



# EMPLOYMENT LAW BRIEFING

St. Petersburg Beach, Florida  
The Don CeSar Beach Resort

March 27-30, 2022

**PLEASE NOTE: AGENDA SUBJECT TO CHANGE**

Sunday	Tuesday
<p><b>2:30pm Briefing Check-In and Refreshments</b></p> <p><b>3:00pm Developments in EEO Law</b> 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. <i>TBA</i></p> <p><b>4:45pm Break</b></p> <p><b>5:00pm ADA Update Part 1: Determining “Qualified”</b> 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. <i>David Fram - NELI</i></p> <p><b>6:15pm Welcoming Reception Hosted by NELI</b></p>	<p><b>8:00am Continental Breakfast</b></p> <p><b>8:30am Ethics in Labor and Employment Law</b> Annual update on cutting edge ethics issues, including conflicts of interest, attorney-client privilege and waiver, <i>ex parte</i> 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, “ghostwriting” of communications, and court enforcement of professionalism and civility codes. <i>Dennis Duffy - Kane Russell Coleman Logan</i></p> <p><b>10:30am Refreshment Break</b></p> <p><b>10:45am ADA Update Part 2: “Reasonable Accommodation”</b> Latest developments on practical reasonable accommodation issues in the age of COVID 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, important changes on the definition of “reasonable,” particular accommodation questions, such as exemptions to mandatory vaccination, work-at-home because of COVID-19 concerns, 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 the best/worst undue hardship arguments. <i>David Fram - NELI</i></p>
Monday	Wednesday
<p><b>8:00am Continental Breakfast</b></p> <p><b>8:30am Wage and Hour &amp; Misclassification Issues</b> Discussion of changing priorities and initiatives at the DOL under the Biden administration, new developments involving contingent workers and other non-covered workers, exemption and misclassification decisions, remote working, and compensable time in our increasingly technology-centered workplace, especially in the COVID-19 era. Joint employer theories and cases and actual or constructive knowledge of time worked required to prove a claim will also be covered. <i>TBA</i></p> <p><b>10:15am Refreshment Break</b></p> <p><b>10:30am FMLA Compliance and Best Practices</b> New DOL opinion letters and OPM guidance, new developments concerning COVID-19, including the coordination of COVID paid sick leave statutes and FMLA leave, handling requests to work without medical clearance and requests to stay home without medical justification, issues when leave is to care for a family member, practical issues regarding the effect of leave on the measurement of performance goals, the relationship between working from home and approved leave, 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. <i>TBA</i></p>	<p><b>8:00am Continental Breakfast</b></p> <p><b>8:30am Retaliation and Whistleblowing Claims</b> 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. <i>TBA</i></p> <p><b>10:15am Refreshment Break</b></p> <p><b>10:30am NLRA Update</b> Substantial changes at the National Labor Relations Board already are well underway. Biden appointees now control the Board and the agency’s new General Counsel has announced an extraordinarily aggressive agenda for change. What will a Biden NLRB look like? How will a wholesale return to – or expansion of – the opinions and policies of the Obama Board affect both union and non-union workplaces? How will the COVID pandemic continue to affect labor relations? And what about the Protect the Right to Organize (“PRO”) Act? There will be lots of important questions to discuss. <i>TBA</i></p> <p><b>12:15pm Briefing Adjournment</b></p>

*Please join us for the WELCOMING RECEPTION immediately following the opening sessions on Sunday.*

*Sessions adjourn at 12:15pm on Monday and Tuesday.*