



EMPLOYMENT LAW BRIEFING

The Don Cesar Beach Resort, St. Pete Beach, FL

March 24-27, 2024

*AGENDA SUBJECT TO CHANGE

Sunday, March 24

2:30-3:00pm **Briefing Check-In and Refreshments**

3:00-4:45pm **Developments in EEO Law**

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

4:45-5:00pm **Break**

5:00-6:00pm **ADA Update Part 1: Determining “Qualified”** [*David Fram – NELI*](#)

Critical lessons from recent court decisions for lawyers and human resources/EEO professionals on analyzing whether an individual is qualified for a job, including the pieces of evidence courts are currently using in determining what is “essential,” the importance of accurate job descriptions, whether certain things like regular attendance, handling job stress, getting along with co-workers, and lifting are considered “essential,” the extreme danger of inaccurate or inflated performance reviews, and how to analyze doctors’ notes, including inconsistent notes.

6:00-7:30pm **Welcoming Reception Hosted by NELI**

Monday, March 25

8:00-8:30am **Continental Breakfast**

8:30-10:30am **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.

10:30-10:45am **Refreshment Break**

10:45-12:15pm **FMLA Compliance and Best Practices**

DOL’s focus in 2023, the continuing difficulties in dealing with medical certifications and best practices, leave to care for a family member, practical issues regarding the effect of leave on the measurement of performance goals, training supervisors on what not to say and how to recognize notice of need for FMLA leave, how to use notice requirements and re-certifications to combat intermittent leave abuse, how to handle an employee who states their “return to work” date is unknown, and what to do when you suspect fraudulent use of leave.

Tuesday, March 26

8:00-8:30am **Continental Breakfast**

8:30-10:15am **ADA Update Part 2: “Reasonable Accommodation”** [*David Fram – NELI*](#)

Latest developments from the EEOC and federal courts on fast-breaking reasonable accommodation issues and the importance of training first-line supervisors on what to listen for as possible triggers to the interactive process, what supervisors and HR personnel should be trained to say and document in response to employee requests, practical developments on the meaning of the term “reasonable,” particular accommodation questions, such as work-at-home, whether/how much “leave” (including a repeated leave extension) is required, how this interplays with the FMLA, whether reduced workloads, non-competitive reassignment, an “irritant-free” environment, shift changes, supervisor changes, or reserved parking spaces are required, whether discipline must be rescinded as an accommodation, and where the funds for accommodations should come from.

10:15-10:30am **Refreshment Break**

10:30-12:15pm **Retaliation and Whistleblowing Claims**

Coverage of the continued surge in these claims, including “protected activity,” expanded concept of “adverse action,” negating the inference of “causation,” third party retaliation, retaliatory harassment, and “unreasonable opposition.” We will also discuss whistleblower claims, including expanded rights and remedies of the would-be whistleblower, and best practices to help avoid and/or minimize liability, especially now.

Wednesday, March 27

8:00-8:30am **Continental Breakfast**

8:30-10:15am **Wage and Hour & Misclassification Issues**

Status of DOL independent contractor test under the Biden administration and new developments involving independent contractors and other contingent and uncovered workers, the DOL’s new proposed modifications to the salary basis threshold, new exemption and misclassification decisions, remote work and compensable time challenges in our increasingly technology-centered workplace, especially post COVID-19. Expanding joint employer theories and cases, actual or constructive knowledge of time worked, and the explosion of new state law rules and causes of action will also be covered.

10:15-10:30am **Refreshment Break**

10:30-12:00pm **NLRB Update**

Substantial changes at the National Labor Relations Board already are well underway. Biden appointees now control the Board. The agency’s new General Counsel has announced an extraordinarily aggressive agenda for change, and those cases are now being decided by the Board. With new rules and the *Cemex* opinion, the Board has reshaped the substantive law governing organizing campaigns. A wholesale return to – and expansion of – the opinions and policies of the Obama Board is underway and will affect both union and non-union workplaces.

Conference to close on Wednesday at noon