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ABA Section of Labor and Employment Law 5th Annual Labor and Employment Law Conference

November 2–5, 2011 • Seattle, Washington

We are very pleased to share with you this outline of the activities planned for the 5th Annual Section of Labor and Employment Law Conference. The Conference will be held from November 2-5, in Seattle, Washington. As you look through the agenda, you'll see the broad range of issues that will be covered, addressing all aspects of the labor and employment law arena.

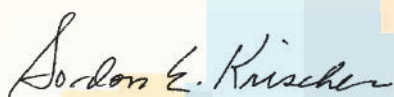
We will have the features that made our previous conferences so successful as well as new networking technology options and hands-on help. At this year's Conference, you can expect:

- **Prominent speakers and exciting and balanced speaker panels**
- **What you can only get at Section conferences: exposure to the best people nationwide on the other side so you can plan to meet the most dangerous arguments before they are made, well in advance of a briefing schedule**
- **A full year's worth of CLE credit at a price that can't be beat**
- **A multitracked curriculum covering all aspects of your labor and employment law practice**
- **A multilevel program that will be of value regardless of your degree of experience**
- **Networking opportunities for you to meet with colleagues representing all perspectives in the labor and employment arena**

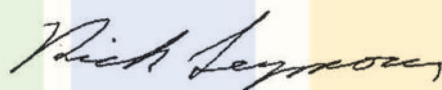
The 5th Annual Section of Labor and Employment Law Conference will provide an opportunity to meet and talk with top practitioners representing employees, employers and unions, as well as neutrals, in-house counsel, academics and government lawyers and regulators. In addition to top quality CLE programming, we've planned networking events at great Seattle locations that will allow you to interact with your colleagues in a more relaxed atmosphere. The Conference also offers you an unparalleled opportunity to learn about government initiatives from agency representatives.

The Conference early registration fee is only \$450 for Section members, with substantial discounts for solo/small firm practitioners, government attorneys, non-profit lawyers, neutrals and academics. Register online by September 9, 2011 and lock in incredible rates for two and a half days of the best CLE programming that can be had!

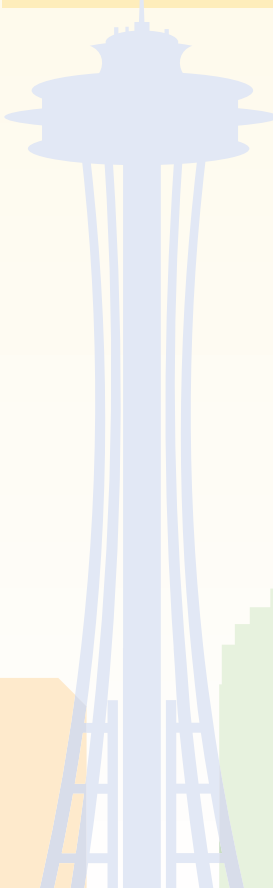
We look forward to seeing you in Seattle at the 5th Annual Section of Labor and Employment Law Conference.



Gordon E. Krischer
Chair
ABA Section of Labor & Employment Law
Los Angeles, California



Richard T. Seymour
Chair-Elect
ABA Section of Labor & Employment Law
Washington, D.C.





5th Annual Section Conf

Wednesday, November 2

2:00 – 3:30 p.m.

Pre-Conference Programs for Union, Employee/Plaintiff and Government Attorneys

3:30 – 8:00 p.m.

Conference Registration

4:00 – 5:30 p.m.

**First-Time Attendee/
New Section Member Orientation**

6:00 – 8:00 p.m.

Welcome Reception and Committee Expo

Thursday, November 3

7:00 – 8:00 a.m.

Continental Breakfast

7:00 – 8:00 a.m.

Standing Committee Business Meetings

8:00 – 9:00 a.m.

Plenary Session: Welcome, Award Presentations and Supreme Court Review

9:30 a.m. – 12:20 p.m.

- **Class Action Track**

9:30 – 11:00 a.m.

Who's The Know It All? Expert Testimony

11:20 a.m. – 12:20 p.m.

Settling EEO Class Actions

9:30 a.m. – 12:20 p.m.

- **In-House Counsel Track**

9:30 – 11:00 a.m.

Can You Keep a Secret? How To Effectively Communicate Within the Limits of the Attorney-Client Privilege and Work Product Doctrine in an In-House Setting

11:20 a.m. – 12:20 p.m.

From Cradle to Grave: Drafting and Communicating Employee Agreements

9:30 a.m. – 3:30 p.m.

- **Alternative Dispute Resolution Track**

9:30 – 11:00 a.m.

FINRA Arbitration: Inside Information for Advocates and Neutrals

11:20 a.m. – 12:20 p.m.

An Empirical Analysis of How Arbitrators Handle Discharge and Discipline Arbitrations: The Results May Surprise You

2:00 – 3:30 p.m.

Megatrends and Freakanomics of ADR

9:30 a.m. – 4:50 p.m.

- **Discrimination and Retaliation Track**

9:30 – 11:00 a.m.

Trends in EEO Law

11:20 a.m. – 12:20 p.m.

The Many Faces of Harassment

2:00 – 3:30 p.m.

Trying Discrimination and Retaliation

3:50 – 4:50 p.m.

Whistleblower Claims

9:30 a.m. – 4:50 p.m.

- **Fundamentals Track**

9:30 – 11:00 a.m.

Depositions Dos and Don'ts Demonstration

11:20 a.m. – 12:20 p.m.

Wage and Hour Boot Camp

2:00 – 3:30 p.m.

Family and Medical Leave Act

3:50 – 4:50 p.m.

Drafting Noncompete Agreements from the Employer and Employee Perspectives

9:30 a.m. – 4:50 p.m.

- **Litigation Track**

9:30 – 11:00 a.m.

Trials in a TV Generation

11:20 a.m. – 12:20 p.m.

The Ethics of Discovery

2:00 – 3:30 p.m.

To Depose or Not to Depose

3:50 – 4:50 p.m.

The Difficult Witness and You

9:30 a.m. – 4:50 p.m.

- **Traditional Labor Track**

9:30 – 11:00 a.m.

Dateline NLRA: An Up-to-the-Minute Update of Developments Under the National Labor Relations Act

11:20 a.m. – 12:20 p.m.

Meet the National Labor Relations Board

2:00 – 3:30 p.m.

Get Off My Land! The Conflict Between Property Rights and Protected Activities Under the National Labor Relations Act

3:50 – 4:50 p.m.

Meet the National Labor Relations Board General Counsel

12:30 – 1:50 p.m.

Pro Bono Luncheon

12:30 – 1:50 p.m.

**In-House Corporate Counsel Luncheon
(In-House Corporate Counsel Only)**

2:00 – 4:50 p.m.

- **Employee Benefits Track**

2:00 – 3:30 p.m.

Healthcare Update

3:50 – 4:50 p.m.

What Every Reasonably Insecure Attorney Should Know About ERISA

2:00 – 4:50 p.m.

- **Wage and Hour Track**

2:00 – 3:30 p.m.

Trying the Wage and Hour Class and Collective Actions

3:50 – 4:50 p.m.

Effective Mediation in Wage and Hour Litigation

3:50 – 4:50 p.m.

- **Law Practice Development Track**

3:50 – 4:50 p.m.

Making the Practice Safe for Diversity

6:30 – 8:00 p.m.

Diversity Reception at Wing Luke Museum

Friday, November 4

7:00 – 8:00 a.m.

Continental Breakfast

7:00 – 8:00 a.m.

Standing Committee Business Meetings

8:00 – 9:15 a.m.

**Plenary Session: Using the Control Key—
How Far Can and Should Employer
Social Media Policies Go**

9:30 – 11:00 a.m.

- **Discrimination and Retaliation Track**

9:30 – 11:00 a.m.

Methods for Proving Pretext

9:30 – 11:00 a.m.

- **Immigration Track**

9:30 – 11:00 a.m.

Beyond Form I-9—What You Need to Know About Immigration Law and Why

9:30 a.m. – 12:20 p.m.

- **Litigation Track**

9:30 – 11:00 a.m.

The Art and Science of Appellate Advocacy

11:20 a.m. – 12:20 p.m.

Objection! Demonstration of When and How To Object

9:30 a.m. – 4:50 p.m.

- **Consulting Track**

9:30 – 11:00 a.m.

**You Can Run, But You Can't Hide:
Background Checks Meet Employee Privacy**

To register or for more information, visit www.americanbar.org.

Conference Program Schedule



11:20 a.m. – 12:20 p.m.

Mine! Mine! Mine! Developments and Issues Concerning the Protection and Disclosure of an Employer's Confidential or Proprietary Information

2:00 – 3:30 p.m.

Anatomy of a Layoff: The Legal and Psychological Implications of RIFs

3:50 – 4:50 p.m.

Post-Employment Conduct by Employers and Employees: Not a Time to Let Your Guard Down

9:30 a.m. – 4:50 p.m.

- **Technology Track**

9:30 – 11:00 a.m.

Protecting the Crown Jewels—Best Practices from Leading Companies

3:50 – 4:50 p.m.

Location, Location, Location: Monitoring Employee Whereabouts and Activities

9:30 a.m. – 4:50 p.m.

- **Traditional Labor Track**

9:30 – 11:00 a.m.

Trying an NLRB Case—Pre-Trial Process, Procedure and Insights—Part I

11:20 a.m. – 12:20 p.m.

In the Trenches: Meet the NLRB Regional Directors

2:00 – 3:30 p.m.

Trying a 10(j) Case—Process, Procedure and Insights—Part II

3:50 – 4:50 p.m.

Dana II

9:30 a.m. – 4:50 p.m.

- **Wage and Hour Track**

9:30 – 11:00 a.m.

Whose Liability Is It Anyway?

11:20 a.m. – 12:20 p.m.

Working With Experts in Wage and Hour Litigation

2:00 – 3:30 p.m.

Stay Tuned: Recent Developments in Wage and Hour Law

3:50 – 4:50 p.m.

Effective Motion Practice in Wage and Hour Class and Collective Actions

11:20 a.m. – 12:20 p.m.

- **Federal Sector Track**

11:20 a.m. – 12:20 p.m.

Mock Trial

11:20 a.m. – 12:20 p.m.

- **Sports and Entertainment Track**

11:20 a.m. – 12:20 p.m.

“Surviving American Idol Housewives Plus Eight Get Real”—Reality TV

11:20 a.m. – 3:30 p.m.

- **Law Practice Development Track**

11:20 a.m. – 12:20 p.m.

Client Management 101

2:00 – 3:30 p.m.

Netbooks, iPads and Smartphones, Oh, My! Or “Yes, Your Honor, There’s an App for That”

11:20 a.m. – 4:50 p.m.

- **Fundamentals Track**

11:20 a.m. – 12:20 p.m.

Class Actions

2:00 – 3:30 p.m. (Concurrent Programs)

- **Occupational Safety and Health Law Basics**

- **Labor Law for Employment Lawyers**

- **So You Think You’ve Got a Case? Your Employer Doesn’t Think So! Selecting Causes of Action and Identifying Available Defenses**

3:50 – 4:50 p.m. (Concurrent Programs)

- **Workers’ Compensation Basics**

- **Legal Pitfalls Arising From Requests for Accommodation and Options for Resolution**

- **Practical and Prudent: How to Handle Written Discovery and Discovery Disputes Without Undue Cost and Delay**

12:30 – 1:50 p.m.

Diversity Luncheon

2:00 – 3:30 p.m.

- **Public Sector Track**

2:00 – 3:30 p.m.

Crisis in Public Sector Bargaining

2:00 – 4:50 p.m.

- **International Track**

2:00 – 3:30 p.m.

Pacific Rim Labor and Employment Law Representation

3:50 – 4:50 p.m.

International Labor and Employment Law Issues in Negotiating and Enforcing Collective and Individual Agreements Covering Employees and Independent Contractors

3:50 – 4:50 p.m.

- **Ethics Track**

3:50 – 4:50 p.m.

The More the Merrier? Ethical Dilemmas in Multiple Representations

6:00 – 9:00 p.m.

Conference Reception at Seattle Space Needle

Saturday, November 5

7:00 – 8:00 a.m.

Continental Breakfast

8:00 – 9:15 a.m.

Plenary Session: How to Stay Out of Jail—What Every (Labor and Employment) Lawyer Needs to Know to Avoid Criminal Liability

9:30 – 11:00 a.m.

- **Ethics Track**

9:30 – 11:00 a.m.

8-Track Players, Dot Matrix Printers, Dial-Up Internet and Flip Phones: Ethical Dilemmas in the World of Rapidly Changing Technology

9:30 – 11:00 a.m.

- **Public Sector Track**

9:30 a.m. – 11:00 a.m.

The Impact of Pension Problems on Collective Bargaining

9:30 – 11:00 a.m.

- **Sports and Entertainment Track**

9:30 – 11:00 a.m.

Take Me Out to the Game

9:30 – 11:00 a.m.

- **Technology Track**

9:30 – 11:00 a.m.

Data Management in ESI Discovery

9:30 a.m. – 12:20 p.m.

- **Consulting Track**

9:30 – 11:00 a.m.

Independent Contractors: Is the Safe Harbor Closed?

11:20 a.m. – 12:20 p.m.

Please Read Closely Before Signing: Executive Employment Agreements in a Recessionary Era

9:30 a.m. – 12:20 p.m.

- **Fundamentals Track**

9:30 – 11:00 a.m.

The RLA and NLRA in the Facebook Age

11:20 a.m. – 12:20 p.m.

The NLRA’s Lesser Known Statutory Cousins: What Management and Union Lawyers Need to Know About the LMRA, LMRDA, Norris-LaGuardia Act and Antitrust Exemptions

11:20 a.m. – 12:20 p.m.

- **Federal Sector Track**

11:20 a.m. – 12:20 p.m.

Mock Trial

11:20 a.m. – 12:20 p.m.

- **Immigration Track**

11:20 a.m. – 12:20 p.m.

The ICEmen Cometh: Immigration Enforcement in the Workplace

11:20 a.m. – 12:20 p.m.

- **International Track**

11:20 a.m. – 12:20 p.m.

Labor Standards Implementation Through NAFTA/NAALC and Subsequent U.S. Free Trade Agreements

11:20 a.m. – 12:20 p.m.

- **Leadership Development Program Track**

11:20 a.m. – 12:20 p.m.

Rainmaking

Thanks to our sponsors to date for their generous contributions in support of the 5th Annual Section Conference:

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ABA Section of Labor and Employment Law

5th Annual Labor and Employment Law Conference

November 2–5, 2011 • Seattle, Washington

2011 SEATTLE

ABA Section of Labor and Employment Law

Highlights

You Can Run, But You Can't Hide: Background Checks Meet Employee Privacy

The increased use of background checks to select workers has gotten the government's attention. A component of the EEOC's eRACE Initiative is forcing employers to examine their seemingly facially neutral criteria for selecting employees, or risk being charged with discriminatory hiring practices. How far can an employer go in searching an applicant's history before making the decision to offer or not offer employment? Will the Genetic Information Nondiscrimination Act of 2008 (GINA) have an impact on employers' selection processes? Will nationwide investigations become more prevalent? Our panel will discuss best practices, with a view toward challenges being launched to protect the rights of the American worker from intrusion.

Independent Contractors: Is the Safe Harbor Closed?

The federal government has made misclassification of workers a major priority, and many states are not far behind. Not only is the Department of Labor investigating the use and impact of independent contractors in the workplace, but the IRS has embarked on countless audits to ensure that employers are properly accounting for employees. Is it actually possible for someone to still be self-employed and provide services, or is the independent contractor a relic of the past? Our panel will discuss the latest initiatives, employer strategies for compliance with this fast changing area of the law, and worker challenges to the denial of benefits.

The More the Merrier? Ethical Dilemmas in Multiple Representations

Lawyers are often called upon to represent—or at least serve the interests of—more than one party in a variety of employment law situations: joint defense of a company and an executive, representation of a union and a union member, representation of an ERISA plan and trustee, and representation of multiple class members in a class action, for example. Even the EEOC is called upon to serve the agency and the charging party. There are myriad ways multiple representation can open a Pandora's box of ethical problems. This panel will discuss the potential risks, how and when to communicate those risks, the role and efficacy of conflict-waiver letters and how to deal with them if they should arise.

Wage and Hour Boot Camp

As settlements and verdicts of wage and hour collective and class actions have grown, reaching hundreds of millions of dollars in the aggregate last year alone, many more lawyers are being attracted to wage and hour law. Our panel of experienced wage and hour practitioners will introduce both substantive wage and hour issues and procedural issues involved in litigating a collective, class and hybrid wage and hour case. Specific topics that will be covered on substantive issues include the duties tests for the white collar, outside sales, Section 7(i) "commissioned employees" and the motor carrier act exemptions; independent contractors; regular rate; and the meaning of "work" and compensable time. The panel will then turn its attention to the litigation of wage and hour claims and, in that context, discuss the FLSA's "similarly situated" standard, the two-tier certification process of collective actions, the consent to join/opt-in process, discovery, decertification, summary judgment and pre-trial evidentiary motions. While the panel will focus primarily on claims under the FLSA, attention will also be given to state law Rule 23 claims, supplemental and CAFA jurisdiction over those claims and issues involved in bringing and defending hybrid cases. This is a "basics" course but will push attendees to strengthen their understanding of wage and hour issues to an intermediate level.

Legal Pitfalls Arising from Requests for Accommodation and Options for Resolution

Some of the most perplexing issues facing employers and employees alike relate to medical issues that require the need for time off or some other form of accommodation from an employer. During this program, we will address the various legal issues that arise from such requests, including issues under the ADA, FMLA and USERRA, and demonstrate best practices for handling such requests.

Practical and Prudent: How to Handle Written Discovery and Discovery Disputes Without Undue Cost and Delay

Written discovery often becomes the bane of a newer lawyer's professional life. This program will address how to propound and respond to document requests, interrogatories, requests for admission and other written discovery requests in an effective manner, both as to costs and advancing your client's position in the case. It will also deal with the inevitable discovery disputes which arise in employment litigation, including the scope of discovery of other complaints, plaintiff's medical history and background and other common areas of dispute.

Can You Keep A Secret? How to Effectively Communicate Within the Limits of the Attorney-Client Privilege and Work Product Doctrine in an In-House Setting

This panel will provide practical advice for in-house as well as outside counsel on applying the attorney/client privilege and work product doctrines to safeguard internal communications. Experienced practitioners will use hypotheticals and actual cases to illustrate the risks and benefits of different forms of written and verbal communication between and among in-house and outside counsel and internal nonlawyer corporate clients. Special considerations for multinational employers will be discussed, including the recent EU decision in *Akzo Nobel Chemicals*.

International Labor and Employment Law Issues in Negotiating and Enforcing Collective and Individual Agreements Covering Employees and Independent Contractors

An ever-growing number of managers, professionals, skilled tradespersons and unskilled workers are being employed to perform work across borders. Contracts of employment or to perform services including collective and individual agreements raise special issues in the transnational context. This program will address how to draft and enforce contracts pertaining to the services of foreign employees and contractors working in the United States, as well as agreements covering American employees and contractors working abroad for U.S. corporations. It also will cover foreign employees who are working for U.S. corporations both inside the United States and in third countries. The panel will emphasize the necessity to draft agreements that simultaneously comply with the often divergent laws of home and host country that may affect the contents of collective and individual employment agreements. The discussion will include topics such as covenants not to compete and to protect intellectual property, immigration issues, and rules regarding termination of employment, and other personnel issues. Questions regarding which country's law may apply and which country's court system or arbitral tribunal is likely to be deemed to be the appropriate forum also may be considered.

Netbooks, iPads and Smartphones, Oh My or "Yes, Your Honor, There's an App for That"

This panel is a "show and tell" of the latest and greatest gadgets and software that mobile road warriors are using in their practice. The rapidly decreasing cost of technology, combined with the attendant increase in technological advances, has dramatically leveled the playing field between solo and small practices and the large multinational firms. Software and cloud-computing has allowed "Davids" to practice law like "Goliaths." Is your practice keeping up, or will you be left behind? Speakers will demonstrate best practices with respect to using technology to manage their firms, ranging from the best time-keeping software to the most efficient way to communicate with clients.