



# EMPLOYMENT LAW CONFERENCE

Conrad Washington, Washington DC

November 7-8, 2024

\*AGENDA SUBJECT TO CHANGE

## Thursday, November 7

**8:15-9:00am** Conference Check-In and Continental Breakfast

**9:00-10:45am** Developments in EEO Law

[Carson Sullivan](#) and [Madalyn Doucet](#) – 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.

**10:45-11:00am** Break

**11:00-12:30pm** Retaliation and Whistleblowing Claims

[Jill Rosenberg](#) - Orrick

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,” analysis of recent stepped up regulatory enforcement by the Securities and Exchange Commission and the Department of Justice, discussion of whistleblower claims, including expanded rights and remedies of the would-be whistleblower, and best practices to help avoid and/or minimize liability, especially now.

**12:30-1:30** Lunch

**1:30-3:15pm** Wage and Hour & Misclassification Issues

[Samantha Rollins Murphy](#) – Faegre Drinker

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.

**3:15-3:30pm** Break

**3:30-5:00pm** NLRA Update

[Robert Nagle](#) – Fox Rothschild

Biden appointees and the agency’s General Counsel embarked on an extraordinarily aggressive agenda for change at the National Labor Relations Board. With new rule-making 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-era Board is almost complete, affecting both union and non-union workplaces. BUT, recent SCOTUS opinions, a more conservative federal judiciary, and the presidential election also will impact the Board’s efforts. All of these important developments will be reviewed and analyzed.

## Friday, November 8

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

**8:30-9:30am** Ethics in Labor and Employment Law

[Christopher Wilkinson](#) – Perkins Coie

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, pretrial 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, use of artificial intelligence and other cutting edge technologies, settlement and negotiations, and court enforcement of professionalism and civility codes.

**9:30-9:45am** Break

**9:45-11:15am** ADA Update: “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.

**11:15-11:30am** Break

**11:30-1:00pm** FMLA Compliance and Best Practices

[Megan Norris](#) – Miller Canfield

What’s going on at the DOL, how the FMLA intersects with the Pregnant Workers Fairness Act, thorny issues when leave is to care for a family member, effectively using the medical certification process, critical employer and employee notice issues, how FMLA leave affects the measurement of performance goals and other practical issues, training supervisors on what not to say, what to do when you suspect fraudulent use of leave and curbing intermittent leave abuse.