



NATIONAL EMPLOYMENT LAW INSTITUTE

*Thirty-Ninth Annual*

# EMPLOYMENT LAW BRIEFING

*The nation's most thorough advanced-level program analyzing legal developments and their practical application to employment practices and litigation.*

**Palm Springs, California** • March 1-4, 2020 • Renaissance Indian Wells Resort & Spa  
**Miami Beach, Florida** • March 8-11, 2020 • Royal Palm South Beach Miami  
**Santa Barbara, California** • March 22-25, 2020 • Hilton Santa Barbara Beachfront Resort

**Approved for 15-18 hours of CLE / PDC / CEU credits, including 2 hours of Ethics.**

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*Fenwick & West  
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*Orrick  
San Francisco, California*

STEVEN W. SUFLAS, Esq.  
*Ballard Spahr  
Denver, Colorado*

### REGISTRATION FEE INCLUDES:

- 2020 Employment Law Deskbook (in print and electronic formats) - This extensive publication addresses substantive, procedural, and practical issues of concern to Human Resource professionals and counsel. The Deskbook is available for purchase if you cannot attend the Briefing.
- **15-18 CLE / PDC / CEU hours, including two hours of Ethics**, and CLE filing in all states where you're licensed for no additional charge.
- Happy Hour on Sunday evening - enjoy drinks and appetizers with faculty members, fellow participants and their guests.
- Light Breakfast and Mid-Morning Snack provided on Monday, Tuesday and Wednesday.

# PALM SPRINGS AGENDA

## Sunday

**2:30pm Briefing Check-In and Refreshments**

**3:00pm Recent Developments in EEO Law**

Update of Supreme Court cases and the most significant appellate court and trial court cases and their application and implications for employment practices and litigation in key substantive and procedural areas, including race, sex, color, religion, national origin, gender and pregnancy discrimination, the ADEA, damages, injunctive relief, and other cutting-edge areas.

*George Abele*

**5:00pm Break**

**5:15pm ADA Update Part 1: Determining “Qualified”**

Critical lessons from recent court decisions on analyzing whether an individual is qualified for a job, including the evidence courts are currently using in determining what is “essential,” the gravity of job descriptions and what to do if a description is inaccurate or a job’s functions are changed, whether certain things like regular attendance, handling job stress, getting along with co-workers, productivity standards, and lifting are considered “essential,” the extreme danger of inaccurate or inflated performance reviews, and how to analyze doctors’ notes, including inconsistent notes.

*David Fram*

**6:15pm Happy Hour Hosted by NELI**

## Monday

**7:30am Continental Breakfast**

**8:00am The e-Workplace: Privacy Issues and Cyber Security**

Covering the expanding set of technology platforms and apps that keep challenging employers on how to restrict, monitor, scrutinize and/or preserve employees’ and applicants’ technology usage that impacts employees’ privacy rights and employers’ information security programs, including the use of “Shadow IT,” “Cloud” technology, social media and other forms of offline communications and their implications for an employer’s BYOD program and potential discoverability in legal proceedings. Also, discussion of employers’ rights to limit employees’ social media posts and the ability to discipline for such posts, prohibitions on forced disclosure of personal login credentials, proactive steps employers can take to minimize risks of data theft, and compliance with state privacy and security statutes and regulations, including those restricting the use of employees’ biometric information.

*Bob Brownstone*

**9:45am Refreshment Break**

**10:00am Wage and Hour & Misclassification Update**

Discussion of recent decisions, DOL interpretations and federal and state initiatives, new developments involving joint employers, contingent workers and other non-covered workers, exemption and misclassification decisions, wage and rate calculation issues, compensable time in our increasingly technology-centered workplace, and emerging case law on actual or constructive knowledge of time worked required to prove a claim.

*Ellen Boshkoff*

**11:30am State and Local Employment Law Developments**

Exploring the increase in employee protection by the numerous states and municipalities that have enacted their own employment statutes, ordinances and regulations, which often differ substantially from their federal counterparts, particularly with respect to protection not found in federal law based on sexual orientation, gender identity, marital or family status and political activities and speech. In addition, we’ll examine new state and local laws related to employers’ use of background checks, recreational marijuana and other lawful activities, pay equity, and state and local response to the #metoo movement.

*Andrew Livingston*

## Tuesday

**7:30am Continental Breakfast**

**8:00am Ethics in Labor and Employment Law**

Annual update on cutting edge ethics issues, including conflicts of interest, attorney-client privilege and waiver, ex parte access to current and former managers and employees, pre-trial investigations, employee confidential communications using employer-provided computers and email, in-house counsel ethical issues, improper acquisition and inadvertent disclosure of information and documents, access to social media information, settlement and negotiations, and court enforcement of professionalism and civility codes.

*Dennis Duffy*

**10:00am Refreshment Break**

**10:15am FMLA: Current Issues and Trends**

What’s new in terms of DOL opinion letters and proposed changes to DOL forms, recent cases on the effective use of recertifications to combat intermittent leave abuse, whether leave can be denied when an employee fails to follow employer notice requirements, how to handle requests for leave to care for a family member, practical issues including adjusting performance standards while on leave, allowing an employee to work on leave, references to leave by a supervisor, how to conduct an investigation if fraudulent use of FMLA leave is suspected, and the seemingly never-ending burden of intermittent leave, and more.

*Megan Norris*

**11:30am ADA Update Part 2: “Reasonable Accommodation”**

Discussion of the latest cases on practical reasonable accommodation issues, including important and pragmatic new cases on the meaning of “reasonable,” what technically triggers the duty to interact, what supervisors and HR personnel should be trained to say and document in response to employee requests, the employee’s duty to cooperate in the process, what a supervisor can disclose to co-workers about an accommodation, and particular accommodation requests such as leave (including repeated leave extensions), change of supervisors, noncompetitive reassignment, light duty, work-at-home, shift changes, and a perfume/irritant-free workplace.

*David Fram*

## Wednesday

**7:30am Continental Breakfast**

**8:00am Retaliation and Whistleblowing Claims**

Determining “protected activity,” understanding the expanded concept of “adverse action,” how to negate an inference of “causation,” third party retaliation, retaliatory harassment, in-house counsel or compliance officer as whistleblower, what constitutes “unreasonable opposition,” the rise in “cybersecurity” whistleblowing and increased regulatory enforcement, plus the continued surge in whistleblower, Dodd Frank and Sarbanes-Oxley issues, including the expanded rights and remedies of the would-be whistleblower, expansion of Sarbanes-Oxley, and best practices to help avoid and/or minimize liability.

*Mark Oberti*

**9:45am Refreshment Break**

**10:00am NLRA Update**

Covering recent developments at the NLRB and what is likely to occur, including analysis of *PCC Structural, Inc.*, *Hy-Brand Industrial Contractors, Ltd.*, *SuperShuttle DFW*, *The Boeing Company*, and *Raytheon Company*, new initiatives announced by NLRB General Counsel Peter Robb and the Board’s rulemaking on joint employer standards, union representational issues, and other potential topics and critical court decisions affecting traditional labor law, including the Supreme Court’s blockbuster decisions in *Epic Systems* and *Janus*.

*Curt Kirschner*

**11:30am Briefing Adjournment**

*Please join us for HAPPY HOUR immediately following the opening sessions on Sunday.*

*Sessions adjourn at 12:45pm on Monday and Tuesday.*

# SOUTH BEACH AGENDA

Sunday

**2:30pm Briefing Check-In and Refreshments**

**3:00pm Recent Developments in EEO Law**

Update of Supreme Court cases and the most significant appellate court and trial court cases and their application and implications for employment practices and litigation in key substantive and procedural areas, including race, sex, color, religion, national origin, gender and pregnancy discrimination, the ADEA, damages, injunctive relief, and other cutting-edge areas.

*Ken Gage*

**5:00pm Break**

**5:15pm ADA Update Part 1: Determining “Qualified”**

Critical lessons from recent court decisions on analyzing whether an individual is qualified for a job, including the evidence courts are currently using in determining what is “essential,” the gravity of job descriptions and what to do if a description is inaccurate or a job’s functions are changed, whether certain things like regular attendance, handling job stress, getting along with co-workers, productivity standards, and lifting are considered “essential,” the extreme danger of inaccurate or inflated performance reviews, and how to analyze doctors’ notes, including inconsistent notes.

*David Fram*

**6:15pm Happy Hour Hosted by NELI**

Monday

**7:30am Continental Breakfast**

**8:00am The e-Workplace: Privacy Issues and Cyber Security**

Covering the expanding set of technology platforms and apps that keep challenging employers on how to restrict, monitor, scrutinize and/or preserve employees’ and applicants’ technology usage that impacts employees’ privacy rights and employers’ information security programs, including the use of “Shadow IT,” “Cloud” technology, social media and other forms of offline communications and their implications for an employer’s BYOD program and potential discoverability in legal proceedings. Also, discussion of employers’ rights to limit employees’ social media posts and the ability to discipline for such posts, prohibitions on forced disclosure of personal login credentials, proactive steps employers can take to minimize risks of data theft, and compliance with state privacy and security statutes and regulations, including those restricting the use of employees’ biometric information.

*Karla Grossenbacher*

**9:45am Refreshment Break**

**10:00am Wage and Hour & Misclassification Update**

Discussion of recent decisions, DOL interpretations and federal and state initiatives, new developments involving joint employers, contingent workers and other non-covered workers, exemption and misclassification decisions, wage and rate calculation issues, compensable time in our increasingly technology-centered workplace, and emerging case law on actual or constructive knowledge of time worked required to prove a claim.

*Shannon Farmer*

**11:30am State and Local Employment Law Developments**

Exploring the increase in employee protection by the numerous states and municipalities that have enacted their own employment statutes, ordinances and regulations, which often differ substantially from their federal counterparts, particularly with respect to protection not found in federal law based on sexual orientation, gender identity, marital or family status and political activities and speech. In addition, we’ll examine new state and local laws related to employers’ use of background checks, recreational marijuana and other lawful activities, pay equity, and state and local response to the #metoo movement.

*Jill Rosenberg*

Tuesday

**7:30am Continental Breakfast**

**8:00am Ethics in Labor and Employment Law**

Annual update on cutting edge ethics issues, including conflicts of interest, attorney-client privilege and waiver, ex parte access to current and former managers and employees, pre-trial investigations, employee confidential communications using employer-provided computers and email, in-house counsel ethical issues, improper acquisition and inadvertent disclosure of information and documents, access to social media information, settlement and negotiations, and court enforcement of professionalism and civility codes.

*Dennis Duffy*

**10:00am Refreshment Break**

**10:15am FMLA: Current Issues and Trends**

What’s new in terms of DOL opinion letters and proposed changes to DOL forms, recent cases on the effective use of recertifications to combat intermittent leave abuse, whether leave can be denied when an employee fails to follow employer notice requirements, how to handle requests for leave to care for a family member, practical issues including adjusting performance standards while on leave, allowing an employee to work on leave, references to leave by a supervisor, how to conduct an investigation if fraudulent use of FMLA leave is suspected, and the seemingly never-ending burden of intermittent leave, and more.

*Ellen McLaughlin*

**11:30am ADA Update Part 2: “Reasonable Accommodation”**

Discussion of the latest cases on practical reasonable accommodation issues, including important and pragmatic new cases on the meaning of “reasonable,” what technically triggers the duty to interact, what supervisors and HR personnel should be trained to say and document in response to employee requests, the employee’s duty to cooperate in the process, what a supervisor can disclose to co-workers about an accommodation, and particular accommodation requests such as leave (including repeated leave extensions), change of supervisors, noncompetitive reassignment, light duty, work-at-home, shift changes, and a perfume/irritant-free workplace.

*David Fram*

Wednesday

**7:30am Continental Breakfast**

**8:00am Retaliation and Whistleblowing Claims**

Determining “protected activity,” understanding the expanded concept of “adverse action,” how to negate an inference of “causation,” third party retaliation, retaliatory harassment, in-house counsel or compliance officer as whistleblower, what constitutes “unreasonable opposition,” the rise in “cybersecurity” whistleblowing and increased regulatory enforcement, plus the continued surge in whistleblower, Dodd Frank and Sarbanes-Oxley issues, including the expanded rights and remedies of the would-be whistleblower, expansion of Sarbanes-Oxley, and best practices to help avoid and/or minimize liability.

*Greg Keating*

**9:45am Refreshment Break**

**10:00am NLRA Update**

Covering recent developments at the NLRB and what is likely to occur, including analysis of *PCC Structural, Inc.*, *Hy-Brand Industrial Contractors, Ltd.*, *SuperShuttle DFW*, *The Boeing Company*, and *Raytheon Company*, new initiatives announced by NLRB General Counsel Peter Robb and the Board’s rulemaking on joint employer standards, union representational issues, and other potential topics and critical court decisions affecting traditional labor law, including the Supreme Court’s blockbuster decisions in *Epic Systems* and *Janus*.

*Denise Keyser*

**11:30am Briefing Adjournment**

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# SANTA BARBARA AGENDA

## Sunday

**2:30pm Briefing Check-In and Refreshments**  
**3:00pm Recent Developments in EEO Law**

Update of Supreme Court cases and the most significant appellate court and trial court cases and their application and implications for employment practices and litigation in key substantive and procedural areas, including race, sex, color, religion, national origin, gender and pregnancy discrimination, the ADEA, damages, injunctive relief, and other cutting-edge areas.

*Felicia Davis*

**5:00pm Break**  
**5:15pm ADA Update Part 1: Determining “Qualified”**

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*David Fram*

**6:15pm Happy Hour Hosted by NELI**

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**8:00am The e-Workplace: Privacy Issues and Cyber Security**

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*Bob Brownstone*

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*Alex Passantino*

**11:30am State and Local Employment Law Developments**

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*Andrew Livingston*

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*Dennis Duffy*

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*Julie Lucht*

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*David Fram*

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*Jason Geller*

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*Steve Suffas*

**11:30am Briefing Adjournment**

*Please join us for HAPPY HOUR  
immediately following the opening sessions on Sunday.  
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## REGISTRATION AND ORDER FORM

Please accept my registration for the:

### 2020 EMPLOYMENT LAW BRIEFING

- Palm Springs, California • March 1-4, 2020
- Miami Beach, Florida • March 8-11, 2020
- Santa Barbara, California • March 22-25, 2020

Registration Fee: .....\$1,595.00

Early Registration Fee: .....\$1,495.00  
(Paid Registration received by Jan 31, Feb 7 and Feb 21, respectively)

Special End-of-Year Registration Fee: .....\$1,395.00  
(Paid Registration received by December 31, 2019)

I am unable to attend, but wish to purchase the:

#### 2020 Employment Law Deskbook

Download \$219.00  Print \$239.00 or  Both \$289.00 \_\_\_\_\_

Shipping and Handling (\$13.00 for print copy, no charge for Download) \_\_\_\_\_

Colorado residents add 7.4% sales tax (publications only) \_\_\_\_\_

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**Do you require any accommodation, due to a disability, to attend this program?**  No  Yes

(Describe) \_\_\_\_\_

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### REGISTRATION INFORMATION

• **Registration Fee: \$1,595.00**

• **Early Registration Fee: \$1,495.00**

If paid by January 31 (Palm Springs),  
February 7 (Miami Beach) and February 21 (Santa Barbara).

• **Special End-of-Year Registration Fee: \$1,395.00**

If paid by December 31, 2019.

• Includes non-refundable administrative fee (see Cancellation Policy below).

**Payment in full is required prior to the Briefing.**

**Group Rates, Discounts and Substitutions** are available and permissible. Email [neli@neli.org](mailto:neli@neli.org) for more information.

**Cancellation Policy:** Cancellations must be confirmed prior to the program. Registrations cancelled more than ten business days prior to the program may elect to receive a full fee credit, or a refund, less a \$150.00 administrative fee. Those cancelled ten or fewer business days prior to the program will receive a fee credit, less a \$250.00 administrative fee. Transfers between locations must be pre-approved. Fee credits may be applied during the next 12 month period to any of NELI's programs or publications. Paid no-shows will receive the program material upon request in full consideration of fees paid. Unpaid cancellations and unpaid no-shows are liable for the registration fee. Any refunds will be processed after the conclusion of the program series.

### CONTINUING EDUCATION

**This program will provide between 15-18 CLE / PDC / CEU hours, including two hours of Ethics, depending upon the jurisdiction.** NELI applies for credit from all MCLE states. Contact us for approval status. To apply for CLE credit, please complete box on registration form. NELI will provide the necessary forms and proof of attendance. NELI is a State Bar of California MCLE approved provider, is recognized by most professional associations as an approved CEU/CPE provider, and is an approved provider of HRCI and SHRM for recertification credit.

As always, **NELI will file in as many jurisdictions/states as you are licensed for no additional fee**, although registrants need to file for credit on their own behalf in jurisdictions that require it.

Please e-mail [neli@neli.org](mailto:neli@neli.org) for available discounts

### REGISTER BY:

**MAIL: NELI, P. O. Box 1189, Golden, CO 80402**

**PHONE: (303) 861-5600**

8:00 a.m. - 4:00 p.m. Monday - Thursday Mountain Time

8:00 a.m. - 12:00 p.m. Friday Mountain Time

**FAX: (303) 861-5665**

**INTERNET: [www.neli.org](http://www.neli.org)**

**EMAIL: [registrar@neli.org](mailto:registrar@neli.org)**

### RESORT ACCOMMODATIONS

For NELI's group rate, reservations must be made directly with the hotel (not through a travel agent). Room blocks are limited and group rates cannot be guaranteed after the listed cut-off dates, and **may be fully booked before then**. Reserve early and state that you are attending NELI's *Employment Law Briefing*. A limited number of rooms at group rates are available "pre" and "post" actual meeting dates. If you experience difficulty, please call NELI. After the cut-off date, reservations at the group rate are on a space available basis.

**Palm Springs - Renaissance Indian Wells Resort & Spa**

44400 Indian Wells Lane, Indian Wells, CA 92210

(760) 733-4444 or (888) 236-2427

Run-of-House Rooms - \$259.00 (plus tax & resort fee)

**Reservation cut-off date: February 7, 2020**

**Miami Beach - Royal Palm South Beach Miami**

1545 Collins Avenue, Miami Beach, FL 33139

(786) 276-0156

"Upgraded" Run-of-House Rooms - \$299.00 (plus tax & resort fee)

**Reservation cut-off date: February 18, 2020**

**Santa Barbara - Hilton Santa Barbara Beachfront Resort**

633 East Cabrillo Boulevard, Santa Barbara, CA 93103

(805) 564-4333 or (800) 879-2929

Run-of-House Rooms - \$269.00 (plus tax & resort fee)

**Reservation cut-off date: March 2, 2020**

**Upgraded room types may be available at time of reservation. Inquire directly with hotel.**

**On-line hotel reservation portals are on NELI's website.**

NATIONAL EMPLOYMENT LAW INSTITUTE

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