



EMPLOYMENT LAW BRIEFING

Conrad Fort Lauderdale Beach, Fort Lauderdale, FL

March 9-12, 2025

*AGENDA SUBJECT TO CHANGE

Sunday, March 9

2:30-3:00pm

Briefing Check-In and Refreshments

3:00-4:15pm

ADA Update Part 1: Determining “Qualified”

Critical lessons from recent court decisions for lawyers and human resources 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 danger of inaccurate or inflated performance reviews, and how to analyze doctors’ notes, including inconsistent notes.

4:15-4:30pm

Break

4:30-6:15pm

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.

6:15-8:00pm

Welcoming Reception Hosted by NELI

Monday, March 10

8:00-8:30am

Continental Breakfast

8:30-10:15am

Wage and Hour & Misclassification Issues

Status of DOL independent contractor test 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, expanding joint employer theories and cases, actual or constructive knowledge of time worked, and the explosion of new state laws.

10:15-10:30am

Refreshment Break

10:30-12:15pm

FMLA Compliance and Best Practices

Update 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 managing the medical certification process, how leave affects the measurement of performance goals and other practical issues, training supervisors on what not to say and how to recognize notice of need for leave, how to use notice requirements and re-certifications to combat intermittent leave abuse, what to do when you suspect fraudulent use of leave.

Tuesday, March 11

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

10:45-12:30pm

NLRB Update

Substantial changes at the National Labor Relations Board are well underway and happening with Biden appointees now controlling the Board, the agency’s new General Counsel announced an aggressive agenda for change, and those cases are now being decided. 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 workplace.

Wednesday, March 12

8:00-8:30am

Continental Breakfast

8:30-10:15am

ADA Update Part 2: “Reasonable Accommodation”

Developments from the EEOC and federal courts on these 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 should be trained to say and document in response to employee requests, practical developments on the term “reasonable,” accommodation questions, such as work-at-home, whether/how much “leave” is required, interplay with the FMLA, whether reduced workloads, non-competitive reassignment, shift 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

10:30-12:00pm

Harassment and Investigations

Update on judicial and EEOC developments including what constitutes severe and pervasive conduct, same sex harassment, when and how to establish an affirmative defense, and actions employers should implement to reduce exposure to liability, including preventative strategies, beyond basic harassment training and updating policies, to diagnose and proactively manage workplace culture issues, promote an environment that values respect, and fosters open communication important to creating a culture of compliance and mutual respect. Also, the additional legal requirements in harassment investigations, including selecting the right investigator, defining the scope, distinguishing between fact finding and findings of policy and law, balancing confidentiality and the duty to investigate, ensuring prompt thorough investigations, establishing and preserving privilege, investigating misconduct with criminal implications and/or in the absence of a cooperative complainant, and the unique challenge of conducting “remote” investigations.

Conference to close on Wednesday at Noon