



19TH ANNUAL
Employment
LAW INSTITUTE

Philadelphia | Tues. & Wed., April 16 & 17, 2013

It's THE premier employment law event in Pennsylvania!

So much variety and choice—55+ top notch sessions, The Year in Review and 3 super workshops

8 federal judges share their insights and perspectives on employment litigation

Lafe Solomon, Acting General Counsel at the NLRB, brings you up-to-the-minute on what's happening at the NLRB

Find out what's on the radar at the EEOC in 2013 from EEOC's Regional Attorney and from the Director of the Philadelphia District Office

Lead counsel in major national **wage & hour** litigation fill you in on all the latest

And so much more!

You'll get
“real world” advice
and workable
solutions from our
faculty of over
85 terrific lawyers.

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Continuing Education Arm of the Pennsylvania Bar Association

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Designed for everyone who deals with workplace issues, the Employment Law Institute is simply the biggest and best employment law educational event in Pennsylvania. At this annual gathering of the employment law bar, great educational opportunities abound, networking is at its best—and more than that, the Institute is fun!

800-247-4724 / www.pbi.org

19TH ANNUAL Employment LAW INSTITUTE

Philadelphia | Tues. & Wed., April 16 & 17, 2013

The Institute kicks off with Mike Ossip and Rick Seymour who are back to fill you in on every important employment law development

Management attorney, Mike Ossip, and plaintiffs' lawyer, Rick Seymour, square off to bring you all the critical news about how the courts have been deciding important employment law issues during the past year. You won't want to miss hearing their insights and analysis of how employment law is evolving and being shaped by the courts.

What's happening at the NLRB? Lafe Solomon, Acting General Counsel of the NLRB, is speaking at the Institute

What a great opportunity to learn about the National Labor Relations Board (NLRB). Lafe Solomon, Acting General Counsel, will discuss the latest developments at the NLRB in two sessions. One session will focus on the recent *Noel Canning* decision by the DC Circuit in which President Obama's January 2012 recess appointments to the NLRB were invalidated. What has been the effect of that landmark decision? In our second session, Acting General Counsel Solomon will guide you through the myriad of recent decisions from the NLRB that impact the non-union workplace in ways that may surprise you. You will not only learn a lot from Acting General Counsel Solomon, but will enjoy his engaging presentation style. He will be joined by union and management advocates, as well as the NLRB Regional Attorney for Region 4.

The Judges Speak—an annual favorite! Judge Diamond, Judge Pratter and Judge Schiller share their perspectives

From summary judgment motions to discovery to evidence, you'll benefit from hearing the insights of our impressive panel of federal judges from the US District Court for the Eastern District of Pennsylvania. What is persuasive, what is not? How can you present your case in the best light? Moderated by defense attorney, Elizabeth Malloy, and plaintiffs' attorney, Harold Goodman, this is a one-of-a-kind opportunity to get tips on how to be a better advocate for your clients—directly from the judges who decide your cases.

Judge Goldberg and Judge Strawbridge provide insights for practitioners to learn the most effective strategies to work, collaboratively and separately, with magistrate judges and Article III judges to litigate cases effectively

You'll learn tips from our distinguished judges regarding settlement approaches, discovery disputes, and consenting to the jurisdiction of the magistrate judges. Moderated by plaintiffs' attorney, Stephen G. Console, and defense attorney, Kristine Grady Derewicz, this session provides a unique opportunity to understand how our judges work and how practitioners can make these processes more effective for their clients.

Get the inside story about how the EEOC works in 2013—directly from Debra Lawrence, Regional Attorney, and Spencer H. Lewis, Jr., Director of the Philadelphia District Office.

As every employment lawyer knows, it's critical to understand what the current rules, regulations, policies and initiatives are of the Equal Employment Opportunity Commission. In separate sessions, we are honored to have both Debra Lawrence and Spencer Lewis joining us to fill you in on the latest. You'll pick up plenty of practice pointers and a fuller understanding of how the EEOC is operating in 2013.

**Insightful, interactive, informative.
Winning and defeating wage & hour class action cases.**

Featuring Jeremy Heisler, managing partner of Sanford Heisler's NY office, and Matt Lampe, partner in the NY office of Jones Day, you'll be treated to an advanced discussion on wage and hour class action litigation, including case strategies, legal developments, motion practice, discovery management, settlement negotiations, and more in this lively session. It will be moderated by John Bogan of CIGNA.

Compare and contrast trying employment cases in state and federal courts in New Jersey with Judge Rosen and Judge Schneider

In this eye-opening session moderated by plaintiffs' attorney, Sidney Gold, you'll hear from judges from New Jersey about the benefits and drawbacks of litigating employment cases in New Jersey state courts vs. federal courts. A great opportunity to learn firsthand from Judge Joel B. Rosen (Ret.) and Judge Joel Schneider about the nuances of employment litigation in New Jersey.

Our "Just the Basics" track teaches you the fundamentals of employment law – it's also the perfect refresher

Newer to employment law? Our "basics" sessions span both days of the Institute. Pick and choose which topics will help you fill in the gaps in your employment law knowledge base. You'll be amazed at how much you'll learn as you gain a new level of confidence for advising your employment law clients.

Count them—4 great choices of ethics sessions

With four terrific ethics sessions, you may want to attend more than one this year. Under the Pennsylvania CLE Board Rules, ethics are "wildcard" credits so that they can be counted as either ethics or substantive credits. Here's the lineup:

1. Ethics in Employment Law: Attorneys Beware—This Could Happen to You!
2. Purists and Prostitutes—
Ethical Issues When Employment Lawyers Take a Walk on the Other Side
3. Legal Ethics in Social Media
4. Consulting or Coaching: Talking to Witnesses During Their Testimony—
featuring Judge Sánchez, US District Court for the Eastern District of Pennsylvania

**Philadelphia
Tues. & Wed., April 16 & 17, 2013**

Pennsylvania Convention Center
12th & Arch Streets
8:30 am to 4:35 pm each day

**You're invited to the
PBA Labor & Employment Law
Section Reception**

Come and enjoy some cool drinks and refreshments at the Institute reception at the end of the sessions on Tuesday. It's a great way to connect with your colleagues and unwind. A big THANK YOU to the PBA Section for hosting this popular event.

**The wonderful Institute materials
are available in book format
or on CD-ROM**

Be sure to note on the registration page your preference of book or CD-ROM.

Institute Planning Team.



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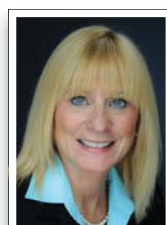
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Jeffrey I. Pasek, Esq.
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Debbie R. Sandler, Esq.
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Accolades for the faculty

Thanks...

to the Institute Planning Team and the 85+ faculty members who so generously share their knowledge at the Institute.

Excellent and interesting speakers who succinctly explained a very complicated area of the law

Concise and relevant

Speakers were very prepared and their presentations were smoothly coordinated

Animated, dynamic speakers

Fantastic practical tips

Articulate, informative, organized!

Fabulous way to put law into practical applications

Very thought-provoking and refreshing

An excellent faculty!

Impressive. Knowledgeable. Skillful Teachers.

Nancy Abrams, Esquire

Spector Gadon & Rosen, P.C., Philadelphia

Michael C. Anderson, Esquire

Snyder's-Lance, Inc., Hanover

John C. Artz, Esquire

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Diana Liberto, Esquire

Walmart Stores, Inc., Horsham

Jeffrey M. Lindy, Esquire

Lindy & Associates, P.C., Philadelphia

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PA Unemployment Compensation Board of Review, Harrisburg

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Honorable Joel Schneider

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Cozen O'Connor, Philadelphia

Anne E. Zerbe, Esquire

CGA Law Firm, York

Barbara E. Ziv, MD

Philadelphia

8:35 – 9:35

PLENARY SESSION

**Year in Review:
What's New in Employment Law**

There's no better way to catch up on all the year's hottest developments than in our kickoff session. Plaintiff's lawyer Rick Seymour and management lawyer Mike Ossip comb the case law and legislative changes to bring you up-to-the-minute on everything new. In addition to hearing what the courts have decided, Rick and Mike offer tips on what the cases actually mean to you and your clients. Always a crowdpleaser!

11:00 – 12:00

SUPER WORKSHOP

**Litigating Your Case in Federal Court:
Tips from An Article III Judge and a
Magistrate Judge**

Here is your opportunity to learn the most effective strategies to work, collaboratively and separately, with magistrate judges and Article III judges to litigate cases effectively. Judge Goldberg and Judge Strawbridge will offer tips regarding settlement approaches, discovery disputes and consenting to the jurisdiction of the magistrate judges. You will understand how our judges work and how practitioners can make these processes more effective for their clients.

3:35 – 4:35

SUPER WORKSHOP

**Winning and Defeating Wage & Hour
Class Action Cases**

With a focus on the most recent Supreme Court opinion addressing FLSA exemptions (*Christopher v. GSK*), a panel will lead an advanced discussion on wage and hour class action litigation, including case strategies, legal developments, motion practice, discovery management, settlement negotiations, and more. Come prepared for an energized debate that generates creative ideas and practical solutions for case success. Insightful, Interactive, Informative. You get it all.

Network...Connect...Unwind

Join us for a reception courtesy of the PBA Employment Law Section immediately following Tuesday's program.

8:30 – 8:35

Welcome & Introduction

8:35 – 9:35

Year in Review: What's New in Employment Law

Mr. Ossip & Mr. Seymour

PLENARY SESSION

9:35 – 9:50

Networking Break

9:50 – 10:50

1

**Family and
Medical Leave Act:
Understanding the
Basics**

COUNSELING

Ms. Growney

2

**Private Eyes Are
Watching You:
Privacy in the Workplace**

Ms. Joseph, Ms. Rosen

3

**Costs and Benefits of
Expert Witnesses in
Employment Cases:
How, When and Who
to Choose for Expert
Testimony**

Ms. Begley, Mr. Gold, Dr. Ziv

10:50 – 11:00

Break

11:00 – 12:00

7

**ADA Basics:
What Plaintiff and
Defense Counsel Need
to Know to Advise Their
Clients**

COUNSELING

Ms. Craighead, Mr. Krevsky

8

**BYOD: What Does the
Bring-Your-Own-Device
Movement Mean for
Employers?**

Mr. Walton

9

**Guess That's Why
They Call It the Blues:
Depression in the
Workplace**

Mr. Markowitz, Ms. Zerbe

12:00 – 1:15

Luncheon

1:15 – 2:15

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Wage and Hour 101

WAGE & HOUR

Mr. Hackett

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**Purists and Prostitutes—
Ethical Issues When
Employment Lawyers
Take a Walk on the
Other Side**

ETHICS

Mr. Friedman, Mr. Gersh

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**Zero Dark Forty-Plus:
Navigating the
Evidentiary Minefield
in Age Discrimination
Cases**

Mr. Munshi, Mr. Pabarue

2:15 – 2:25

Break

2:25 – 3:25

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**Objection! Evidence for
Employment Lawyers**

LITIGATION

Ms. Abrams

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**Turning a Silk Purse into
a Sow's Ear: The Top Ten
Ways Retaliation Claims
Transform a Bad Case
into a Payday**

Mr. Centeno, Ms. Liberto
Ms. Mooyman

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**Understanding
But-For and Mixed
Motive Standards in
Title VII, ADA and
ADEA Cases**

Ms. Post

3:25 – 3:35

Break

3:35 – 4:35

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**Reasonable
Accommodation and the
Interactive Process 101**

COUNSELING

Mr. Campolongo
Ms. McDonough

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**The Impact of Criminal
Charges and Convictions
on Employment Law**

Mr. Borland, Mr. Yampolsky

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**Title VII Update:
Yes, There Are New
Interpretations and
Applications of Title VII**

Ms. Austin, Ms. Bell



Love this seminar!

Best Employment Law CLE
every year!

Great value for the money
and two-day investment

Excellent!
Attendance benefits
far outweigh any lost time
at the office.

The Employment Law Institute
is critical to the practice of
this specialty.

8:35 - 9:35

9:50 - 10:50

11:00 - 12:00

1:15 - 2:15

2:25 - 3:25

3:35 - 4:35

4

Inside the Beltway:
Taking the Pulse of
Employment Law After
the 2012 Election

Mr. Fortney

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Ethics in Employment
Law: Attorneys Beware–
This Could Happen
to You!

ETHICS

Ms. Bond, Ms. Comisky

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Essentials of
Independent Contractor
Use

Mr. Anderson

10

Litigating Your Case in Federal Court: Tips from an Article III Judge
and a Magistrate Judge

SUPER WORKSHOP

Judge Goldberg, Judge Strawbridge, Mr. Console, Ms. Derewicz

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The Wide Ranging
Impact of the *Noel
Canning* Decision on the
NLRB

Mr. Solomon, Mr. Halevy
Mr. Johns, Mr. Walters

15

Managing the Cost
of Litigation through
Financial Stewardship

Mr. Bogan, Mr. Haller

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A New Generation of
Sexual Harassment
Cases: Pushing the
Boundaries or Defining
New Ones Entirely?

Mr. Harris, Ms. Mattiacci

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The National Labor
Relations Act and the
Non-Union Workplace:
Recent Developments

Mr. Solomon, Mr. Halevy
Mr. Johns, Mr. Walters

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Litigating Independent
Contractor Cases

Ms. Bruno, Mr. O'Meara

22

The Great Arbitration
Debate: Mandatory
Arbitration of
Employment Disputes–
Boon or Bane?

Ms. Tsipras

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Winning and Defeating Wage & Hour
Class Action Cases

WAGE & HOUR

SUPER WORKSHOP

Mr. Bogan (moderator), Mr. Heisler, Mr. Lampe

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The Employee Who Is
Absent (A Lot!) – How to
Effectively Manage FMLA
Intermittent Leave

Ms. Hernandez, Ms. Snyder

	Just the Basics
	Employment Counseling
	Litigation
	Ethics
	Wage & Hour

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TUESDAY'S SESSIONS

8:35 - 9:35 am ► KEYNOTE ADDRESS

Year in Review:

What's New in Employment Law

Mr. Ossip, Mr. Seymour

There's no better way to catch up on all the year's hottest developments than in our kickoff session. Plaintiff's lawyer Rick Seymour and management lawyer Mike Ossip comb the case law and legislative changes to bring you up-to-the-minute on everything new. In addition to hearing what the courts have decided, Rick and Mike offer tips on what the cases actually mean to you and your clients. Always a crowdpleaser!

PLENARY SESSION

9:50 - 10:50 am ► CHOOSE ONE

1. Family and Medical Leave Act: Understanding the Basics

Ms. Growney

COUNSELING

Understand the basic requirements of the FMLA. It may seem simple, but getting back to the basics can be both helpful for a beginner in the employment law field, as well as a good refresher for the seasoned employment attorney. We will address: • employer coverage and employee eligibility • reasons for leave • calculating leave time • employer notice and other requirements.

2. Private Eyes Are Watching You: Privacy in the Workplace

Ms. Joseph, Ms. Rosen

Understanding the legal aspects of workplace privacy is key for company attorneys, human resources professionals and other managers. We will explore an employer's ability to conduct business balanced against an employee's privacy expectations. We will also address the practical and legal implications of workplace privacy as it relates to:

- background checks • off-duty conduct • searches
- fraternization • substance abuse/drug testing/smoking
- inoculations • dress codes • religious/political symbols
- polygraph testing • access to personal information.

3. Costs and Benefits of Expert Witnesses in Employment Cases: How, When and Who to Choose for Expert Testimony

Ms. Begley, Mr. Gold, Dr. Ziv

When does it really make sense to have expert testimony in an employment case? Who should you choose, and in what type of cases? What are the costs and benefits of bringing expert testimony into your case? You will drill down into some of the tougher issues with plaintiff and defense counsel, as well as an expert who has frequently provided expert witness reports and testimony.

4. Inside the Beltway: Taking the Pulse of Employment Law After the 2012 Election

Mr. Fortney

Following the 2012 election, the federal agencies have initiated significantly expanded enforcement and announced new regulations. Here is your opportunity to hear the latest developments from Washington, DC, including: • immigration reform efforts • the agencies' newest enforcement strategies and priorities, including the expanded focus on fair pay and compensation • the EEOC's Strategic Enforcement Plan • DOL's top regulations and initiatives, including the independent contractor initiative • the latest challenges to the NLRB.

5. Ethics in Employment Law: Attorneys Beware – This Could Happen to You!

Ms. Bond, Ms. Comisky

ETHICS

Many recent ethics opinions are applicable to employment-related cases. We will showcase several examples of key decisions and describe what went wrong. Why were plaintiff's lawyers sanctioned for using information that was given to them from an anonymous source? Can attorneys perform internet research on jurors – in the courtroom? Can sharing a confidence you learned at work with your closest friend lead to big trouble? How effectively can you limit your liability through the drafting of engagement agreements? The audience will participate by voting on multiple choice questions aimed at addressing the key to each example. Test your reaction to those of the courts and ethics committees

6. Essentials of Independent Contractor Use

Mr. Anderson

Learn how to navigate the dangers associated with using independent contractors. Specifically, we will address the IRS Section 530 Safe Harbor provisions, the 20 point analysis utilized by the IRS to determine independent contractor status, the Pennsylvania standard of review, and the pitfalls and traps for the unwary. Whether you or your clients have been utilizing independent contractors for many years, or you are struggling with the implementation of a new independent contractor program, please join us for what promises to be a lively and informative open discussion.

11:00 - 12:00 noon ► CHOOSE ONE

7. ADA Basics: What Plaintiff and Defense Counsel Need to Know to Advise Their Clients

Ms. Craighead, Mr. Krevsky

Identify key issues under the ADA from the perspective of both plaintiff and defense counsel. Using hypothetical fact patterns, tips on how to analyze an ADA case and advise clients will be offered. Practitioners on both sides will gain a basic understanding of the ADA, as well as practice pointers.

8. BYOD: What Does the Bring-Your-Own-Device Movement Mean for Employers?

Mr. Walton

Join us as we explore: • What liability issues and problem areas does BYOD potentially trigger? • What are positives and negatives of BYOD and should employers ban it altogether? • What policies should employers have in place to deal with this growing phenomenon? • What is the future of BYOD?

9. Guess That's Why They Call It the Blues: Depression in the Workplace

Mr. Markowitz, Ms. Zerbe

Estimates show that depression costs American business in excess of \$31 billion per year in lost employee productivity. Clearly, the best interests of employees and employers are well served by taking steps to manage depression in the workplace. We will focus on several topics, including: • warning signs of employee depression • working conditions that minimize depression • the ADA and FMLA implications of depression • dealing with the depressed employee to minimize employer liability and maximize employee productivity.

10. Litigating Your Case in Federal Court: Tips from the an Article III Judge and a Magistrate Judge

Judge Goldberg
Judge Strawbridge

Mr. Console, Ms. Derewicz

SUPER WORKSHOP

Here is your opportunity to learn the most effective strategies to work, collaboratively and separately, with magistrate judges and Article III judges to litigate cases effectively. Judge Goldberg and Judge Strawbridge will offer tips regarding settlement approaches, discovery disputes and consenting to the jurisdiction of the magistrate judges. You will understand how our judges work and how practitioners can make these processes more effective for their clients.

1:15 - 2:15 pm ► CHOOSE ONE

11. Wage and Hour 101

Mr. Hackett

WAGE & HOUR

Despite the wave of litigation, the rules for paying employees remain fraught with potential minefields for even the most diligent employers. Join us as we identify steps that can be taken to avoid these pitfalls before they lead to wage disputes.

12. Purists and Prostitutes – Ethical Issues When Employment Lawyers Take a Walk on the Other Side

Mr. Friedman, Mr. Gersh

ETHICS

For a variety of reasons, more and more labor and employment lawyers are “working both sides of the street” – taking both defense and plaintiffs’ work. Some see such an ambidextrous approach as unseemly, others claim that it makes them better advocates for their clients. Who is right? Is an “anything goes” approach to client selection unethical? Are clients’ interests best served when their attorneys always argue from one side of the courtroom, or when they are more “flexible”? Examine the issues, traps and limits for lawyers who represent both sides, with views from the purists, the prostitutes and the academy.

13. Zero Dark Forty-Plus: Navigating the Evidentiary Minefield in Age Discrimination Cases

Mr. Munshi, Mr. Pabarue

Recent decisions in age discrimination cases appear to have made it more difficult to prove age discrimination. Come to hear: • the current burden of persuasion necessary to establish age discrimination • types of evidence needed to prove or disprove age discrimination under current law • mandatory retirement: per se age discrimination? • juror response to evidence presented in age discrimination trials.

14. The Wide Ranging Impact of the Noel Canning Decision on the NLRB

Mr. Solomon, Mr. Halevy, Mr. Johns, Mr. Walters

Come to hear Lafe Solomon, Acting General Counsel, discuss the latest developments at the National Labor Relations Board (NLRB). He will focus on the recent *Noel Canning* decision by the DC Circuit in which President Obama's January 2012 recess appointments to the NLRB were invalidated. What has been the effect of that landmark decision?

15. Managing the Cost of Litigation through Financial Stewardship

Mr. Bogan, Mr. Haller

The costs associated with litigation can impact not just the bottom line, but also the case strategy; thus managing those costs is both a key financial skill and a key to obtaining quality legal outcomes. Financial stewardship includes consideration of alternative fee arrangements, early case assessments, budgeting, retention letters, and more. Join a leading defense litigator and in-house counsel as they square off on this important topic. Be surprised, be entertained, and most importantly be informed.

16. A New Generation of Sexual Harassment Cases: Pushing the Boundaries or Defining New Ones Entirely?

Mr. Harris, Ms. Mattiacci

There remains significant mystery about what is—and is not—actionable, unlawful sexual harassment. We will explore, from both the plaintiff and the defense perspective, recent sexual harassment cases and discuss specifically: • how have courts followed the guidance in *Oncale* to distinguish between “ordinary socializing in the workplace – such as male-on-male horseplay or intersexual flirtation” or “simple teasing or roughhousing” and actionable sexual harassment? • to what extent can (or should) the subjectively and objectively offensive prongs of the harassment analysis change with the new generation? • how has technology changed sexual harassment law (or has it)? • who are the faces of modern sexual harassment cases?

2:25 – 3:25 pm ► CHOOSE ONE

17. Objection! Evidence for Employment Lawyers

Ms. Abrams

LITIGATION

Just how far does that cat’s paw reach? Who is a proper comparator? What investigative records are discoverable? How do you obtain and use social media evidence? How can after-acquired evidence best be utilized? How do you balance rights of privacy against rights to relevant evidence? This highly interactive session will review basic evidentiary standards in employment cases, as well as these volatile and ever-evolving evidentiary issues.

18. Turning a Silk Purse into a Sow’s Ear: The Top Ten Ways Retaliation Claims Transform a Bad Case into a Payday

Mr. Centeno, Ms. Liberto, Ms. Mooyman

Retaliation claims continue to grow and can become the best claim for employees, regardless of the merits of the underlying discrimination claim. We will provide an update on retaliation claims, review current important case law and discuss the best practices for managing employees who are also plaintiffs.

19. Understanding But-For and Mixed Motive Standards in Title VII, ADA and ADEA Cases

Ms. Post

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and the Age Discrimination in Employment Act of 1967 prohibit employment practices that discriminate against people because of their race, color, religion, sex, national origin, disability, and age. In proving intentional discrimination, plaintiffs have several options: they can pursue the pretext theory, the mixed-motive theory, or a combination of the two. We will explore the difference between pretext and mixed-motive cases, the standards of causation required, the burdens of persuasion, and the remedies available depending on the theory pursued.

20. The National Labor Relations Act and the Non-Union Workplace: Recent Developments

Mr. Solomon, Mr. Halevy, Mr. Johns, Mr. Walters

Lafe Solomon, Acting General Counsel for the NLRB, will discuss recent NLRB cases showing how employee rights under the National Labor Relations Act may affect the non-union workplace. Topics to be discussed include mandatory arbitration clauses and class action waivers, at-will employment disclaimers, the confidentiality of workplace investigations, off-duty employee access policies, and employee use and access to employer e-mail systems. Reaction and discussion from employer and union advocates will be included.

21. Litigating Independent Contractor Cases

Ms. Bruno, Mr. O’Meara

Come to hear a discussion about litigation of independent contractor cases, including examples of effective witness examination. Whether trying to prove independent contractor status or disprove it, the quality of the lawyering frequently controls the outcome of these cases. As independent contractor litigation increases, attorneys should be aware of special tactics and skills useful in such matters.

22. The Great Arbitration Debate: Mandatory Arbitration of Employment Disputes – Boon or Bane?

Ms. Tsipras

An increasing number of companies today are mandating that employees arbitrate their disputes with the company because it is cheaper, faster, and less disruptive than litigation. Many employees, however, view mandatory arbitration as biased and unfair. We will look at both sides of this debate and the attention that mandatory arbitration agreements are receiving with courts and legislators.

3:35 – 4:35 pm ► CHOOSE ONE

23. Reasonable Accommodation and the Interactive Process 101

Mr. Campolongo, Ms. McDonough

COUNSELING

The duty to provide a reasonable accommodation to a qualified individual with a disability is considered one of the most important statutory requirements of the ADA. It is also one of the most confusing. Here is your opportunity to:

- go through the definition of what is “reasonable” and what triggers the interactive process
- examine trends in current case law regarding types of reasonable accommodations
- discuss what it means to have an “undue hardship” and how the term “direct threat” applies.

24. The Impact of Criminal Charges and Convictions on Employment Law

Mr. Borland, Mr. Yampolsky

The United States continues to have the highest rate of incarceration in the world. This fact has a large impact on much of society, including the area of employment law. We will explore the effect that criminal charges and convictions have on employment, with a particular emphasis on the new EEOC guidelines. We will also examine the state of the law and look at what applicants need to know about their obligations to disclose their history.

25. Title VII Update:

Yes, There Are New Interpretations and Applications of Title VII

Ms. Austin, Ms. Bell

Discrimination cases comprise a significant portion of most employment lawyer’s practice. Here is your opportunity to discuss what the courts have been saying about Title VII claims and gain practical tips for litigating or avoiding such claims. In addition, we will discuss significant new EEOC guidance impacting Title VII claims.

26. Winning and Defeating Wage & Hour Class Action Cases

WAGE & HOUR

SUPER WORKSHOP

Mr. Bogan (moderator), Mr. Heisler, Mr. Lampe

With a focus on the most recent Supreme Court opinion addressing FLSA exemptions (*Christopher v. GSK*), a panel will lead an advanced discussion on wage and hour class action litigation, including case strategies, legal developments, motion practice, discovery management, settlement negotiations, and more. Come prepared for an energized debate that generates creative ideas and practical solutions for case success. Insightful, Interactive, Informative. You get it all.

27. The Employee Who Is Absent (A Lot!)—How to Effectively Manage FMLA Intermittent Leave

Ms. Hernandez, Ms. Snyder

Navigating the Family and Medical Leave Act – particularly the rights it gives to employees to take intermittent leave from work – is essential to any employer’s risk management strategy. The law in this area is complex and often wrought with potential pitfalls. We will focus on practical approaches for employers seeking to maximize legal compliance and avoid risk, especially when dealing with employees willing to “press the envelope.”

Just the Basics

Employment Counseling

Litigation

Ethics

Wage & Hour

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8:35 – 9:35

SUPER WORKSHOP

The Judges Speak

Hear from the trial judges who preside over federal employment litigation cases. We are honored to have three judges from the US District Court for the Eastern District of PA, Judge Diamond, Judge Pratter and Judge Schiller, share their perspectives on a number of issues of interest to employment law practitioners, including:

- effective presentation at trial of the plaintiff and the employer's decision-maker
- pointers for summary judgment motions and oppositions
- the use of the Pilot Project on Initial Discovery Protocols and common discovery disputes.

There's nothing better than learning directly from the judges who hear your cases!



Great annual update on the most recent changes in employment law.

Well worth the time commitment!

8:35 – 9:35

28

The Judges Speak

SUPER WORKSHOP

Judge Diamond, Judge Pratter, Judge Schiller, Mr. Goodman & Ms. E. Malloy

9:35 – 9:50 Networking Break

9:50 – 10:50

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ETHICS

Mr. Pasek

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Litigating the Reasonable Accommodation Case: It's Harder Than You May Think

Mr. Candiello, Mr. Gold
Ms. Greenberg

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Hot Topics Before the EEOC: Recent EEOC Guidance and How to Stay Off the EEOC Radar

Ms. Lawrence

10:50 – 11:00 Break

11:00 – 12:00

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Drafting Effective Separation Agreements

COUNSELING

Ms. Diamond

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Veterans' Rights Under USERRA: The Interplay with FMLA

Mr. Candiello, Ms. Perrong

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U.S. Equal Employment Opportunity Commission Update

Mr. Lewis, Ms. Tiernan

12:00 – 1:15 Luncheon

1:15 – 2:15

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Steering the Problem Employee Safely Out the Door

COUNSELING

Ms. Sandler

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Rethink Your Approach to Mediation: Practical Tools for More Successful Mediation Outcomes

Ms. Karapelou, Ms. Uebler

45

Benefits of Litigating an Employment Case in Federal Court Rather Than State Court in NJ

Judge Rosen (ret.)
Judge Schneider
Ms. Barasch, Mr. Gold

2:15 – 2:25 Break

2:25 – 3:25

49

Updating Employee Handbooks: Traps for the Unwary

COUNSELING

Ms. Clemons

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Strange Issues in Employment Litigation in Pennsylvania

Mr. Burkhardt, Mr. Mazurek

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Consulting or Coaching: Talking to Witnesses During Their Testimony

ETHICS

Judge Sánchez, Ms. M. Malloy
Mr. Surkin

3:25 – 3:35 Break

3:35 – 4:35

55

Workplace Harassment: Proving It and Defending It

LITIGATION

Mr. DiNome, Mr. Kopac

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The Americans with Disabilities Act and the George Costanza Hypothetical

Mr. Iannacone, Ms. Williams

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Employers' Obligations Under the Affordable Care Act: Is Fast Ap

Mr. Bowers, Ms. St

	29 #disTracted!driving: Legal Liability and Preventive Measure for Employers Mr. Pedrow	30 The OFCCP's Regulatory and Enforcement Agenda Ms. Horvitz	8:35 - 9:35
34 Limiting Contractor Misclassification and Joint Employment Liability Mr. Puma	35 The Rising Tide of Whistleblower Claims: Tips for Representing Employers and Employees Mr. Ellis, Ms. Katz	36 How Immigration Problems Weave Themselves Into All Aspects of the Work Relationship Ms. Choi, Ms. Hess	9:50 - 10:50
40 Lessons from the Lion's Den: Employment Law Takeaways from the Penn State Scandal Mr. Homans, Mr. Lindy	41 Advanced Topics in Wage and Hour Litigation WAGE & HOUR Ms. Farmer, Mr. Fryman Mr. Winebrake	42 The Closing Argument Guides Your Case: How to Win by Writing Your Closing Before Discovery Begins Mr. Console, Ms. Short	11:00 - 12:00
46 The Arc of Covenants: New Developments in Restrictive Covenant Law Mr. Mills	47 What's Happening to Pensions and Other Benefits? An ERISA Update Mr. Salmanson	48 Data Matters: New Trends in Wage and Hour Litigation WAGE & HOUR Dr. Kelly	1:15 - 2:15
52 "You Talkin' To Me?": Individual Liability Under Employment Law Statutes Ms. Hughes, Mr. Torchia	53 Practical Advice for Meeting the Regulatory Challenges of the ADA and the FMLA Mr. Meyer, Mr. Mohl	54 Litigating the Discrimination Case in State Court Mr. Crocenzi, Mr. Markowitz	2:25 - 3:25
57 Discrimination Under the Fair Housing Act: New Developments and Proaching Mr. Artz, Mr. Mackarevich	58 Unemployment Compensation: Benefit Eligibility Changes and Appellate Update Mr. Artz, Mr. Mackarevich	59 Workplace Violence: Finding a Balance Between Employers' Responsibilities and Employees' Rights Mr. Deratzian, Ms. Zellers	3:35 - 4:35



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WEDNESDAY'S SESSIONS

8:35 – 9:35 am ► CHOOSE ONE

28. The Judges Speak

Judge Diamond, Judge Pratter
Judge Schiller, Mr. Goodman, Ms. E. Malloy

SUPER WORKSHOP

Hear from the trial judges who preside over federal employment litigation cases. We are honored to have three judges from the US District Court for the Eastern District of PA, Judge Diamond, Judge Pratter and Judge Schiller, share their perspectives on a number of issues of interest to employment law practitioners, including: • effective presentation at trial of the plaintiff and the employer's decision-maker • pointers for summary judgment motions and oppositions • the use of the Pilot Project on Initial Discovery Protocols and common discovery disputes. There's nothing better than learning directly from the judges who hear your cases!

29. #disTracted!driving: Legal Liability and Preventive Measure for Employers

Mr. Pedrow

The recent \$21 million verdict against Coca-Cola in Texas, involving a company employee who struck someone while talking on her cell phone, has caught the attention of the employment law community. Explore the legal landscape surrounding employer risks and obligations when it comes to employees, driving, and technology. Examine the recent explosion of verdicts against employers whose employees engage in "distracted driving." Hear the best practices for policy development.

30. The OFCCP's Regulatory and Enforcement Agenda

Ms. Horvitz

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is pursuing an aggressive regulatory agenda. It appears that OFCCP expects to finalize its two proposed rules (to amend 41 CFR Part 60-300 and 41 CFR Part 60-741) in April 2013 and issue three new proposed rules in 2013 (compensation, construction (Part 60-4), sex discrimination (Part 60-20)). If final rules have been published, join us for a discussion of the final rules. If not, hear what contractors ought to be doing now in anticipation of the final rules. We will also use actual OFCCP information requests and walk through a compensation audit start to finish.

9:50 - 10:50 am ► CHOOSE ONE

31. Legal Ethics in Social Media

Mr. Pasek

ETHICS

The emergence of social media has immediate impact on the ethical obligations of attorneys. Whether you try cases, advertise your practice on a website or use the Internet to investigate your opponents, what you don't know can get you into trouble. Come to explore how new technologies impact application of old (and new) ethical principles.

32. Litigating the Reasonable Accommodation Case: It's Harder Than You May Think

Mr. Candiello, Mr. Gold, Ms. Greenberg

What happens when an employer determines that there is no reasonable accommodation to allow the employee to continue working and litigation ensues? Learn the peculiarities and jury sensibilities of litigating a reasonable accommodation case, specifically: the standard for failure to accommodate claims in the Third Circuit; defenses such as undue burden, direct threat (it's not what you may think), and the overlooked statutory provision and EEOC interpretative regulation which precludes a plaintiff's claims if "required or necessitated" by some other federal law or regulation, e.g. safety or union issues.

10

33. Hot Topics Before the EEOC: Recent EEOC Guidance and How to Stay Off the EEOC Radar

Ms. Lawrence

There's nothing like getting "the inside scoop." A veteran trial attorney with the U.S. Equal Employment Opportunity Commission (EEOC), Debra M. Lawrence serves as regional attorney of the agency's Philadelphia District, which includes offices in Philadelphia, Pittsburgh, Baltimore and Cleveland. She is back by popular demand to fill you in on the latest initiatives.

34. Limiting Contractor Misclassification and Joint Employment Liability

Mr. Puma

Employers in many industries increasingly rely on independent contractors, staffing agencies, and other non-traditional working relationships. Join us for a discussion of legislative and regulatory developments, the governing standards developed in case law, and most importantly, how to structure operations to limit exposure to contractor misclassification and joint employment claims.

35. The Rising Tide of Whistleblower Claims: Tips for Representing Employers and Employees

Mr. Ellis, Ms. Katz

Federal whistleblower law is changing rapidly. The Department of Labor Administrative Review Board has begun taking an expansive view of Sarbanes-Oxley ("SOX") whistleblower law but the federal courts are not necessarily following the lead of the ARB. At the same time, Dodd Frank cases are starting to be filed in U.S. district courts resulting in a series of inconsistent decisions. Two experienced whistleblower attorneys discuss the latest case law and its implications for both whistleblowers and regulated employers.

36. How Immigration Problems Weave Themselves into All Aspects of the Work Relationship

Ms. Choi, Ms. Hess

Given the complexities of a typical corporate transaction, oftentimes even the best of corporate attorneys/corporate teams have a tendency to overlook the impact of immigration issues on the final "deal." Decisions involving corporate transactions, including but not limited to mergers, acquisitions or a restructuring, must take into account potential immigration law issues if key employees are to be hired or retained. Discover the immigration consequences of corporate decisions so you will be able to perform full diligence on behalf of your corporate clients.

11:00 - 12:00 noon ► CHOOSE ONE

37. Drafting Effective Separation Agreements

Ms. Diamond

COUNSELING

Negotiating and drafting separation agreements often is the bread and butter of any employment law practice, whether the termination is a single employee or a corporate-wide reduction in force. What types of claims could a terminated employee assert? What is necessary for a knowing and valid release? How should tax implications be handled? Analyze the anatomy of a separation agreement, best practices in reviewing and revising drafts and negotiating modifications.

38. Veterans' Rights Under USERRA: The Interplay with FMLA

Mr. Candiello, Ms. Perrong

USERRA and the FMLA are two strict liability statutes requiring compliance with complex, technical provisions. What happens when you take two, confusing statutes and attempt to give constructive and practical advice about

their overlap to clients? Through the eyes and experience of a human resources professional and counsel, you will learn how to obtain critical information from a client in order to give practical advice that will not unduly restrict the operations of a client.

39. U.S. Equal Employment Opportunity Commission Update

Mr. Lewis, Ms. Tieman

Spencer Lewis, Director, Philadelphia District Office, EEOC, will provide an update on the EEOC, from both a national and Philadelphia District Office standpoint. This update will include the following topics: • the do's and don't's of the EEOC Administrative Process, including a discussion regarding how the Commission views various requests and responses from attorneys, human resources professionals and others who represent employers who are respondents in EEOC administration actions • legal update, including recent cases, settlements and charges, both nationally and with a focus on the Philadelphia District Office, as well as the EEOC Strategic Plan • the EEOC's systemic litigation strategy and caseload, as well as the reason for the Commission's focus on this type of litigation and the types of cases it chooses to investigate and pursue, such as cases involving employer's criminal background check policies and procedures.

40. Lessons from the Lion's Den: Employment Law Takeaways from the Penn State Scandal

Mr. Homans, Mr. Lindy

The tragic events that came to light at Penn State University present a case study on missteps that employers can avoid when faced with reports of serious or criminal conduct at a company or institution. We will include an analysis of what went wrong in Happy Valley, and what employment counsel, in-house counsel, and their clients can do to avoid the same fate, including issues of institutional culture, reporting misconduct to authorities, investigating claims of misconduct internally, resisting efforts by high-level executives to quash an investigation or minimize the response, eDiscovery issues, and the value of training employees about the duty to report suspected misconduct to an appropriate authority.

41. Advanced Topics in Wage and Hour Litigation

Ms. Farmer, Mr. Fryman, Mr. Winebrake

WAGE & HOUR

New federal Fair Labor Standards Act cases are at an all-time high. A panel of experienced practitioners will discuss some of the hottest issues in wage and hour litigation including: • "opt-in" collective action and "opt-out" class action compatibility and managing pendent state law claims and parallel state law actions • conditional certification motions and notice to the prospective class • defining the scope of the class • decertification of the FLSA Class • joint employment • necessity of court approval of FLSA settlements • offers of judgment • advertising for prospective plaintiffs and communication with class members and potential class members.

42. The Closing Argument Guides Your Case: How to Win by Writing Your Closing Before Discovery Begins

Mr. Console, Ms. Short

Learn from experienced trial lawyers how to win your case by knowing your entire closing argument before you even begin discovery. Hear how identifying your strongest points at the very start of the case, as well as your strategies for handling your weakest points, can help you win in the end. Knowing what you are going to ask the jury to do for you allows you to weave your themes into your pleadings, witness interviews, written discovery, depositions, and motions, not to mention your trial presentation. Your coherent, consistent story to the jury, developed from day one when you wrote your closing, is the key to trial success.

43. Steering the Problem Employee Safely Out the Door

Ms. Sandler

COUNSELING

How can an employer rid itself of a problem employee without creating a likely plaintiff? Hear real world techniques and best practices to manage your workforce and reduce litigation risk. Among the topics covered will be:

- turning documentation from a chore into a weapon
- drafting policies that protect the company from itself
- recognizing potential causes of action in real time
- investigation do's and don'ts.

44. Rethink Your Approach to Mediation: Practical Tools for More Successful Mediation Outcomes

Ms. Karapellou, Ms. Uebler

Have you ever thoroughly prepared for a mediation, only to have it result in an impasse or a less than hoped for outcome? We will explore common mistakes, learned behaviors and presumptions which can hinder negotiations, and provide strategic tools for more successful mediations. Through audience participation, role playing, and facilitated debrief sessions, you will learn how to better interpret your opposing parties' values and recognize potential opportunities for resolution - with the goal of better mediation outcomes overall.

45. Benefits of Litigating an Employment Case in Federal Court Rather Than State Court in New Jersey

Judge Rosen, Judge Schneider, Ms. Barasch, Mr. Gold

When does it make sense to try an employment case in federal court in New Jersey and when is state court friendlier? You'll explore the options and learn the benefits and detriments of both choices with our distinguished panel comprised of Judge Schneider, federal judge in New Jersey and Judge Rosen (Ret.) who formerly served as a federal judge. Sid Gold will moderate this fascinating discussion.

46. The Arc of Covenants: New Developments in Restrictive Covenant Law

Mr. Mills

Join us as we highlight new trends and developments in restrictive covenant law in Pennsylvania. We will review the most significant decisions, and build a checklist of elements that should or should not be included in an effective and enforceable restrictive covenant. Learn how to refine and improve the agreements in place with employees, or look for flaws in existing agreements.

47. What's Happening to Pensions and Other Benefits? An ERISA Update

Mr. Salmanson

Benefits cases continue to raise complex issues which can confound the employment law practitioner who does not regularly litigate ERISA claims. Indeed, many employment lawyers tend to shy away from ERISA altogether. We will focus on significant recent developments in the Supreme Court, as well as cases within the 3rd Circuit, and address issues of particular interest to employment lawyers, such as ERISA's anti-retaliation provision.

48. Data Matters: New Trends in Wage and Hour Litigation

Dr. Kelly

WAGE & HOUR

Judges are increasingly citing data analyses in their decisions in wage and hour cases. This new focus on the data, regardless of which side provides it, has helped judges to define classes more clearly, or to decertify classes. What data are being used? How is it presented? What do the data show? What are the judges saying? We will focus on recent court decisions to answer these questions and more.

2:25 - 3:25 pm ► CHOOSE ONE

49. Updating Employee Handbooks: Traps for the Unwary

Ms. Clemons

COUNSELING

Handbooks are a potential source of disputes and legal liability. Join us as we highlight important aspects of updating employee handbooks and identify common mistakes to avoid as you make sure your handbook remains current and effective.

50. Strange Issues in Employment Litigation in Pennsylvania

Mr. Burkhardt, Mr. Mazurek

Join us as we examine:

- the right to a jury trial for common law wrongful discharge
- the availability of compensatory and/or punitive damages arising from a defendant's approach to litigation
- "present value" damages calculation for state law claims in federal court
- firing someone for cause and then not being able to enforce your non-compete.

51. Consulting or Coaching: Talking to Witnesses During Their Testimony

Judge Sánchez, Ms. M. Malloy, Mr. Surkin

ETHICS

You can't talk to your witnesses, even if they are your clients, during breaks in their cross-examination. Or can you? Explore the law, the lore, the legends, and the ethical rules that affect what some might call coloring the witness' testimony, and others see as facilitating the search for the truth. Both trial and deposition testimony will be addressed by the panel. Judge Sánchez, US District Court for the Eastern District of PA, will provide his judicial insights into these often confusing issues for practitioners.

52. "You Talkin' To Me?": Individual Liability Under Employment Law Statutes

Ms. Hughes, Mr. Torchia

It is not uncommon for managers, supervisors and executives to have at least a basic understanding of employment laws. What they do not know, is that they can be personally liable under a variety of state and federal statutes. Representing both the employer and employee perspectives, we will inform you of the limits of personal liability, review the potential penalties and provide advice to avoid liability in the first place.

53. Practical Advice for Meeting the Regulatory Challenges of the ADA and FMLA

Mr. Meyer, Mr. Mohl

We will discuss accommodations under the Americans with Disabilities Act and the Family and Medical Leave Act, common ADA and FMLA mistakes employers make, as well as best practices that can reduce liability. You will:

- gain a better understanding of the coordination between federal and state leaves and the ADA
- learn about the impact of the recent ADA amendments
- hear how employers can effectively administer leaves to reduce liability
- study ADA and FMLA enforcement trends.

54. Litigating the Discrimination Case in State Court

Mr. Crocenzi, Mr. Markowitz

Generally, we find ourselves litigating discrimination cases in federal court. However, when smaller employers are involved, we can find ourselves litigating these cases in state court. Gather the best tips for successfully litigating your case in state court. We will cover:

- discovery rules and techniques including eDiscovery
- dealing with the Judge who will preside over the bench trial (no juries)
- motion practice
- recoverable damages and how to manage the differences
- trial strategy
- post-trial procedures.

3:35 - 4:35 pm ► CHOOSE ONE

55. Workplace Harassment: Proving It and Defending It

Mr. DiNome, Mr. Kopac

COUNSELING

Hear from two experienced advocates who have litigated, arbitrated, and more importantly, worked to resolve workplace harassment disputes. We hope to challenge some assumptions about root causes of workplace harassment and have this be an interactive problem-solving session.

56. The Americans with Disabilities Act and the George Costanza Hypothetical

Mr. Iannacone, Ms. Williams

Learn from video clips from a Seinfeld episode where George uses a cane while interviewing for a job. The clips address ADA implications during the hiring process, employment of a disabled person (and persons perceived to be disabled), and discipline, including termination, of a disabled employee.

57. Employers' Obligations Under the Affordable Care Act: 2014 Is Fast Approaching

Mr. Bowers, Ms. Stevens

Many of the provisions of the Affordable Care Act have already been put in place and many more will need to be acted on by 2014. Here is your chance to bone up on the new guidance pertaining to employers' responsibilities, obligations and opportunities under the Affordable Care Act.

58. Unemployment Compensation: Benefit Eligibility Changes and Appellate Update

Mr. Artz, Mr. Mackarevich

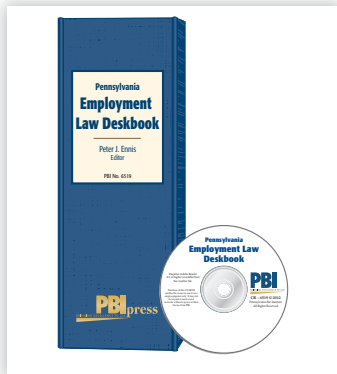
Pennsylvania employment attorneys need to be aware of the changing landscape of unemployment compensation. The past year has seen significant case law development on such topics as independent contractor, "able and available," and voluntary separation to collect workers' compensation settlement or early retirement incentives. In addition, significant amendments introduced an active search for work requirement, triggered partial deduction for severance payments, and adjusted some of the base year calculations and eligibility criteria. We will provide an overview of these appellate and statutory changes.

59. Workplace Violence: Finding a Balance Between Employers' Responsibilities and Employees' Rights

Mr. Deratzian, Ms. Zellers

Incidents of workplace violence are increasingly in the news. While these largely unpredictable tragedies are often difficult to prevent, there are strategies, tips, and guidelines to help reduce these incidents. We will address:

- the types of behavior and incidents that employers should address
- existing laws and regulations applicable to employers' responsibilities and employees' rights
- working with unionized workforces and requirements imposed under collective bargaining agreements
- employees' rights of privacy and Second Amendment rights
- workplace prevention policies and procedures, training and prevention strategies, and protocols for dealing with incidents of violence.



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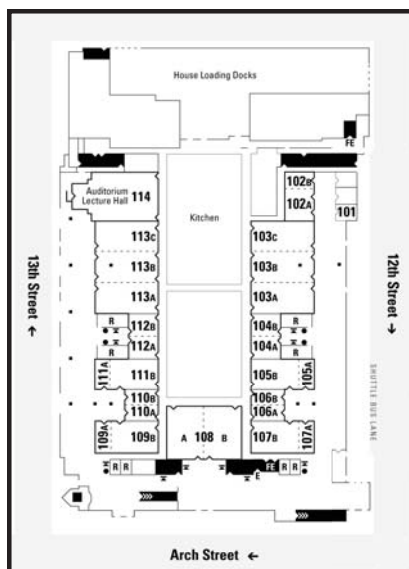
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