

NATIONAL EMPLOYMENT LAW INSTITUTE

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NATIONAL EMPLOYMENT LAW INSTITUTE

Thirty-Second Annual

EMPLOYMENT LAW BRIEFING

*The nation's most thorough advanced-level program analyzing legal developments
and their practical application to employment practices and litigation.*

Vail, Colorado

February 24-27, 2013

Vail Cascade Resort & Spa

Disney World, Florida

March 3-6, 2013

Disney's BoardWalk Inn

Las Vegas, Nevada

March 17-20, 2013

Four Seasons

VAIL AGENDA

Sunday

3:00pm Registration and Refreshments

3:30pm Developments in EEO Law

Annual update of Supreme Court cases and the most significant appellate and trial court cases and their application and implications for employment practices and litigation in key substantive and procedural areas, including race, sex, color, religion, national origin, gender and pregnancy discrimination, the ADEA and USERRA, damages, injunctive relief, class actions and prospects for new anti-discrimination laws and enforcement actions in the second Obama Administration.

Paul Grossman

6:00pm Welcoming Reception Hosted by NELI

Socialize and enjoy drinks & appetizers with faculty members, fellow participants and their guests.

Monday

7:00am Light Breakfast

7:30am Growing Wave in Retaliation & Whistleblowing

Why and how courts are sharply divided on applying key elements such as what is "protected activity," when does an employer take "adverse action," and how does an employer negate an inference of "causation," hot topics, including third party retaliation, retaliatory harassment, attorney/compliance officer as the whistleblower, "unreasonable opposition," with separate focus on the explosion of whistleblower legislation and particular attention to recent Dodd Frank and Sarbanes-Oxley issues, including developments which radically alter the landscape and dramatically expand the rights and remedies of the would-be whistleblower, and guidance on how to avoid and minimize liability in a rapidly escalating risk environment.

Jill Rosenberg

9:30am Midday Break

3:30pm ADA Part 1: Whether an Individual is "Qualified"

Discussion of how courts and the EEOC have determined whether an individual is qualified for a job, including how to defend qualification standards that might screen out an individual for medically-related reasons, the importance of accurate job descriptions, whether attendance, shift work, overtime, lifting, and interacting with others are "essential" functions, and the most important pieces of evidence in determining whether someone is qualified, including performance reviews, doctors' notes, and statements made in another forum.

David Fram

4:45pm The Expansion of the NLRA

Analyzing the effect of a controversially reconstituted National Labor Relations Board expanding employee rights especially for non-unionized workplaces, changes in labor relations regulations and enforcement policy under the Obama Administration's second term, pending federal legislation and its potential impact on employers, the current state of unions, and a review of important recent court and NLRB decisions.

Steve Suflas

Tuesday

7:00am Light Breakfast

7:30am Ethics in Labor and Employment Law

Examination of conflicts of interest, attorney-client privilege and waiver, ex parte access to current and former managers and employees, pre-trial investigations, electronic investigations and communications, 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 metadata and social media information, settlement and negotiations, and "ghostwriting" of communications, court enforcement of professionalism and civility codes.

Dennis Duff

9:30am Midday Break

Tuesday (continued)

3:30pm Complex FMLA Issues

Practical guidance on FMLA issues in light of recent case law decisions including direct v. indirect care of a family member, the status of DOL's proposed regulations and the likely impact of President Obama's second term, when enforcing call-in procedures crosses the line to interference, pitfalls of allowing an employee to work on leave, managing the employee who refuses to cooperate in the medical certification process, curbing intermittent leave abuse, fraudulent use of leave and the honest belief defense, and what employer conduct can defeat summary judgment.

Martha Gates

4:45pm ADA Part 2: "Reasonable Accommodation" Issues

Discussion of recent court decisions on what technically "triggers" the reasonable accommodation process, how supervisors/managers/HR personnel should document the interactive process, whether it is advisable to give accommodations without analyzing whether there is a "disability," how much "leave" is required and how this interacts with FMLA, whether continuous leave extension requests must be granted, whether non-competitive reassignment, an "irritant-free" environment, light duty, work-at-home, or parking spaces are required, and whether misconduct must be forgiven as an accommodation.

David Fram

Wednesday

7:00am Light Breakfast

7:30am The e-Workplace: Social Media, Privacy and Information Security Policies

Analysis of key legal, technology and Human Resource issues relating to workplace privacy and data security as employers decide how intensely to scrutinize employees and applicants both inside and outside the workplace's physical and virtual walls, covering cutting-edge developments as to social-networking postings, bring-your-own-device (BYOD), restrictions on forced disclosure of personal log-ins/passwords, discoverability of social-media, ownership of contact lists and the legally compliant contours of conducting various types of background checks.

Bob Brownstone

9:30am Refreshment Break

9:45am Wage and Hour Law Update

Thorough coverage of developments in the law regarding exempt status under each of the major exemptions, including an update on the highly-compensated employee exemption. We will also examine developments regarding what constitutes compensable time, what compensation must be included in the regular rate of pay, and whether overtime must be paid at .5, 1.0 or some other multiple.

John Fox

11:00am Terminations and Severance Agreements

Recent case law developments on the enforcement of waivers of employment claims, compliance with the OWBPA, strategies for successfully negotiating terms of a settlement agreement, viability of additional clauses in settlement agreements, including non-competition, non-solicitation, and confidentiality, special issues in the settlement of class actions, and tax issues arising from settlement payments.

Steve Suflas

12:15pm Briefing Adjournment

MIDDAY BREAK scheduled on both Monday and Tuesday from 9:30am until 3:30pm. Afternoon sessions will end at 6:00pm on Sunday, Monday, and Tuesday.

DISNEY WORLD AGENDA

Sunday

3:00pm Registration and Refreshments

3:30pm Developments in EEO Law

Annual update of Supreme Court cases and the most significant appellate and trial court cases and their application and implications for employment practices and litigation in key substantive and procedural areas, including race, sex, color, religion, national origin, gender and pregnancy discrimination, the ADEA and USERRA, damages, injunctive relief, class actions and prospects for new anti-discrimination laws and enforcement actions in the second Obama Administration.

Jeff Wohl

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Mark Oberti

9:30am Refreshment Break

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David Fram

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Brian Bulger

12:15pm Session Adjournment

Tuesday

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7:30am The e-Workplace: Social Media, Privacy and Information Security Policies

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Adam Forman

Tuesday (continued)

9:30am Refreshment Break

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Megan Norris

11:00am ADA Part 2: "Reasonable Accommodation" Issues

Discussion of recent court decisions on what technically "triggers" the reasonable accommodation process, how supervisors/managers/HR personnel should document the interactive process, whether it is advisable to give accommodations without analyzing whether there is a "disability," how much "leave" is required and how this interacts with FMLA, whether continuous leave extension requests must be granted, whether non-competitive reassignment, an "irritant-free" environment, light duty, work-at-home, or parking spaces are required, and whether misconduct must be forgiven as an accommodation.

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Dennis Duffy

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Ellen Boshkoff

11:00am Terminations and Severance Agreements

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Denise Keyser

12:15pm Briefing Adjournment

*Don't forget to review special deals for the Disney Parks:
www.mydisneymeetings.com/nationalemploymentlawinstitute
For the golfers, multiple options abound!*

LAS VEGAS AGENDA

Sunday

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Greg Keating

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Dennis Duffly

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Ellen McLaughlin

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Kirby Wilcox

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Linda Headley

12:45pm Briefing Adjournment

Contact the Four Seasons Hotel Concierge for assistance with tours, golf and Las Vegas entertainment options!

REGISTRATION AND ORDER FORM

Please accept my registration for the:

2013 EMPLOYMENT LAW BRIEFING in

- Vail, Colorado • February 24-27, 2013
- Disney World (Orlando), Florida • March 3-6, 2013
- Las Vegas, NV • March 17-20, 2013

Registration Fee:\$1,495.00

Early Registration Fee:\$1,395.00
(Paid Registration received by cut-off date below.)

I am unable to attend, but wish to purchase the

2013 Employment Law Deskbook

CD \$199.00 Print \$219.00 or Both \$269.00

Shipping and Handling (\$7.00 for print copy, no charge for CD)

Colorado residents add 7.3% sales tax (publications only)

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Do you require any accommodation, due to a disability, to attend this program? No Yes

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REGISTRATION INFORMATION

Registration Fee: \$1,495.00; Early Discounted Fee: \$1,395.00 if payment is received prior to February 4 (both Vail and Orlando), and February 18 (Las Vegas). Includes non-refundable administrative fee (see Cancellation Policy below).

Payment in full is required prior to the Briefing.

Group Rates, Discounts and Substitutions are available and permissible. Email neli@neli.org for more information.

Cancellation Policy: Cancellations must be confirmed in writing and addressed to the Registrar. Registrations cancelled more than ten business days prior to the program may elect to receive a full fee credit, or a refund, less a \$150.00 administrative fee. Those cancelled ten or fewer business days prior to the program will receive a fee credit, less a \$250.00 administrative fee. Transfers between cities must be pre-approved. Fee credits may be applied during the next 12 month period to any of the Institute's programs or publications. Paid no-shows will receive the program material upon request in full consideration of fees paid. Unpaid cancellations and unpaid no-shows are liable for the registration fee.

CONTINUING EDUCATION

This program will provide between 16-19.2 CLE/CEU hours, including two hours of Ethics, depending upon the jurisdiction. NELI's programs are approved for CLE credit in jurisdictions with mandatory CLE requirements. To apply for CLE credit, please complete box on registration form. NELI will provide the necessary forms and proof of attendance. NELI is a State Bar of California MCLE approved provider, is recognized by professional associations as an approved CEU/CPE provider, and is an approved provider of HRCI/SHRM.

As always, NELI will file in as many jurisdictions as you are licensed for no additional fee, although registrants may be required to file for credit on their own behalf in some jurisdictions.

REGISTER BY

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NELI, P. O. Box 1189, Golden, CO 80402

PHONE: (303) 861-5600, 8:00 a.m. - 4:30 p.m. Mountain Time

FAX: (303) 861-5665

INTERNET: www.neli.org

EMAIL: registrar@neli.org

RESORT ACCOMMODATIONS

To receive NELI's preferred group rate, registrants must make their own room reservations directly with the hotel (not through a travel agent). Room blocks are limited and discounted group rates cannot be guaranteed after the listed cut-off dates, and **may be fully booked even before then**. Reserve early and state that you are attending NELI's *Employment Law Briefing* to qualify. A limited number of rooms at group rates are available "pre" and "post" actual meeting dates. If you experience difficulty securing a reservation, please call NELI for assistance. After the cut-off date, the hotels will only accept reservations at the discounted rate on a space available basis.

Vail - Vail Cascade Resort & Spa • www.vailcascade.com

1300 Westhaven Drive, Vail, CO 81657 • (970) 476-7111

Main Lodge Rooms - \$299.00

(exclusive of current 9.8% tax and resort fee of \$25.00 per night)

Reservation cut-off date: February 4, 2013

Disney World - BoardWalk Inn Resort

www.mydisneymeetings.com/nationalemploymentlawinstitute

2101 Epcot Resorts Boulevard, Orlando, FL 32830

(407) 939-4686 • Group Reservations

Run-of-House Rooms - \$209.00 (exclusive of current 12.5% tax)

Reservation cut-off date: February 4, 2013

Las Vegas - Four Seasons Hotel • www.fourseasons.com/lasvegas

3960 Las Vegas Boulevard South, Las Vegas, NV 89119

(702) 632-5100 • Superior King - \$249.00 (exclusive of current 12% tax and resort fee of \$15.00 per night)

Reservation cut-off date: February 18, 2013



The use of this seal is not an endorsement by the HR Certification Institute of the quality of this program. It means that this program has met the HRCI criteria to be pre-approved for recertification credit.

Please e-mail neli@neli.org for available discounts!



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Four Seasons

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JOHN C. FOX, Esq.
Fox, Wang & Morgan, P.C.
San Jose, California

ELLEN E. McLAUGHLIN, Esq.
Seyfarth Shaw LLP
Chicago, Illinois

EMPLOYMENT LAW DESKBOOK

Registrants will receive the 2013 *Employment Law Deskbook* in both **print and searchable CD** formats containing papers and supporting reference materials prepared exclusively for this Briefing. This extensive two-volume set addresses substantive, procedural, and practical issues of critical concern to human resource professionals and counsel, and will serve as an excellent research and reference workbook with a chapter for each topic in the agenda. Those unable to attend may purchase a copy by completing and faxing or mailing the Registration/Order Form, or by contacting NELI via phone or e-mail. The Deskbook will be available in April following the Las Vegas Briefing.