

**American Bar Association
Section of Labor and Employment Law
2013 ABA Annual Meeting
San Francisco, California**

August 8-12, 2013

Thursday, August 8

**8:30 – 10:00 a.m. Ever-Expanding Federal Whistleblower Protections:
Increasing Rewards, Growing Risks**

Moscone Center West, Room 3007, Third Floor

The experienced panelists will offer differing perspectives on employment claims and litigation under the growing number of federal whistleblower protections. Discussion will cover the most recently enacted whistleblower laws, including the enhanced Sarbanes-Oxley protections and the consumer financial protection whistleblower provisions of Dodd-Frank; the growth of federal whistleblower “bounty” programs, including CFTC and IRS programs; the Department of Labor’s evolving approach to the adjudication of whistleblower claims; and best employment practices for minimizing whistleblower litigation risk.

Moderator: Cynthia E. Nance, University of Arkansas, Fayetteville, AR

Speakers:

Joséph Y. Ahmad, Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, Houston, TX

Jeffrey S. Heller, BP America, Houston, Texas

Donn C. Meindersma, Conner & Winters, LLP, Washington, DC

Gerald M. Waites, O’Donoghue & O’Donoghue, LLP, Washington, DC

Jason M. Zuckerman, U.S. Office of Special Counsel, Washington, DC

2:00 – 3:30 p.m. Supreme Court Labor and Employment Law Update

Moscone Center West, Room 3007, Third Floor

While media coverage of the U.S. Supreme Court’s most recent term has understandably focused on hot-button issues like gay marriage, affirmative action, and voting rights, the Court has also been busy addressing issues that affect labor and employment lawyers and the civil justice system generally. Join an expert panel of Supreme Court advocates and employment litigators for a moderated discussion on the Court’s most recent term. The panelists will discuss emerging trends in the Court’s treatment of issues critical to your practice, including arbitration, class actions, FLSA collective actions and standing. The panel will also provide in-depth analysis of key labor and employment law cases.

Moderator: Deepak Gupta, Gupta Beck PLLC, Washington, DC

Speakers:

Katherine C. Huibonhoa, Paul Hastings, San Francisco, CA

Peter K. Stris, Stris & Maher LLP, Los Angeles, CA

3:45 – 5:15 p.m.

USERRA and Reemployment Rights:

What Returning Military Personnel, Unions, and Employers Need to Know

Moscone Center West, Room 3007, Third Floor

The Uniformed Service Employment and Reemployment Rights Act (USERRA) governing military leave and discrimination/retaliation issues resulting from military service is critical in today's workplace. USERRA provides broad-sweeping and unique rights to employees who have left the workplace to serve in the military. Given USERRA's complex rules governing veterans' re-employment rights and the growing body of law in this area, this timely program will ensure that all parties are familiar with the statute's requirements and with related laws and regulations.

Moderator: George R. Wood, Littler Mendelson P.C., Minneapolis, MN

Speakers:

David M. Jaffe, CVS/Caremark, Woonsocket, RI

Stephen B. Moldof, Cohen, Weiss and Simon LLP, New York, NY

Kathryn S. Piscitelli, Orlando, FL

Esther A. Tamburro-Lander, U.S. Department of Justice, Washington DC

Friday, August 9

8:30 – 10:00 a.m.

Wage and Hour Best Practices Check List

Moscone Center West, Room 3007, Third Floor

Wage and hour class and collective actions continue to be filed with frequency. An expert panel will discuss litigation trends under the California Labor Code and the Fair Labor Standards Act and will identify best practices for employers to follow to insulate themselves against such claims.

Moderator: Julie A. Totten, Orrick, Herrington & Sutcliffe LLP, Sacramento, CA

Speakers:

Janet M. Herold, U.S. Department of Labor, San Francisco, CA

Joseph E. Jaramillo, Goldstein, Borgen, Dardarian & Ho, Oakland, CA

George L. Washington, Jr., Orange Business Services, Oak Hill, VA

8:30 – 10:00 a.m.

International Labor & Employment Law Committee Business Meeting

The Palace Hotel, Mendocino, 2nd Floor

This meeting will provide an update on the Committee's programs and publications and will serve as a networking opportunity to learn more about the Committee's functions and plans, including a discussion of proposed topics for the 2014 Midyear Meeting. In addition, information on significant developments in the international labor and employment law arena will be addressed.

8:30 – 10:00 a.m.

Professional Responsibility in Representing Persons with Diminished Capacity and Disabilities

Moscone Center West, Room 2002, Second Floor

Joint Sponsor: Commission on Disability Rights

Attorneys representing persons with disabilities face unique challenges in meeting their primary duty under the Model Rules of Professional Conduct to allow their clients to make "adequately considered decisions" in the course of their case. This program focuses on this professional responsibility, and discusses ethical rules relating to client competency, maintaining the integrity of the attorney-client relationship, confidentiality of information

concerning the client's disability, and the circumstances when an attorney may withdraw from representation.

Moderator:

Honorable Judge Marguerite D. Downing, Los Angeles County Superior Court Edmund D. Edelman Children's Court, Los Angeles, CA,

2:00-1:30 p.m. Careers in Labor and Employment Law
Marriott Marquis Hotel

The panel will provide an opportunity to meet with leading lawyers in the field of labor and employment law and to learn about the varied career paths in this growing specialty area, including "big law" firm practice, union legal staff, boutique litigation firms, federal regulatory agencies, and in-house corporate counsel. Join us for an interesting and informative panel. Panel and luncheon is complimentary for ticketholders. Tickets may be obtained at the Law Student Division Information table.

2:00 – 3:30 p.m. Use of Criminal Convictions in Employment
Moscone Center West, Room 3007, Third Floor

The EEOC has held hearings and issued new policy guidance concerning criminal background checks. Several states have enacted legislation restricting the use of criminal records by employers or are looking at such legislation. The EEOC and the private bar have engaged in significant litigation involving employment decisions affected by criminal background checks. Still, many employers believe that they need to obtain and review criminal records to protect their businesses, employees, and customers, and to avoid claims of negligent hiring or retention. Join our expert panel for a stimulating discussion of the latest status of the law in this area, as well as best practices for employers interested in conducting criminal background checks.

Moderator: Barry A. Hartstein, Littler Mendelson P.C., Chicago, IL

Speakers:

James Kan, Goldstein, Borgen, Dardarian & Ho, Oakland, CA

Carol Miaskoff, U.S. EEOC, Washington, DC

Lester S. Rosen, Employment Screening Resources, Novato, CA

3:30 – 5:00 Council Meeting
The Palace Hotel, Sea Cliff, 2nd Floor

6:00 – 7:30 pm Section Reception
The Palace Hotel, French Parlor, 2nd Floor

Saturday, August 10

8:30 – 10:00 a.m. Ethics of Communicating with Represented and Unrepresented Parties and Witnesses in Class Actions
Moscone Center West, Room 3024, Third Floor

Communicating with class members can pose difficult ethical issues for both plaintiff and defense counsel. Different rules may apply depending on the type of case as well as whether the case has been certified. The advent of social media has impacted the methods of communicating with class members, but have the rules really changed? Comprised of class

action specialists from the plaintiff and defense bars as well as an experienced judge and professional responsibility academic, this panel will focus on best practices for avoiding ethical issues in this area.

Moderator: Beth Terrell, Terrell Marshall Daudt & Willie, PLLC, Seattle, WA

Speakers:

Jason C. Marsili, Posner & Rosen LLP, Los Angeles, CA

John Strait, Seattle University School of Law, Seattle, CA

Andrew J. Voss, Littler Mendelson, Minneapolis, MN

12:30 – 2:00 p.m.

Section Luncheon

The Palace Hotel, Twin Peaks, 2nd Floor

All Section members registered for the Annual Meeting are invited to attend this informal lunch. Please note that space is limited and advance registration is required. Please email Lynette Kelley at lynette.kelley@americanbar.org to inform us if you plan to attend.

2:00 – 3:30 pm

Health Care Reform – What Now?

Room 2022, 2nd Floor, Moscone Center West

Joint Sponsor: Tort Trial & Insurance Practice Section

A panel of experts will provide an update of the key components of the Affordable Care Act and its implications relative to (1) employee benefit plan design, cost and compliance, and (2) the physician/hospital relationship. Among other topics, our distinguished panel will discuss enrollment in the exchange and the impact on coverage in employee benefit plans, employer notice obligations, and new plan designs for 2014 for non- grandfathered plans. Our panel will also discuss individual shared responsibility, eligibility for the premium credit, and insurance reform requirements in 2014 (such as guaranteed renewability, guaranteed availability and fair premiums). Finally, our panel will discuss the changing nature of the hospital/physician relationship and how reimbursement cuts and other financial pressures stemming from the Act are impacting physician

Moderator: Jason H. Ehrenberg, Bailey & Ehrenberg PLLC, Washington, D.C.

Speakers:

Kathy Bakich, The Segal Company, Washington, D.C.

Alice King, Dallas, Texas

Tiffany Santos, Trucker Huss, San Francisco, California

3:30 – 4:30 p.m.

Section Business Meeting and Election

The Palace Hotel, Mendocino, 2nd Floor

Sunday, August 11

8:30 – 10:00 a.m.

The Real Cost of Human Trafficking: How Can Employers and Worker Advocates Prevent Labor Trafficking and Protect Trafficking Victims

Room 2022, 2nd Floor, Moscone Center West

This program will provide an in depth analysis of the often hidden crime of human trafficking with a focus on the best policy alternatives to combat human trafficking in

American workplaces. The expert panel will provide practical tools for employers, unions and worker advocates to protect identified victims. Labor and management have been working together to develop training for managers and others to identify trafficking victims and the illegal labor suppliers that deal in trafficked persons. Government initiatives in the Department of Homeland Security, the Department of Labor, the EEOC and elsewhere provide useful guidance for employers seeking to assure that their workforces are untainted by human trafficking and advice on effective remedies for victims. These agencies as well as independent advocacy groups have successfully prosecuted traffickers as well as those employers who have been caught in the web of human trafficking. Attendees at this program will learn how to prevent their workplaces from unwittingly becoming involved in the network of labor trafficking and how to assist those workers who have become victims.

Moderator:

Nora L. Macey, Macey Swanson and Allman, Indianapolis, IN

Panelists:

Ana Avendaño, AFL-CIO, Washington, D.C.

Robert A. Canino, Equal Employment Opportunity Commission, Dallas, TX

Eunice Hyunhye Cho, National Employment Law Project, Oakland, CA

Rená Cutlip-Mason, Department of Homeland Security, Washington, D.C.

Joseph Z. Fleming, Greenberg Traurig LLP, Miami, FL

8:30 – 10:00a.m.

Arbitration Update

Room 3022, 3rd Floor, Moscone Center West

Joint Sponsor: Section of Dispute Resolution

This panel will discuss the most important arbitration issues of the past year. During this session, United States Supreme Court rulings dealing with arbitration issues, as well as notable federal and state court decisions will be reviewed. Panelists will consider issues related to labor and employment, as well as give a legislative update.

Moderator:

John R. Phillips, Husch Blackwell, Kansas City, MO

Panelists:

Hon. Bruce E. Meyerson, Bruce Meyerson PLLC, Phoenix, AZ

Barbara J. D'Aquila, Fulbright & Jaworski L.L.P., Minneapolis, MN

Suzanne K. Nusbaum, Impartia, Los Gatos, CA

2:00 - 3:30 p.m.

Employment Retaliation: An Ever Present Danger

Moscone Center West, Room 2024, 2nd Floor

Retaliation cases form a significant percentage of court and governmental dockets. They are difficult to defend and can result in big verdicts. A panel of experienced practitioners will discuss developing case law and best practices for avoiding and responding to retaliation claims. The topics will include reasonable vs. unreasonable protected activity; causation issues (is timing enough) and what constitutes an adverse action. The practitioners will give practical advice on making sure that individuals accused of discrimination and third parties do not retaliate or engage in conduct that creates that appearance.

Moderator: Adele Rapport, Chicago IL

Panelists:

Darci E. Burrell, Levy Vinick Burrell Hyams, Oakland, CA

Michael J. Gray, Jones Day, Chicago, IL
T. Warren Jackson, DirecTV, El Segundo, CA
Michael P. Posner, Posner & Rosen LLP, Los Angeles, CA
William R. Tamayo, Equal Employment Opportunity Commission, San Francisco, CA

2:00 – 3:30 p.m.

Recent DOL Enforcement Initiatives & ERISA Supreme Court Update

Room 3022, 3rd Floor, Moscone Center West

Joint Sponsor: Tort Trial & Insurance Practice Section

With the current national debate over retirement security, the latest judicial and regulatory developments in this area are of even greater importance. Moreover, with over \$19 trillion in U.S. retirement assets, the retirement sector is a key growth area for many sectors. Our panel of experts will discuss recent retirement-related and ERISA developments at the Supreme Court and on the regulatory front. In addition to considering the implications of the Court's 2013 decision in *U.S. Airways v. McCutchen* from both a management and plaintiff's bar perspective, the panel will provide its insights on retirement-related issues that may come before the Court in the next few years. The panel also will provide an overview of significant regulatory developments at the Department of Labor and other agencies that have broad implications not only for the retirement industry, but also for related sectors including investment management and the securities industry.

Moderator: David S. Cohen, Milbank, Tweed, Hadley & McCloy, Washington, D.C.

Panelists:

Margo Hasselman, Lewis, Feinberg, Lee, Renaker & Jackson P.C., Oakland, California
H. Douglas Hinson, Alston & Bird LLP, Washington, D.C.
David J. Levine, McDermott Will & Emery LLP, Washington, D.C.
Michael A. Tilghman, II, Bailey & Ehrenberg PLLC, Washington, D.C.

3:45 – 5:15 pm

Legislative and Other Developments in LGBT Employment Rights

Moscone Center West, Room 3024, Third Floor

In November, voters in three more states approved same-sex marriage. There continue to be significant developments on both the legislative and judicial playing fields, with the Supreme Court set to address the Defense of Marriage Act, the constitutionality of California's Proposition 8, and potentially an equal protection challenge to the removal of benefits by a State. Join our panel of experts to discuss these developments, as well as recent changes in the law relating to LGBT employees, including current issues relating to benefits for same-sex partners. Regardless of whether you are an employer, employee, or union, this panel will provide fascinating food for thought and vital information that you need to know in this rapidly evolving area of the law.

Moderator: J. Randall Coffey, Fisher & Phillips LLP, Kansas City, MO

Panelists:

Shannon Price Minter, National Center for Lesbian Rights, San Francisco, CA
Teresa S. Renaker, Lewis, Feinberg, Renaker, & Jackson, PC, Oakland, CA
Amy Todd-Gher, Valdez Noor Todd & Doyle, San Francisco, CA

Monday, August 12

12:00 – 2:00 p.m.

Luncheon for Section Members who are HOD Delegates

Moscone Center West, Room 2011, 2nd Floor