

Program Agenda

Recent Developments in Public Sector Employment Law 2008

Day 1

8:00 am: **Registration**

8:30 am: **Moderator's welcome and introduction**

8:35 am

Emerging Trends: New Public Sector Employment Law Challenges, Legislative and Regulatory Developments, and What's Happening in the Courtroom

Thanks to legislators, regulators, and creative plaintiffs' attorneys, there's no rest for weary HR professionals. The employment landscape is constantly shifting and requires your undivided attention to keep you and your employer off the hot seat. Discover what challenges are on the horizon, and get a head start on employer compliance.

- Constitutional issues impacting government employers: The Supreme Court's decision in *Ceballos* and other recent court cases addressing constitutional rights
- Examining the latest court decisions on limited immunity and personal liability
- The explosion in class action lawsuits: Why they are on the rise and what you can do to avoid becoming a defendant in a multimillion-dollar lawsuit
- Addressing increasing substance abuse issues in the workplace, including the new threat of meth: How to investigate and eliminate this potential danger to your employees
- The raging debate over illegal immigrants in the workforce: Will Congress tackle the issue, and what will the remedy look like?
- Getting employees back to work after military service: USERRA rights and mental health issues

9:15 am

EEOC Update: The Relationship Between Discrimination and Retaliation and What You Must Do to Break the Bond and Minimize Your Liability Risks

"Age bias causes VA surgeon to retire; federal court awards him \$1 million"

Studies show that as many as 60 percent of employees who report discrimination experience retaliation, too. In fact, retaliation claims have increased by almost 100 percent over the past decade, so it's important to be up to date on what's happening with both discrimination and retaliation claims. Here are the tools and techniques you need so you won't get caught in the nasty tangle of discrimination and retaliation.

- Update on the Supreme Court's recent retaliation decision that makes it harder for employers to defend retaliation lawsuits
- The aging workforce and why age bias claims are about to explode: What you must do to benefit from your older employees and avoid litigation
- More of a melting pot than ever: Avoiding national origin claims from English-only rules and accent discrimination
- What are sincere religious beliefs, and the growing confusion of what you must do to accommodate them
- Important recent cases on race, sex, and pregnancy discrimination
- Implementing critical antiretaliation training for managers and supervisors so you can avoid legal headaches

10:15 am: **Break**

10:30 am

Solutions to Growing Workplace Violence Concerns in the Public Sector: Impact on the Workplace and Methods to Prevent and Respond to Situations That Could Threaten Your Organization

According to a recent study, nearly 47 million Americans have experienced psychological or physical aggression at work. An important factor in the number of physical assaults that occur each year in the workplace is when domestic violence creeps out of the home and into work. In addition to your legal obligation to protect your employees from violence, the cost in lost productivity from violence is enormous, which gives you two important reasons to take action now to reduce risks in the workplace.

- Staying alert to behavioral warning signs and what it takes to prevent workplace incidents and promote a culture of civility and respect
- New diagnosis: Managing employees with intermittent explosive disorder while complying with the ADA and safeguarding your workplace
- Decreasing the odds of a horrific outcome: Why you must have a workplace violence/terrorism response plan, and what it should contain
- Enforcing policies and providing leadership training to identify and deal with workplace violence concerns
- The insidious cost to your organization from domestic violence: Actions you can take to restore lost productivity and protect your employees

11:30 am

The Firing Block: Strategies to Prevent Lawsuits Arising from Termination

“Nonrenewal of employment nets Asian school teacher \$2.4 million for bias”

Terminations are the job every HR professional dreads, whether they arise from a reduction in force or performance issues. While we can't make the job any less unpleasant for you, we can soothe your legal fears by giving you the latest strategies to make sure your terminations pass legal muster.

- The latest from the courts on the due process rights of public sector employees
- How merit system and civil service laws impact your discipline and termination policies
- Lawful terminations during periods of downsizing or reductions in workforce and the unique challenges they present
- Terminating employees who have injuries or illnesses: The legal issues and the steps you must take to protect your employer
- How a unionized workforce makes your job more difficult: Additional issues presented by collective bargaining agreements and the loss of at-will status
- Assessing risk when terminating: Deciding if discharge is right according to the situation

12:30 pm: **Break**

1:30 pm

Successfully Managing Today's Problematic Employees: Enforcing Disciplinary Action While Avoiding Expensive Liability

Managing troublesome employees is not a new problem; however, the number of behavior problems in the workplace is increasing, and the issues facing employers are more complex than ever before. While taming grouchy, whiney, irresponsible, and aggressive behaviors is burdensome, it is absolutely essential to take assertive action in order to avoid loss of productivity and potential legal risks. This session will equip you with strategies to manage difficult employees while staying in compliance with the law.

- Update on the increasing behavior problems facing employers
- Don't let them slide: Recognizing warning signs of problematic behavior and taking immediate action before it turns ugly
- Investigating rogue employees and determining when it's appropriate to take disciplinary action
- Establishing corrective action policies and practices, and exercising good judgment and consistency in enforcement
- Using mediation and conflict resolution tactics to lessen the chances of your legal exposure

2:30 pm

It Looks Good on Paper, but Will It Win in the Courtroom? Implementing Documentation Practices to Defend Against Potential Litigation

With the ever-increasing limitations on the time we have to get the job done, keeping employment documentation up to date is more of a challenge than ever before. And getting managers to follow through has never been harder. Unfortunately, there is a high price to pay in penalties and jury verdicts for failing to keep proper documentation. This session will provide you with strategies for implementing documentation practices to prevent and defend against potential litigation.

- Lessons learned from recent case studies of documentation slip-ups
- Discover which documents an employee's attorney will enter as exhibits in the courtroom
- Motivating managers to follow through on their responsibilities to document
- Defining at-will employment and avoiding statements and language that could pose legal threats
- Drafting and enforcing lawful contracts to prevent liability

3:15 pm: **Break**

3:30 pm

Preparing for the Approaching Tidal Wave in Wage and Hour Litigation

Payouts of almost \$100 million are being racked up in wage and hour collective action suits with a frequency that is frightening. Meanwhile, some collective actions entail little in unpaid wages and are brought more for the attorneys' fees than the wages owed. This session will give you the latest on what employer mistakes plaintiffs' attorneys are looking for and the steps you must take to close the door on the approaching tidal wave of wage and hour litigation.

- The developing battleground: The difference between class action and collective action lawsuits
- Recognizing the most common employer errors that leave the door wide open for collective action suits
- The steps you must take to eliminate wage and hour mistakes that could blow up into enormous lawsuits
- The latest developments in exempt-status classification: What the courts are saying
- Dealing with FLSA exemptions specific to the public sector
- What is time worked? Surprising employer errors that add up to big money
- Update on recent court cases and DOL opinion letters and what they mean for your organization

4:30 pm: **Day One Concludes**

Day 2

8:30 am

What Constitutes Notice of the Need for FMLA Leave and Other Pressing FMLA Issues?

The FMLA was enacted over 12 years ago, but employers still struggle with administering this difficult statute. The last year has seen many cases addressing the fundamental question of whether an employee's communication to an employer even constitutes a request for leave, and the questions only begin there. This session will focus on the latest developments under this tricky law and arm you with the strategies you need to manage it.

- Knowing what employee communications a court might recognize as a request for FMLA leave
- Applying the latest decisions on what constitutes a "serious health condition"
- Balancing employee privacy rights and certification requests
- Dealing with increasing "needed to care for" leave requests
- How the Supreme Court's *Ragsdale* decision has been applied by lower courts, and what that means for managing your employees' leaves
- How your vacation notice requirements might be found to violate the FMLA

- Latest strategies for minimizing FMLA abuse
- Learning the latest on “mixed motive” court decisions on FMLA retaliation and what they mean for you
- How to be on the right side of the line between determining an employee can’t do the job and “retaliation”

9:30 am

Determining Who Is Covered Under the ADA and What They’re Entitled To, and Making Sure Your Managers Don’t Take Actions to Make Nondisabled Employees Protected

“Police officer who claimed he was denied job because of his deformed left hand wins \$500,000 jury award”

Much of the ADA litigation revolves around the question of whether an employee is even disabled, and the law covers many employees who are not disabled because they are “regarded as” disabled. This session will bring you up to date on the latest developments to help employers strike the delicate balance between providing covered employees with the required protections under the statute, but not inadvertently having to provide ADA protection to employees who are not disabled.

- Revisiting who is disabled and what impairments are “substantially limiting” under the law
- Determining whether employees have an obligation to “mitigate” their impairments in order to be able to work
- Learning whether you can consider working overtime to be an essential function of a job for ADA purposes
- The latest on what constitutes regarding an employee as disabled, and an employer’s obligation to accommodate employees regarded as disabled
- Do you need to provide a smoke-free room to a sensitive employee? Plus, other recent reasonable accommodation cases
- Applying the EEOC’s latest guidance on prehiring inquiries to your employment interviews and applications

10:30 am: **Break**

10:45 am

Employee Leaves and Alphabet Soup: Simultaneously Protecting Your Public Sector Organization from Liability Under the ADA, FMLA, CBAs, and Your STD and LTD Plans

No aspect of an HR manager’s job requires you to simultaneously consider more different legal obligations of an employer than employee leaves. This session will provide you the latest strategies for ensuring that your organization is complying with the ADA and FMLA, workers’ compensation statutes, union contracts, and your own policies and plans when an employee goes on leave.

- Clarifying when a leave is covered by the various requirements, and strategies for ensuring none of the requirements fall through the cracks
- Simultaneously managing various leave requirements for a single employee
- Knowing where the different laws come into conflict and how to manage those conflicts
- What to include in your employee handbooks and policies about the different leave statutes and other entitlements
- Strategies for getting employees back to work and minimizing the need for extended leaves—within the law

11:45 am

It's No Joke: Ridding Your Workplace of Sexually Charged Comments and Other Inappropriate Behaviors That Could Lead to Costly Sexual Harassment Claims

“Smutty remarks, pictures, and emails cost Denver Mint \$9 million in settlement costs”

Since current Supreme Court Justice Clarence Thomas and Anita Hill introduced America to the issue of sexual harassment, it has continually grown more complex and perplexing. Issues that no one would have thought of in 1991 have moved to the forefront and present new challenges to employers as the courts try to find consensus on how we will define sexual harassment in the coming years. This session will introduce you to some of these new issues and present you with strategies to help you avoid the legal fray that surrounds them.

- Defining the fine line between a consensual relationship and sexual harassment and strategies you can use to lessen your liability risk
- Stretching the limits of sexual harassment: Gender nonconformity and the courts' confusion about what it is
- The supervisor's peephole: Is it sexual harassment if the victim is unaware of the harassment?
- What obligation do you have to respond when a male complains about sexual language, magazines, and other behavior that denigrates women but is limited to conduct between men?
- The keys to avoiding sexual harassment claims: Policies, procedures, training, and how to identify when you have a sexual harassment issue that requires action

12:30 pm: **Break**

1:30 pm

Recruiting in a Tight Employment Market: Innovative Staffing Strategies that Are Both Successful and Legal

Today's tight employment market presents HR with a huge challenge in recruiting top talent. As qualified individuals become scarcer and highly specialized job roles become more common, it is critical that you strategically focus your recruitment efforts. This session will provide you with innovative and lawful staffing strategies to attract the very best employees in a fiercely competitive market.

- Why job analysis is the first step in the recruitment process
- Using your Web site to make a compelling case for government employment
- Branding your organization to attract top-quality talent
- Maintaining a database of potential candidates to increase your chance of making a successful hire
- Using targeted recruiting methods, such as trade associations, networking groups, and membership lists from professional organizations or conferences, to find qualified candidates while ensuring a diversified candidate pool

2:15 pm: **Break**

2:30 pm

Protecting Your Organization from Liability for Breaches of Data Privacy and the Other Burgeoning Privacy Issues

We have seen numerous high-profile disclosures of employee private information (both actual and threatened) by loss, theft, and other breaches of confidential databases. Telecommuting employees have lost or had department laptops stolen with confidential information on millions of employees, and disgruntled employees have hacked into department databases, resulting in potential exposure of employee information. This session will focus on lessons to be learned from these events in the downside of advancing technology, and how to protect your organization from employee privacy-related liability in the future.

- Understanding the “low tech” foundations of privacy law and how they still apply to cutting-edge technology issues
- Constitutional protections of public sector employees

- Being prepared to comply with a growing number of state “data disclosure” and other privacy-related laws
- Learning about recent breaches of employee information, and how to avoid being the next news story
- Designing employee information systems to minimize the risk of exposure
- Managing your telecommuters to avoid loss and theft of employee personal information
- The latest decisions and developments on searches and monitoring
- Understanding why even small organizations may need to be aware of different states’ laws on privacy-related issues
- Striking the right balance when regulating off-work behavior, and complying with state statutes that limit your ability to do so

3:15 pm

Ensuring Your Organization Is Prepared for Government Audits and Investigations: EEOC, DOL, USCIS/ICE, and State OSHA

If you fail to plan, then plan to fail. When it comes to government investigations, not only are they unavoidable, but if you aren’t ready when they knock on your door, you may be leaving your organization exposed to costly fines and potential liability. From laying the groundwork to the actual investigation, this session will help you discover how to handle new challenges and what it takes to be prepared when the government shows up at your door.

- On the horizon: Employers may feel the heat soon from U.S. Citizenship and Immigration Services (USCIS)
- Preparing for the inevitable: Steps to guarantee your organization is in compliance with government regulations to avoid costly penalties
- Ensuring that your managers know what to do when investigators arrive and demand access to your files
- Give them what they ask for and nothing more: Understanding your responsibilities and what to expect from auditors
- Identifying and repairing weak areas in your files and programs for a successful audit

4:00 pm

Open Mic Forum: Get Answers to Your Most Burning Public Sector Employment Law Questions from an Expert Attorney Panel

Don’t walk away with unanswered questions—join us for an opportunity to address the issues of your choice. Our panel of leading labor and employment law experts will be on hand to answer your most pressing questions.

4:30 pm: **Program Concludes**