

22ND ANNUAL
**LABOR AND EMPLOYMENT
LAW CONFERENCE**



May 12–13, 2015
AT&T Conference Center ■ Austin, TX

Litigation Strategies and Workforce Strategies Tracks

Earn up to 14.50 Hours of Credit Including 2.50 Hours of Ethics Credit
TX Legal Specialization Credit Approved for Labor and Employment Law
PHR, SPHR and GPHR Recertification Credit Expected

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TUESDAY MORNING, MAY 12, 2015

Presiding Officer:

**David T. Lopez, Attorney at Law,
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

New Federal Case Law and Legislation

Analyze 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 federal agencies which regulate labor and employment matters.

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

10:15 a.m. Break

10:30 a.m. .75 hr

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
Margaret A. Harris, Butler & Harris, Houston, TX

11:15 a.m. .33 hr

**Affordable Care Act:
Welcome to the Brave New World of 2015**

After almost five years, one of the last major parts of the ACA—the employer mandate—has now become effective for many employers. While employers can breathe a little easier knowing that this requirement has been clarified by a regular stream of guidance from Washington, many thorny practical problems remain to be solved during 2015 and beyond. Understand the key ACA and employee benefits issues you need to know about in 2015 and get practical tips for managing their impact.

Timothy G. Verrall, Ogletree, Deakins, Nash,
Smoak & Stewart, P.C., Houston, TX

11:35 a.m. .50 hr

**Recent Developments under the National
Labor Relations Act**

In the past year, a revitalized National Labor Relations Board has addressed a number of significant issues affecting union and nonunion workplaces. Hear recent developments from regulation of employer e-mail policies to expansion of the joint employer doctrine.

Danielle E. Needham, Jackson Walker L.L.P.,
Fort Worth, TX
Rod Tanner, Tanner and Associates, PC,
Fort Worth, TX

12:05 p.m. Pick Up Lunch

Included in registration.

TUESDAY AFTERNOON

Presiding Officer:

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

LUNCHEON PRESENTATION

12:25 p.m. .75 hr

**Social Media and Protected Concerted
Activities**

What do I do when my employees talk about work on Facebook? On Twitter? Does the NLRA apply to me if I don't have a union? Oh yes, it does!

Martha E. Kinard, Regional Director, National Labor
Relations Board, Fort Worth, TX

1:10 p.m. Break

1:25 p.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

2:20 p.m. .50 hr

**Religious Discrimination:
It's Even More Complicated than You Thought**

Employers are not only faced with traditional demands for accommodation, but experience new challenges from proselytizing employees, some of whom are now asserting their own religious beliefs. Courts are now facing a question they have long tried to avoid—what actually is a religion? The potential clash of these various interests pose fascinating challenges both for courts and for the lawyers who represent employers or employees.

Michael W. Fox, Ogletree, Deakins, Nash, Smoak &
Stewart, P.C., Austin, TX

2:40 p.m. .50 hr

Emerging LGBT Issues in the Workplace

Recent legal developments have dramatically changed the landscape for same-sex marriage and the rights of LGBT employees in the workplace. Explore the related impact on employee benefit plans, leave entitlements, and anti-discrimination policies.

Shannon B. Schmoyer, Schmoyer Reinhard LLP,
San Antonio, TX

3:10 p.m. Break

3:20 p.m. .50 hr

Dealing with Workplace Violence

Address the three phases of crisis management by focusing 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

3:50 p.m. .75 hr | .25 hr ethics

The Limits of Fair Competition: UTSA, Non-Competes, Clawbacks and More

Significant recent non-compete decisions, an update on the Uniform Trade Secrets Act (UTSA), non-compete drafting tips, discussion of considerations that arise at the outset of litigation, plus practical considerations when seeking or opposing applications for a TRO and temporary injunction.

Tom Nesbitt, DeShazo & Nesbitt LLP, Austin, TX
Hon. R. K. Sandill, 127th District Court, Houston, TX
Howard L. Steele Jr., Steele Law Group, PLLC, Houston, TX

4:35 p.m. .50 hr | .25 hr ethics

Getting from Internet to Evidence

Learn ethical methods of eDiscovery related to social media, the nuts and bolts of admitting social media data into evidence, and strategies for using that evidence on both liability and damages claims.

Michael J. Golden, Boulette Golden & Marin L.L.P., Austin, TX

5:05 p.m. .50 hr ethics

Ethical Settlement and Case Valuation

Part science experiment and part game show, analyze the valuation of a few employment law situations, including how employee-side and employer-side lawyers' perspectives differ, and how that can assist in ethical settlement negotiations.

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

5:35 p.m. Adjourn

WEDNESDAY MORNING, MAY 13, 2015

Presiding Officer:

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

7:30 a.m. Conference Room Opens

Includes continental breakfast.

8:30 a.m. .75 hr

Developments in Disability Discrimination Law

A look at significant developments under the ADA and insight into emerging disability issues.

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

9:15 a.m. .50 hr

Employment Cases: A View from the Bench

A discussion of recent developments and hot topics in state court employment practice, including the impact of the new Rule 91a, the application of the anti-SLAPP statute and the Texas Uniform Trade Secrets Act.

Hon. Kenneth H. Molberg, 95th Judicial District Court, Dallas, TX

Moderator:

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

9:45 a.m. Break

Concurrent Sessions

TRACK A: LITIGATION STRATEGIES

Presiding Officer:

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

10:00 a.m. .50 hr

Dos and Don'ts for Federal Law Practice

A roundtable discussion on federal practice tips from former federal law clerks.

Moderator:

J. Allen Douglas, Littler Mendelson P.C., Houston, TX

Panelists:

Elizabeth Siberry Chestney, Cornell Smith Mierl & Brutocao, LLP, Austin, TX
Tyrone L. Haynes, Steele Law Group, PLLC, Houston, TX
Shreedhar R. Patel, Steele Law Group, PLLC, Houston, TX

10:30 a.m. .50 hr

Depositions

We rely on deposition testimony to support or overcome motions for summary judgment, bolster negotiating positions, and impeach witnesses at trial. Hear tips and strategies for taking effective depositions and getting the evidence you need.

Moderator:

Viane Lopez Braun, Buck Keenan LLP, Houston, TX

Panelists:

Malinda A. Gaul, Law Offices of Gaul and Dumont, San Antonio, TX
Robert E. Sheeder, Bracewell & Giuliani LLP, Dallas, TX

11:00 a.m. .50 hr | .25 hr ethics

Gaining an Edge: The Use of Jury Consultants

The demand for and use of jury consultants has increased dramatically in the last few years. Trial lawyers, in-house counsel, and insurance counsel now frequently look to jury consultants for answers as to case assessment, trial strategy, and risk avoidance. Learn what tools a jury consultant can provide to help you succeed in your litigation practice.

Jason S. Bloom, Bloom Strategic Consulting, Inc., Dallas, TX

11:30 a.m. .33 hr

What We Have Here... Is a Failure to Mitigate

Analyze the legal standards and issues regarding mitigation, including burden of proof, evidentiary requirements, expert testimony, and recent developments. Plus, get trial tips and other practical advice for plaintiffs and defendants.

Kenneth D. Hughes, Hughes Roch LLP, Houston, TX

11:50 a.m. .50 hr

Proving or Defending against Mixed Motive Claims

Tips and traps with this causation standard.

Katherine L. Butler, Butler & Harris, Houston, TX
John V. Jansonius, Jackson Walker L.L.P., Dallas, TX

12:20 p.m. Pick Up Lunch

Included in registration.

TRACK B: WORKFORCE STRATEGIES

Presiding Officer:

Tom Nesbitt, DeShazo & Nesbitt LLP, Austin, TX

10:00 a.m. .50 hr

Leveraging Human Resources

Gain a new perspective on the HR function, including the challenges that face many HR professionals as they make their way to being recognized as a true business partner in their organization. How do you stop your business people from considering you an obstacle and instead an ally—before they ask you to fix their mess ups?

Daisy Olivera, vcfo, Austin, TX

10:30 a.m. .33 hr

HR in Times of Crisis

How to navigate the legal issues presented during unexpected challenges such as weather events, pandemics, and other emergencies.

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

10:50 a.m. .50 hr

The Dos and Don'ts of Background Checks

Many employers find that background checks are an important tool to use when making hiring decisions. Learn how to avoid class action lawsuits, as well as violations of privacy rights and the Fair Credit Reporting Act when conducting background checks on applicants and employees.

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

11:20 a.m. .50 hr | .25 hr ethics

FLSA Audits

Pre-inspection preparation issues, including preserving evidence, individual liability, and maximizing defenses.

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

11:50 a.m. .50 hr

Handbooks 2015

Practical tips to update existing policies and adopt new ones in light of recent NLRB, EEOC, and court activity, as well as new state and local sick leave laws for multi-state employers.

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

12:20 p.m. Pick Up Lunch

Included in registration.

ABOUT THE COVER

#1 Record, 24" x 24", Starbucks cups, candy wrappers, origami paper, and construction paper, is by Philip Durst. For more information, visit www.blueprintstore.com or www.davisgalleraustin.com/artist.durst.html.

Presiding Officer:

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

12:40 p.m. .75 hr | .25 hr ethics

In-House Insights:

What Resonates with In-House Lawyers

A discussion of what action—or inaction— influences selection and retention of defense counsel, as well as the steps a plaintiff's lawyer can take to grab the attention of the company's internal lawyers.

Moderator:

Brian S. Greig, Norton Rose Fulbright, Austin, TX

Panelists:

Christopher H. Hahn, Dell, Round Rock, TX

Nestor Ho, Silicon Labs, Austin, TX

Ana Christina Ward, Asuragen, Inc., Austin, TX

1:25 p.m. Break

1:40 p.m. .75 hr

Big Data:

Analytics and the Hackable Employee

Explore the growing use of data analytics in traditional employment decision-making, the potential for using big data to effect positive change, and the legal risks associated with unsophisticated big data decision-making. Discuss the new era of voluntarily-captured personal data and the creative use of the same by employee and employer advocates alike. Specific treatment will be given to big data and Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Stored Communications Act, the Texas Uniform Trade Secrets Act, and more.

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

2:25 p.m. .50 hr | .25 hr ethics

Retaliation Red Flags

What can help you or hurt you in preventing or proving a retaliation case?

Amy Gibson, Gibson Wiley PLLC, Dallas, TX

2:55 p.m. .75 hr ethics

Ethics and Professionalism Update for Employment Lawyers

An annual 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

3:40 p.m. Adjourn

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This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 14.50 hours, of which 2.50 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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Bonus eCourses: Complimentary 180-day access to Bonus eCourses—with papers, slides, and audio—for CLE credit (TX, CA) you may have missed at the conference. Available in *Your Briefcase* 6–8 weeks after the conference.

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IN-HOUSE AND CONFERENCECOMPLETE MATERIALS

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Special group registration rates available. Call 512.475.6700.

1. Select Registration Type

- Individual registration by Friday, May 1 \$595
 Individual registration after Friday, May 1 \$645

2. Select Course Materials Format

- Electronic Course Binder on USB Key ONLY
 Printed Course Binder ONLY (available through May 1)

3. Wednesday Morning Concurrent Sessions—Select One

- Track A: Litigation Strategies
 Track B: Workforce Strategies

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AUSTIN
 May 12–13, 2015

CONFERENCE LOCATION



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 The University of Texas at Austin
 1900 University Avenue
 Austin, TX 78705
 512.404.3600

Special Room Rate: \$179
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 (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 1, 2015**
last day for early registration
 add \$50 for registrations
 received after this time
- May 6, 2015**
last day for cancellation (full refund)
- May 8, 2015**
last day for cancellation (partial refund)
 \$50 processing fee applied
- May 12, 2015, 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:

- Martha Kinard, NLRB Regional Director, presents *Social Media and Protected Concerted Activities*
- A summary of key employee benefits issues under the Affordable Care Act and practical guidance for managing their impact
- An analysis of the Uniform Trade Secrets Act and its impact on drafting non-compete agreements, clawback of benefits and risk allocation.
- Discussions on workplace discrimination, including religion the workplace and emerging LGBT issues
- An understanding of workplace violence before, during and after an incident
- An exploration of how “big data” is being captured, used and analyzed by employers and its increasing use and legal implications in employment decision-making
- Ethics and professionalism update for employment lawyers, plus ethical settlement negotiation and case valuation
- Focused series of presentations on litigation strategies and workforce strategies
- The latest on federal and state employment case law and legislative developments, including disability issues under the ADA, guidance under the NLRA, and more

2014 ESSENTIAL EMPLOYMENT HANDBOOK

The Definitive Resource Guide for Employment Lawyers and HR Professionals

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?

The Essential Employment Law Handbook addresses these questions, and provides best practices on “employment-at-will,” discrimination and harassment issues, wage and hour violations, retaliation, hiring, firing, documentation, performance reviews, FMLA and much more.

Available in print or for download. To purchase, select on the registration form or visit www.utcle.org/conferences/EE14.