



NATIONAL EMPLOYMENT LAW INSTITUTE

*Thirty-Eighth Annual*

# EMPLOYMENT LAW BRIEFING

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

**Scottsdale, Arizona** • March 3-6, 2019 • Omni Montelucia  
**Naples, Florida** • March 10-13, 2019 • Naples Beach Hotel & Golf Club  
**Coronado, California** • March 24-27, 2019 • Hotel Del Coronado

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

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Chicago, Illinois*

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*Faegre Baker Daniels  
Indianapolis, Indiana*

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*Seyfarth Shaw  
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*Perkins Coie  
Seattle, Washington*

JEFFREY D. WOHL, Esq.  
*Paul Hastings  
San Francisco, California*

### REGISTRATION FEE INCLUDES:

- 2019 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 and Mid-Morning Snack provided on Monday, Tuesday and Wednesday.

# SCOTTSDALE AGENDA

## Sunday

**2:30pm Briefing Check-In and Refreshments**

**3:00pm Recent 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”**

Critical lessons from EEOC determinations and recent court decisions for lawyers and human resources professionals on analyzing whether an individual is qualified for a job, including the evidence courts are currently using in determining what is “essential,” the importance of accurate job descriptions and what to do if a job’s functions are changed, whether certain things like regular attendance, handling job stress, getting along with co-workers, productivity standards, 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 FMLA: Best Practices for Compliance and Defending Claims**

What’s new in terms of compliance, on-site audits and opinion letters from the Department of Labor, medical certification challenges, effective use of recertifications to combat intermittent leave abuse, the importance of clear and accurate communications, employee notice requirements, practical issues including adjusting performance standards while on leave, allowing an employee to work on leave, references to leave by a supervisor, how to conduct an investigation if fraudulent use of FMLA leave is suspected, and the seemingly never-ending burden of intermittent leave, and more.

*Julie Lucht*

**11:30am Creating Diverse, Inclusive and Respectful Work Environments**

Interactive session discussing strategies to create a highly productive and innovative workforce through successful diversity and inclusion programs, including best practices in creating diversity programs, the effects of implicit bias, micromessages, the impact of the “me too” movement, workplace training and investigations, victim and bystander empowerment, and other key areas on the topic.

*David Bowman*

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

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

## 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 on how to restrict, monitor, scrutinize and/or preserve employees’ and applicants’ technology usage which impacts employees’ privacy rights and employers’ information security programs, including the use of “Shadow IT,” “Cloud” technology, social media and other forms of offline communications and their implications on an employer’s BYOD program and potential discoverability in legal proceedings. We will discuss employers’ rights to limit employees’ social media posts and the ability to discipline for such posts if needed, prohibitions on forced disclosure of personal login credentials, proactive steps employers can take to minimize risks of data theft, and compliance with state laws restricting the use of employees’ biometric information.

*Karla Grossenbacher*

**9:45am Refreshment Break**

**10:00am Wage and Hour & Misclassification Issues**

Discussion of decisions and new DOL interpretations and federal and state initiatives, new developments involving joint employers, contingent workers and other non-covered workers, exemption and misclassification decisions, wage and rate calculation issues, compensable time in our increasingly technology-centered workplace, and emerging case law on actual or constructive knowledge of time worked required to prove a claim.

*Samantha Rollins*

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

The latest developments on practical reasonable accommodation issues, including effective training of first-line supervisors on what to listen for as possible triggers to the interactive process, proper documentation of the process, cases fleshing out the definition of “reasonable,” and particular accommodation questions, such as whether / how much “leave” (including a repeated leave extension) is required and how this interplays with the FMLA, whether reduced stress, lower productivity, non-competitive reassignment, an “irritant-free” environment, work-at-home, commuting assistance, shift changes, or supervisor changes are required, and whether discipline for misconduct must be rescinded as an accommodation.

*David Fram*

## Wednesday

**7:30am Continental Breakfast**

**8:00am Retaliation and Whistleblowing Claims**

Determining “protected activity,” understanding the expanded concept of “adverse action,” how to negate an inference of “causation,” third party retaliation, retaliatory harassment, in-house counsel or compliance officer as whistleblower, what constitutes “unreasonable opposition,” the rise in “cybersecurity” whistleblowing and increased regulatory enforcement plus 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.

*Mark Oberti*

**9:45am Refreshment Break**

**10:00am Labor Law Update in the Trump Era**

We’ll discuss what has been done so far and what is likely to occur, including analysis of *PCC Structural, Inc.*, *Hy-Brand Industrial Contractors, Ltd.*, *The Boeing Company*, and *Raytheon Company*, new initiatives announced by NLRB General Counsel Peter Robb and the Board’s rulemaking on joint employer standards and other potential topics and critical court decisions affecting traditional labor law, including the Supreme Court’s blockbuster decisions in *Epic Systems* and *Janus*.

*Steve Suflas*

**11:30am Briefing Adjournment**

# NAPLES AGENDA

## Sunday

**2:30pm Briefing Check-In and Refreshments**

**3:00pm Recent 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.

*Ken Gage*

**5:00pm Break**

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

Critical lessons from EEOC determinations and recent court decisions for lawyers and human resources professionals on analyzing whether an individual is qualified for a job, including the evidence courts are currently using in determining what is “essential,” the importance of accurate job descriptions and what to do if a job’s functions are changed, whether certain things like regular attendance, handling job stress, getting along with co-workers, productivity standards, 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 FMLA: Best Practices for Compliance and Defending Claims**

What’s new in terms of compliance, on-site audits and opinion letters from the Department of Labor, medical certification challenges, effective use of recertifications to combat intermittent leave abuse, the importance of clear and accurate communications, employee notice requirements, practical issues including adjusting performance standards while on leave, allowing an employee to work on leave, references to leave by a supervisor, how to conduct an investigation if fraudulent use of FMLA leave is suspected, and the seemingly never-ending burden of intermittent leave, and more.

*Ellen McLaughlin*

**11:30am Creating Diverse, Inclusive and Respectful Work Environments**

Interactive session discussing strategies to create a highly productive and innovative workforce through successful diversity and inclusion programs, including best practices in creating diversity programs, the effects of implicit bias, micromessages, the impact of the “me too” movement, workplace training and investigations, victim and bystander empowerment, and other key areas on the topic.

*Terry Johnson*

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## 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 on how to restrict, monitor, scrutinize and/or preserve employees’ and applicants’ technology usage which impacts employees’ privacy rights and employers’ information security programs, including the use of “Shadow IT,” “Cloud” technology, social media and other forms of offline communications and their implications on an employer’s BYOD program and potential discoverability in legal proceedings. We will discuss employers’ rights to limit employees’ social media posts and the ability to discipline for such posts if needed, prohibitions on forced disclosure of personal login credentials, proactive steps employers can take to minimize risks of data theft, and compliance with state laws restricting the use of employees’ biometric information.

*Bob Brownstone*

**9:45am Refreshment Break**

**10:00am Wage and Hour & Misclassification Issues**

Discussion of decisions and new DOL interpretations and federal and state initiatives, new developments involving joint employers, contingent workers and other non-covered workers, exemption and misclassification decisions, wage and rate calculation issues, compensable time in our increasingly technology-centered workplace, and emerging case law on actual or constructive knowledge of time worked required to prove a claim.

*Shannon Farmer*

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

The latest developments on practical reasonable accommodation issues, including effective training of first-line supervisors on what to listen for as possible triggers to the interactive process, proper documentation of the process, cases fleshing out the definition of “reasonable,” and particular accommodation questions, such as whether / how much “leave” (including a repeated leave extension) is required and how this interplays with the FMLA, whether reduced stress, lower productivity, non-competitive reassignment, an “irritant-free” environment, work-at-home, commuting assistance, shift changes, or supervisor changes are required, and whether discipline for misconduct must be rescinded as an accommodation.

*David Fram*

## Wednesday

**7:30am Continental Breakfast**

**8:00am Retaliation and Whistleblowing Claims**

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*Jill Rosenberg*

**9:45am Refreshment Break**

**10:00am Labor Law Update in the Trump Era**

We’ll discuss what has been done so far and what is likely to occur, including analysis of *PCC Structural, Inc.*, *Hy-Brand Industrial Contractors, Ltd.*, *The Boeing Company*, and *Raytheon Company*, new initiatives announced by NLRB General Counsel Peter Robb and the Board’s rulemaking on joint employer standards and other potential topics and critical court decisions affecting traditional labor law, including the Supreme Court’s blockbuster decisions in *Epic Systems* and *Janus*.

*Denise Keyser*

**11:30am Briefing Adjournment**

# CORONADO AGENDA

## Sunday

**2:30pm Briefing Check-In and Refreshments**

**3:00pm Recent Developments in EEO Law**

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*George Abele*

**5:00pm Break**

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*David Fram*

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*Dennis Duffy*

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*Megan Norris*

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*Ellen Boshkoff*

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*David Fram*

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*Greg Keating*

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*Curt Kirschner*

**11:30am 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:

### 2019 EMPLOYMENT LAW BRIEFING

- Scottsdale, Arizona • March 3-6, 2019
- Naples, Florida • March 10-13, 2019
- Coronado, California • March 24-27, 2019

Registration Fee: .....\$1,595.00

Early Registration Fee: .....\$1,495.00  
(Paid Registration received by Feb 1 - Scottsdale, Feb 8 - Naples, Feb 22 - Coronado)

Special End-of-Year Registration Fee: .....\$1,395.00  
(Paid Registration received by December 31, 2018)

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

#### 2019 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) \_\_\_\_\_

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

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CLE CREDIT: Provide state and bar numbers.

### REGISTRATION INFORMATION

• Registration Fee: \$1,595.00

• Early Registration Fee: \$1,495.00

If paid by February 1 (Scottsdale), February 8 (Naples) and February 22 (Coronado).

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

If paid by December 31, 2018.

• 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](mailto: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](mailto:neli@neli.org) for available discounts

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

PHONE: (303) 861-5600

8:00 a.m. - 4:30 p.m. Monday - Thursday Mountain Time

8:00 a.m. - 12:00 p.m. Friday Mountain Time

FAX: (303) 861-5665

INTERNET: [www.neli.org](http://www.neli.org)

EMAIL: [registrar@neli.org](mailto: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.

**Scottsdale - Omni Scottsdale Resort & Spa at Montelucia**

4949 East Lincoln Drive, Scottsdale, AZ 85253

(480) 627-3200 or (800) 843-6664 • [www.omnihotels.com](http://www.omnihotels.com)

Run-of-House Rooms - \$309.00 (plus tax and resort fee)

**Reservation cut-off date: February 1, 2019**

**Naples - Naples Beach Hotel & Golf Club**

851 Gulf Shore Boulevard North, Naples, FL 34102

(239) 261-2222 or (800) 237-7600 • [www.naplesbeachhotel.com](http://www.naplesbeachhotel.com)

Run-of-House Rooms - \$339.00 (plus tax - no resort fee)

**Reservation cut-off date: February 8, 2019**

**Coronado - Hotel Del Coronado, Curio Collection by Hilton**

1500 Orange Avenue, Coronado, CA 92118

(619) 435-6611 or (800) 468-3533 • [www.hoteldel.com](http://www.hoteldel.com)

Run-of-House Rooms - \$280.00 (plus tax and resort fee)

**Reservation cut-off date: February 22, 2019**

**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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*Please send address changes to [neli@neli.org](mailto:neli@neli.org)*



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