

**National Bar Association, Commercial Law Section
30th Annual Corporate Counsel Conference**

InterContinental Buckhead, Atlanta

Session Information: CLE#1: Employment Law

Title: What's Hot in Employment Law? Employment Law Practitioners Share Strategies and Best Practices for Handling Hot-Button Employment Law Issues

Date: Thursday, February 23, 2017

Time: 10:15 a.m. - 11:45 a.m.

Session Room: TBD

NBA-CLS Coordinator: Jonathan Goins

Session Designer/Proposer: Jamala S. McFadden
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I. Overview

This session entails several small group, concurrent roundtable discussions facilitated by teams of one in-house and one firm lawyer where participants share practical tips for handling various hot-button issues that employment law practitioners face.

This is a practitioner-oriented interactive session where in-house and outside counsel can engage and interact with each other in small groups, share experiences and resources, and hopefully begin to create meaningful relationships.

II. Format and Flow

The room will be set up with five tables, each assigned a different discussion topic. Two facilitators – one in-house and one law firm lawyer – will be assigned to each table to lead the discussion on each topic.

Attendees have the opportunity to visit three discussion groups during the session. As part of the conference registration, attendees could be asked to rank topics of interest based on the set list of discussion topics (see topics below). Staff could pre-assign attendees to tables based on their chosen topics of interest. Alternatively, for administrative ease, attendees could choose available tables as they enter the CLE room.

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Following opening remarks and introductions, facilitators and attendees will discuss each topic for 20 minutes. The moderator will give facilitators a three-minute “warning” before each session ends. At the end of 20 minutes, attendees change tables to discuss the next topic of their choice. Attendees will have three minutes to transition to their next table. Facilitators remain seated and await the next group to discuss their topic. Facilitators will discuss the same topic three times.

At the end of the rotation, the entire group will re-assemble (with attendees remaining at their third table assignment) and facilitators will present the “hottest” tips for each topic that came out of the group discussions. The timeline is as follows:

- 10:15a - 10:25a: Attendees settle in (seated at their first discussion tables), moderator provides a program overview and brief introduction of facilitators.
- 10:25a – 10:50a: First discussion topic and transition to second topic
- 10:50a – 11:15a: Second discussion topic and transition to third topic
- 11:15a – 11:35a: Third discussion topic
- 11:35a - 11:45a: Summation comments and any announcements and/or housekeeping matters

III. Moderator and Facilitators

Jamala McFadden will moderate this session, which will primarily consist of introducing the facilitators, providing instructions and announcing transitions.

Each discussion topic will be facilitated by five (5) teams of one in-house and one firm lawyer who are experienced labor and employment practitioners. Each facilitation team is responsible for preparing for and leading the small group discussions on one topic.

Confirmed Facilitators:

1. Leslie Annexstein – EEOC
2. Dionne Blake – Target
3. Ottrell Edwards – EEOC
4. Shymeka Hunter – WorldPay
5. Janis Johnson – Bank of America
6. Jewelle Johnson – Graphic Packaging
7. Darren Jones – UPS
8. Sharonda Mills – Wyndham Worldwide
9. Philip Phillips – Foley & Lardner
10. Erika Royal – Holland & Knight

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IV. Discussion Topics

Facilitators will select the discussion topic for which they will prepare and facilitate. The twenty-minute small group discussions will focus on five of the topics below (the five topics to be finalized based on speaker interest).

- 1. The Trump Administration and Employment Law: What We know and What We Can Expect.** The election of Donald J. Trump creates uncertainty for employers. Not your typical Republican, President Trump campaigned on a platform with some typically Democrat-proposed policies, including paid family leave and more conservative efforts like rolling back DOL/Obama initiatives with respect to overtime pay. This group will discuss what we know about the changes afoot in the labor and employment realm in a Trump administration and Republican-controlled congress. Discussion topics may include DOL exemptions and overtime pay, joint employer rules, arbitration agreements, paid family leave, and paid sick leave, among others.

Facilitators: Darren Jones and Phil Phillips

- 2. Q&A with the EEOC.** Facilitated by an EEOC attorney with an in-house counsel as moderator, topics for this group may include the following:
 - The EEOC's priorities and potential changes under the new Administration
 - The relationship between the charging party's counsel and the EEOC, including information shared with the charging party's counsel and when
 - Flags for onsite investigations
 - The most efficient way to get to a "no cause" determination
 - Pay equity efforts, including the pay data rule
 - The EEOC's latest enforcement guidance on retaliation

Facilitator: Ottrell Edwards (with questions asked by Halima Horton White, as needed)

- 3. Strategies for Dealing with Workers with Disabilities: Discipline, Leave and Accommodation Issues.** With the incremental increases in employers' duties to accommodate disabilities, the discussion will focus on obstacles for which employers should prepare; common mistakes and pitfalls that employers should avoid in order to best meet their legal duty; and how employers effectively manage discipline for employees with disabilities.

Facilitators: Jewelle Johnson and Shymeka Hunter

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- 4. Tips and Best Practices in Transgender Accommodations.** The issue of transgender workers in the workplace has become a popular topic, with employers asking questions about bathroom usage, benefits, and everyday interactions. This discussion will focus on the latest in transgender accommodations, including the impact of *Lusardi v. McHugh* on transgender employees and the implications of *Gloucester County School Board v. G.G.*, a case involving the federal government’s interpretation of “sex” as it related to a transgender student. Discussion topics may also include gender stereotyping; how employers can protect an employee’s right to their sexual identity while not conflicting with another employee’s religious beliefs; how various federal laws and agencies address transgender employees treatment/rights in the workplace (and whether that is expected to change with the new Administration); accommodations of transgender workers; and how to best accommodate a diverse workforce and minimize liability for discrimination and harassment claims.

Facilitators: Leslie Annexstein and Sharonda Mills

- 5. Making the Business of Employment Law Work in A Changing Environment.** In-house and outside labor and employment counsel face unique pressures in the changed/changing landscape of labor and employment law. In-house counsel are under increasing pressure to reduce L&E spending as much of the work may be viewed by business partners as commoditized. Fixed-fee and capped-fee arrangements are becoming more prevalent – is the billable hour dead for most employment lawyers? Firms are under significant pressure to maintain or increase rates to attract and retain top talent. This group will discuss measures for more cost-effective management of legal services from the perspective of both in-house and outside counsel; alternative sources for services, including the use of non-lawyer professionals, technology and software; areas in which companies are willing to pay a premium (e.g., class action work, traditional labor); how outside counsel can provide maximum value; and how in-house and outside lawyers can strike a workable balance.

Facilitators: Erika Royal and Dionne Blake

V. Materials

The CLE materials for the topics covered by this session will be provided by the moderator and facilitators and could include a compilation of one-to-three page “best practices” or “tip” sheets for each discussion topic.