

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



May 9–10, 2019  
AT&T Conference Center ■ Austin, Texas

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Live Webcast May 9–10

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Earn up to 14.25 Hours of MCLE Credit, Including 1.25 Hours of Ethics Credit  
Approved in TX, CA, and OK (hours vary by jurisdiction)

TX Legal Specialization Credit Approved for Civil Appellate Law, Civil Trial Law, Labor and Employment Law  
Professional Accreditation Expected: PHR, SPHR, GPHR, and SHRM-CPSM/SHRM-SCPSM Recertification Credit

TX Accounting CPE Credit Available

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Professional Accreditation Expected: PHR, SPHR, GPHR, and SHRM-CPSM/SHRM-SCPSM Recertification Credit

TX Accounting CPE Credit Available

**THURSDAY MORNING, MAY 9, 2019**

**Presiding Officer:**

**Amy Gibson, Gibson Wiley PLLC,  
Dallas, 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**

Examine employment-related developments under Texas state law, including a discussion of significant new Texas cases. Also explore important trends developing in other states, and what they might mean for Texas.

Christopher Benoit, The Law Office of Lynn Coyle, PLLC, El Paso, TX  
Clara "C. B." Burns, Kemp Smith LLP, El Paso, TX

**9:15 a.m. .75 hr**

**Federal Employment Law Update**

Analyze recent U.S. Supreme Court decisions, significant federal case law, and federal legislative developments.

Danielle K. Herring, Littler Mendelson P.C., Houston, TX

**ACCREDITATION**

**CLE CREDIT**

This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 14.25 hours, of which 1.25 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). Texas Board of Legal Specialization Credit Approved for Civil Appellate Law, Civil Trial Law, Labor and Employment Law.

**PROFESSIONAL ACCREDITATION**

PHR, SPHR, and GPHR Recertification Credit Expected  
SHRM-CPSM/SHRM-SCPSM Recertification Credit Expected  
Earn up to 15.50 credits in TX Accounting #250

**10:00 a.m. .50 hr**

**Emerging Local Regulations and the Multistate Employer**

Businesses with employees in more than one state are facing the challenges of an increasingly disparate patchwork of laws. Hear about some of the most recent and significant labor and employment developments at the state and local level that could impact your multistate clients.

Sarah Mitchell Montgomery, Jackson Walker LLP, Dallas, TX

**10:30 a.m. Break**

**10:45 a.m. .75 hr | .25 hr ethics**

**Navigating the EEOC**

Get practical tips to ethically navigate through the EEOC administrative process from the perspective of the employee, employer, and EEOC. Hear guidance on how litigation with the EEOC differs from litigation between employers and employees.

Malinda A. Gaul, Gaul and Dumont, San Antonio, TX  
Philip J. Moss, U.S. Equal Employment Opportunity Commission, San Antonio, TX  
Jennifer M. Trulock, Baker Botts, Dallas, TX

**11:30 a.m. .50 hr**

**Negligence is Alive and Well in the Harassment Arena**

What can negligence tell us about employment claims, and what negligence claims can survive *Waffle House*? Applying negligence concepts to harassment and other claims from the perspective of an employee-side attorney—learn what employees and employers are doing that may be damaging their claims and defenses.

Austin Kaplan, Kaplan Law Firm, Austin, TX

**12:00 p.m. .50 hr | .25 hr ethics**

**Antitrust Insights for HR Practices**

Discuss the Antitrust Guidance for Human Resources Professionals (issued by the Department of Justice and Federal Trade Commission in October 2016) and its enforcement under the current Administration.

Christine E. Reinhard, Schmoyer Reinhard LLP, San Antonio, TX

**12:30 p.m. Pick Up Lunch**

Included in registration.

**THURSDAY AFTERNOON**

**Presiding Officer:**

**Sean M. Becker, Vinson & Elkins LLP,  
Houston, TX**

**LUNCHEON PRESENTATION**

**12:50 p.m. .50 hr**

**Age Discrimination: A New Kind of Generation Gap**

The Age Discrimination in Employment Act (ADEA) just celebrated the 50<sup>th</sup> anniversary of its enactment. With an aging baby boomer population, employees working past traditional retirement age, and millennials moving into management positions—these issues are more important than ever. Discuss strategies for managing multi-generational workforces and preventing age discrimination claims.

Katrina Grider, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Houston, TX

**1:20 p.m. Break**

**1:35 p.m. .75 hr**

**Wage and Hour Update**

Review developments in wage and hour enforcement and law over the past year.

Aaron Johnson, Equal Justice Center, Austin, TX  
Daniel A. Verrett, Moreland Verrett, P.C., Austin, TX

**2:20 p.m. .75 hr**

**As the Board Turns: Recent Developments Under the National Labor Relations Act**

A union lawyer and management lawyer discuss the continuing evolution of the Board and how recent developments are impacting employment policies for non-union and unionized employees.

Jennifer Bley Sweeney, Blumenfeld & Sweeney, LLP, Fort Worth, TX  
Rod Tanner, Tanner and Associates, PC, Fort Worth, TX

**3:05 p.m. Break**

## Concurrent Sessions

### SPECIAL NOTICE: Live Webcast Includes *Workforce Solutions* Only

The live webcast includes the *Workforce Solutions* track but not the *Litigation Strategies* track. The materials for both tracks are available in the course materials, and approximately 4–6 weeks after the conference the *Workforce Solutions* video and *Litigation Strategies* audio will both be available in "Your Briefcase."

### TRACK A: WORKFORCE SOLUTIONS

#### Presiding Officer:

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

3:20 p.m. .50 hr

#### Click for More: The Pitfalls of Modern Recruiting

How much is too much information? Between background checks, social media, and visas, review best practices to avoid being sued before your employee's first day.

Derek T. Rollins, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Austin, TX

3:50 p.m. .50 hr

#### Drugs in the Workplace

Survey federal and state laws governing workplace testing for prescription and illegal drugs, including federal regulations, the Americans with Disabilities Act, and medical and recreational marijuana laws. Discuss best practices for drafting workplace drug testing policies in light of recent Texas case law.

Dylan A. Farmer, Schmoyer Reinhard LLP, San Antonio, TX

4:20 p.m. .50 hr

#### Employee Mental Health Accommodations: Tips for Success in Managing Stigma and Stress

Does the topic alone kill your confidence or increase your own stress level? Hear practical tips and strengthen your skills in spotting and responding to such issues in compliance with the ADA and FMLA.

Susan Motley, Wood Weatherly Trial Law, Denton, TX

4:50 p.m. .50 hr

#### Combatting Hostile Environments: Risks of "Workplace Civility" Policies

Anti-harassment policies that prohibit only conduct that is strictly unlawful do not go far enough to guarantee a respectful workplace for employees. But broadly-drafted policies that require civility in workplace interactions can have unintended consequences. Examine the pros and cons of policies that go beyond unlawful behavior, and what they can mean for you and your clients.

Christopher H. Hahn, Dell, Round Rock, TX

5:20 p.m. Adjourn to Reception

### TRACK B: LITIGATION STRATEGIES

#### Presiding Officer:

Tom Nesbitt, DeShazo & Nesbitt LLP, Austin, TX

3:20 p.m. .50 hr

#### Covenants Not to Compete: Recent Trends and Developments

Explore recent cases and strategies involving the enforcement or relaxation of restraints on competition.

Philip Durst, Deats, Durst & Owen, P.L.L.C., Austin, TX

3:50 p.m. .50 hr

#### Corroborating Evidence: It's Not Just a Swearing Match

Workplace disputes dismissed as "he-said, she-said" very often are in reality "he-said, she-said" plus some other evidence says. What is corroborating evidence to courts and juries in workplace discrimination and harassment cases?

Jim Sanford, Gillespie Sanford LLP, Dallas, TX

4:20 p.m. .50 hr

#### Anti-SLAPP for Everyone!

More and more states are adopting Anti-SLAPP legislation, and the broad approach taken by Texas under the TCPA suggests that even a tangential relationship between the communication and a matter of public concern is sufficient. So what is an attorney to do? Review the elements and limits of Anti-SLAPP litigation, and make sure you are prepared the next time a slap is on the horizon.

Robert E. Sheeder, Bracewell, Dallas, TX

4:50 p.m. .50 hr

#### Class Action Employment Litigation: What's Left and What's New

*Dukes*, *Epic Systems*, and many other cases in the past decade have made class litigation extremely difficult in employment cases. Nonetheless, government agencies and private litigants are still filing a variety of class action discrimination cases and the prevalence of wage-hour collective actions remain strong. Discuss the status of class and collective action employment litigation with a focus on recent developments impacting both the plaintiffs' and defense bars.

John V. Jansonius, Jackson Walker LLP, Dallas, TX

5:20 p.m. Adjourn to Reception

## FRIDAY MORNING, MAY 10, 2019

#### Presiding Officer:

Austin Kaplan, Kaplan Law Firm, Austin, TX

7:30 a.m. Conference Room Opens

Includes continental breakfast.

8:30 a.m. .75 hr

#### Public Sector Update

Get the latest on representing government employees, including developments in the First Amendment, due process, privacy, political patronage, and state law protections in the public workplace.

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

Natalie G. DeLuca, Metropolitan Transit Authority, Houston, TX

9:15 a.m. .50 hr

#### Religious Freedom in the Workplace

Combined federal and state initiatives create a complex legal tableau for both employers and employees concerning religious beliefs and practices in the workplace. Trace the sources of the core rights and duties, and highlight significant legislative, executive, and judicial developments.

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

9:45 a.m. .75 hr

#### Developments in Disability Law

Review significant regulatory and court developments under the Americans with Disabilities Act and gain insights into emerging disability issues.

James H. Kizziar Jr., Bracewell, San Antonio, TX and Washington, DC

10:30 a.m. Break

10:45 a.m. .50 hr

#### Contingent Workers and Joint Employment

Claims brought by contingent workers often involve disputes about whether or not a worker is an "employee" and who is that worker's "employer." Survey the different standards for determining employment status under various labor and employment laws with a focus on nonstandard work arrangements, including contract, temporary, and "gig" work.

Kathryn Youker, Texas RioGrande Legal Aid, Brownsville, TX

## THANK YOU TO OUR RECEPTION SPONSORS

5:20 p.m. – 6:20 p.m.

Join us for drinks and hors d'oeuvres with program faculty and attendees.

11:15 a.m. .75 hr

**The Gig Economy: Don't Call It a Comeback**

Revisit the rapidly evolving gig economy and take a tour through the myriad approaches courts and agencies have adopted, tested, and abandoned in their collective attempt to understand and classify the growing number of digital platform providers that now enable service providers to connect directly with end-users. Examine the limitations of the binary employee/contractor classification system, the promises and pitfalls of a proposed hybrid "gig" worker classification, and the competing federal, state, and local efforts to find the right balance between entrepreneurial enablement and service provider protection.

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

12:00 p.m. .50 hr

**Federal Contractor Update**

It has been a record-breaking year of new initiatives from the OFCCP! Hear updates on federal contractor compliance obligations and review recent developments at Office of Federal Contract Compliance Programs.

Shafeeqa W. Giarratani, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Austin, TX

12:30 p.m. **Pick Up Lunch**

Included in registration.

**FRIDAY AFTERNOON**

**Presiding Officer:**

**Richard R. Brann, Baker Botts, Houston, TX**

**LUNCHEON PRESENTATION**

12:50 p.m. .50 hr

**HR Systems: Things to Consider**

The way human resources systems are structured and implemented can have impacts far beyond any individual case. Examine why and how these systems and the changes they bring can be so critical.

David L. Wiley, Gibson Wiley PLLC, Dallas, TX

1:20 p.m. **Break**

1:35 p.m. .75 hr

**Texas Unemployment and Payday Law Update**

Survey the significant Texas Workforce Commission-related legislation under consideration in 2019, and hear an update on how the TWC has been ruling on unemployment and wage claims. Outline important compliance issues for wage payments and unemployment taxes in Texas, and a highlight of the best practices for employers to follow in order to minimize the risk of unemployment and wage claims.

William T. (Tommy) Simmons, Texas Workforce Commission, Austin, TX

2:20 p.m. .75 hr

**Settlement Documents: Lessons to Learn**

Optimizing separation agreement and settlement language to protect client assets, compliance with restrictions on confidentiality provisions, and avoiding hidden "gotcha" mistakes.

Laura M. Merritt, Boulette Golden & Marin L.L.P., Austin, TX

3:05 p.m. .75 hr ethics

**Ethics for Employment Lawyers: 2019**

Get updated on on cutting-edge ethics issues, including attorney-client privilege and waiver issues, *ex parte* communications, access to social media and computer information, inadvertent disclosure and improper acquisition of confidential information, litigation holds and spoliation issues, and settlement negotiations.

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

3:50 p.m. **Adjourn**

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## HOW TO REGISTER

### Online:

www.utcle.org/conferences/EL19

### Mail:

The University of Texas  
School of Law  
ATTN: CLE  
PO Box 7759  
Austin, TX 78713-7759

### Fax:

512.475.6876

Questions? 512.475.6700

If you would like to request accommodations under the ADA, please contact Customer Service at 512.475.6700 or service@utcle.org at least 10 business days prior to the conference.

## REGISTRATION BENEFITS

**Before the Conference:** Access course materials—downloadable PDFs of papers and slides—and speaker and attendee roster in "Your Briefcase" approximately 48 hours before the event.

**After the Conference:** Unlimited access to final, complete course materials—downloadable PDFs of papers and slides—in "Your Briefcase."

**eConference:** Complimentary access to the eConference—with papers, slides, and audio—for CLE credit (TX and CA) you may have missed at the live Conference. Available in "Your Briefcase" 4–6 weeks after the event.

**TX MCLE Credit Reporting:** UT Law CLE can report credit on your behalf directly to the State Bar of Texas. Track your Texas MCLE credit claimed and reported through UT Law CLE in "Your Account."

**Your Account:** Activate "Your Account" online at www.utcle.org. Your UT Law CLE Account is created for you as a first-time conference registrant (mail and fax registrations) with the email address(es) provided.

## CAN'T MAKE THE CONFERENCE? PRE-ORDER THE ACCREDITED ECONFERENCE TODAY

While nothing can replace the experience and networking opportunities of the live event, you can still catch up on all the latest developments with the eConference.

The online eConference includes papers, slides and audio – and CLE credit (TX and CA) – from this year's live Conference. Available in "Your Briefcase" through the user's account at www.utcle.org 4–6 weeks after the live event.

## REGISTRATION FORM

PLEASE PRINT CLEARLY

EL19

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

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

Firm \_\_\_\_\_

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

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

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

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

**REGISTRATION—Includes electronic course materials, continental breakfast, Thursday and Friday Luncheon Presentations and Thursday evening networking reception. eConference also available 4–6 weeks after the Conference.**

Special group registration rates available. Call 512.475.6700.

### Select Registration Type

- Individual registration by May 1 ..... \$645  
 Individual registration after May 1 ..... \$695

### Thursday Afternoon Concurrent Sessions – Select One

- Track A: Workforce Solutions  
 Track B: Litigation Strategies

### Printed Course Binder – Available for an Additional Fee Through May 1

*Conference registration includes Electronic Course Binder Download (PDF) in "Your Briefcase" at www.utcle.org.*

- Printed Course Binder ..... \$54.13  
*Price includes 8.25% Sales Tax*  
 Printed Course Binder for tax exempt registrants ..... \$50  
*(e.g., government employees and nonprofits)*

### Dietary Restrictions (Lunch) – Available Through May 1

- Vegetarian  Vegan  Gluten Free  Dairy Free  None

### LIVE WEBCAST REGISTRATION

- Individual registration ..... \$595  
*Includes Electronic Course Binder Download (PDF) in "Your Briefcase" within your account at www.utcle.org.*

**FIRST AND SECOND YEAR ATTORNEYS MAY ATTEND FOR JUST \$150! CALL 512.475.6700 TO REGISTER.**

### POST-CONFERENCE PRODUCTS

#### eConference – For Texas MCLE Credit

Complete eConference package includes all conference materials for download from "Your Briefcase" at www.utcle.org. Available 4–6 weeks after the live conference date. MCLE hours may vary from the live conference.

- Individual eConference ..... \$595  
*Call 512.475.6700 or fax 512.475.6876 to register additional participants.*

#### Complete Conference Binder – For Research and Self-Study

Comprehensive Binder with papers and slides from the live event. Available for delivery 4–6 weeks after conference date. Non-exempt customers add 8.25% sales tax.

- eBinder Download (PDF) ..... \$225  
 Printed Materials Binder (*shipping included*) ..... \$275  
 2018 Essential Employment Law Handbook eBinder Download ..... \$125

Add 8.25% sales tax or include an exemption certificate ..... \$ \_\_\_\_\_  
*Sales tax will be invoiced separately on taxable orders for which payment does not include tax.*

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- Check (make check payable to The University of Texas at Austin)  
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**AUSTIN**

May 9–10, 2019

CONFERENCE LOCATION



**AT&T Conference Center**  
 The University of Texas at Austin  
 1900 University Avenue  
 Austin, Texas  
 877.744.8822 (reservations)

**Special Room Rate: \$189**  
 good through April 6  
 reference "2019 Labor and  
 Employment Law Conference"  
 (subject to availability)

**Parking:**

Limited daily self-parking will be validated for the AT&T Conference Center garage or surrounding UT garages. Please note Dobie is not a UT garage and parking cannot be validated. Separate fees apply for valet and overnight parking.

**KEY DATES**

**May 1, 2019**

*Last day to order a printed binder*

**May 1, 2019**

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

**May 3, 2019**

*Last day for full refund cancellation*

**May 6, 2019**

*Last day for partial refund cancellation  
 \$50 processing fee applied*

**May 9, 8:30 a.m.**

*Conference begins*

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**REASONS TO ATTEND LABOR AND EMPLOYMENT LAW**

UT Law's **Labor and Employment Law Conference** is the premier program on employment law practice in Texas. By bringing together leading members of the bar, personnel experts, and in-house counsel, the conference offers the timely updates, emerging trends, and the variety of perspectives practitioners need. 2019 highlights include:

- Perspective on *Navigating the EEOC* from both sides of the bar – and the EEOC
- Analysis of the standards for determining *Contingent Workers and Joint Employment*
- Discussion of *Emerging Local Regulations and the Multistate Employer*
- Focused presentation series on litigation strategies and workforce solutions
- Updates on federal and state law, including developments at the NRLB
- New this year – networking reception on Thursday evening

Following the conference, attendees will receive a bonus eSupplement to ensure practitioners can earn their required 15.00/3.00 MCLE hours for the year.

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Unsure if there is ever an obligation to give a reference on a former employee? Can employee violence really be prevented? What is the difference between disparate treatment and disparate impact, and why does it matter? What is working time? How is overtime calculated?

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