

12 CLE CREDITS INCLUDING ETHICS | 14 CPA CREDITS AVAILABLE

# EMPLOYMENT LAW INSTITUTE 2019

The premier employment law event for everyone who represents employers and employees

**25** YEARS 25 years and better than ever!

## SO MUCH IS INCLUDED!

9 distinguished federal judges share their insights

A remarkable faculty including national leaders in employment law

Over 55 sessions - choose the ones that matter most to you and your practice

An incomparable networking opportunity

Plus so much more!



*PBI is pleased to cosponsor this program with the PBA Labor and Employment Law Section*



Continuing Legal Education Arm of the Pennsylvania Bar Association

## Philadelphia

**WED. & THU., APR. 24-25, 2019**

**PA CONVENTION CENTER, 12TH & ARCH STREETS**

8:30 am to 4:35 pm both days;  
check-in and continental breakfast begins at 7:45 am



25  
YEARS

# 25 years and better than ever!

The Employment Law Institute continues its proud tradition of bringing you practical and realistic solutions to everyday and unexpected problems in employment law. In addition to a thorough update on all the new developments in employment law, the Institute features more than 55 sessions covering every aspect of employment law. More than 500 employment lawyers and human resource professionals typically attend this gathering of plaintiff and defense lawyers, human resource professionals and others interested in employment law. It's not only great education, it's a fun time.

## The popular Year in Review is back!

The Institute opens with a lively point/counterpoint discussion between plaintiff's lawyer Richard Seymour and management lawyer Michael Torchia as they examine the most interesting and significant employment law cases of the year. You'll not only learn the holdings of recent cases, but get practical insights into how these changes impact your clients. You'll also learn what's trending!

## You will have the chance to learn from national speakers at the Institute

**Philip Miscimarra** is the former Chairman of the National Labor Relations Board (NLRB). He is in the NLRB special appeals practice at Morgan Lewis & Bockius in Washington, DC. He is uniquely qualified to bring you up-to-speed on key decisions of the Board, including his perspectives regarding areas in which the Board has had divergent views. This session promises to be an eye-opener!

**Richard Seymour** is a nationally renowned plaintiff's attorney in Washington, D.C. In addition to kicking off the Institute in the Year in Review session, Mr. Seymour will share his encyclopedic knowledge of evidence in employment litigation. And, he will help you fine-tune your skills for your next employment case.

**Debra Lawrence** is EEOC Regional Director in Philadelphia. The past year has been filled with new guidance and decisions that impact how you advise and represent your clients. Ms. Lawrence will make sure you know about all that's new and how it impacts your practice.

## Philadelphia

8:30 am to 4:35 pm both days;  
check-in and continental breakfast begins at 7:45 am

APR  
24

APR  
25

## Come to hear what the judges have to say

### Learn how to evaluate, settle and try sexual harassment cases with Judge Rice and Judge Strawbridge

The Honorable Timothy Rice and the Honorable David Strawbridge team up to analyze sexual harassment cases post #MeToo in this information-packed hour moderated by plaintiff's attorney Stephen Console and defense attorney Kristine Derewicz. You will get tips on how to determine the best pretrial strategy, evaluate settlement value and prepare for trial. You won't want to miss this valuable information!

### Understand the value of damages in your employment case

The Honorable Juan Sánchez, the Honorable Renee Marie Bumb, the Honorable Mitchell Goldberg and the Honorable Mark Kearney will break down the factors to consider in valuing damages in your case. This engaging hour will be moderated by plaintiff attorney Robin Bond and defense attorney Larry Turner. What an opportunity!

### Pick up practical tips from the magistrate judges

Our panel of talented magistrate judges includes the Honorable Ann Marie Donio, the Honorable Henry Perkin and the Honorable Thomas Rueter. Attend to get lessons from the judges as they share their experiences and offer tips on employment litigation. This Super Workshop promises to be a quick-paced, eye-opening session moderated by plaintiff's attorney Christine Burke and defense attorney Thomas Servodidio.

#### NEW THIS YEAR!

#### A fresh format with 6 terrific ethics choices

One hour each day is dedicated to ethics. Choose among the 3 choices of topics.

**Reminder:** Ethics credits can count as either ethics or substantive credits under the PA CLE Board rules.

**Sessions #9 and #28** When You Need to Breakup with Your Client—Handling the Tough Issues Ethically

**Session #10** Laboring to Find Labor Clients: The Pitfalls of Legal Advertising

**Session #11** A Call for Action – Impairment in the Legal Profession and What YOU Can Do About It

**Session #40 and #54** Ethics War Stories

**Sessions #41** Ripped From the Headlines: Lawyers Behaving Badly

**Session #42** The E in Email Stands for Evidence: Proper Email Etiquette May Avoid Legal Issues

8:30 - 8:35 *Welcome & Introduction*

8:35 - 9:35 **Year in Review: What's New in Employment Law**

Mr. Seymour, Mr. Torchia

9:35 - 9:50 *Networking Break*

9:50 - 10:50	<b>1 BASICS</b>	Wage and Hour Basics  Mr. Hackett	<b>2</b>	Working Remotely: The Legal Challenges Employers Face from the Growing Popularity of Telecommuting Arrangements  Mr. Kim, Mr. Puma	<b>3</b>	Medical Marijuana in the Workplace  Mr. Pollins
	<b>10:50 - 11:00</b>	<i>Break</i>				
11:00 - 12:00	<b>8 BASICS</b>	ADA Basics  Ms. Keefe	<b>9 ETHICS</b>			
	<b>12:00 - 1:15</b>	<i>Luncheon (included for all registrants)</i>	When You Need to Breakup with Your Client—Handling the Tough Issues Ethically  Ms. Welch			
1:15 - 2:15	<b>12 BASICS</b>	Negotiating to Win: Getting Everything While Giving Nothing  Mr. Iannacone, Ms. Snavelly	<b>13 #MeToo</b>	Evaluating, Settling and Trying Sex Discrimination and Sexual Harassment Cases Post #MeToo  Judge Rice, Judge Strawbridge Mr. Console (M), Ms. Derewicz (M)	<b>14</b>	Fusion Between Entertainment Law and Employment Law  Mr. Campolongo, Ms. McCarthy
	<b>2:15 - 2:25</b>	<i>Break</i>				
2:25 - 3:25	<b>18 BASICS</b>	The Ins and Outs of the FMLA  Ms. Kindig	<b>19</b>	Trade Secrets and Restrictive Covenants: Keeping Your Secrets Safe and Your Employees Honest  Mr. Baron, Mr. Fryman	<b>20 SUPER WORKSHOP</b>	
	<b>3:25 - 3:35</b>	<i>Break</i>	The New NLRB: What's Changed, What's Real, What's Not and What Does the Future Hold?  Mr. Miscimarra			
3:35 - 4:35	<b>24 BASICS</b>	We're Not Getting Any Younger – Handling the Boom in Age Discrimination Cases  Ms. Conley	<b>25 #MeToo</b>	Creating Safe Spaces: Some New Approaches to Sexual Harassment Prevention  Ms. Ballard, Mr. Haller	<b>26</b>	
			ADA Survivor  Ms. Bell, Mr. Campolongo, Mr. Krause Ms. Zerbe, Mr. Johns (M)			

**(M) Moderator**



“The topics are always very good and the materials are great!”

4 #MeToo

Internal Investigations in the #MeToo Era

Mr. Krause, Mr. Nofer

5

What to Do If You Think Your Employee Is Abusing the FMLA or ADA...or If Your Employer Is Trying to Make Leave Difficult

Mr. Goldshaw, Ms. McClure, Ms. Zerbe

6

Checkmate: Dealing with That Problem Employee

Ms. Abrams, Mr. Candiello

7

Emotional Distress in Employment Cases

Dr. Koller, Mr. Koller, Ms. Lavallo

10 ETHICS

Laboring to Find Labor Clients: The Pitfalls of Legal Advertising

Mr. McGinnis, Mr. Reich

11 ETHICS

A Call for Action - Impairment in the Legal Profession and What YOU Can Do About It.

Mr. Quinn

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Mock Mediation: Views from the Mediator, Plaintiffs and Defense Side

Ms. Marseca, Ms. Post

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Recurring Evidence Issues

Mr. Seymour

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Developments in LGBT Employment Rights

Ms. Eyer, Ms. Weiss

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Advanced Pre-Trial and Trial Tactics for Experienced Employment Attorneys Concerning Mitigation

Mr. Karpf, Mr. Lantis

22

The Electronic Workplace Update: What Every Employer and Employee Needs to Know

Mr. Cossrow

23

The European Union's General Data Protection Regulation: It's Impact on Domestic Employers

Ms. Fischer, Ms. Rakoski

27

Biometrics in the Workplace

Mr. Pasek, Mr. Preziosi

28 ETHICS | REPEAT OF #9

When You Need to Breakup with Your Client—Handling the Tough Issues Ethically

Ms. Welch

29

Employment Arbitration Agreements: New Strategies After the Supreme Court Speaks

Mr. Bogan, Ms. Dubler, Mr. O'Meara

8:35 – 9:35 AM

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

MR. SEYMOUR, MR. TORCHIA

Have you stayed abreast of the recent employment cases during the past year? The Institute will kick off with a spirited point/counterpoint exchange between Rick Seymour and Mike Torchia who will examine some of the most interesting and significant employment law cases of the year. You will learn the holdings of the recent cases and take away practical advice on how these changes impact your clients in 2019.

9:50 – 10:50 AM

**1. Wage and Hour Basics**

MR. HACKETT

Come to hear a discussion on the basics of FLSA litigation, including: • FLSA basics • white collar exemptions and the proposed rule • independent contractors • settlement of FLSA suits.

**2. Working Remotely: The Legal Challenges Employers Face from the Growing Popularity of Telecommuting Arrangements**

MR. KIM, MR. PUMA

A growing number of employees are now demanding or expecting the opportunity to work remotely. Examine the legal risks particularly from a wage and hour perspective and explore strategies to mitigate those risks. We will also provide a brief overview of other issues to consider for remote working arrangements such as: workplace safety obligations, accommodation and leave of absence management, and protection of proprietary information.

**3. Medical Marijuana in the Workplace**

MR. POLLINS

The large majority of states now have medical marijuana legislation, which is also taking effect in PA. Employers are struggling with whether they need to accommodate medical marijuana use like medication for other disabilities, particularly for safety-sensitive positions, and how to do so. Join us for an interactive discussion of the varying state laws and how to navigate ADA and state disability law requirements.

**4. Internal Investigations in the #MeToo Era**

MR. KRAUSE, MR. NOFER

Learn best practices and practical considerations when evaluating whether and how to conduct an internal investigation, particularly during this period of time where there is particular sensitivity and attention being paid to this issue by the public and the media. Decisions such as who conducts the investigation, whether the investigation should be treated as privileged, scope of investigation, and order of witnesses interviewed are all important questions for which there is no stock answer. We will help decision makers and their advisors understand how to walk through these questions and come to the answers that work best for that organization.

**5. What to Do if You Think Your Employee Is Abusing the FMLA or ADA...or If Your Employer Is Trying to Make Leave Difficult**

MR. GOLDSHAW, MS. MCCLURE, MS. ZERBE

In this practical session, we will use several hypothetical situations and an interactive format to explore some of the trickiest FMLA and ADA situations that arise in the real world.

**6. Checkmate: Dealing with That Problem Employee**

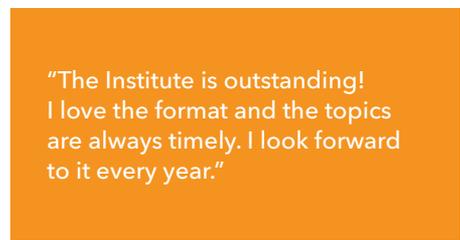
MS. ABRAMS, MR. CANDIELLO

All employers have that “problem employee”: the one who always comes in early or stays late; the potentially good employee who continues to exhibit bad work behaviors; the employee who continually commits small infractions; the employees who, when they see that their job is in jeopardy, makes a harassment or discrimination complaint. We will discuss the importance of timing (and how to do) effective performance evaluations; counseling vs. discipline; the importance of documentation; handling specific behaviors.

**7. Emotional Distress in Employment Cases**

DR. KOLLER, MR. KOLLER, MS. LAVALLE

Learn what exactly “emotional distress” is and how it manifests and affects people. Lawyers may lack very basic understanding and training about the ways sexual harassment in particular, but harassment of any kind, may present itself in the form of symptoms. Often times it causes victims to not speak up at all, or to act in ways that might seem counterintuitive to the layperson or even the attorney on the plaintiff side or the defense side and perhaps even the judge assigned to the case. There are symptoms of disorders that are overlooked or minimized in the course of litigation. We will discuss types of cases to hire a psychologist, what a psychologist does in cases, various tools and assessments and ways to increase the value of your case. But it all starts with an understanding of the victim and what the victim went through.



11:00 AM – 12:00 PM

**8. ADA Basics**

MS. KEEFE

Explore the basic elements of the ADA, as well as an employer's obligations to provide accommodations to disabled individuals in the workplace. Examine an employer's duty to engage disabled employees in the interactive process and provide reasonable accommodations that will enable disabled workers to perform the essential functions of their jobs.

**9. When You Need to Breakup With Your Client—Handling the Tough Issues Ethically (ETHICS)**

MS. WELCH

repeated at #28

Mandatory or permissive? Litigation or transaction? “Hot Potato” Rule. What can I reveal in the process? How do I manage risk? We all hope we never have to face the prospect of leaving our client, but it can happen. Explore ethical and practical issues in attorney-client breakups and how to manage the risks.

**10. Laboring to Find Labor Clients: The Pitfalls of Legal Advertising (ETHICS)**

MR. MCGINNIS, MR. REICH

With the ubiquity of social media and the Internet, attorney advertising has become more innovative and less expensive—creating significant ethical questions for labor and employment attorneys. We will address: • ethical standards in light of 21st century labor and employment practice • the ABA's revisions to the Model Rules of Professional Conduct regarding attorney advertising, and what they mean in 2019 • particular considerations in the era of 280-character limits, digital evolution, and #MeToo.

**11. A Call for Action - Impairment in the Legal Profession and What YOU Can Do About It (ETHICS)**

MR. QUINN

Learn what members of our profession can and should be doing about their impaired colleagues, rather than the enabling behavior that we see so often. Intervention techniques will be discussed and a detailed explanation of what a typical call to the LCL 24-hour Helpline “looks” like. A detailed description of the free services that LCL provides to lawyers, judges, their family members and law students will be provided. It is our hope that this program will help alleviate some of the fear that surrounds picking up the phone to ask LCL for personal advice or help with a colleague who suffers from impairment due to alcohol or drug use, stress, depression, anxiety or any other mental health issues.

1:15 – 2:15 PM

**12. Negotiating to Win: Getting Everything While Giving Nothing**

MR. IANNAcone, MS. SNAVELY

The majority of people share a common misconception that the key to “winning” in a negotiation is making your best argument(s) about why you win and the other side loses. Most likely, your opponent shares this same view, and you end up with an all-out battle of wills, with each side focused only on their own position, resulting in no meaningful progress ever being made. To avoid this common scenario, one must change the focus of the negotiation. The true key to any successful negotiation is focusing on your opponent's true motivation behind the negotiation—gathering as much information as possible and then using that information to get what you need out of the negotiation.

**13. Evaluating, Settling and Trying Sex Discrimination and Sexual Harassment Cases Post #MeToo**

JUDGE RICE, JUDGE STRAWBRIDGE, MR. CONSOLE (M)  
MS. DEREWICZ (M)

The #MeToo and TimesUp movements have empowered women to come forward and have caused employers and employees alike to view sexual harassment and sex discrimination claims differently. Employment lawyers must evaluate cases differently, whether in deciding to accept the client, determining the best pretrial strategy, evaluating settlement value, or preparing for trial. We will address each of these topics, focusing on the judges' experiences in settling and evaluating these cases. Expect to discuss jury selection when two-thirds of women surveyed claim they have been harassed; motions in limine related to the prior relationships of both the alleged harasser and harassed; use of expert psychiatrists/counselors; and other related topics.

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#### 14. Fusion Between Entertainment Law and Employment Law

MR. CAMPOLONGO, MS. MCCARTHY

Come to hear about: • use of mandatory arbitration agreements in the entertainment industry, particularly in high profile cases (Harvey Weinstein, Les Moonves) • lack of diversity on arbitration panels (Jay-Z/Roc Nation/Iconix case) • misclassification of employees as independent contractors (Pablo Batista v. O-Jays case alleging ADA violation) • FLSA and overtime issues for on-air talent (exempt v. non-exempt) • unpaid wages in the fallout of the Fyre Festival.

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#### 15. Mock Mediation: Views from the Mediator, Plaintiff and Defense Side

MS. MARESCA, MS. POST

We will conduct a mock mediation of ADA/FMLA issues, followed by comments and critique with active audience participation. Join us for an engaging and interactive session.

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#### 16. Recurring Evidence Issues

MR. SEYMOUR

Some questions of evidence arise frequently. These include the authentication of electronic evidence such as emails, the authentication of alleged electronic signatures to documents, the admissibility of information from past web sites, hearsay and its exceptions, the admissibility of other claimed instances of discrimination, spoliation, the admissibility of stolen documents and whether to offer them in the first place, surreptitious recordings, circumstances in which traditionally “no go” documents such as settlement offers and character evidence might be admissible, and the like.

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#### 17. Developments in LGBT Employment Rights

MS. EYER, MS. WEISS

The law surrounding LGBT employment rights has been undergoing rapid developments in the last several years, with increasing findings in the lower courts that anti-LGBT discrimination is per se sex discrimination. In response to these decisions, new arguments have been raised by opponents of LGBT employment equality, including the contention that “original public meaning” bars such sex discrimination claims. This issue, which seems sure to be resolved by the Supreme Court in the near future (potentially even as early as this Term, as there are two cases pending cert), is thus one where up to date knowledge is vitally important to practitioners raising or defending LGBT employment rights claims.

2:25 – 3:25 PM

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#### 18. The Ins and Outs of the FMLA

MS. KINDIG

Every employment lawyer must understand the ins and outs of the Family and Medical Leave Act. Topics include: • the legal and regulatory structure of the FMLA • employer and employee notice requirements • definition of a serious health condition • medical certifications.

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#### 19. Trade Secrets and Restrictive Covenants: Keeping Your Secrets Safe and Your Employees Honest

MR. BARON, MR. FRYMAN

Review the current state of the law on trade secrets and restrictive covenants, including statutory, case law and regulatory developments. We will also provide practical advice regarding drafting agreements and prosecuting and defending actions for injunctive relief.

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#### 20. The New NLRB: What's Changed, What's Real, What's Not and What Does the Future Hold?

MR. MISCIMARRA

In recent years, employers, unions and employees have seen lots of change at the National Labor Relations Board. During President Obama's term, the Board adopted many new principles that expanded joint employer status, accelerated union representation elections, invalidated many work rules and employee handbooks, prohibited the waiver of class action claims in non-NLRB lawsuits, and more. During the Trump administration, the NLRB has adopted some changes, engaged in rulemaking, and some observers predict more is yet to come. In this session, join former NLRB Chairman Philip Miscimarra who will discuss his tenure on the NLRB, describe the latest NLRB developments, and make predictions for the future.

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#### 21. Advanced Pre-Trial and Trial Tactics for Experienced Employment Attorneys Concerning Mitigation

MR. KARPE, MR. LANTIS

Too many seasoned attorneys make blanket arguments about mitigation based upon instinct. We will focus on arming plaintiff and defense attorneys with solid, legally-supported positions, pre-trial strategies, and proper trial tactical considerations and approaches.

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#### 22. The Electronic Workplace Update: What Every Employer and Employee Needs to Know

MR. COSSROW

Using scenarios played out in recent movies and television programs, join us to discuss the following issues: employee privacy rights in electronic communications; employer handling of such communications, including preservation and litigation hold; how employers can establish policies and procedures that clarify the rules of the road in their workplace; destruction and spoliation of electronic communications; and the most recent judicial interpretation of the 2016 amendments to the Federal Rules of Civil Procedure that address electronically stored information and Pennsylvania's amended Rules of Professional Conduct that address professional responsibility for electronic communications.

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#### 23. The European Union's General Data Protection Regulation (GDPR): Its Impact on Domestic Employers

MS. FISCHER, MS. RAKOSKI

Join us to learn the global impact of the GDPR on the collection, processing and storage of personal identifiable information (PII) data. The discussion will include a comparison of the requirements for security and privacy domestically, and the implications of the recent Pennsylvania Supreme Court decision in *Dittman v. UPMC*, in comparison to the requirements of the GDPR. We will also focus on the growing divergence on an international level in the way that countries and regions approach data privacy and protection, providing insight into global data management within increasingly contrasting international regulatory requirements.

3:35 – 4:35 PM

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#### 24. We're Not Getting Any Younger—Handling the Boom in Age Discrimination Cases

MS. CONLEY

As the average age of the workforce rises, age-based claims of discrimination are increasing and impacting more employers. We will explore unique developments in age discrimination case law and administrative agency

enforcement, as well as best practices for employers to avoid liability and for plaintiffs' counsel to preserve and win their claims.

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#### 25. Creating Safe Spaces: Some New Approaches to Sexual Harassment Prevention

MS. BALLAD, MR. HALLER

Most employers' approach to the problem of sexual harassment is reactive, rather than preventive. Employers need to do more than write a policy, train employees and investigate and remedy complaints. Employers need to learn where the problems are before they turn into complaints so they can solve their problems before they become disputes. Experienced counsel from both sides will discuss ways to create safe spaces for employees to tell them what's actually happening.

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#### 26. ADA Survivor

MS. BELL, MR. CAMPOLONGO, MR. KRAUSE, MS. ZERBE  
MR. JOHNS (M)

Advising an employer or an employee about a reasonable accommodation, undue hardship, and medical leave can be complicated, particularly given the patchwork of federal and state laws that can apply. Using a unique panel game show approach that will leave one of our panelists as the “sole ADA Survivor,” we will address: • legal concepts under the Americans with Disabilities Act • leave as a reasonable accommodation • the use of “drop dead” policies to address extended disability leave • how to apply legal principles to a hypothetical scenario.

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#### 27. Biometrics in the Workplace

MR. PASEK, MR. PREZIOSI

Biometrics refers to physiological characteristics that can be used to identify people ranging from fingerprints, to retina recognition, and from speech recognition to electro-physiologic characteristics such as heart or brain waves. Employers have begun to use biometric characteristics to identify employees and control access to premises, computer systems and even vehicles. Employees who object to the use of their biometric data have begun to bring claims based on a variety of legal theories, and some states have passed legislation limiting employers in their ability to capture and use such data. We will address: (1) what are biometrics; (2) how are they being used in the workplace; (3) what types of claims have employees been able to assert; (4) what statutory claims are emerging; and (5) how biometric data can be proven in litigation.

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#### 28. When You Need to Breakup With Your Client—Handling the Tough Issues Ethically (ETHICS)

MS. WELCH

repeat of #9

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#### 29. Employment Arbitration Agreements: New Strategies After the Supreme Court Speaks

MR. BOGAN, MS. DUBLER, MR. O'NEARA

With the Supreme Court's landmark ruling on class action waivers in *Epic*, it's time for employers to reevaluate their agreements. What changes should employers make to their existing arbitration approaches? What is the status of class action waivers? What procedures should employers follow when rolling out agreements and amendments to ensure they are enforceable? Should employees refuse to agree, and if they do, what are the consequences? Join us for a session that will address these questions and more to help attendees develop and enforce a state-of-the-art arbitration program.

8:30 - 9:30	30		
	<b>Breakfast with the Judges: Key Trends Affecting Damages in Employment Cases</b>  Chief Judge Sánchez, Judge Bumb, Judge Goldberg, Judge Kearney Ms. Bond (M), Mr. Turner (M)		
9:45 - 10:45	9:30 - 9:45	Networking Break	
	<b>34 BASICS</b>  Trusting the Process: The Difference Between Public and Private Sector Employment Law  Mr. Braveman, Ms. Farmer	<b>35 SUPER WORKSHOP</b>  EEOC Update from the Regional Director  Ms. Lawrence	
11:00 - 12:00	10:45 - 11:00	Break	
	<b>39 BASICS</b>  Making the Most of EEOC Mediations  Ms. Marino, Mr. Murphy, Ms. Peet, Mr. Meyer (M)	<b>40 ETHICS</b>  Ethics War Stories  Ms. Kirshenbaum, Ms. Rosenblum	
1:15 - 2:15	12:00 - 1:15	Luncheon (included for all registrants)	
	<b>43 BASICS</b>  Workplace Harassment: Proving It and Defending It  Mr. Deratzian	<b>44 SUPER WORKSHOP</b>  Lessons from the Magistrate Judges  Judge Donio, Judge Perkin, Judge Rueter, Ms. Burke (M), Mr. Servodidio (M)	
2:25 - 3:25	2:15 - 2:25	Break	
	<b>48 BASICS</b>  Don't Put Words in my Mouth: Preparing Your Witness for Depositions  Mr. Goldner, Ms. Markey	<b>49</b>  The Art of the Deal: Issues in the Negotiation of Executive Employment Agreements  Ms. Bond, Mr. Homans	<b>50 #MeToo</b>  Dealing with the #MeToo Plaintiff Employed  Ms. Begley, Ms. Rashid Dr. Ziv
3:35 - 4:35	3:25 - 3:35	Break	
	<b>53 BASICS</b>  The Down and Dirty on Title VII  Ms. Bell, Ms. Reger	<b>54 ETHICS   REPEAT OF #40</b>  Ethics War Stories  Ms. Kirshenbaum, Ms. Rosenblum	<b>55</b>  It's All in the Family: FMLA Rec Maternity Leave, Paternity Leave  Ms. Malloy, Ms. Salgado

(M) Moderator

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Privacy in the Workplace

Ms. Boerner, Ms. Rosen

32

Management Training That Can Help HR Avoid Legal Risks

Ms. Carman, Mr. Ewan

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Latent Bias Research for Employment Lawyers

Ms. Mian

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Blowing the Whistle on Cybersecurity Problems: Protections for Whistleblowers and Areas of Liability for Employers

Mr. Ellis, Ms. Ronickher

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Employment Arbitration Agreements: Litigating and Arbitrating to Conclusion

Ms. Gorokhovich, Mr. Lantis, Mr. Weisberg

38

eDiscovery Toolkit: How to Chisel Away the Costs of eDiscovery

Ms. Hughes, Mr. McDonald

41 ETHICS

Ripped from the Headlines: Lawyers Behaving Badly

Mr. First, Ms. Snyder

42 ETHICS

The E in Email Stands for Evidence: Proper Email Etiquette May Avoid Legal Issues

Mr. Fortunato

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Title IX Claims in Colleges and Universities – How to Handle Claims Involving Students or Claims Filed by Professional Staff

Ms. Hamill

46

Navigating Real (and Imagined) Independent Contractor Issues in the Gig Economy

Mr. Nahass, Ms. Nentwig, Mr. Worley

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Regulating Off-Duty Conduct in the Digital Age

Mr. Benedetti, Ms. Galbally, Ms. Hartman

51

Wage and Hour Update

Ms. Farmer, Mr. Winebrake

52

Tips on Successfully Navigating the ADA Interactive Process

Mr. Meyer, Mr. Mohl

56

What Are We Not Asking for in Discovery in These Employment Cases That We Should Be? And – Does It Really Come in at Trial?

Ms. Burke, Ms. Rigo

57

Antitrust Update for Labor and Employment Lawyers

Mr. Duffy, Mr. Grossman, Ms. Thomson

8:30 – 9:30 AM

**30. Breakfast with the Judges: Key Trends Affecting Damages in Employment Law Cases**

CHIEF JUDGE SÁNCHEZ, JUDGE BUMB, JUDGE GOLDBERG  
JUDGE KEARNEY, MS. BOND (M), MR. TURNER (M)

One of the most difficult questions for employment lawyers is valuing a case – what kind of damages are available, and what evidence is needed to prove, or disprove, those damages? There are many factors that can affect how much a plaintiff may be awarded. This session will provide valuable insights from an illustrious panel of judges in our region on some of the trends affecting damages in employment law cases. This will be a discussion during which we explore how to set the floor and exceed the ceiling for damages in employment cases through motion practice and effective arguments before a jury.

**31. Privacy in the Workplace**

MS. BOERNER, MS. ROSEN

Attend to hear about recent hot privacy issues in the workplace, including background checks, social media and off-duty conduct, cybersecurity, data privacy, workplace monitoring, and medical marijuana and substance abuse testing, among other topics.

**32. Management Training That Can Help HR Avoid Legal Risks**

MS. CARMAN, MR. EWAN

We will provide in-house counsel with a practical training framework for supervisors and managers to ensure compliance and minimize litigation risks. Topics include: • employee time cards and working “off the clock” • documenting performance issues • responding to requests for references • social media monitoring.

**33. Latent Bias Research for Employment Lawyers**

MS. MIAN

Attend to learn the social science surrounding latent bias (sometimes referred to as unconscious bias), and the implications for the profession and practice of law. We will address: • scientific research which shows that psychological beliefs can have profound effects on hiring, promotion, and climate in the employment context, including assessments of merit, who speaks and when, compensation, and decisions as to the relative worth of subfields • the ways that courts have infused this research into legal decisions, occasionally interpreting stereotyping as a means of violating Title VII and other employment laws • implications for the practice of law, representation of clients, and ways to run a better law firm and alleviate bias in the workplace more generally.

9:45 – 10:45 AM

**34. Trusting the Process: The Difference Between Public and Private Sector Employment Law**

MR. BRAVEMAN, MS. FARMER

From complaint to write up, grievance to arbitration, agency to court, there are many differences between

how public and private sector employers handle investigations and disciplinary matters that arise. Topics include: • employer and Union attorneys with practical strategies on resolving pending discipline • an overview of the various stages of discipline from grievance/ complaint to arbitration • a review of laws and provisions relevant to each stage of discipline • a review of forums in which complaints may be filed when discipline is not resolved.

**35. EEOC Update from the Regional Director**

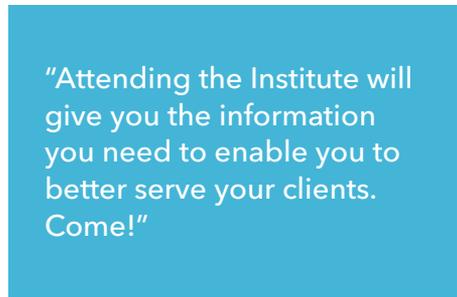
MS. LAWRENCE

Find out the latest developments in EEO law and EEOC litigation from the Philadelphia Regional Attorney. Always a crowd pleaser!

**36. Blowing the Whistle on Cybersecurity Problems: Protections for Whistleblowers and Areas of Liability for Employers**

MR. ELLIS, MS. RONICKHER

Cybersecurity whistleblowers play an important role in uncovering privacy and data security deficiencies, but they also present a potentially substantial source of liability for employers. We will address: • potential cybersecurity whistleblowers claims and defense against such claims • reward programs for cybersecurity whistleblowers (False Claims Act, SEC, CFTC) • how to advise a would-be cybersecurity whistleblower to blow the whistle safely • how as an employer should you respond to would-be cybersecurity whistleblowers.



**37. Employment Arbitration Agreements: Litigating and Arbitrating to Conclusion**

MS. GOROKHOVICH, MR. LANTIS, MR. WEISBERG

So, you have a plaintiff and an employer-defendant that entered into a pre-dispute arbitration agreement, and now have a dispute. What's next? Should the plaintiff agree to proceed in arbitration or challenge the agreement? What are good strategies for litigating that issue? How should you handle pre-arbitration mediation if it is voluntary or mandatory under the agreement? Once in arbitration, how is a winning approach different from one used in traditional litigation? How do you manage mass individual arbitration after enforcement of a class action waiver? How is discovery impacted? What about summary judgment? Explore these questions with a panel discussion.

**38. eDiscovery Toolkit: How to Chisel Away the Costs of eDiscovery**

MS. HUGHES, MR. MCDONALD

Document review comprises about 70% of the costs of eDiscovery. Using the EDMR (eDiscovery Reference Model), we will discuss legal strategies and technology solutions that can help dramatically reduce the costs of eDiscovery by reducing the number of documents

needing review during the discovery phase of litigation or during an internal investigation. These strategies and solutions can also be used to reduce the receiving party's cost associated with reviewing a voluminous document production. The ultimate goal is to right-size document review to better control litigation costs and focus on merits resolution.

11:00 AM – 12:00 PM

**39. Making the Most of EEOC Mediations**

MS. MARINO, MR. MURPHY, MS. PEET, MR. MEYER (M)

More than ever, employment lawyers must be aware of new developments and the impact of increased immigration enforcement on employers. We will discuss: • impact of Executive Orders • new agency priorities • worksite enforcement by DOL, ICE, IER and FDNS • recent employer audits, fines and penalties • visas for “workplace crimes” and “labor trafficking” • practical strategies and best practices to protect your clients.

**40. Ethics War Stories (ETHICS)**

MS. KIRSHEBAUM, MS. ROSENBLUM

repeated at #54

In this interactive session, we will examine de-identified, but very real situations that raise serious ethical issues in representation. We will discuss how these and similar scenarios might arise in your practice and the applicable ethical rules. Finally, we will engage in a robust discussion of ways to navigate these situations in the best interests of our clients and in conformity with our ethical obligations.

**41. Ripped from the Headlines: Lawyers Behaving Badly (ETHICS)**

MR. FIRST, MS. SNYDER

In a dynamic and interactive session, our panelists will use hypotheticals drawn from real life, newsworthy scenarios to educate attendees on important ethics issues facing all attorneys.

**42. The E in Email Stands for Evidence: Proper Email Etiquette May Avoid Legal Issues (ETHICS)**

MR. FORTUNATO

We'll explore things like knowing your audience (the dangerous “Reply All”) and the likelihood that your email will be read by people other than those to whom you sent it; avoiding humor and sarcasm because recipients can't read your tone; avoiding the use of language that sounds like you're offering or accepting the terms of a contract; considering telephone calls or in-person meetings for the transmission of sensitive information; and proofreading your emails.

1:15 – 2:15 PM

**43. Workplace Harassment: Proving It and Defending It**

MR. DERATZIAN

Attend to hear practical solutions on how to resolve workplace harassment disputes. Examine the legal issues regarding workplace harassment, including: • what constitutes illegal harassment • what a good anti-harassment policy looks like • what lawyers representing employers and employees need to know about investigations and responses to complaints • potential defenses and damages under existing law.

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#### 44. Lessons from the Magistrate Judges

JUDGE DONIO, JUDGE PERKIN, JUDGE RUETER  
MS. BURKE (M), MR. SERVODIDIO (M)

Join us for a candid discussion with Magistrate Judges Donio, Perkin and Rueter on issues important to employment law cases.

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#### 45. Title IX Claims in Colleges and Universities—How to Handle Claims Involving Students or Claims Filed by Professional Staff

MS. HAMILL

Learn about representing accused students and faculty in Title IX disciplinary proceedings and related litigation. Topics will include practical tips for handling disciplinary proceedings; legal theories available to challenge responsibility findings and sanctions; and key legal issues that arise in these cases both in general and specific to faculty.

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#### 46. Navigating Real (and Imagined) Independent Contractor Issues in the Gig Economy

MR. NAHASS, MS. NENTWIG, MR. WORLEY

The gig economy – with its predilection for temporary, part-time and flexible work situations – seems a perfect fit for independent contractor status. Not surprisingly, however, the laws have not caught up to the reality – leaving many businesses struggling to find a balance between attracting workers, providing excellent service and complying with the law. Our panel discussion will cover recent legal developments and case law impacting the independent contractor analysis. We will also review several unique real-world misclassification cases and the legal issues they raise - including those involving exotic dancers, construction workers and ride-share/delivery drivers – making clear that the tests applicable in these cases apply across virtually all industries. We will engage the audience by polling them on several key questions, and the panel will discuss our first-hand experience with similar cases. We will discuss the legal tests under multiple federal and state laws (and how they differ), the liability businesses face on multiple fronts if they get it wrong, and how to help clients address misclassification issues when they arise from both a plaintiff and defense perspective.

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#### 47. Regulating Off-Duty Conduct in the Digital Age

MR. BENEDETTI, MS. GALBALLY, MS. HARTMAN

It is an unescapable fact that employees' off-duty conduct often impacts the workplace. Additionally, social media has further blurred the lines between the definition of off-duty conduct and on-duty conduct. How should employers respond to off-duty conduct that impacts their workplace? To what extent can you, and should you, discipline employees for off-duty conduct? How should employers respond to off-the-premises sexual harassment? How have employers responded to viral videos showing employees exercising poor judgment and making racist and sexist remarks? How did employers respond to photographs showing their employees marching at the "Unite the Right" rally in Charlottesville? Please join us for an hour long discussion on employer rights in the digital age.

2:25 – 3:25 PM

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#### 48. Don't Put Words in my Mouth: Preparing Your Witness for Depositions

MR. GOLDNER, MS. MARKEY

Depositions in employment cases are often emotionally charged, intense experiences – both from the perspective of the employee and the employer. These cases also invariably involve summary judgment motions which are heavily dependent upon deposition testimony. Witnesses must be properly prepared to make an adequate record. This hands-on session will offer practical advice from practitioners who have prepared hundreds of witnesses for both sides.

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#### 49. The Art of the Deal: Issues in the Negotiation of Executive Employment Agreements

MS. BOND, MR. HOMANS

Securing top talent is the goal of successful organizations. Examine the process that occurs when employers seek to hire talent while retaining both internal and market parity, yet having to strategically assess and balance the incoming executive's personal leverage. We will explore the current key issues in executive compensation, as well as the non-monetary terms both executives and employers need to consider for every agreement. Counsel from both sides of the negotiating table will weigh in on key provisions, how to handle the "hot topic" issues that arise, and share strategies and best practices for getting these important deals closed successfully.

"The Institute always includes a great collection of topics that are pertinent to keep you up-to-date and you hear from both sides."

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#### 50. Dealing with the #MeToo Plaintiff Who Is Currently Employed

MS. BEGLEY, MS. RASHID, DR. ZIV

Even over a year later, the effects of #MeToo continue to percolate around the workplace. Many employers have already scrutinized their workplace policies and revamped their internal training to prevent claims of sexual harassment. But what should an employer do when, despite its best efforts, a current employee makes a claim of sexual harassment in the workplace? We will provide employers with clear, comprehensive strategies for how best to handle a complaint from a current employee, including: investigating the complaint; addressing potential wrongdoing by the accused; interacting with the employee; managing litigation; preventing a retaliation claim; and handling media and social media.

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#### 51. Wage and Hour Update

MS. FARMER, MR. WINEBRAKE

Hear recent developments in wage and hour law, including • proposed changes to the Pennsylvania overtime regulations • regulations and court decisions addressing tipped employees • Third Circuit cases

addressing breaks and compensable work • court decisions addressing pay deductions and overtime calculation under Pennsylvania law.

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#### 52. Tips on Successfully Navigating the ADA Interactive Process

MR. MEYER, MR. MOHL

Understanding the complexities of the Americans with Disabilities Act is as important as ever with ADA claims on the rise and accommodations becoming more complex. After attending this session, you will have a better understanding of the ADA, recent developments, and have a grasp on how to successfully navigate the ADA's interactive process. This practical session will guide you through the ADA reasonable accommodation process by highlighting recent cases and trends.

3:35 – 4:35 PM

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#### 53. The Down and Dirty on Title VII

MS. BELL, MS. REGER

Overwhelmed by the complexity of Title VII? We will review the protections afforded by Title VII and recent developments in the law seeking to enlarge those protections, including: • Title VII basics • a road map to a Title VII case • does Title VII include protections on the basis of sexual orientation? • does Title VII protect transgender status?

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#### 54. Ethics War Stories (ETHICS)

MS. KIRSHENBAUM, MS. ROSENBLUM

Repeat of #40.

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#### 55. It's All in the Family: FMLA Requirements in Context of Maternity Leave, Paternity Leave and Pregnancy Disability

MS. MALLEY, MS. SALGADO

Come to learn about the FMLA in the context of maternity leave, paternity leave, and child bonding leave. We will also discuss strategies for avoiding FMLA retaliation claims, and review developments in FMLA caselaw.

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#### 56. What Are We Not Asking for in Discovery in These Employment Cases That We Should Be? And—Does it Really Come in at Trial?

MS. BURKE, MS. RIGO

Learn tips and tricks for serving the right requests in discovery, anticipating objections, probing questions for plaintiff and defense depositions and seeking proper follow up information. We will review District Court cases on various motions to compel/motion for protective order rulings and evidentiary rulings at trial on common items sought and discovered in employment cases.

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#### 57. Antitrust Update for Labor and Employment Lawyers

MR. DUFFY, MR. GROSSMAN, MS. THOMSON

There have been a number of antitrust developments in the past couple of years, the most notable is enforcement against "anti-poaching" agreements among employers. We will review new developments and discuss how clients can be counseled to avoid antitrust issues.

## OUR IMPRESSIVE PLANNING TEAM



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“The Institute provides a chance for question and answer with the judges and agency heads.”

A big **THANK YOU** to all who contributed their time and ideas to the planning of this year's Institute.

Thanks to the faculty members who so generously share their knowledge at the Institute

The willingness of our faculty to share experiences, practice tips and new ideas is a hallmark of the Institute. Our faculty will guide you through the many tricky questions that arise in employment law practice so that you can be confident about the advice you are giving to your clients.

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