



LEARN | CONNECT | SERVE

A blurred background image of a large conference room with many people seated at tables, attending a meeting or conference. A wooden podium with a microphone is visible in the foreground on the right side.

**San Antonio Human Resource
Management Association's
14th Annual Employment Law Conference**

Virtual Conference
Wednesday, August 19, 2020

**Ogletree
Deakins**

AGENDA

8:00 – 8:15 a.m.

WELCOME AND OPENING REMARKS

8:15 – 9:00 a.m.

Recalling and Rehiring Our Workforce: Tips for Minimizing Legal Claims

Many employers were required to temporarily layoff much, if not all, of its workforce. As businesses resume operations, the recall process can present pitfalls for employers if not handled pursuant to neutral, well-defined protocols for the order in which we recall employees and for how we respond to situations involving employees with disabilities or employees who were out on a protected leave at the time of furlough. This session will review the process for deciding which employees to recall and how to recall them, tips for recalling employees at a possible lower pay levels while considering the possible impact on FLSA exemptions as well as concerns related to pay inequalities, and ideas for developing and implementing appropriate safety protocols prior to the recall.

Presenter: Katrina Grider, Esq.

9:00 – 9:45 a.m.

Post-Pandemic Issues and Preparing for the Next One

As employees return to work, HR professionals are likely to confront continued needs for leave, either due to continued COVID-19 cases or lack of childcare due to cancellation of summer camps and other activities normally available for children who are out of school. With reports of a second wave of COVID-19 in the fall, and the likely exhaustion of EPSL and EFMLA benefits by then, what tools are at employers' disposal for addressing what may be in our future? This session will review the various legal considerations under the FMLA, ADA, and FLSA, as well as possible revisions to handbooks, policies and procedures, and employment agreements.

Presenters: Ray Bissmeyer, Esq. and Dan Stern, Esq.

9:45 – 10:00 a.m.

BREAK

10:00 – 10:45 a.m.

Lessons from COVID-19 and the Future of Telework

The increased reliance upon teleworking arrangements during recent stay-at-home orders raises a host of long-term considerations for employers and employees alike. Employers may recognize the opportunity to save costs by minimizing physical office spaces. Employees may not wish to return to long commute times and inflexible work hours. This session will review traditional considerations such as whether employers can continue to insist upon in-person attendance as an essential job function when it concerns ADA accommodation requests and how continued usage of teleworking arrangements can present new legal concerns under the FMLA and FLSA. This session will also review how teleworking may impact workers' compensation claims and measures to safeguard confidential and proprietary information of the company. Finally, this session will analyze how telework has (and will continue) to evolve over the coming weeks/months and how companies can leverage efficiencies of telework to support their organizations.

Presenter: Justin Barbour, Esq.

10:45 – 11:30 a.m.

Losing My Exemption: Avoiding Costly Misclassification Issues As Well As Other Wage & Hour Updates

Following layoffs and other business reorganizations, employers may find that their remaining employees no longer meet the salary and/or duties tests for the various exemptions under the FLSA, thereby exposing themselves to potential liability for unpaid overtime. Beyond layoffs, employers may be faced with continued tough decisions related to salary reductions and/or reduced work hours, decisions which could also jeopardize employees' classifications as exempt or non-exempt. This session will review these common, potentially problematic scenarios arising out of the COVID-19 pandemic, as well as provide a general overview of key developments under the FLSA and with the Department of Labor over the past year.

Presenter: Laura O'Donnell

11:30 – 11:55 a.m.

BREAK / GET LUNCH

12:00 – 12:55 p.m.

Panel Discussion: Preparing for COVID-19-Related Legal Claims

Employers were forced to make many tough decisions over a short period of time, most often without the benefit of any clear legal guidance for the unprecedented stay-at-home orders or for the flurry of new legislation impacting the employment relationship. Employment lawyers are already seeing demand letters and litigation associated with decisions made relative to EPSL and EFMLA under the FFCRA, as well as workers' compensation claims related to employees who contracted COVID-19 while at work. This session will review the anticipated new wave of legal claims likely to be seen in the new future, including not only claims arising from the FFCRA, but also a surge in claims related to disability, age, and caregiver discrimination and possible disparate impact claims related to particular protected groups that may have been disproportionately impacted by layoff decisions.

Presenters: Tiffany Cox Stacy and Lawrence Morales

1:00 – 1:45 p.m.

Best Practices for Handling Political Discussions in the Workplace During the 2020 Presidential Election

While most Americans have been primarily focused on the COVID-19 pandemic, Americans will soon be casting their votes in the 2020 Presidential Election, as well as in other local elections. With this comes increased chatter amongst employees regarding political views and opinions, much of which often proves to incite strong personal feelings and even disagreements that can prove disruptive to the workplace. This presentation will cover the various state and federal laws, including EEO laws and the National Labor Relations Act, potentially implicated by such political discussions in the workplace and will provide HR professionals with effective techniques for accommodating an open, robust workplace discussion without politicking and partisanship hindering operations or leading to conflict.

Presenter: Raquel Perez, Esq.

1:45 – 2:00 p.m.

BREAK

2:00 – 2:45 p.m.

Not to Be Overlooked: OSHA and NLRA Implications For All Employers Arising Out of COVID-19

1. How OSHA is (and is not) playing a role in the COVID-19 pandemic.

While OSHA has not issued new rules specific to the coronavirus, several existing OSH Act provisions and regulations are of particular relevance. They include the OSH Act's general duty clause, which requires employers to provide a workplace "free from recognized hazards," and an OSHA regulation which requires the use of gloves, eye and face protection, and respiratory protection by employees in certain industries. The Secretary of Labor has pledged to enforce these rules against employers that don't implement reasonable protections, but so far has apparently not issued any enforcement actions specific to the pandemic. To the extent they feel their employers aren't providing a safe workplace, workers can file complaints with OSHA. This triggers a probe that can lead to a citation, and blocks employers from retaliating against workers who blow the whistle. OSHA has issued a press release "reminding employers that it is illegal to retaliate against workers because they report unsafe and unhealthful working conditions during the coronavirus pandemic."

2. Can I Refuse to Report to Work?

The National Labor Relations Act gives employees of most private sector employers, unionized or not, a job-protected right to engage in "concerted activity for the purpose of mutual aid or protection," which covers a range of activity from spontaneous walk-outs to coordinated strikes. If workers are fired for protesting unsafe working conditions, and their protest is deemed to be "concerted activity" and not solely an individual complaint, and they have not been permanently replaced, the employees may be able to obtain reinstatement and backpay through the National Labor Relations Board

Presenters: John Ferguson and Bob Kilgore

2:45 – 3:30 p.m.

Developments in Disability-Related Law

Over the past year, legal authority on the Americans with Disabilities Act has continued to develop. Many cases reaffirm practical guidance for compliance—such as whether the employer can choose between effective accommodations, what actions by employers demonstrate compliance with ADA interactive process obligations, and how to address misconduct that is related to an individual’s disability. Yet, other cases address compliance aspects that are less certain—such as whether the potential to contract a disease is a disability, and the extent to which drug testing could be an ADA medical exam. This presentation will examine recent developments, as well as provide timely update on the ADA and continuing implications of the COVID-19 pandemic.

Presenter: Amber Dodds, Esq.

3:30 – 3:45 p.m.

BREAK

3:45 – 4:30 p.m.

EMPLOYMENT LAW HOT TOPICS—GAME SHOW STYLE

This energetic and highly interactive presentation will test your HR knowledge and problem solving by making you the new HR Nation’s Secretary of the Treasury and presenting you with employee issues to resolve. Demonstrate your ability to “outduel” your rivals...otherwise you’d better start learning the lyrics to “God Save the Queen”.

Presenters: Chris A. Scherer, Esq. and John A. Heller, Esq.

4:30 p.m.

CLOSING REMARKS

Recognition of sponsors
Adjourn