



NATIONAL EMPLOYMENT LAW INSTITUTE

Thirty-Seventh Annual

EMPLOYMENT LAW BRIEFING

The nation's most thorough advanced-level program analyzing legal developments and their practical application to employment practices and litigation.

Vail, Colorado

March 4-7, 2018

Vail Marriott Mountain Resort

Miami Beach, Florida

March 11-14, 2018

Shelborne South Beach

Palm Springs, California

March 25-28, 2018

Renaissance Indian Wells

Approved for 15-18 hours of CLE / PDC / CEU credits, including 2 hours of Ethics.

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REGISTRATION FEE INCLUDES:

- 2018 Employment Law Deskbook (in print and electronic formats) - This extensive publication addresses substantive, procedural, and practical issues of concern to Human Resource professionals and counsel. The Deskbook is available for purchase if you can't attend the Briefing.
- **15-18 CLE / PDC / CEU hours, including two hours of Ethics**, and CLE filing in all states where you're licensed for no additional charge.
- Welcoming Reception on Sunday evening - enjoy drinks and appetizers with faculty members, fellow participants and their guests.
- Light Breakfast provided on Monday, Tuesday and Wednesday, and Afternoon Snacks on Monday and Tuesday in Vail.

VAIL AGENDA

Sunday

2:30pm Briefing Check-In and Refreshments

3:00pm Developments in EEO Law

Update of Supreme Court cases and the most significant appellate court and trial court cases and their application and implications for employment practices and litigation in key substantive and procedural areas, including race, sex, color, religion, national origin, gender and pregnancy discrimination, the ADEA, damages, and injunctive relief.
Paul Grossman

5:00pm Break

5:15pm ADA Update Part 1: Determining “Qualified”

Critical lessons from recent court decisions for lawyers and human resources/EEO professionals on analyzing whether an individual is qualified for a job, including the pieces of evidence courts are currently using in determining what is “essential,” the importance of accurate job descriptions, whether certain things like regular attendance, handling job stress, getting along with co-workers, and lifting are considered “essential,” the extreme danger of inaccurate or inflated performance reviews, and how to analyze doctors’ notes, including inconsistent notes.

David Fram

6:15pm Welcoming Reception Hosted by NELI

Monday

7:00am Continental Breakfast

7:30am Ethics in Labor and Employment Law

Annual update on cutting edge ethics issues, including conflicts of interest, attorney-client privilege and waiver, *ex parte* access to current and former managers and employees, pre-trial investigations, employee confidential communications using employer-provided computers and email, in-house counsel ethical issues, improper acquisition and inadvertent disclosure of information and documents, access to social media information, settlement and negotiations, “ghostwriting” of communications, and court enforcement of professionalism and civility codes.

Dennis Duffy

9:30am Midday Break

3:30pm Current FMLA Developments

What’s new from the Department of Labor and the courts, including the use of third party administrators, the burden on employers to investigate the need for FMLA leave, medical certification challenges, what constitutes “notice” of the need for leave, enforcing call-in procedures, investigating and handling fraudulent use of FMLA leave, enforcement of attendance policies, the inevitable overlap with ADA protections and other laws, the seemingly never-ending burden of intermittent leave, and more.

Megan Norris

4:45pm Refreshment Break

5:00pm ADA Update Part 2: “Reasonable Accommodation”

Emerging developments on practical reasonable accommodation issues, including the importance of training first-line supervisors what to listen for as possible triggers to the interactive process, what supervisors and HR personnel should be trained to say and document in response to employee requests, particular accommodation questions, such as whether/how much “leave” is required, how this interplays with the FMLA, whether reduced workloads, non-competitive reassignment, and supervisor changes are required, whether discipline must be rescinded as an accommodation, and whether government enforcement positions are likely to change under the Trump Administration.

David Fram

Tuesday

7:00am Continental Breakfast

7:30am The e-Workplace: Privacy Issues and Cyber Security

The expanding set of technology platforms and apps keeps challenging employers who must decide how to restrict, monitor and scrutinize employees/applicants’ technology usage inside and outside the workplace. This impacts employees’ privacy rights and employers’ information security programs, including the ever-growing use of “Cloud” technology, employers’ rights to limit employees’ personal social networking site (SNS) postings, implications of BYOD vs. COPE, prohibitions on forced disclosure of personal logins, proactive steps to minimize risks of data theft/breaches, compliance with state laws restricting use of employees’ biometric information and discoverability of SNS posts, photos and messages.

Julie Totten

9:30am Midday Break

3:30pm Wage and Hour & Misclassification Issues

Recent decisions and new DOL interpretations and initiatives from the Trump Administration, the continued surge in joint employer theories and cases, exemption and misclassification decisions, compensable time in our increasingly technology-centered workplace, rounding and auto-deduction issues, decisions on settling FLSA cases, issues involving contingent workers and the gig economy, and emerging case law on actual or constructive knowledge of overtime worked required to prove a claim.

Steve Suffas

4:45pm Refreshment Break

5:00pm Managing Harassment Claims and Conducting Lawful and Effective Investigations

Recent developments including what constitutes severe and pervasive conduct, same-sex harassment, establishing an affirmative defense, and actions employers should implement to reduce exposure to liability. Also, conducting internal investigations and the additional legal requirements and higher stakes in harassment/discrimination investigations, including selecting the right investigator, balancing confidentiality and the duty to investigate, establishing and preserving privilege, investigating misconduct with criminal implications, and/or in the absence of a cooperative complainant.

Sabrina Shadi

Wednesday

7:00am Continental Breakfast

7:30am Complex Retaliation and Whistleblowing Claims

Determining “protected activity,” what employer conduct negates an inference of “causation,” third party retaliation, retaliatory harassment, in-house counsel or compliance officer as whistleblower, what constitutes “unreasonable opposition,” and the continued surge in whistleblower, Dodd Frank and Sarbanes-Oxley issues, including the expanded rights and remedies of the would-be whistleblower, expansion of Sarbanes-Oxley, and best practices to help avoid and/or minimize liability.

Andrew Livingston

9:00am Refreshment Break

9:15am Recent Developments in Pay Equity and Practical Considerations in Self-Analysis

Recent developments in compensation and pay equity law have resulted in a patchwork of inconsistent laws, creating complex legal issues for employers. We will discuss how to identify a pay equity shortfall, decisions regarding remediation, and how to implement a pay adjustment. The panel will include a statistical analyst who has worked hand-in-hand with counsel to help employers navigate these treacherous, and generally uncharted, waters.

Maria Audero & David Lamoreaux

10:45am Briefing Adjournment

Please join us for the WELCOMING RECEPTION immediately following the opening sessions on Sunday.

MIDDAY BREAK scheduled on both Monday and Tuesday from 9:30am until 3:30pm, and afternoon sessions will end at 6:15pm.

MIAMI BEACH AGENDA

Sunday

2:30pm Briefing Check-In and Refreshments

3:00pm Developments in EEO Law

Update of Supreme Court cases and the most significant appellate court and trial court cases and their application and implications for employment practices and litigation in key substantive and procedural areas, including race, sex, color, religion, national origin, gender and pregnancy discrimination, the ADEA, damages, and injunctive relief.
Brian Bulger

5:00pm Break

5:15pm ADA Update Part 1: Determining “Qualified”

Critical lessons from recent court decisions for lawyers and human resources/EEO professionals on analyzing whether an individual is qualified for a job, including the pieces of evidence courts are currently using in determining what is “essential,” the importance of accurate job descriptions, whether certain things like regular attendance, handling job stress, getting along with co-workers, and lifting are considered “essential,” the extreme danger of inaccurate or inflated performance reviews, and how to analyze doctors’ notes, including inconsistent notes.

David Fram

6:15pm Welcoming Reception Hosted by NELI

Monday

7:30am Continental Breakfast

8:00am Ethics in Labor and Employment Law

Annual update on cutting edge ethics issues, including conflicts of interest, attorney-client privilege and waiver, *ex parte* access to current and former managers and employees, pre-trial investigations, employee confidential communications using employer-provided computers and email, in-house counsel ethical issues, improper acquisition and inadvertent disclosure of information and documents, access to social media information, settlement and negotiations, “ghostwriting” of communications, and court enforcement of professionalism and civility codes.

Dennis Duffy

10:00am Refreshment Break

10:15am Managing Harassment Claims and Conducting Lawful and Effective Investigations

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Sabrina Shadi

11:30am Current FMLA Developments

What’s new from the Department of Labor and the courts, including the use of third party administrators, the burden on employers to investigate the need for FMLA leave, medical certification challenges, what constitutes “notice” of the need for leave, enforcing call-in procedures, investigating and handling fraudulent use of FMLA leave, enforcement of attendance policies, the inevitable overlap with ADA protections and other laws, the seemingly never-ending burden of intermittent leave, and more.

Ellen McLaughlin

Tuesday

7:30am Continental Breakfast

8:00am The e-Workplace: Privacy Issues and Cyber Security

The expanding set of technology platforms and apps keeps challenging employers who must decide how to restrict, monitor and scrutinize employees/applicants’ technology usage inside and outside the workplace. This impacts employees’ privacy rights and employers’ information security programs, including the ever-growing use of “Cloud” technology, employers’ rights to limit employees’ personal social networking site (SNS) postings, implications of BYOD vs. COPE, prohibitions on forced disclosure of personal logins, proactive steps to minimize risks of data theft/breaches, compliance with state laws restricting use of employees’ biometric information and discoverability of SNS posts, photos and messages.

Karla Grossenbacher

10:00am Refreshment Break

10:15am Wage and Hour & Misclassification Issues

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Shannon Farmer

11:30am ADA Update Part 2: “Reasonable Accommodation”

Emerging developments on practical reasonable accommodation issues, including the importance of training first-line supervisors what to listen for as possible triggers to the interactive process, what supervisors and HR personnel should be trained to say and document in response to employee requests, particular accommodation questions, such as whether/how much “leave” is required, how this interplays with the FMLA, whether reduced workloads, non-competitive reassignment, and supervisor changes are required, whether discipline must be rescinded as an accommodation, and whether government enforcement positions are likely to change under the Trump Administration.

David Fram

Wednesday

7:30am Continental Breakfast

8:00am Complex Retaliation and Whistleblowing Claims

Determining “protected activity,” what employer conduct negates an inference of “causation,” third party retaliation, retaliatory harassment, in-house counsel or compliance officer as whistleblower, what constitutes “unreasonable opposition,” and the continued surge in whistleblower, Dodd Frank and Sarbanes-Oxley issues, including the expanded rights and remedies of the would-be whistleblower, expansion of Sarbanes-Oxley, and best practices to help avoid and/or minimize liability.

Jill Rosenberg

9:30am Refreshment Break

9:45am Recent Developments in Pay Equity and Practical Considerations in Self-Analysis

Recent developments in compensation and pay equity law have resulted in a patchwork of inconsistent laws, creating complex legal issues for employers. We will discuss how to identify a pay equity shortfall, decisions regarding remediation, and how to implement a pay adjustment. The panel will include a statistical analyst who has worked hand-in-hand with counsel to help employers navigate these treacherous, and generally uncharted, waters.

Maria Audero & David Lamoreaux

11:15am Briefing Adjournment

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Sessions adjourn at 12:45pm on Monday and Tuesday.

PALM SPRINGS AGENDA

Sunday

2:30pm Briefing Check-In and Refreshments

3:00pm Developments in EEO Law

Update of Supreme Court cases and the most significant appellate court and trial court cases and their application and implications for employment practices and litigation in key substantive and procedural areas, including race, sex, color, religion, national origin, gender and pregnancy discrimination, the ADEA, damages, and injunctive relief.

Jeff Wohl

5:00pm Break

5:15pm ADA Update Part 1: Determining “Qualified”

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David Fram

6:15pm Welcoming Reception Hosted by NELI

Monday

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Dennis Duffy

10:00am Refreshment Break

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Ellen Boshkoff

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Martha Gates

Tuesday

7:30am Continental Breakfast

8:00am The e-Workplace: Privacy Issues and Cyber Security

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Bob Brownstone

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Sabrina Shadi

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David Fram

Wednesday

7:30am Continental Breakfast

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Mark Oberti

9:30am Refreshment Break

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Maria Audero & David Lamoreaux

11:15am Briefing Adjournment

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Sessions adjourn at 12:45pm on Monday and Tuesday.

REGISTRATION AND ORDER FORM

Please accept my registration for the:

2018 EMPLOYMENT LAW BRIEFING

- Vail, Colorado • March 4-7, 2018
 Miami Beach, Florida • March 11-14, 2018
 Palm Springs, California • March 25-28, 2018

Registration Fee:\$1,595.00

Early Registration Fee:\$1,495.00
(Paid Registration received by Feb 2 - Vail, Feb 16 - Miami Beach, Feb 26 - Palm Springs)

Special End-of-Year Registration Fee:\$1,395.00
(Paid Registration received by December 31, 2017)

I am unable to attend, but wish to purchase the:

2018 Employment Law Deskbook

Download \$219.00 Print \$239.00 or Both \$289.00 _____

Shipping and Handling (\$13.00 for print copy, no charge for Download) _____

Colorado residents add 7.4% sales tax (publications only) _____

TOTAL = _____

Do you require any accommodation, due to a disability, to attend this program? No Yes

(Describe) _____

CLE CREDIT: Provide state and bar numbers.

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REGISTRATION INFORMATION

• Registration Fee: **\$1,595.00**

• Early Registration Fee: **\$1,495.00**

If paid by February 2 (Vail), February 16 (Miami Beach) and February 26 (Palm Springs).

• Special End-of-Year Registration Fee: **\$1,395.00**

If paid by December 31, 2017.

• Includes non-refundable administrative fee (see Cancellation Policy below).

Payment in full is required prior to the Briefing.

Group Rates, Discounts and Substitutions are available and permissible. Email neli@neli.org for more information.

Cancellation Policy: Cancellations must be confirmed prior to the program. Registrations cancelled more than ten business days prior to the program may elect to receive a full fee credit, or a refund, less a \$150.00 administrative fee. Those cancelled ten or fewer business days prior to the program will receive a fee credit, less a \$250.00 administrative fee. Transfers between cities must be pre-approved. Fee credits may be applied during the next 12 month period to any of NELI's programs or publications. Paid no-shows will receive the program material upon request in full consideration of fees paid. Unpaid cancellations and unpaid no-shows are liable for the registration fee. Any refunds will be processed after the conclusion of the program series.

CONTINUING EDUCATION

This program will provide between 15-18 CLE / PDC / CEU hours, including two hours of Ethics, depending upon the jurisdiction. NELI applies for credit from all MCLE states. Contact us for approval status. To apply for CLE credit, please complete box on registration form. NELI will provide the necessary forms and proof of attendance. NELI is a State Bar of California MCLE approved provider, is recognized by most professional associations as an approved CEU/CPE provider, and is an approved provider of HRCI and SHRM for recertification credit.

As always, NELI will file in as many jurisdictions/states as you are licensed for no additional fee, although registrants need to file for credit on their own behalf in jurisdictions that require it.

Please e-mail neli@neli.org for available discounts

REGISTER BY:

MAIL: NELI, P. O. Box 1189, Golden, CO 80402

PHONE: (303) 861-5600, 8:00 a.m. - 4:30 p.m. Mountain Time

FAX: (303) 861-5665

INTERNET: www.neli.org

EMAIL: registrar@neli.org

RESORT ACCOMMODATIONS

For NELI's group rate, reservations must be made directly with the hotel (not through a travel agent). Room blocks are limited and group rates cannot be guaranteed after the listed cut-off dates, and may be fully booked before then. Reserve early and state that you are attending NELI's *Employment Law Briefing*. A limited number of rooms at group rates are available "pre" and "post" actual meeting dates. If you experience difficulty, please call NELI. After the cut-off date, reservations at the group rate are on a space available basis.

Vail - Vail Marriott Mountain Resort

715 West Lionshead Circle, Vail, CO 81657

(970) 476-4444 or (877) 622-3140 • www.marriott.com

Standard & Lodge Rooms - \$399.00 (plus tax and resort fee)

Studio or Deluxe King Rooms - \$439.00 (plus tax and resort fee)

Reservation cut-off date: February 2, 2018

Miami Beach - Shelborne South Beach

1801 Collins Avenue, Miami Beach, FL 33139

(305) 531-1271 or (305) 704-3668 • www.shelborne.com

Run-of-House Rooms - \$319.00 (plus tax and resort fee)

Reservation cut-off date: February 16, 2018

Palm Springs - Renaissance Indian Wells Resort & Spa

44400 Indian Wells Lane, Indian Wells, CA 92210

(760) 773-4444 or (800) 446-9875 • www.marriott.com

Run-of-House Rooms - \$259.00 (plus tax and resort fee)

Reservation cut-off date: February 26, 2018

Upgraded room types may be available at time of reservation. Inquire directly with hotel.
On-line hotel reservation portals are on NELI's website.

NATIONAL EMPLOYMENT LAW INSTITUTE

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