

# Program Agenda

## Employment Law Hot Topics 2009

8:00 am: **Registration**

8:30 am

### **FMLA Part I: FMLA Extended to Military Family Members; DOL Issues New Proposed Regulations**

9:45 am

### **FMLA Part II: The Latest on Employee Eligibility, Notice of Need for Leave, and Other Recent Developments**

The FMLA continues to generate litigation, and that, along with a steady stream of DOL opinion letters, makes FMLA compliance a moving target. We will help steady your aim with an update on the most recent FMLA developments.

- Is “I’m sick” sufficient to put you on notice of an employee’s need for leave?
- Find out how far back you must go when counting prior service toward the 12-month employment requirement
- Counting hours of service toward the 1250-hour requirement when an employee is paid for on-call time or for hours not worked
- When an employee of a subsidiary can count a nearby parent company’s employees to meet the 50-employees-within-75-miles requirement
- DOL issues an opinion letter on the treatment of dental plans as group health plans that must be maintained during leave
- Terminating employees on FMLA leave: Court weighs in on discharge of employee who vacationed in Las Vegas while on FMLA leave
- FMLA does not protect an employee from discharge for violent behavior
- The effect of disability benefits on the employer’s right to require the use of accrued paid leave during FMLA leave
- Prorating bonuses based on the use of FMLA leave: What you can do and what you can’t do

10:45 am: **Break**

11:00 am

### **Courts Continue to Transform the ADA: What You Must Know to Comply**

Confused by whether your employee has a disability or not? You are not alone! The latest cases will help you understand the issue and will help you steer clear of “regarded as disabled” claims.

***Alert! Employee perceived as disabled wins \$2.5 million jury verdict  
(Jordan v. Bates Advertising Holdings Inc., N.Y. Sup. Ct., No. 118785/99, 2/7/06)***

- Does your employee really have a disability? Recent cases on impairments, substantial limitations, and major life activities
- “Regarded as disabled” cases split a fine hair, require employer caution
- Establishing job duties as essential functions that employees must perform to be qualified for a job
- The steps you must take to prove you engaged in the reasonable accommodation “interactive process”
- Allowing an accommodation for a period of time may cast doubt that it would impose an undue hardship in the long term
- Violent behavior caused by a disability is not protected by the ADA—or is it?
- FMLA-ADA overlap: Is the use of FMLA leave evidence that an employee can’t perform the essential job function of attendance?

11:45 am

## **Policies You Have That Are Illegal and Policies You Don't Have But Need**

In the past year, a federal agency has ruled that two employment policies you probably have are illegal. In addition, surveys show that several important issues are seldom covered in policy handbooks. Here is the up-to-date information you need to revise your policies.

- Challenges presented by employee blogs: Should you have a policy, what should it contain, and how much control can you take over this nonwork conduct?
- Essential elements of a workplace-violence policy
- OSHA's position on guns in the workplace, and how state laws are making it more difficult to ban guns from an employer's property
- Ahh, romance!: The dangers of dating in the workplace and what you should consider when implementing a dating policy or "love contracts"
- NLRB expands employers' rights to govern email use (*Guard Publ.*)
- Policies you have that are illegal and how you must revise and enforce them
- Designing an arbitration policy that the courts will uphold: Substantive and procedural rights
- Break out the cots: Is it time to scrap discipline for sleeping at work and develop a policy that encourages napping?
- Are "no-jerks" policies and rules an emerging trend that is right for you?

12:30 pm: **Break**

1:30 pm

## **Revised FLSA White-Collar Exemptions Prove No Easier to Apply: Courts, DOL Provide Guidance**

While human resources professionals and their attorneys hoped that the 2004 revisions to the white-collar exemptions would make life easier, everyone is now realizing that they are just as difficult to apply. This update will help ease the pain.

- Federal minimum wage increased from \$5.15 to \$7.25 over two years
- Carrying a pager is not the ultimate test in determining if on-call time is compensable; here's what is determinative
- Court says sick leave buy-back must be included in regular rate for overtime pay calculation
- Time spent studying English at home may not be compensable time
- Why drinking coffee and socializing in the morning may be compensable time
- Applying the FLSA motor carrier exemption to employees who drive as part of their duties
- The latest cases and DOL advice on white-collar exemptions
- DOL offers guidance on computer employee exemption
- Docking exempt employees for damaging company property or not working required hours can jeopardize exemption

2:30 pm **Break**

2:45 pm

## **New Discrimination Cases You Must Understand to Protect Your Organization**

Laws prohibiting discrimination protect just about everyone. We'll take a look at the most significant developments over a range of protected categories in this session.

***Alert! Jury awards \$3.4 million to women not hired because of strength test (EEOC v. Dial Corp., 8<sup>th</sup> Cir., No. 05-4183, 11/17/06)***

- How much younger must a replacement worker be for a former employee to prove age discrimination?
- Why supervisors must be trained what not to say: When age-related remarks can support a claim of age discrimination
- Coordinating retiree health benefits with Medicare: What you must know
- EEOC issues expanded guidance on race discrimination and harassment

- Employee who was fired for cheering supervisor's death as "God's will" was not discriminated against because of her religion
- EEOC issues new guidance on discrimination against workers with caregiving responsibilities
- Why it is essential that you clearly articulate the reason for an employee's discharge before taking action
- Hire employees who don't meet objective job requirements at your peril—it may foreclose a defense against discrimination lawsuits
- What employer actions are "adverse" enough for an employee to establish discrimination
- No sex discrimination when boss fires woman who his wife suspects is having an affair with him

3:30 pm

### **Groping, Graffiti, and Other Harassment: Using Recent Cases to Help Reduce Complaints and Liability**

Harassment can have a devastating psychological effect on its victims and a debilitating financial effect on employers. Reducing the possibility for harassment and promptly ending any that does occur serves everyone's best interests. Here's the latest word on how to accomplish your goal of eliminating harassment.

***Alert! Trucking company pays 3 women \$2.3 million for "hyper-sexualized" workplace (EEOC v. Custom Cos. Inc., N.D. Ill., No. 02 C 3768, verdict 11/17/06)***

- Recent cases clarifying what conduct rises to the level of actionable harassment
- Creating affirmative defenses to harassment by supervisors or coworkers
- More than just harassment: When egregious harassment can cause a constructive discharge
- Harassment created by consumers of your services: Can your "line of business" protect you from liability?
- Sexually derogative email sent between coworkers but not to victim can be evidence of harassment
- Harassment based on gender nonconformity vs. being gay: One's protected, the other isn't, but what is the difference?
- Courts limit personal liability for sexual harassment under Title VII

4:15 pm: **Program Concludes**