



# LOOKING AHEAD

The 2019 Fisher Phillips  
Inside Counsel Conference

Join us at the 2019 Inside Counsel Conference, where we'll bring together some of the nation's foremost workplace law practitioners and business leaders to deliver cutting-edge and high-level content to an exclusive group of inside counsel.

#FPICC19



Inside  
Counsel  
Conference  
**2019**

March 6-8, 2019

**THE  
PHOENICIAN  
RESORT**

6000 E CAMELBACK RD  
SCOTTSDALE, AZ 85251

FOR REGISTRATION  
SEE BACK COVER



# WEDNESDAY

March 6, 2019

6:00 – 9:00 pm

#FPICC19

CAPTURE  
THE MOMENT  
RECEPTION  
AND DINNER



## WELCOME TO THE PHOENICIAN!

Join us for a glowing start to a great program.  
Connect with colleagues over refreshments and  
dinner at the Clubhouse Breezeway





# THURSDAY

March 7, 2019

#FPICC19

7:30 – 8:30 am

**BREAKFAST**

8:30 – 8:45 am

**WELCOME/OPENING REMARKS**

8:45 – 9:30 am

**PAY EQUITY: Compliance Challenges, Business Risks, and Legal Ramifications**

*Cheryl Behymer (Columbia), Kathleen Caminiti (New Jersey), and Cheryl Pinarchick (Boston)*

The three co-chairs of our firm's Pay Equity Practice Group will address what is sure to be one of the hottest employment issues in 2019. With more than 30 states having introduced pay equity bills mandating equal pay among men and women in the past several years—some of which requiring pay equity across other protected classes— and the EEOC making clear that pay equity will be one of its six essential priorities during the next five years, there's little doubt that business compensation practices are squarely in the crosshairs of plaintiffs' attorneys and government agencies. This presentation will explore the key concepts embodied in federal and state pay equity laws, including what constitutes "equal pay," evaluation of "substantially similar" jobs, affirmative defenses, and potential damages. You will learn how to develop and manage a privileged pay audit to identify potential unlawful wage disparities and pay practices. The presentation will also discuss best practices for establishing compliant compensation-setting policies and practices and for remediating pay disparities before they turn into costly litigation.

9:30 – 10:30 am

**MAKING #MeToo #NotHere**

*Jennifer Sandberg (Atlanta) and Terri Stewart (Atlanta)*

Ongoing sexual harassment allegations at high-profile organizations serve as potent reminders that the workplace did not become as civilized as we had hoped over the last 30 years. Despite well-intentioned policies and procedures directed at eliminating inappropriate behavior from the workplace, the problem persists. Your executive team and board of directors are looking to you and your legal team for guidance on this prominent issue—not only from a case defense standpoint, but also for strategies on creating a complete cultural shift in the dynamics of your organization. Join a panel of experts to hear multiple perspectives on developing a progressive culture, cutting-edge policies, reporting and investigative procedures, first-class training and more. These varied viewpoints will help unlock strategies to protect your employees and your organization while developing a strong culture of acceptance and inclusion.

10:30 – 10:45 am

**BREAK**

10:45 – 11:45 am

**KEYNOTE ADDRESS: Best Workplace Practices for The Fifth Trimester and Beyond: How to Attract and Retain Working Parents**

*Lauren Smith Brody, Author of "The Fifth Trimester: The Working Mom's Guide to Style, Sanity, and Big Success After Baby"*



Lauren Smith Brody

If the first three trimesters are pregnancy, and the fourth is parental leave, the fifth trimester is when the working mom is born...and when American businesses have a vital opportunity to retain her and evolve workplace culture. Learn from Lauren Smith Brody, author of the bestselling book *The Fifth Trimester: The Working Mom's Guide to Style, Sanity, and Success After Baby* and the founder of The Fifth Trimester Consulting, as she shares her research of 800+ diverse working mothers. She'll look beyond policies on paper to address specific best practices before, during, and after maternity leave that can ultimately narrow the wage gap, protect your workplace from internal bias and discrimination, and create a culture that fosters creativity and productivity for everyone with a personal life (A.K.A.: all of us).

11:45 am – 12:45 pm

**LUNCH**

12:45 – 1:30 pm

**ARBITRATION AND CLASS ACTION WAIVERS: The Panacea Some Say They Are?**  
*Hagood Tighe (Columbia) and Ryan Mulally (Vice President and Assistant General Counsel, Domino's Pizza LLC)*

Following the U.S. Supreme Court's *Epic Systems* decision upholding the validity of class action waivers, some employers joined a frenzy to adopt arbitration agreements without considering all of the legal and practical issues. This session will lead the attendees through an interactive discussion of the pros and cons of arbitration programs, including a discussion about the state legal issues to consider. Additionally, the presentation will unveil best strategies on how best to roll out a program effectively and practically. Columbia partner J. Hagood Tighe, who has successfully used class waivers to kill at least 10 class actions in the recent past, will present with Ryan Mulally, Vice President and Assistant General Counsel at Domino's Pizza LLC, who will be able to share his considerable experience with his company's national arbitration program.

1:30 – 2:15 pm

**CONTRACTORS, JOINT EMPLOYERS, AND EVERYTHING IN BETWEEN**  
*Jim Fessenden (San Diego) and John Polson (Irvine)*

Join the Chair of our firm's Staffing and Contingent Workers Practice Group and one of our most deeply experienced joint employment and misclassification litigators for a presentation that will provide a concrete roadmap for navigating our quickly evolving contractor and joint employment laws. You'll get caught up on the substantial shift in joint employment laws and learn how the shift impacts your company's use of workers supplied by staffing companies and other vendors. You will also join a robust discussion of the evolving laws affecting the use of contractors, including coverage of the landmark *Dynamex* decision and the ABC test that continues to spread across the country. You'll then pick up some best practices you can use to minimize the threat of litigation while using contingent and contractor workforces, highlighting some specific successes the presenters have enjoyed by using creative arguments to defeat employer status cases.

2:15 – 2:30 pm

**BREAK**

2:30 – 3:30 pm  
Breakout Sessions

**BREAKOUT A**  
**AM I LOOKING AT THIS RIGHT?**  
**Evaluating California Class Actions and PAGA Actions From All Perspectives**  
*Todd Scherwin (Los Angeles), Suzy Lee (Los Angeles), and Natalie Roberts (Director, Global Employment Counsel, Fossil Group, Inc.)*

During this panel discussion, we will delve into the ever-expanding terrain of California Class Actions and PAGA actions and discuss the different strategies available to California businesses. Should we take an aggressive approach? Should we move for a quick settlement/mediation? Should we play hard ball with opposing counsel? What should in-house counsel look for in terms of analysis, evaluation, and communication? How should companies prepare internally for such litigation? What frustrates a plaintiffs' lawyer and makes them realize they don't have a strong case? Led by Todd Scherwin, this panel also features Suzy Lee—a recent former class action plaintiffs' attorney—and Natalie Roberts from Fossil Group, who has been in the thick of multiple wage-hour class actions and PAGA actions in recent years.

## **BREAKOUT B**

### **ISO 45001: The New Gold Standard of Workplace Safety**

*Edwin G. Foulke, Jr. (Atlanta), Steve Davis (Global Risk Management), and Kathy Seabrook (Global Solutions, Inc.)*

In March 2018, after a five-year process involving more than 70 countries, a new international Occupational Health & Safety (OH&S) standard was published—ISO 45001. This standard sets a new benchmark in global OH&S and will result in companies significantly reducing their workplace injuries and illnesses while dramatically improving employee productivity and quality—which will lead to increased profitability. It provides a framework to significantly improve organizational safety and health performance through a risk management system, while increasing operational excellence and positively impacting a company's sustainability and social responsibility programs. This interactive panel discussion will examine the benefits of becoming ISO 45001-certified and provide a detailed overview on how to achieve this status. Leading the panel discussion will be the co-chair of our firm's Workplace Safety and Catastrophe Management Group, Edwin G. Foulke, Jr., who was named by President George W. Bush to head the Occupational Safety and Health Administration (OSHA) from 2006 to 2008. He will be joined by several industry experts who can provide practical suggestions for your organization.

3:40 – 4:40 pm  
Breakout Sessions

## **BREAKOUT A**

### **MODERN METHODS OF ADDRESSING MEDICAL AND RECREATIONAL MARIJUANA IN A RAPIDLY CHANGING LANDSCAPE**

*Danielle Moore (San Diego), Lesley Marlin (Senior Counsel, Labor and Employment, Northrop Grumman), and Shane Spradlin (Executive Vice President, General Counsel and Secretary, Penske Automotive Group)*

An increasing number of states permit some form of legalized marijuana and some states have gone so far as to require accommodation of medical marijuana and to even give marijuana users some protection under state discrimination laws. At the same time, American society continues to relax its attitude toward the drug while our neighbor to the north, Canada, has recently outright legalized the drug country-wide. Employers are faced with a conundrum: do you continue to maintain and enforce a zero-tolerance drug policy, especially since marijuana is still illegal under federal law, and at the same time potentially subject your company to lawsuits from applicants and employees who use the drug? Or do you adapt to the changes (given how hard it is to hire qualified workers) and look at drug use in a new light? This presentation will examine the shifting legal landscape, including some very recent court decisions providing workers with greater rights and shouldering employers with additional obligations, and provide practical suggestions for balancing the competing interests you are now facing. You will hear from companies on both ends of the spectrum and participate in a discussion regarding the pros and cons of both approaches, so that you can take the discussion back to the office and thoughtfully consider how your company might handle marijuana in the workplace in years to come.

## **BREAKOUT B**

### **FEDERAL BRIEFING: Immigration Compliance in the Extreme Vetting Era**

*Jessica Cook (Atlanta), Shanon Stevenson (Atlanta), James McHenry (Director, Executive Office for Immigration Review, U.S. DOJ), and Brad Lanza (IMAGE Coordinator, ICE/Homeland Security Investigations)*

Prior to President Trump taking office, in-house counsel typically delegated immigration compliance to HR professionals and staff. But now that the new standard for immigration adjudications is “extreme vetting”—with a 400 percent increase in worksite enforcement investigations in the past few years—the law demands a closer oversight of immigration matters. Meanwhile, employers now face innumerable barricades to hiring qualified foreign national employees to meet labor needs, including visa denials, the ending of deference to prior immigration applications, additional federal enforcement efforts, and an increase in private litigation. Employers must also confront the antidiscrimination provision of the INA during recruiting, hiring, and terminations. During this session, you'll hear a panel discussion by government officials from the U.S. Department of Justice and Immigration and Customs Enforcement that will present practical solutions to address the most common concerns faced by today's employers.



# THURSDAY

March 7, 2019

6:00 – 9:00 pm

#FPICC19

UNCORKED  
& TAPPED AT  
JOKAKE INN  
RECEPTION  
AND DINNER



**CONNECT WITH COLLEAGUES** over refreshments and dinner as we uncork and tap into local wines and beers on the historical grounds of the Jokake Inn at the Phoenician.



# FRIDAY

March 8, 2019

#FPICC19

7:30 – 8:30 am

**BREAKFAST**

8:30 – 9:15 am

## **STRATEGIC WORKPLACE LAW ISSUES IMPLICATED THROUGH ACQUISITIONS**

*Michael Marra (New York City)*

If your organization is contemplating strategic acquisitions, this session is for you. This presentation will center on key labor and employment issues that deserve significant attention when your organization is considering a merger and acquisition transaction. You'll learn about the potential issues that can arise for uncovering liability, compliance climate issues, learning key information regarding employee relations, operational issues, and issues of culture and fit between the organizations. You'll also get a sense of which areas will be most important for you to address post-acquisition. You will leave this session with a better understanding of what areas might deserve the allocation of resources during the due diligence process, creating a greater likelihood of a more meaningful transactional payoff—in terms of evaluating and pricing deals, and building in protections and practical solutions for potential liabilities in the areas of wage and hour law, immigration, workplace safety, labor, and employee relations.

9:15 to 10:15 am



Mark Smolik

## **KEYNOTE ADDRESS: LESSONS IN LEADERSHIP: Leading through Adversity and Change** *Mark Smolik, General Counsel and Chief Compliance Officer, DHL Supply Chain*

Much has changed in the legal industry, particularly since the "great recession" of 2008. Law departments continue to be challenged to do more with less, and are looking to establish strategic, value-driven partnerships with legal service providers that reflect the hypercompetitive nature of outsourcing legal services. Be among the first to hear firsthand how one international legal department is building meaningful and sustainable relationships with its external service providers that provide a win-win for both sides. Join Mark Smolik, a nationally recognized leader and speaker on the subject, for this keynote presentation on how to effectively manage through this change.

10:15 – 10:30 am

**BREAK**

10:30 – 11:30 am  
Breakout Sessions

## **BREAKOUT A**

### **ACQUIRING A UNIONIZED ENTITY: The Practical, Legal and Business Considerations**

*Steve Bernstein (Tampa)*

For decades now, the path to acquiring a unionized business has been riddled with a host of practical and legal pitfalls. Even the slightest change in business structure, buy-sell language, or general approach to employee relations can have a massive impact on the expense model and corporate culture of the acquiring entity. Further complicating matters is a convoluted set of labor laws and regulations that seemingly shift with every federal administration change. One of the leaders of our Labor Relations Practice Group will walk you through the legal framework for addressing successorship issues, while offering tried-and-true methods for approaching the due diligence process with the critical eye that these high stakes demand. You will also learn practical advice on how best to structure deals to reduce the risk of legal exposure on the front end, while managing the labor relations process to ensure against any last-minute surprises at the late stages of the acquisition process.



## **BREAKOUT B**

### **BEFORE, DURING, AND AFTER: What Are Your Responsibilities When an Employee Transitions Gender?**

*Sarah Moore (Cleveland), Melanie Webber (Cleveland), and Michael Douglas (CEO, Diversity Initiatives)*

One of your company's employees is transitioning genders over the next year. As an employer, what are your legal obligations before, during, and after the transition? Furthermore, are there any leading corporate practices for this process beyond simply following the law? The panel discussion will focus on not just your legal obligations, but specific strategies that have worked—and some that haven't—for organizations across the world. By the end of this presentation, you will have developed an understanding for the best way to turn a gender transition into a positive experience for the workplace.

11:30 am – 12:45 pm



Victoria Lipnic

## **LUNCHTIME TALK with EEOC's Victoria Lipnic**

Come join the Honorable Victoria Lipnic, Acting Chair of the Equal Employment Opportunity Commission, for an informative and enlightening lunchtime chat. You'll hear comments from Acting Chair Lipnic on some of the day's most timely topics impacting your organization, including the agency's position on employment litigation, compliance and enforcement, agency priorities, and the future of the EEOC. She'll reserve plenty of time for a candid Q&A session. This could be the most important session of the conference—you won't want to miss it.

12:45 – 1:00 pm

## **BREAK**

1:00 – 2:00 pm

## **DEFENSIBLE ESI COLLECTION AND ETHICS FOR IN-HOUSE AND OUTSIDE COUNSEL**

*Usama Kahf (Irvine) and Brent Cossrow (Philadelphia)*

This session will focus on the ethical ground rules of which in-house and outside counsel need to be aware when designing and implementing a defensible litigation hold and collection policy to collect and organize electronically stored information (ESI), focusing on two hypothetical employment law cases: a sexual harassment claim involving multiple alleged harassers and multiple alleged victims over the course of several months, and an employee defection and trade secret case involving allegations of misappropriation of confidential information (raising confidential information preservation issues but also a forensic analysis and metadata situation). Focal points of this presentation will be the frequently recurring decisions that counsel face in these two paradigm cases, including:

- What happens when employees have ESI relevant to the allegations from their former employer on their personal electronic smart phones, personal email accounts, and home computers? Is such ESI in the "control" of the employer as defined by federal rules, and does the new employer have an obligation to preserve and collect?
- What happens if an employee refuses to cooperate in the collection of this ESI?
- What dangers lurk if an organization decides to "self-collect" such information?
- What are the most common pitfalls with the execution of litigation holds?
- How involved should in-house counsel be in this process to satisfy ethical duties?



## BREAKOUT A

### THE FUTURE OF DATA SECURITY FOR EMPLOYERS

*Risa Boerner, CIPP/US (Philadelphia) and Danielle Urban, CIPP/E (Denver)*

Join the Chair of our firm's Data Security and Workplace Privacy Practice Group and another of our firm's practice leaders—both Certified Information Privacy Professionals—to get a sneak peek into what businesses can expect when it comes to the future of data privacy and cybersecurity. The presentation will present a brief overview of what other countries are doing in this advancing field, with an emphasis placed on 2018's GDPR protections now in place in Europe. More importantly, our presenters will then focus on what to expect over the next few years in the United States. By examining the California data privacy rules set to go into effect in 2020, you'll learn which European and other global restrictions have or may be soon adopted in the U.S. (or are considered best practices for your business), and what you can start doing about them today.

## BREAKOUT B

### STATE-LEVEL ADVOCACY IN THE TRUMP ERA: Crucial To Employment Growth

*Ben Ebbink (Sacramento), Rick Grimaldi (Philadelphia), and Georgia State Senator John Albers*

While many pundits speak of the "employer-friendly" policies of the Trump administration, employers themselves recognize that it is state and local legislation that requires ongoing attention and a strategic plan to make their voices heard in city hall and the state house. Join a current state senator and the two principals of FP Advocacy—a national firm providing premier legislative and regulatory advocacy and related services to businesses—for this informative panel presentation that will educate in-house counsel and senior HR executives on the status of key employment legislation across the country. You will receive an overview of legislation in areas such as wage and hour, employee leave, and discrimination, while learning how key trends are gaining momentum at the state and local levels—and more importantly, what you need to consider as you evaluate these trends. Attendees will learn advocacy strategies to make your voices heard at both the local and state levels.

## CLOSING REMARKS

**Ensuring that your organization stays relevant in today's competitive business environment—and that you succeed in your role in providing valuable legal guidance—requires you to stay one step ahead of the curve. This conference will help you examine the legal environment in a new light, looking ahead at developing trends, timely issues, and up-to-the-minute best practices.**

**#FPICC19**

## REGISTRATION INFORMATION

### REGISTRATION

Online:

<https://www.fisherphillips.com/newsroom-events-inside-counsel-conference>

### COST

**\$795 per person**

Fisher Phillips clients receive a discounted registration rate.

Please contact your Fisher Phillips attorney to receive the registration discount code.

### THE PHOENICIAN RESORT

Fisher Phillips has arranged a discounted block of rooms at \$350/night\*.

The group rate is available through February 12, 2019.

*This rate does not include taxes or additional charges that may apply.*

All changes/cancellations to reservation are responsibility of the attendee.

**You can make your reservation by [clicking here](#).**

NOTE: Your credit card will be charged a minimum deposit of one night's room and tax at the time of reservation

### CLE INFORMATION

CLE credit is anticipated for this program, including 1 hour of Ethics credit.

To confirm whether CLE is available in your respective state, please email [FPEvents@fisherphillips.com](mailto:FPEvents@fisherphillips.com) in advance.

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