### It's Here, and There's More to Come...

As we approach the first fall open enrollment for healthcare exchanges, employers and healthcare providers are anticipating the impacts of full implementation of the Affordable Care Act. In this session, an attorney who works throughout the marketplace of healthcare providers and at their interface with federal/state regulation and payment programs, identifies a list of systemic changes to watch for and details how employer and public interests may be affected.

Glen A. Reed, King & Spalding LLP, Atlanta, GA

4:30 p.m. .75 hr including .25 hr ethics

#### HR on Trial: Internal Investigations and Their Impact on Trial Success

Gain insight on employers' best practices to ensure thorough, legal investigations, and plaintiffs' best strategies for attacking employer investigations. Recent agency guidance and case law on investigations are also addressed, and examples where poor investigations resulted in liability exposure for the employer are examined.

Elizabeth Siberry Chestney, Cornell Smith Mierl & Brutocao, Austin, TX  
Kenneth D. Hughes, Hughes Roch LLP, Houston, TX

5:15 p.m. Adjourn

## FRIDAY MORNING, MAY 17, 2013

#### Presiding Officer:

Vianei Lopez Braun, Buck Keenan LLP, Houston, TX

7:30 a.m. Conference Room Opens

Includes continental breakfast.

8:30 a.m. .75 hr including .50 hr ethics

#### Hiring Candidates with Restrictive Covenant Agreements

A discussion of the practical, ethical and legal requirements attendant to hiring employees who have non-competition, non-solicitation and/or confidentiality contracts with previous employers.

Sean M. Becker, Vinson & Elkins LLP, Houston, TX  
Christopher H. Hahn, Dell, Round Rock, TX

9:15 a.m. .75 hr

#### What's It Worth?

We all know one of the hardest aspects of our practices is evaluating the value of our case. This presentation offers practice tips for each side of the docket.

Phil Durst, Deats, Durst, Owen & Levy, P.L.L.C., Austin, TX

10:00 a.m. Break

10:15 a.m. .75 hr ethics

#### "Winning" at Mediation: Perspectives on Strategies

Perspectives on achieving positive outcomes by utilizing the mediation process.

Scott L. Beckenbaugh, Federal Mediation and Conciliation Service, Washington, DC

11:00 a.m. .75 hr

#### Fair Labor Standards Act Compliance: Recent Developments

Over the past several years, there have been many new developments and trends regarding the Fair Labor Standards Act, including increased challenges to "rounding" time, utilization of the *de minimis* work defense, and issues arising from the flexible workplace. In addition, there has been an increase in the number of collective actions being brought under the FLSA and many new developments regarding such actions, including donning and doffing time, the standard for determining a proper collective class, and various affirmative defenses to such actions. Hear about these new developments as well as other emerging trends.

Robert E. Sheeder, Bracewell & Giuliani LLP, Dallas, TX

11:45 a.m. .50 hr

#### Public Employment: Recent Developments

A focused discussion of statutory and recent case law developments relevant to public sector employment, including free speech, due process, search and seizure, privacy and whistleblower law.

B. Lee Crawford Jr., City of Austin Law Department, Austin, TX

12:15 p.m. Pick Up Lunch

Included in conference registration fee.

## FRIDAY AFTERNOON

#### Presiding Officer:

Vianei Lopez Braun, Buck Keenan LLP, Houston, TX

### LUNCHEON PRESENTATION

12:35 p.m. .75 hr

#### Legal Writing for the Rewired Brain: Persuading Readers in a Paperless World

Screen reading changes the way we perceive and process information. Learn how technology is rewiring our brains and what you can do to craft legal documents to be more useful for screen readers.

Robert B. Dubose, Alexander Dubose & Townsend LLP, Houston, TX

1:20 p.m. Break

1:30 p.m. .50 hr

#### Whistleblower and Retaliation Law: Recent Developments

Developments and developing trends in retaliation law, including whistleblower laws: new protections, dying doctrines, what's hitting the judicial radar and what's just hitting big.

Amy Gibson, Gibson Wiley PLLC, Dallas, TX

2:00 p.m. .50 hr

#### Dos and Don'ts for Dealing with the EEOC

How to develop a record, respond to charges, and deal with requests for further information and documents.

Jennifer M. Trulock, Baker Botts L.L.P., Dallas, TX

2:30 p.m. .75 hr ethics

#### Ethics and Professionalism Update for Employment Lawyers

Update on ethics and professionalism issues including conflicts of interests, representation of insured clients in employment practice liability insurance matters, inadvertent disclosure rules, attorney-client privilege and waiver issues, metadata issues, and ethical issues relating to settlement discussions.

Dennis P. Duffy, Baker & Hostetler LLP, Houston, TX

3:15 p.m. Adjourn

## CONFERENCE FACULTY

SCOT L. BECKENBAUGH  
Federal Mediation and  
Conciliation Service  
Washington, DC

SEAN M. BECKER  
Vinson & Elkins LLP  
Houston, TX

JASON BOULETTE  
Boulette & Golden L.L.P.  
Austin, TX

VIANEI LOPEZ BRAUN  
Buck Keenan LLP  
Houston, TX

CLARA "C.B." BURNS  
Kemp Smith LLP  
El Paso, TX

ELIZABETH SIBERRY CHESTNEY  
Cornell Smith Mierl & Brutocao  
Austin, TX

B. LEE CRAWFORD JR.  
City of Austin Law Department  
Austin, TX

ROBERT B. DUBOSE  
Alexander Dubose & Townsend LLP  
Houston, TX

DENNIS P. DUFFY  
Baker & Hostetler LLP  
Houston, TX

PHIL DURST  
Deats, Durst, Owen & Levy, P.L.L.C.  
Austin, TX

MICHAEL W. FOX  
Ogletree Deakins  
Austin, TX

EDWARD L. FRIEDMAN  
Baker & Hostetler LLP  
Houston, TX

AMY GIBSON  
Gibson Wiley PLLC  
Dallas, TX

KATRINA GRIDER  
Attorney at Law  
Cypress, TX

CHRISTOPHER H. HAHN  
Dell  
Round Rock, TX

LINDA OTTINGER HEADLEY  
Littler Mendelson P.C.  
Houston, TX

CHARLES C. HIGH JR.  
Kemp Smith LLP  
El Paso, TX

KENNETH D. HUGHES  
Hughes Roch LLP  
Houston, TX

JOHN V. JANSONIUS  
Jackson Walker L.L.P.  
Dallas, TX

JAMES H. KIZZIAR JR.  
Bracewell & Giuliani LLP  
San Antonio, TX

DAVID T. LOPEZ  
David T. Lopez & Assoc.  
Houston, TX

AUDREY E. MROSS  
Munck Wilson Mandala, LLP  
Dallas, TX

ROD PHELAN  
Baker Botts L.L.P.  
Dallas, TX

GLEN A. REED  
King & Spalding LLP  
Atlanta, GA

ROBERT E. SHEEDER  
Bracewell & Giuliani LLP  
Dallas, TX

ROD TANNER  
Tanner & Associates, P.C.  
Fort Worth, TX

JENNIFER M. TRULOCK  
Baker Botts L.L.P.  
Dallas, TX

## PLANNING COMMITTEE

JAMES H. KIZZIAR JR.—CHAIR  
Bracewell & Giuliani LLP  
San Antonio, TX

SEAN M. BECKER  
Vinson & Elkins LLP  
Houston, TX

JASON BOULETTE  
Boulette & Golden L.L.P.  
Austin, TX

RICHARD R. BRANN  
Baker Botts, L.L.P.  
Houston, TX

VIANEI LOPEZ BRAUN  
Buck Keenan LLP  
Houston, TX

CONNIE L. CORNELL  
Cornell Smith Mierl & Brutocao  
Austin, TX

B. LEE CRAWFORD JR.  
City of Austin Law Department  
Austin, TX

DENNIS P. DUFFY  
Baker & Hostetler LLP  
Houston, TX

PHIL DURST  
Deats, Durst, Owen & Levy, P.L.L.C.  
Austin, TX

AMY GIBSON  
Gibson Wiley PLLC  
Dallas, TX

CHRISTOPHER H. HAHN  
Dell  
Round Rock, TX

LINDA OTTINGER HEADLEY  
Littler Mendelson P.C.  
Houston, TX

CHARLES C. HIGH JR.  
Kemp Smith LLP  
El Paso, TX

JOHN V. JANSONIUS  
Jackson Walker L.L.P.  
Dallas, TX

DAVID T. LOPEZ  
David T. Lopez & Assoc.  
Houston, TX

LAURA M. MERRITT  
Wilson Sonsini Goodrich & Rosati  
Austin, TX

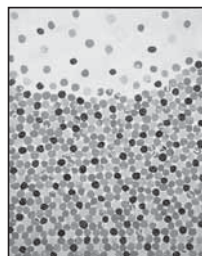
AUDREY E. MROSS  
Munck Wilson Mandala, LLP  
Dallas, TX

THOMAS A. NESBITT  
DeShazo & Nesbitt LLP  
Austin, TX

ROD TANNER  
Tanner & Associates, P.C.  
Fort Worth, TX

MICHELLE M. TURNER  
The University of Texas School of Law  
Austin, TX

### ABOUT THE COVER



M&M's, 38" x 30", mixed media collage of packaging, is by Philip Durst. For more information, visit <http://www.davisgalleryaustin.com/artist.durst.html>

## 2012 ESSENTIAL EMPLOYMENT LAW HANDBOOK

*The Definitive Resource Guide for Employment Lawyers and HR Professionals*

Unsure how to handle the changing definition of sexual harassment? Or what to do when a discrimination charge has been filed? The Essential Employment Law Handbook addresses critical employment law issues such as "employment-at-will," discrimination issues, wage and hour violations, retaliation, FMLA and more. The focus is practical with detailed written materials—forms, sample employment contracts, and handbook recommendations that you'll want to keep within reach for day-to-day use.

**\$125—see registration form**

## HOW TO REGISTER

**Register online:**  
www.utcle.org

**Or mail your registration to:**  
The University of Texas  
School of Law  
Attn. Registration  
PO Box 7759  
Austin, TX 78713-7759

**Or fax to:**  
512.475.6876

**Questions? Call us at 512.475.6700**

## MATERIALS, AUDIO AND IN-HOUSE CLE

### Printed Materials in Course Binder

Leading practitioners provide the definitive set of materials.

### eBinder on CD

Add an electronic version of conference materials to your course registration or purchase of the Course Binder or Audio MP3 Speeches on CD or Audio CD Set for only \$50. eBinders are distributed 3–5 weeks after the conference and include searchable PDF versions of printed materials.

### Audio MP3 Speeches on CD or Audio CD Set

Listen to the Labor and Employment Law Conference on the go. Informative, topical and entertaining presentations recorded from UT Law's other live CLE programs are also available.

### In-House CLE

CLE for two or more participants—as many as you want. Receive full MCLE credit. We'll accredit the course for you\* and provide one Audio CD Set plus a Course Binder for each participant.

\*Texas MCLE credit only.

## REGISTRATION FORM

Mail this registration form to:

**EL13**

The University of Texas School of Law, Attn. Registration  
PO Box 7759, Austin, TX 78713-7759 or fax a copy to: 512.475.6876

### PLEASE PRINT CLEARLY

Bar Card# \_\_\_\_\_  TX  Other State: \_\_\_\_\_  N/A

Name [ Mr. / Ms. ] \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

Registrant's Email (required) \_\_\_\_\_

Assistant's Email (optional) \_\_\_\_\_

*Invoices, confirmations and receipts are emailed to these addresses.*

### REGISTRATION

Includes Course Binder and Friday Luncheon Presentation

#### 1. Select Course Binder Format:

Electronic Course Binder on USB Key ONLY  Printed Course Binder ONLY

#### 2. Select Type:

Registration by Wednesday, May 8, 2013 .....\$550

Registration after Wednesday, May 8, 2013 .....\$600

### CONFERENCE PUBLICATIONS AND MEDIA

*Allow 3–5 weeks from the conference date for delivery.*

Course Binder Without Conference Registration.....\$250  
Note: Conference Registration includes Course Binder.

Audio MP3 Speeches on CD .....\$130

Audio CD Set.....\$250

eBinder on CD (PDF format).....\$250/\$50  
(\$250 purchased alone, \$50 with Registration or purchase of Course Binder or Audio MP3 Speeches on CD or Audio CD Set)

2012 Guide to Essential Employment.....\$125

### IN-HOUSE CLE: Bring the conference in-house and learn at your convenience.

*Allow 3–5 weeks from the conference date for delivery. Approved for Texas MCLE credit.*

In-House CLE for 2—Includes Audio CD Set and Course Binders .....\$900

\_\_\_\_\_ Add participants (includes Course Binder) for \$250 each ..... \$ \_\_\_\_\_

TOTAL ENCLOSED ..... \$ \_\_\_\_\_

### METHOD OF PAYMENT

Check (make checks payable to: The University of Texas at Austin)

VISA  MasterCard (sorry, no AMEX or Discover)

Card number     -     -     -

X \_\_\_\_\_  
Authorized Signature

/    
Exp. Date (mm/yy)

Visit

[www.utcle.org](http://www.utcle.org)

Email

[service@utcle.org](mailto:service@utcle.org)

Call

**512.475.6700**

for more information

## AUSTIN

May 16–17, 2013

### CONFERENCE LOCATION



#### AT&T Conference Center

The University of Texas at Austin  
1900 University Avenue  
Austin, TX 78705  
512-404-3600

#### Special Room Rate: \$174

good through May 8, 2013  
(subject to availability)

#### Parking:

Free daily self-parking at UT garages.  
Separate fees apply for valet and  
overnight parking.

### KEY DATES

**May 8, 2013**

*last day for early registration*  
add \$50 for registrations  
received after this time

**May 10, 2013**

*last day for full refund*

**May 13, 2013**

*last day for partial refund*  
\$50 processing fee applied

**May 16, 2013, 8:20 a.m.**

*Conference begins*

## REASONS TO ATTEND THE 20TH ANNUAL LABOR AND EMPLOYMENT LAW CONFERENCE

Learn from and interact with experts in employment law and HR. Hear timely updates and emerging trends in employment law, including:

- **Case Law and Legislative Updates:** Analysis of significant federal and state employment law developments
- **Recent Developments:** Regulatory updates from the DOL, EEOC and other federal agencies; NLRB policies impacting unionized and non-union workplaces; emerging disability issues under the ADA; FLSA compliance; whistleblower and retaliation laws; and more
- **Impact of Technology on the Workplace:** The changing technology landscape and its effect of workplace privacy issues and concerns
- **Litigation strategies:** Voir dire, witness preparation, attorney's fees, and employer counterclaims
- **Workplace strategies:** Managing leave issues, best hiring practices, implementation of the Affordable Care Act, and impact of internal investigations on trials
- **Practice Tips:** Legal writing for screen reading, dos and don'ts for dealing with the EEOC, and determining the value of your case
- **Ethics:** Winning mediation strategies, ethics and professionalism update for employment attorneys, and hiring candidates with restrictive covenant agreements

**LEARN MORE AND REGISTER**

[www.utcle.org/conferences/EL13](http://www.utcle.org/conferences/EL13)