



American Bar Association
Section of Labor and Employment Law
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Chicago, IL 60654

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LAS VEGAS

Midwinter Meeting

Employment Rights and Responsibilities Committee

March 19-23, 2019

Four Seasons Hotel Las Vegas • Las Vegas, Nevada

ABA Section of Labor and Employment Law

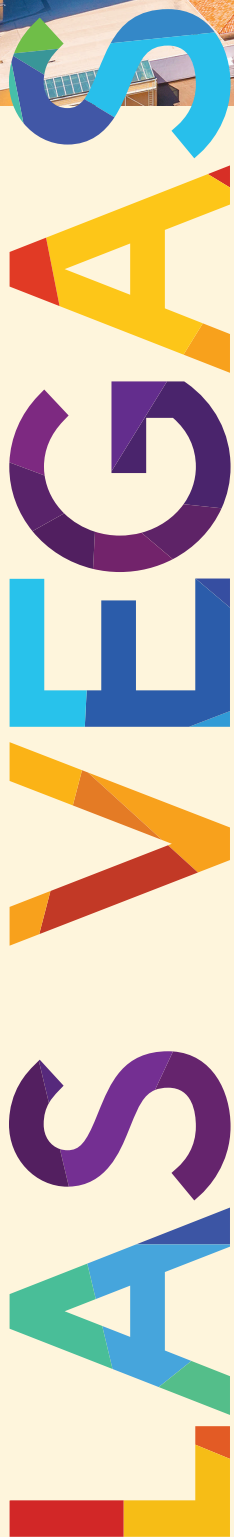
Midwinter Meeting

Four Seasons Hotel Las Vegas • Las Vegas, Nevada

**Employment Rights and
Responsibilities Committee**

March 19-23, 2019





Viva Las Vegas! Please join us in March 2019 as we chase away the winter blues with an exciting, educational and enjoyable program in Las Vegas, Nevada for the Employment Rights and Responsibilities Committee Midwinter Meeting.

Our annual CLE program will take place from March 20 to 24 in the elegant oasis that is the Four Seasons Hotel on the strip in Las Vegas. The hotel offers a “non-gaming sanctuary” with a private pool and lobby that is literally steps from world-class gaming, exciting entertainment and dramatic night life. For families, the Four Seasons’ association with Mandalay Bay Resort provides amenities that include a wave-pool beach and lazy river, plus off-site activities including 3-D movies, the Mandalay Bay Shark Reef, fountain shows and theme rides.

The ERR Committee will offer you a guaranteed jackpot of educational programming. Among the highlights this year will be panels featuring such cutting-edge topics as arbitrations in the post-*Epic* world, eliminating bias in jury selection, non-compete enforcement in corporate mergers and acquisitions, the challenges of workplace romances, and contingent workers as the next unionized workforce. In addition, we will offer a concurrent track of ethics programs on Friday, allowing you to secure valuable ethics and professional responsibility knowledge and CLE credit. As always, our programs will reflect the diversity of our membership, including the employer/management, employee/plaintiff, union, government and in-house counsel perspectives, as well as unique viewpoints from our international colleagues.

We will open our festivities on Tuesday evening with a welcome reception and charity poker tournament and will continue the fun on Wednesday, with our subcommittee and welcome receptions. We will augment our customary networking opportunities with a Dine-Around on Thursday evening, featuring wonderful restaurant options, and will cap off the week with our traditional Friday dinner dance.

Characteristic of all ERR meetings and of our Committee in general is shared expert knowledge and genuine friendship, irrespective of practice area. The result is an experience that is distinctive, providing opportunities for both professional growth and personal fulfillment.

On behalf of the ERR family, we hope you will make plans to join us in exciting Las Vegas for a one-of-a-kind Midwinter Meeting. Everyone wins when they bet on ERR!

Melinda Burrows, *Employer (In-House) Co-Chair*

Lori L. Deem, *Employee Co-Chair*

Hon. Stephanie M. Jones, *Public Co-Chair*

Paul E. Starkman, *Employer Co-Chair*

Douglas L. Steele, *Union & Employee Co-Chair*

Midwinter Meeting

Tuesday, March 19

- **6:00 – 8:00 p.m.**
Welcome Reception at
Four Seasons Hotel Las Vegas

Wednesday, March 20

- **8:00 – 9:00 a.m.**
Continental Breakfast
- **8:00 – 9:00 a.m.**
ERR Subcommittee Co-Chair Meeting
- **9:00 – 10:00 a.m.**
You Can't Change What You Can't See:
Key Lessons from the 2018 ABA Report on
Racial and Gender Bias in the Legal Profession
A comprehensive report by the ABA Commission on Women in the Profession, the Minority Corporate Counsel Association and Hastings College of Law's Center for WorkLife Law concludes that "traditional diversity tools" have been "ineffective" at addressing bias in the legal profession. The report encourages firms and in-house departments to adopt "evidence-based, metrics-driven" changes to personnel processes as a way to disrupt the transmission of bias in decisions. Our panel will review the report's key findings and discuss the "toolkits" it recommends for targeting and eliminating bias in personnel decisions.

SPEAKERS:
TBD

- **10:00 – 10:15 a.m.**
Refreshment Break

10:00 – 11:30 a.m. **Corporate Counsel Caucus**

Bobbie J. Fox and Donald S. Barth will host a caucus meeting for in-house attorneys focusing on emergent issues important to the in-house labor and employment practitioner. The topics will be discussed from the unique perspective of in-house corporate counsel responsible for providing legal advice to corporate clients on these issues. The meeting format will allow participants to discuss and compare approaches for addressing risk management and other legal issues. Attendance is limited to in-house corporate counsel to promote a free flow of information. Discussion topics will be solicited from in-house registrants in advance of the meeting.

- **10:15 – 11:15 a.m.**
Uncovering and Challenging Bias in
Jury Selection and Deliberations

Presented by the Trial and Appellate Advocacy Subcommittee

Since deciding *Batson v. Kentucky* in 1986, the U.S. Supreme Court has handed down decisions involving bias in jury selection (*Foster v. Chatman*) and juror deliberations (*Pena-Rodriguez v. Colorado*). Recently, questions about the role of "implicit" bias nearly reached the Supreme Court in *Rhines v. South Dakota*, a case dealing with sexual orientation. Our panel will explore solutions for dealing with bias in trial proceedings and will conduct a short "implicit bias test" to show how covert bias infects and affects the legal profession and society in general.

MODERATOR:

Maureen S. Binetti, *Wilentz, Goldman & Spitzer, P.A.*,
Woodbridge, NJ

SPEAKERS:

Hon. J. Michelle Childs, *U.S. District Court for the District of*
South Carolina, Columbia, SC

William R. Clayton, *Greenberg Traurig, LLP, Las Vegas, NV*

Jill Huntley Taylor, Ph.D., *Dispute Dynamics, Inc., Philadelphia, PA*

- **11:30 a.m. – 12:45 p.m.**
First-Time Attendee Luncheon

Sponsored by Morrison & Foerster LLP

First-time attendees are invited to an informal luncheon with Section and Committee leaders who will discuss what ERR does and how to get involved.

- **1:00 – 1:30 p.m.**
Welcome, Introductions and
Section Leadership Report

COMMITTEE CO-CHAIRS

Melinda C. Burrows, *Netscout, Westford, MA*

Lori L. Deem, *Outten & Golden LLP, Chicago, IL*

Hon. Stephanie M. Jones, *Federal Agency, Knoxville, TN*

Paul E. Starkman, *Clark Hill PLC, Chicago, IL*

Douglas L. Steele, *Woodley & McGillivray LLP, Washington, DC*

PROGRAM CO-CHAIRS

Wynter P. Allen, *Alden Law Group, PLLC, Washington, DC*

Gary B. Eidelman, *Saul Ewing Arnstein & Lehr LLP, Baltimore, MD*

John A. Henderson, *U.S. Equal Employment Opportunity*
Commission, Baltimore, MD

Heather F. Lindsay, *Lindsay & Lindsay, P.A., Milton, FL*

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

ADMINISTRATIVE CO-CHAIRS

Monique Gougisha Doucette, *Ogletree Deakins Nash Smoak &*
Stewart, P.C., New Orleans, LA

Glen D. Savits, *Green Savits LLC, Florham Park, NJ*

2019

• 1:30 – 2:30 p.m.

Arbitration in an *Epic* World

Presented by the Alternatives to Litigation Subcommittee

Now that the Supreme Court has green-lit class waivers in arbitration agreements, employers have a choice: stick with the old-fashioned route of litigating in court or require employees to enter into arbitration agreements as the exclusive means of dispute resolution. This panel will explore factors employers weigh in deciding whether to enter into arbitration agreements with employees and how the plaintiff's bar has responded to *Epic Systems*. Panelists also will discuss how the Supreme Court's decision squares with the increasing number of state laws banning mandatory arbitration of sexual harassment claims in response to the #MeToo movement.

MODERATOR:

T. Warren Jackson, *Signature Resolution, Los Angeles, CA*

SPEAKERS:

Jeffrey A. James, *Sebris Busto James, Bellevue, WA*

Lucas J. Kaster, *Nichols Kaster, PLLP, Minneapolis, MN*

Jean Sternlight, *Director and Michael and Sonja Saltman Professor of Law, Saltman Center for Conflict Resolution, University of Nevada Las Vegas Boyd School of Law, Las Vegas, NV*

Sirithon Thanasombat, *U.S. Equal Employment Opportunity Commission, San Francisco, CA*

• 2:35 – 3:50 p.m.

Safely and Successfully Accommodating Mental Health Conditions in the Workplace

Jointly Presented by the Disability and Leaves of Absence Subcommittee and Diversity Outreach and Inclusion Task Force

Mental health conditions present employers, employees and unions with difficult questions in determining effective accommodations. Issues surrounding privacy, safety and productivity are especially challenging when accommodating mental health impairments. Join our panel to explore many of the legal and practical concerns surrounding these important matters, including dealing with opioid use, responding to suicidal ideation and preserving the dignity of workers.



MODERATOR:

Sonya Richburg, *Coca-Cola Bottling Co. Consolidated, Charlotte, NC*

SPEAKERS:

Camille Monahan, *U.S. Equal Employment Opportunity Commission, Memphis, TN*

Naomi N. Oglesby, *Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Detroit, MI*

Douglas L. Steele, *Woodley & McGillivray, LLP, Washington, DC*

• 6:00 – 7:00 p.m.

Subcommittee Reception

For those having a hard time deciding which ERR subcommittee to join, the Membership Committee will present the Subcommittee Reception. First-time attendees are encouraged to meet with subcommittee co-chairs and other ERR and Section leaders in a festive and relaxed setting to learn more about ERR's subcommittees and how to become involved in ERR activities.

We thank the following firms for their generous contributions in support of this reception:

Employment Practices Group

Green and Spiegel LLC

Green Savits LLC

HomansPeck, LLC

Hardwick Benfer LLC

Ice Miller LLP

John Sands, Arbitrator & Mediator

Law Office of Kirsten Scheurer Branigan, P.C.

Nichols Kaster, PLLP

O'Malley & Madden, P.C.

Pollins Law Firm

Ritz, Clark and Ben-Asher

Scott Dukes & Geisler P.C.

Woodley & McGillivray, LLP

• 7:00 – 8:30 p.m.

Networking Reception

We thank the following firms for their generous contributions in support of this reception:

Borden Ladner Gervais LLP

Clark Hill PLC

Laner Muchin, Ltd.

Littler Mendelson P.C.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

Outten & Golden LLP

Saul Ewing Arnstein & Lehr LLP

Sheppard, Mullin, Richter & Hampton LLP

Van Dermyden Maddux Law Corporation

Midwinter Meeting 2019

Thursday, March 21

- **8:00 – 9:00 a.m.**
Continental Breakfast

- **8:00 – 9:00 a.m.**
***Breakfast Roundtable:**
From #MeToo to #WeToo:
International Perspectives on the
Movement Against Sexual Harassment
and Sexual Assault in the Workplace

Presented by the International Law Subcommittee

In little more than a year, the #MeToo movement has changed cultural norms in workplaces around the world and has led to legal reforms and proposed legislation in many countries. Join an international panel for an interactive discussion of the latest developments in this global phenomenon, including a comparison of legislative and regulatory efforts in the U.S. and abroad, and a discussion of workplace initiatives undertaken by employers and employees in response to #MeToo.

MODERATOR:

Eben Krim, Honeywell Performance Materials and Technologies,
New York, NY [invited]

SPEAKERS:

Karen Durand-Hakim, DDL Law Firm, Paris, France
Javiera Medina Reza, Baker McKenzie, Mexico City, Mexico
Gerlind Wisskirchen, CMS Hasche Sigle, Cologne, Germany
Andrea L. Zwack, Gall Legge Grant Zwack LLP, Vancouver, BC

CONCURRENT PROGRAMS: TRACK 1

- **9:00 – 10:00 a.m.**
Rolling Snake Eyes:
Counseling Executives and
Companies when the House Goes Bust

Presented by the Contracts and
Executive Compensation Subcommittee

When a company is in extreme crisis and considering the best way to move forward, executives face unique labor and employment issues. Executives debating whether to stay the course or leave need to understand how they will be compensated and how retention bonuses are scrutinized and approved. Indemnification agreements play a critical role in that debate because they impact a number of issues if a company goes into bankruptcy proceedings. This panel will focus on these and other issues facing companies and their executives when in moments of financial peril.

MODERATOR:

Donna M. Hughes, Bedminster, NJ

SPEAKERS:

Jonathan Ben-Asher, Ritz Clark & Ben-Asher LLP, New York, NY
Robert S. Gilmore, Kohrman Jackson & Krantz LLP, Cleveland, OH
Joseph A. Kohanski, Jr., Bush Gottlieb, Glendale, CA

- **10:00 – 10:15 a.m.**
Refreshment Break

- **10:15 – 11:15 a.m.**
Here, There and Everywhere:
A Globetrotting Update of Developments
in Employment and Labor Law

Presented by the International Law Subcommittee

From impactful court decisions to far-reaching legislation, countries around the world have seen significant developments in their labor and employment laws. This program will provide a guided tour of countries with notable developments, with stops in France, the United Kingdom, Asia, Latin America and the United States. Our tour guides will analyze trends that appear to emerge from the developments and will make predictions about future destinations for labor and employment laws in these and other countries.

MODERATOR:

Amy F. Shulman, Outten & Golden LLP, New York, NY

SPEAKERS:

Analia V. Duran, MBB Abogados, Buenos Aires, Argentina
Jingbo (Jason) Lu, River Delta Law Firm, Shanghai, China
Esther Martin, CM Murray LLP, London, United Kingdom
Patrick Thiebart, Jeantet Associes, Paris, France

- **11:20 a.m. – 12:20 p.m.**
Lessons Learned from Title IX

Presented by the Workplace Investigations Subcommittee

This session will compare and contrast Title IX campus sexual misconduct investigations with Title VII workplace investigations. Panelists will cover unique Title IX issues, such as trauma informed interviewing approaches, the importance of the institution's policies, including the concept of "affirmative consent," and the impact of intoxication and incapacitation. In addition, the panel will explore growing trends in Title VII investigations in the wake of the #MeToo movement, including anonymous complaints, stale claims and off-duty conduct, and also will cover how these Title IX and Title VII concepts can overlap for an investigator or legal advisor.

MODERATOR:

Hon. Stephanie M. Jones, Federal Agency, Knoxville, TN

SPEAKERS:

Lisa Karen Atkins, Ogletree Deakins, Nash, Smoak & Stewart, P.C.,
Birmingham, AL
Jeff Brodin, Brodin HR Law, Phoenix, AZ
Nina T. Pirrotti, Garrison, Levin-Epstein, Fitzgerald & Pirrotti, P.C.,
New Haven, CT
Sheree C. Wright, Vanderbilt University, Nashville, TN

*The Breakfast Roundtables are informal gatherings designed to permit group discussions. There will be no written materials distributed about the topics and, due to their informal nature, these sessions are not approved for CLE credit.

CONCURRENT PROGRAMS: TRACK 2• **9:00 – 10:00 a.m.****Demystifying ERISA for Employment Lawyers****Presented by the Employee Benefits Subcommittee**

If you have ever broken out in a cold sweat because the acronym “ERISA” appeared in a complaint or demand, then this is the program for you. This panel will explain key ERISA concepts that every labor and employment lawyer should know, including the role of fiduciaries, required notifications of employee rights and vesting of employee interests. Panelists also will discuss the intersections between employment law and ERISA and arm you with the tools to evaluate the interrelationships.

MODERATOR:Audrey Browne, *DC 37 Health & Security Plan, New York, NY***SPEAKERS:**Joel R. Hurt, *Feinstein Doyle Payne & Kravec, LLC, Pittsburgh, PA*J. Timothy McDonald, *Thompson Hine LLP, Atlanta, GA*Erin M. Sweeney, *Miller & Chevalier Chartered, Washington, DC*• **10:00 – 10:15 a.m.****Refreshment Break**• **10:15 – 11:15 a.m.****Identifying and Addressing Whistleblower Claims: Can You Hear the Whistle Blowing****Presented by the Whistleblower Subcommittee**

What constitutes whistleblowing and retaliation? This panel will discuss employee protections under the Sarbanes-Oxley Act of 2002 (SOX) and the Dodd-Frank Wall Reform and Consumer Protection Act (Dodd-Frank) and will provide guidance on how to address claims regarding adverse employment actions.

MODERATOR:Melinda C. Burrows, *Netscout, Westford, MA***SPEAKERS:**Lloyd B. Chinn, *Proskauer Rose LLP, New York, NY*Uche Egemonye, *U.S. Department of Labor, Atlanta, GA*Jason Zuckerman, *Zuckerman Law, Washington, DC*• **11:20 a.m. – 12:20 p.m.****Balanced Approaches to Regulating Romance in the Workplace: Tainted Love?****Employment at Will Subcommittee**

Mention workplace romance to employers and you may hear fears about legal claims, lost productivity and the agita of managing office gossip, claims of favoritism, and hurt feelings. These concerns have led more companies to develop stricter policies to address relationships among employees and coworkers, supervisors, competitors and clients. But, as with some romances, there are limits to how far these policies can go, especially in states that protect employees’ off-duty conduct. This panel will discuss the implications of workplace romance policies and solutions for regulating romance while still respecting employees’ rights.

**MODERATOR:**Kimberly W. Geisler, *Scott Dukes & Geisler, P.C., Birmingham, AL***SPEAKERS:**Sandra Pullman, *Office of the New York State Attorney General, Civil Rights Bureau, New York, NY*Kathleen O. Sedey, *The Case Law Firm, Chicago, IL*Bobby C. Simpson, *General Electric, Louisville, KY*• **12:30 – 1:30 p.m.****Subcommittee Luncheon**

ERR’s subcommittees will meet over lunch to plan activities and programs for the 2020 Midwinter Meeting. Newcomers are encouraged to attend! We thank the following for their generous contributions in support of the Subcommittee Luncheon:

Ahmad Zavitsanos Anaipakos Alavi & Mensing P.C.**The Case Law Firm****Foley Hoag LLP****Lindsay & Lindsay, P.A.****Martin & Bonnett P.L.L.C.****The Murray Law Group****Polsinelli PC****Proskauer Rose LLP****Spilman Thomas & Battle PLLC****Wilentz, Goldman & Spitzer, P.A.**• **3:00 – 5:00 p.m.****TopGolf Outing (Optional Ticketed Event)**• **7:00 – 10:00 p.m.****Dine-Around**

Meeting registrants and guests are invited to participate in an organized “dine-around” at some of Las Vegas’ best restaurants. Sign-up sheets will be posted at the ABA Registration Desk.

• **10:00 p.m. – 12:00 a.m.****Late Night Hospitality Suite**

Midwinter Meeting 2019

Friday, March 22

• 8:00 – 9:00 a.m.

Continental Breakfast

• 8:00 – 9:00 a.m.

*Breakfast Roundtable: Gab with the Government

Join a panel of government agency attorneys from the DOL, EEOC and NLRB, who will discuss the newest developments and provide the latest updates from their respective agencies. Come prepared to ask questions and learn about matters currently of interest to the federal government in the labor and employment law context.

MODERATOR:

Jo Linda Johnson, U.S. Department of Homeland Security – Federal Emergency Management Agency, Washington, DC

SPEAKERS:

Uche Egemonye, U.S. Department of Labor, Atlanta, GA

Linda M. Mohns, National Labor Relations Board, Memphis, TN

Jeremy Montiero, U.S. Department of Justice, Washington DC

Sirithon Thanasombat, U.S. Equal Employment Opportunity Commission, San Francisco, CA

CONCURRENT PROGRAMS: TRACK 1

• 9:00 – 10:00 a.m.

Unauthorized Practice of Law in a Multijurisdictional World: Road Warriors Beware

Labor and employment attorneys face a conundrum when it comes to their practices: the work is not limited by state lines, but law licenses may be. And the rules may vary depending on whether you are practicing in federal court, state court or private arbitration, whether the work involves pre-litigation activities, or whether your role is one of in-house counsel. This interactive panel will consider the nature of multi-jurisdictional practice from the management, in-house, union, plaintiff and government perspective, and will discuss what attorneys ethically can (and can't do) across state and jurisdictional lines.

SPEAKERS:

TBD

• 10:00 – 10:15 a.m.

Refreshment Break

• 10:15 – 11:30 a.m.

Strategies and Tips for Helping Lawyers with Substance Abuse Problems

Lawyers are at an elevated risk of experiencing substance abuse disorders. More than 1 in 5 lawyers report that they experienced problematic use of alcohol or other drugs at some point in their adult lives—more than twice the rate of the general population—and the rate of substance abuse increases the longer attorneys have been practicing. This panel will provide practical tips for identifying and responding to attorneys with substance abuse problems from the perspective of the law firm or

employer, the impaired attorney and the concerned colleague, and will feature experts who focus on substance abuse in the legal profession.

SPEAKERS:

TBD

• 11:35 a.m. – 12:50 p.m.

Interrupting Bias in the Legal Profession: What Would You Do?

Presented by the Ethics and Professional Responsibility Subcommittee

While many lawyers are aware of the existence of implicit and explicit biases, they often struggle with how to respond when they observe the operation of bias in colleagues, clients, opposing counsel or the courts. This panel of subject-matter experts will focus on our professional obligations as lawyers to address bias as well as practical strategies for interrupting bias in the legal profession.

SPEAKERS:

TBD

CONCURRENT PROGRAMS: TRACK 2

• 9:00 – 10:00 a.m.

Non-Compete Enforcement Issues in Business Acquisitions 2019: What Are Your Odds?

Presented by the Covenants Not to Compete Subcommittee

Lawyers in business transactions often find themselves drafting or assessing restrictive covenants, intellectual property and trade secret protection issues in the sale/purchase of a business. Clever drafters often will stack the deck with favorable terms and conditions, so it is important to be able to read all of the cards when reviewing such provisions. Practitioners must understand the ins and outs of these transactions to determine if such restrictions are enforceable and also consider how new federal and state statutes may come into play. This panel will provide analysis, strategies and tips to avoid making a losing bet when representing clients.

MODERATOR:

David J. Carr, Ice Miller LLP, Indianapolis, IN

SPEAKERS:

Barbara A. Robb, Hartley Michon Robb LLP, Boston, MA

Justin Suhr, Uber, San Francisco, CA

• 10:00 – 10:15 a.m.

Refreshment Break

• 10:15 – 11:30 a.m.

Equal Pay Act and the #TimesUp Movement

Jointly Presented by the Complex Litigation and Statutory Rights Subcommittees

This panel will review the Equal Pay Act in light of the #TimesUp Movement, noting the important intersection of pay and other forms of discrimination (e.g. race, pregnancy, harassment, job steering) and explore the complexities of litigating these cases, particularly from a class perspective.

MODERATOR:

Tamika D. Lynch, Siemens Corporation, Buffalo Grove, IL

SPEAKERS:

Kelly M. Dermody, Lieff Cabraser Heimann & Bernstein, LLP, San Francisco, CA

Diane Smason, U.S. Equal Employment Opportunity Commission, Chicago, IL

Eric A. Tate, Morrison & Foerster LLP, San Francisco, CA

• **11:35 p.m. – 12:50 p.m.**

Employer Use of Technology and Tracking Employees in the Workplace

Jointly Presented by the Employee Privacy and Technology Subcommittees

The use of AI in employment decisions, its impact on privacy concerns and unintended consequences leading to litigation will be discussed in this presentation. The inevitable conflict between technology and privacy has raised concerns about wage and hour claims as well as discriminatory targeting of recruitment efforts based on user demographics. Additionally, the intersection of the technology of biometrics with the use of AI in recruiting, as well as the use of surveillance and GPS to track, identify and supervise employees in the workplace, will be discussed.

MODERATOR:

Kelly Trindel, pymetrics, Washington, DC

SPEAKERS:

Adam S. Forman, Epstein Becker & Green, P.C., Detroit, MI

Jason C. Marsili, Rosen Marsili Rapp LLP, Los Angeles, CA

Garry G. Mathiason, Littler Mendelson P.C., San Francisco, CA

• **12:50 – 1:00 p.m.**

Committee Business and Feedback Meeting

• **7:00 – 10:00 p.m.**

Reception, Dinner and Dance

Saturday, March 23

• **8:00 – 9:00 a.m.**

Continental Breakfast

• **9:00 – 10:15 a.m.**

State Law Requirements for Ethical and Technical Standards Regarding ESI and Electronic Communications

Jointly Presented by the Ethics and Professional Responsibility and State Law Developments Subcommittees

Following on the heels of the ABA Commission on Ethics 20/20, states have begun requiring attorneys to have a level of technical proficiency on ESI and e-discovery as well as general technological competence as part of their ethical obligations to clients. Panelists will explore this hot topic as it is developing on the state court level and in state bars.

MODERATOR:

Donald S. Barth, Munich Reinsurance America, Inc., Princeton, NJ

SPEAKERS:

Hon. Yvette Roland, State Bar of California, Los Angeles, CA

Eric W. Iskra, Spilman Thomas & Battle, PLLC, Charleston, WV

John P. Madden, O'Malley & Madden, P.C., Chicago, IL

Megan K. Mechak, Woodley & McGillivray LLP, Washington, DC

• **10:15 – 10:30 a.m.**

Refreshment Break

• **10:30 – 11:30 a.m.**

Strategies for Counseling Clients in ICE Enforcement Actions

Workplace enforcement actions by ICE have increased five-fold since the start of the Trump Administration, and the scope of workplace raids has expanded beyond compliance with I-9 regulations. These factors, combined with a constricting visa processing system and enhanced removal practices, create challenges for foreign workers and their employers. Panelists will provide practical guidance on how labor and employment lawyers can better advocate for clients (whether employers, unions or workers) when faced with an ICE action.

MODERATOR:

Jonathan G. Grode, Green and Spiegel LLC, Philadelphia, PA

SPEAKER:

Meredith Rapkin, Executive Director, Justice at Work, Philadelphia, PA

• **11:35 – 12:35 p.m.**

Contingent Workers: The Next Unionized Workforce?

Presented by the Contingent Workers Subcommittee

Ordinances in Seattle and New York City that gave ride-sharing app drivers the right to organize created test cases for the intersection of the gig economy and collective bargaining rights. The litigation that ensued may be instructive to other jurisdictions about the NLRA and potential federal preemption of city ordinances. This panel will discuss how labor unions are attempting to organize gig economy workers, whether the NLRA and other labor laws adequately provide for such unionization, and what further organizing would mean for workers, employers and consumers.

MODERATOR:

Eric L. Barnum, Baker and Hostetler LLP, Atlanta, GA

SPEAKERS:

Andrew GraBois, Pepsi-Cola & National Brand Beverages, New York, NY

Linda M. Mohns, National Labor Relations Board, Memphis, TN

P. Casey Pitts, Altshuler Berzon LLP, San Francisco, CA

Sponsors

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in support of our 2019 Midwinter Meeting

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Employment Rights & Responsibilities Committee

Subcommittee Descriptions

The Employment Rights & Responsibilities (ERR) Committee has 19 subcommittees, which embrace the wide spectrum of issues facing the labor and employment lawyer. ERR members are encouraged to participate in any of the various subcommittees. These subcommittees prepare and present a program each year at the Midwinter Meeting.

Alternatives to Litigation Subcommittee

– assists employment lawyers dealing with various alternative dispute resolution forums outside the courtroom. This subcommittee addresses legal developments and provides practical assistance to members practicing arbitration, mediation or other forums.

Complex Litigation Subcommittee

– Established in response to the increase in class and collective employment litigation, this subcommittee's focus is on the latest developments, issues and practice points associated with complex litigation.

Contingent Work Force Subcommittee

– addresses the issues that arise when an employer turns to a contingent work force to address its labor needs and explores practical solutions for those issues. This expanding tool used in the workplace presents developing legal questions and requires employment lawyers to address the risks, claims, advantages and disadvantages arising from the use of a contingent work force.

Contracts and Executive Compensation Subcommittee

– covers developments concerning key areas of employment contracts and executive compensation, including trends in contract terms; negotiation strategy for both sides; litigation and arbitration of contract disputes; equity, deferred and bonus compensation; change in control agreements; and contracts and statutory issues for special professions.

Covenants Not to Compete and Trade Secrets Subcommittee

– focuses on legal developments relating to disputes arising from the transition of employees from company to company, including issues where trade secrets and confidential information are likely to be exposed as part of that transition. The increasing frequency with which employers use non-disclosure and non-compete agreements, the disputes that arise from such agreements and state-by-state distinctions are explored by this subcommittee.

Disabilities and Leaves of Absences Subcommittee

– addresses a broad and complex set of statutory and regulatory protections for employees who have medical issues and/or need leaves of absence from work, including the rights created by the ADA and FMLA. This subcommittee address the legal developments with respect to the intersection of various laws regulating how employers may treat employees with disabilities and employees using statutorily protected leave.

Diversity Outreach & Inclusion Taskforce (“DOIT”)

– highlights diversity issues particular to both the legal profession as well as within the American workforce. DOIT addresses diversity and inclusion programs as well as the implicit bias in the legal profession and in society. This subcommittee updates the membership on cutting edge legislation broadening protections based on gender identity and sexual orientation as well as diversity initiatives designed to eliminate bias in the U.S. based on race, ethnicity, gender, sexual orientation, gender identity and disability status.

Employee Benefits Subcommittee

– provides updates on ERISA and employee benefits as well as executive compensation developments of particular significance to employers and participants. This subcommittee also focuses on how benefits programs are addressed in the collective bargaining context and how legislation impacts benefits programs in union and non-union workplaces.

Employee Privacy Subcommittee

– focuses on issues arising out of the intersection of privacy and employment law, including but not limited to background checks, security of human resources data, employee monitoring and surveillance, mobile device management, privacy of employee health information, and employer regulation of employee off work activities and conduct.

Employment at Will Subcommittee

– keeps abreast of common law and statutory employment claims applicable to at-will employees throughout the U.S., including collateral torts (e.g., negligent hiring, retention, and supervision and personal harm torts), implied contract, whistleblower, wrongful discharge and public policy claims. The subcommittee's focus is to identify trends and to report innovative or otherwise noteworthy cases to ERR membership.

Ethics & Professional Responsibility Subcommittee

– examines ethics issues arising under the ABA Model Rules of Professional Conduct, and federal and state law, which particularly implicate the activities of labor and employment lawyers. The subcommittee focuses on traditional conflicts and other common ethics problems as well as emerging areas of interest involving the intersection of law and technology.

Insurance Subcommittee

– focuses on legal issues and developments in EPLI products, specialized issues that arise in handling EPLI matters, and practical pointers for managing relationships with clients and their EPLI carriers.

International Law Subcommittee

– addresses the increasing number of international issues faced by employment lawyers, including legal developments in the global environment, jurisdictional issues, conflicting laws, and developments in domestic and foreign employment law. Members include counsel from many countries.

State Law Developments Subcommittee

– focuses on labor and employment issues that develop state-by-state, addressing state case law and statutory law regarding the employee-employer relationship. Where distinct from the federal approach to labor and employment issues, the subcommittee also reviews cutting edge state legislation and judicial interpretation of state and federal law.

Statutory Rights Subcommittee

– maintains a broad focus on the varied state and federal laws governing the employment relationship, including Title VII, the ADEA, the ADA, and the Equal Pay Act; compensation issues under the FLSA; federal and state whistleblower and retaliation provisions, and state legislation impacting the employment relationship. This subcommittee also provides in-depth analysis of emerging trends regarding statutory interpretation of labor and employment statutes to assist with compliance and litigation avoidance.

Technology Subcommittee

– examines how technological changes impact labor and employment law, litigation and the practice of law generally. Topics addressed by the subcommittee include social media at work, discovery of electronic documents, and privacy.

Trial and Appellate Advocacy Subcommittee

– covers trial practices and procedures relating to labor and employment issues, including trial preparation issues, pretrial motions and conferences, selection and use of witnesses, expert witness issues, voir dire, jury selection, jury instructions, opening and closing arguments, and examination of witnesses.

Whistleblower Subcommittee

– focuses on advanced compliance and litigation issues arising from protected activity by workers, including recent developments related to the variety of laws prohibiting retaliation against whistleblowers. Topics addressed by this subcommittee include burdens of proof, forum selection, alternative dispute resolution, and remedies as well as provide practical and strategic tips for litigators in this area.

Workplace Investigations Subcommittee

– focuses on legal developments and compliance issues that trigger investigations as well as best practices in conducting prompt and thorough investigations. The subcommittee also focuses on the impact of investigations on evidentiary issues, available remedies where litigation occurs, and how investigations may support both claims and affirmative defenses.

Registration Information

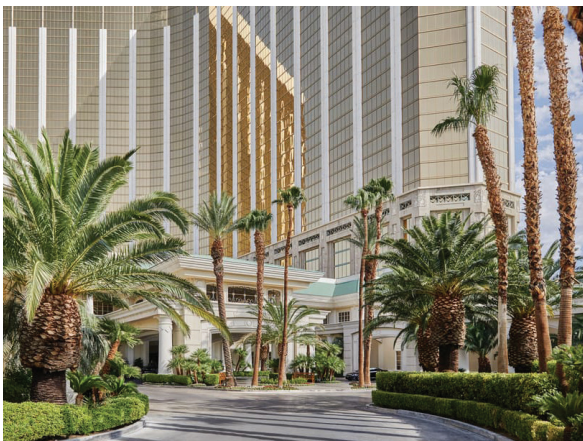
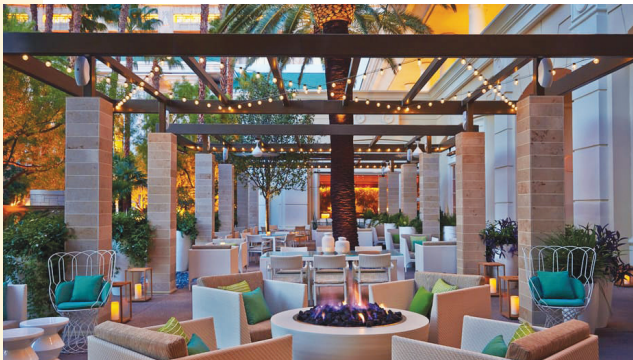
Meeting Registration

The Midwinter Meeting registration fees cover the Tuesday and Wednesday Receptions and the Friday Reception, Dinner and Dance, continental breakfasts, and refreshment breaks during the meeting. The Spouse/Guest registration fee includes all evening events.

You are encouraged to register online at www.americanbar.org/groups/labor_law.html. You also may register by filling out the attached registration form and returning it with your payment to the ABA by March 4, 2019. Registration fees are refundable, less a \$50 administrative fee, for cancellations received in the Section Office by March 4, 2019.

Hotel Accommodations

We have negotiated special group rates at the Four Seasons Hotel Las Vegas of **\$275** for Superior or Deluxe, single or double occupancy rooms. The resort fee, which includes in-room WiFi and fitness center access, has been waived for our group. The reservation deadline for the group rate is February 18, 2019. If necessary, cancellations must be made 48 hours prior to the scheduled day of arrival to avoid a one-night cancellation charge. Reservations may be made online at <https://book.passkey.com/go/ABAERR2019> or by calling the hotel at 702.632.5000. Be sure to mention you are attending the “ABA Employment Rights and Responsibilities Committee Midwinter Meeting” to receive the special group rate.



Social Events

• Welcome Reception

The Welcome Reception will be held on Tuesday, March 19 from 6:00 to 8:00 p.m. All Midwinter Meeting attendees and registered guests are welcome to attend.

• Subcommittee Reception

Following the Subcommittee Reception for First-Time Attendees, New ERR Committee Members and Subcommittee Co-chairs on Wednesday from 6:00 to 7:00 p.m., the Committee will host a Networking Reception from 7:00 to 8:30 p.m.

• Dine-Around

On Thursday, March 21, you are invited to join your colleagues for an organized “dine-around” at some of Las Vegas’ best restaurants. Sign-up sheets will be available at the ABA Registration Desk beginning Tuesday, March 19.

• Topgolf Outing

In lieu of our usual golf tournament, we have organized a special afternoon at Topgolf Las Vegas, where players hit micro-chipped golf balls that track each shot’s accuracy and distance while awarding points for hitting targets in the outfield. Whether you’re an aspiring golf pro or picking up a club for the first time, Topgolf is everyone’s game. The cost per player is \$75, which includes light snacks and beverages.

• Friday Reception, Dinner and Dance

You will not want to miss our Friday dinner party for meeting attendees and registered guests, which begins at 7:00 p.m. The evening will feature great food, drinks and wonderful entertainment. The cost of this event is included in the registration fees.

Continuing Legal Education Credit

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, CT, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, ME, MN, MS, MO, MP, MT, NH, NJ, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI and WV. These states sometimes do not approve a program for credit before the program occurs. The ERR meeting is expected to qualify for 16.5 CLE credit hours (including 1.25 ethics hours) in 60-minute states and 19.8 credit hours (including 1.5 ethics hours) in 50-minute states. The Ethics meeting is expected to qualify for 7.0 CLE credit hours (including 7.0 ethics hours) in 60-minute states and 8.4 credit hours (including 8.4 ethics hours) in 50-minute states. These transitional programs are approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit www.americanbar.org/cle/mandatory_cle.html.

Financial Assistance

Visit the Section of Labor & Employment Law website at www.americanbar.org/labor for information about the Section Development Fund and Government and YLD Fellowship Program opportunities. For registration fees over \$500, qualifying attorneys could receive at least a 50% reduction in the course fee. This does not include any reduction in meals, lodging or travel costs associated with the course. Please send written requests to laborempllaw@americanbar.org.

Registration Form

ABA Section of Labor and Employment Law

Midwinter Meeting

Employment Rights and Responsibilities Committee

March 19–23, 2019 • Four Seasons Hotel Las Vegas • Las Vegas, Nevada

Registration Deadline: March 4, 2019

ONLINE:

www.ambar.org/lelmidwinter

(Credit card payments accepted online only.)

FAX: (312) 988-5850

MAIL:

ABA Section of Labor & Employment Law

Attn: Service Center – Meeting/Event Registrations Dept.

321 North Clark Street, Chicago, IL 60654

☐ **Enclosed check** (payable to “American Bar Association”)

NAME

NICKNAME/BADGE NAME

FIRM/ORGANIZATION

STREET ADDRESS

CITY

STATE/PROVINCE

POSTAL CODE

PHONE

FAX

E-MAIL ADDRESS

NAME OF ATTENDING SPOUSE/GUEST(S)

Affiliation:

☐ Employer/Management ☐ Employee/Plaintiff ☐ Union & Employee ☐ Public/Government ☐ Neutral ☐ Other

☐ **First-Time Attendee**

Registration Fees:

	Number Attending	Total
Early Section Member Discount (on or before 1/16/19)	_____ @ \$525	\$ _____
* Section Member (after 1/16/19)	_____ @ \$625	\$ _____
ABA # _____		
ABA Member	_____ @ \$725	\$ _____
Non-ABA Member	_____ @ \$825	\$ _____
Government Agency, Full-Time Academic or Non-Profit	_____ @ \$395	\$ _____
First-Time Attendee	_____ @ \$395	\$ _____
Spouse/Guest(s)	_____ @ \$175	\$ _____
Children (12–18)	_____ @ \$75	\$ _____

Social Events:

Tuesday Welcome Reception	_____ (included in registration fee)
Wednesday Networking Reception	_____ (included in registration fee)
Thursday Topgolf Outing	_____ @ \$75/player
Friday Reception and Dinner	_____ (included in registration fee)

Total Enclosed: \$ _____

* Not a Section of LEL member?

Join online at
www.americanbar.org/join/
to register for the meeting
at the Section Member rate.

If any special arrangements
are required under the ADA,
contact the Section Office at
(312) 988-5813.