



EMPLOYMENT LAW BRIEFING

Royal Palm South Beach, Miami, FL

March 19-22, 2023

*AGENDA SUBJECT TO CHANGE

Sunday, March 19

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

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

[Jeff Wohl – Paul Hastings](#)

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 20

8:00-8:30am Continental Breakfast

8:30-10:30am Ethics in Labor and Employment Law

[Dennis Duffy - Kane Russell Coleman Logan](#)

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

[Ellen McLaughlin - Seyfarth](#)

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 21

8:00-8:30am Continental Breakfast

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

Latest developments on practical 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, 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.

10:15-10:30am Refreshment Break

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

[Greg Keating - Epstein Becker Green](#)

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 22

8:00-8:30am Continental Breakfast

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

[Chris Parlo – Morgan Lewis](#)

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. Joint employer theories and cases and actual or constructive knowledge of time worked required to prove a claim will also be covered.

10:15-10:30am Refreshment Break

10:30-12:00pm NLRB Update

[Steve Suflas – Holland & Hart](#)

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 especially non-union workplaces? What can we learn from recent trends in union organizing and job actions? And what about the Protect the Right to Organize (“PRO”) Act and state and local forays into traditional labor law issues?

Conference to close on Wednesday at noon