

21ST ANNUAL
**LABOR AND EMPLOYMENT
LAW CONFERENCE**



May 15–16, 2014
AT&T Conference Center ■ Austin, TX

Litigation Strategies and Workforce Strategies Tracks

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LABOR AND EMPLOYMENT LAW CONFERENCE

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THURSDAY MORNING, MAY 15, 2014**Presiding Officer:**Linda Ottinger Headley, Littler
Mendelson P.C., Houston, 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 Texas state law with a discussion of significant new Texas cases and important trends in other states.

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

9:15 a.m. .50 hr**Update 2014: New Federal Case Law
and Legislation**

An analysis of recent Supreme Court decisions, significant federal case law and federal legislative developments.

Linda Ottinger Headley, Littler Mendelson P.C.,
Houston, TX**9:45 a.m. .50 hr****Federal Regulatory Update**

A discussion of important new developments at the DOL and EEOC.

Vianei Lopez Braun, Buck Keenan LLP, Houston, TX

10:15 a.m. Break**10:30 a.m. .75 hr****Developments in Disability Discrimination Law**

Hear significant developments under the Americans with Disabilities Act and gain insight into emerging disability issues.

James H. Kizziar Jr., Bracewell & Giuliani LLP,
San Antonio, TX**11:15 a.m. .75 hr****The Fair Labor Standards Act for the
21st Century**

In recent years, wage and hour lawsuits have proliferated. This presentation examines the intricacies of the FLSA and continuing trends.

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

12:00 p.m. Pick Up Lunch

Included in registration.

THURSDAY AFTERNOON**Presiding Officer:**Linda Ottinger Headley, Littler
Mendelson P.C., Houston, TX**KEYNOTE LUNCHEON PRESENTATION****12:20 p.m. .75 hr****The Declining Civil Jury Trial**

A review of possible factors leading to the decline of jury trials and recommendations to reverse the trend.

Hon. Xavier Rodriguez, U.S. District Court,
Western District of Texas, San Antonio, TX**1:05 p.m. Break****1:15 p.m. 1.00 hr****Implementation of the Affordable Care Act
for Employers**

With one wave of Affordable Care Act (ACA) reforms complete and another wave—including the employer "pay or play" mandate—currently underway, employers need to understand how the ACA affects them now and in the future. This presentation addresses existing and upcoming ACA requirements for employers and provides employer tips for cost-effective implementation.

Laura R. Westfall, King & Spalding, New York, NY

2:15 p.m. .75 hr**DOMA and Emerging LGBT Issues in
the Workplace**Last June, the U.S. Supreme Court ruling in *U.S. v. Windsor* dramatically changed the landscape for same-sex marriage and led to further developments for the rights of LGBT employees in the workplace. Explore its related impact on employee benefit plans, leave entitlements and anti-discrimination policies.Cristina C. Jennings, Schmoyer Reinhard LLP,
San Antonio, TX
Shannon B. Schmoyer, Schmoyer Reinhard LLP,
San Antonio, TX**3:00 p.m. Break****Concurrent Sessions****LITIGATION STRATEGIES****Presiding Officer:**Laura M. Merritt, Wilson Sonsini
Goodrich & Rosati, Austin, TX**3:15 p.m. .50 hr ethics****Waiving Privilege to Win Your Case**

Through the FLSA's good faith defenses, employers have powerful tools to avoid liability or limit damages even when the plaintiff has proved its claim. This presentation investigates the complexities of using the "advice of counsel" defense to establish the employer's good faith and provides strategies for plaintiffs to employ when faced with the defense.

Jeff Barnes, Jackson Lewis P.C., Houston, TX

3:45 p.m. .50 hr ethics**Attorney Fees**

A look at recent developments in minimizing or maximizing a fee award in employment litigation.

Philip Durst, Deats, Durst, Owen & Levy, P.L.L.C.,
Austin, TX**4:15 p.m. .67 hr****Why Juries Do What They Do: Thoughts and
Strategies on Jury Selection**

Figuring out what a prospective juror might do is never easy, but always critical. Hear from veteran employment trial lawyers from both sides of the docket and an experienced jury consultant on best practices and approaches to picking a jury.

Moderator:Michael W. Fox, Ogletree, Deakins, Nash, Smoak &
Stewart, P.C., Austin, TX**Panelists:**Jason S. Bloom, Bloom Strategic Consulting, Inc.,
Dallas, TX
John W. Griffin Jr., Marek, Griffin & Knaupp,
Victoria, TX**4:55 p.m. .50 hr****Settlement Agreements: It's Not Just about
the Money!**

Guidelines to help avoid unnecessary hours spent negotiating standard settlement clauses.

Malinda A. Gaul, Law Offices of Gaul and Dumont,
San Antonio, TX**5:25 p.m. Adjourn**

Concurrent Sessions

WORKFORCE STRATEGIES

Presiding Officer:

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

3:15 p.m. .50 hr

Handbooks and Employee Agreements

Employee handbooks and basic agreements can define the relationship and be critical to averting unnecessary litigation, as well as asserting key defensive theories when a trial is unavoidable. However, recent traps for the unwary drafter can create unintended risk.

Connie L. Cornell, Cornell Smith Mierl & Brutocao, LLP,
Austin, TX

3:45 p.m. .50 hr

Dealing with Workplace Violence

Addressing the three phases of crisis management, this presentation focuses on understanding and preventing workplace violence before there is an incident, steps to take during an incident to minimize injuries and damage, and steps to take following an incident of violence in the workplace.

Dennis A. Davis, Ogletree, Deakins, Nash, Smoak &
Stewart, P.C., Torrance, CA

4:15 p.m. .33 hr

Government Audits

How to prepare for and handle wage-hour on-site investigations, including defensive pre-inspection audits of employee classifications, off-the-clock issues and employer rights during an investigation.

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

4:35 p.m. .33 hr

Immigrant Employees

Immigrant workers have become a valued and vital part of the workforce. This presentation discusses how to handle issues in the workplace, as well as the exploding category of temporary foreign guest workers and the potential impact of immigration reform.

Christopher J. Willett, Equal Justice Center, Austin, TX

4:55 p.m. .50 hr

From Background Checks to Exit Interviews: Managing Tricky Hiring and Firing Issues

Learn how to prepare for employment discovery disputes involving broad and over-reaching discovery requests.

Victoria Martin Phipps, Littler Mendelson P.C.,
Houston, TX

5:25 p.m. Adjourn

FRIDAY MORNING, MAY 16, 2014

Presiding Officer:

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

7:30 a.m. Conference Room Opens

Includes continental breakfast.

8:30 a.m. .75 hr

2014 Public Sector Employment Law Update

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

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

9:15 a.m. .75 hr

Recent Developments under the National Labor Relations Act

From constitutional attacks on the appointment of NLRB members to the regulation of social media policies in the workplace, major developments under the NLRA have been unfolding at a dramatic pace in recent years. This presentation examines these recent developments in both union and non-union workplaces.

Richard F. Griffin Jr., National Labor Relations Board,
Washington, DC
J. Rod Tanner, Tanner and Associates, PC,
Fort Worth, TX

10:00 a.m. .33 hr ethics

Recent Developments in Fee Shifting: From Offers of Judgment to Prevailing Party Rights and Beyond

A review of significant employment cases and recent developments regarding fee shifting, including the U.S. Supreme Court's decision on Rule 68 offers of judgment in *Genesis Healthcare Corp. v. Symczyk*, as well as recent fee awards against the EEOC and other noteworthy fee shifting developments.

Marlene C. Williams, Jackson Walker LLP, Houston, TX

10:20 a.m. Break

10:35 a.m. .75 hr

Strategies for Employee Leaves of Absence

Discover tips, tricks and strategies to deal with issues like intermittent leave, leave abuse, ADA accommodation, certification and return to work documentation, psychiatric health conditions and more.

Katrina Grider, Attorney at Law, Cypress, TX

11:20 a.m. .50 hr

Whistleblower Claims and Retaliation Issues: The Legal Landscape Keeps Getting Bigger

Whistleblower law continues to develop at warp speed: The Dodd-Frank Act amended the Sarbanes-Oxley and Securities Exchange Acts, the False Claims Act was amended to broaden the class of whistleblowers and the IRS has even issued a manual on whistleblower claims. And virtually every discrimination and harassment charge is coupled with a retaliation claim, with the Courts seeming more receptive to retaliation claims than the underlying claims of discrimination or harassment.

Michael D. Mitchell, Ogletree, Deakins, Nash,
Smoak & Stewart, P.C., Houston, TX

11:50 a.m. .33 hr

Non-Disparagement Clauses

A discussion of how to craft non-disparagement clauses to avoid common pitfalls, reduce potential exposure to liability and provide the best opportunity for enforcement.

Shafeeqa Watkins Giaratani, Norton Rose Fulbright,
Austin, TX

12:10 p.m. Pick Up Lunch

Included in registration.

FRIDAY AFTERNOON

Presiding Officer:

Presiding Officer TBD

KEYNOTE LUNCHEON PRESENTATION

12:30 p.m. .75 hr

Changing the HR Conversation

The CHRO role has become one of the most important roles on the executive leadership team. Human Resources has been elevated to the C-Suite and with that increase in status has come increased pressure to perform. Today's HR leaders must adapt to and address the demands of an increasingly diverse and demanding workforce, globalization, stricter regulatory requirements, increased accountability to the CEO and board of directors, and the complexity of leading the HR function often with limited resources.

Libby Sartain, Author and HR Advisor, Bastrop, TX

1:15 p.m. Break

ABOUT THE COVER

Tootsie/Starbucks 144, 32" x 32", collage of Starbucks cups, Tootsie Roll pop wrappers, old law books and acrylic, is by Philip Durst. For more information, visit www.davisgalleryaustin.com/artist.durst.html.

1:25 p.m. .75 hr

Technology in the Workplace: The Beginning of the End

Explore the continuing rise of automation, mobile work, virtualization and social media in the workplace, as well as the nascent movement to bring data-driven analytical rigor to employment decision-making and the effect of "big data" HR practices on the prosecution and defense of discrimination, retaliation, disparate impact and other employment law claims.

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

2:10 p.m. .75 hr

Great Idea! ID and Protect Your IP

One great idea can launch a successful business or product, but not if someone else owns it or is improperly using it. Combining intellectual property law with employment law to define a company's protectable interests, this presentation explains how to use written agreements to maintain control of intellectual property and how to avoid or defend against unfair competition by current and former employers and contractors.

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

2:55 p.m. .33 hr

The Growing Use of Unpaid Interns

In a job market still clouded with uncertainty, the number of unpaid internships has increased dramatically in recent years. Many of the workers in these roles lack strong employment law protections, but high-profile lawsuits and increased scrutiny from state and federal regulators have made the use of such internships a risky proposition for employers. This presentation discusses key issues inherent in unpaid internships, and highlights the numerous legal landmines companies must avoid.

W. Joseph Miguez III, McGuire Woods LLP, Austin, TX

3:15 p.m. .75 hr ethics

Ethics and Professionalism Update for Employment Lawyers

An 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, cellphone, computer and social media issues, and ethical issues relating to settlement discussions.

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

4:00 p.m. Adjourn

**M
C
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E**

This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 14.75 hours, of which 2.00 credit hours will apply to legal ethics/professional responsibility credit. The University of Texas School of Law is a State Bar of California approved MCLE provider (#1944), and an Oklahoma Bar Association MCLE presumptively-approved provider (#169).

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EL14

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EL14

AUSTIN

May 15–16, 2014

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 April 22
(subject to availability)

Parking:

Free daily self-parking at UT garages.
Separate fees apply for valet and overnight parking.
(subject to change)

KEY DATES

May 7, 2014

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

May 9, 2014

last day for cancellation (full refund)

May 12, 2014

last day for cancellation (partial refund)
\$50 processing fee applied

May 15, 2014, 8:20 a.m.

Conference begins

REASONS TO ATTEND LABOR AND EMPLOYMENT LAW

Leading members of the employment law bench and bar along with HR and personnel experts provide timely updates and identify emerging trends in employment law, including:

- Keynote Presentations by Libby Sartain, former head of HR for Yahoo! Inc. and Southwest Airlines, and Hon. Xavier Rodriguez, U.S. District Judge
- Examination of Affordable Care Act implementation and upcoming requirements
- DOMA and emerging rights for LGBT employees
- Dealing with workplace violence
- Identifying and protecting IP
- Ethics and professionalism update for employment lawyers
- Focused series of presentations on litigation strategies and workforce strategies
- Analysis of significant federal and state employment case law and legislative developments
- Updates from the DOL and EEOC; NLRB policies impacting unionized and non-union workplaces; emerging disability issues under the ADA; intricacies of FLSA; whistleblowing and retaliation claims; and more

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The Definitive Resource Guide for Employment Lawyers and HR Professionals

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