Fall Focus
Labor and Employment Law Seminar

Baker Donelson
Nashville, Tennessee

Thursday, October 9, 2014
7:30 a.m. – 3:30 p.m.

PHR · SPHR · GPHR
Approved Provider
HR Certification Institute

BAKER DONELSON

EXPAND YOUR EXPECTATIONS℠

Schedule

7:30 a.m. – 8:30 a.m.
Registration and Networking Breakfast

8:30 a.m. – 8:45 a.m.
Welcome and Introduction

8:45 a.m. – 9:45 a.m.
Trying to Reason With Hurricane Season
Employment law storms were plentiful this year with thunderous Supreme Court pronouncements, cloudy state laws across the nation, a hail of new Executive Orders from the East Coast, and strategic lightening strikes hitting Tennessee. Our storm chaser opening session will review the challenges we weathered in 2014 and provide satellite predictions of the key employment law watches and warnings for 2015.
Speaker: Kim Vance

9:45 a.m. – 10:00 a.m.
Break

10:00 a.m. – 11:00 a.m.
Earthquaked! When Classifications Threaten Your Foundation
Hollywood may have brought unpaid interns to the forefront, but there's more to it than irritated swans. In this presentation, learn which employers may be found liable for employment law violations even though their workers are classified as temps, independent contractors or unpaid interns. As businesses move toward the use of nontraditional employees, it becomes even more important for human resources professionals to understand the legal issues and legal risks associated with their use.
Speaker: Ken Weber

11:00 a.m. – 11:30 a.m.
Immigration Tsunami: Understanding the Tidal Wave of Compliance When Hiring Foreign Nationals
Hiring a foreign national differs significantly from hiring a U.S. citizen, and if you're not willing to invest the time, money, and responsibility to learn the rules, you're in for a tidal wave of pain. Learn the rules of compliance in this valuable presentation.
Speaker: Mabel Arroyo-Tirado

11:30 a.m. – 12:00 p.m.
The Inmates May be Running the Asylum After All
You've survived hurricanes, tsunamis and earthquakes, and you've settled your managers down. But who's keeping an eye on the employees? Take a walk with us through recent NLRB rulings to learn just how much has changed in the workplace. Is everything really as it seems, or have these rulings nixed your valuable management tools?
Speaker: Rusty Gray

12:00 p.m. – 1:00 p.m.
Lunch
Join us outside – we're grilling burgers and hot dogs!

1:00 p.m. – 2:45 p.m.
Perry Mason, Petrocelli, Alley McBeal and Suits
Back by popular demand, this interactive mock trial puts everything you've learned to the test. With Baker Donelson lawyers serving as the judge and counsel, audience members will act as witnesses and jury in a squirm-inducing set of circumstances. You don't want to miss this.
Charles Grant: Defendant's Counsel
Mark Baugh: Plaintiff's Counsel
Larry Eastwood: Judge

2:45 p.m. – 3:15 p.m.
Questions and Answer Session

3:15 p.m. – 3:30 p.m.
Wrap up and Drawing for Grand Prize(s)*
Kim Vance
**You must be present to win*

Moderator

Kim Vance
Management Training and Litigation Defense
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kvance@bakerdonelson.com

Kim has more than 25 years representing management in every aspect of labor and employment law. She is described by sources as a "terrific problem solver," and is noted for her impressive counseling and defense of management teams before the EEOC and the Tennessee Human Rights Commission. She presents in-house management training programs; counsels management clients through auditing human resources policies; and develops pre-litigation strategies to improve available defenses in preparation for litigation.

Speakers

Kenneth Weber
Employment Litigation
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Ken is a trial lawyer who has participated in over 30 trials, including more than 10 jury trials as "first chair." He defends employers against the full range of employment discrimination and harassment claims, as well as claims of retaliation, whistleblower, contracts and wage and hour, including several FLSA collective actions. He also represents employers and executives in non-compete and trade secret litigation. Ken's ERISA litigation experience includes defending institutional plan and/or claim administrators as well as employers in cases involving the denial of employee benefits, breach of fiduciary duties and related claims.

Mabel Arroyo-Tirado
Immigration
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Mabel is one of the Firm's immigration attorneys. Fluent in both English and Spanish, she understands the complexities of U.S. immigration laws and proactively helps businesses and individuals with corporate immigration issues. She assists manufacturers, health care corporations and other companies in connection with visa applications, day-to-day operational questions and administrative proceedings before the United States Citizenship and Immigration Services (USCIS), the U.S. Department of Labor and U.S. Embassies and Consulates throughout the world. A native of Puerto Rico, she began practicing immigration law in Tennessee in 1997.

Rusty Gray
Labor Relations
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Rusty is the managing shareholder in the Chattanooga office and serves on Baker Donelson's Board of Directors. Rusty represents local, regional and national clients on a full range of labor and employment matters, including responding to union activity, and issues of wage and hour, drug testing, policy manuals, covenants not to compete, various employment forms, compliance advice and employment litigation. He has litigated matters before courts or government agencies in approximately 20 states.

Participants

Lawrence S. Eastwood Jr.
Discrimination and Harassment
615.726.7344
leastwood@bakerdonelson.com

Larry has extensive experience litigating labor and employment law cases on behalf of management. He defends against administrative charges brought under Title VII, ADEA, ADAAA, FMLA, FLSA, ERISA and state employment statutes. He also litigates matters involving the enforcement of employment contracts, noncompete covenants, confidentiality agreements, and protection of "heart of the business" trade secrets. Larry has used his litigation experience to counsel clients on employment law compliance and litigation avoidance.

Charles Grant
Employment Litigation
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Charles has tried more than 47 jury trials to verdict in both federal and state courts, and represented numerous clients in mediation and arbitration proceedings across more than a dozen states. He represents clients in complex employment litigation, including class and collective actions brought under FLSA, discrimination and harassment under state and federal laws, wrongful and retaliatory discharge, protection of trade secrets and more.

Mark Baugh
Discrimination and Harassment
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Mark is chair of Baker Donelson's Diversity Committee. As for his primary practice areas, whether it is a bench trial or a jury trial in State or Federal Court, Mark is always comfortable in the courtroom. He defends employers in a wide variety of employment and litigation matters, including discrimination, harassment and retaliation, workers' compensation, employment contractual disputes and others. Mark routinely counsels employers on employment law compliance and litigation avoidance, proactively addressing issues such as employment policies and non-compete agreements. Mark is originally from Jamaica.

Baker Donelson's Labor & Employment Practice

We're the Resource in Human Resources. Our labor and employment attorneys offer litigation defense services for administrative and court proceedings at the federal and state level, advice on pre-litigation strategies to reduce legal risks, policy analysis and drafting, compliance audits, management training and labor negotiation.

We Know People. We know our clients as people, not just clients. We form business partnerships so we can help clients strategize on the best approach for each situation, and are always looking at the big picture to ensure long-term success.

We Know Business and Industry. We work with clients across all types of businesses and industries, and we take pride in understanding exactly how they work and how our clients are positioned in the marketplace. These include local, regional and global companies in the health care, energy, food processing, entertainment, insurance, chemical manufacturing, construction, transportation and distribution industries.

We Know Labor, Health and Safety. We help management deal with labor unions during the election phases of union campaigns, and we help with labor agreement negotiation. For clients who have unions already representing their workforce, we pursue management's interests in all phases of the grievance and arbitration process. Our health and safety lawyers offer regulatory monitoring, compliance oversight, training programs and internal auditing protocols, and represent clients before federal and state Occupational Safety and Health regulators.

We Know Our Alphabet. Our attorneys stay on top of the latest changes in laws and regulations from A to Z. We provide counseling and strategic advice on all employment-related laws and regulations, and when necessary, we defend our clients in district and federal courts across the country. Attorneys regularly appear before the EEOC, DOL and Occupational Health and Safety boards.

We Get Around. Our more than 70 labor and employment-focused attorneys are spread across the Firm's seven states and Washington, D.C. Attorneys are licensed in a total of 14 states and have handled matters in 40 states and the District of Columbia. Over the last three years, the team has tried more than 630 federal court cases, has appeared in the Third, Fourth, Fifth, Sixth, Eleventh and District of Columbia Courts of Appeal, and has appeared in 22 District Courts as well as the District of Columbia.

We Like to Help. Baker Donelson customizes all in-house management training programs so that clients' management teams will feel comfortable interacting with us and getting answers to their questions. We offer mock trials, case studies, role-playing, quizzes and video vignettes for human resources managers, mid-level managers and front line supervisors.

We Open Doors for Immigration. We offer a comprehensive and efficient approach to immigration, guiding clients through the entire range of immigration processes for foreign investors, executives, managers, professionals and other workers and their family members. Our experience and relationships help us cut through to practical solutions, using state-of-the-art systems to drive our best thinking through each step of every case.

We Play Well With Others. We want to be your go-to lawyers for every aspect of your company. No matter the legal issue, Baker Donelson's labor and employment attorneys can count on an integrated and experienced team of professionals to assist you in every other aspect of your legal business needs.

We're Good People. We are part of a Firm culture that promotes diversity, inclusion and a sincere appreciation for creative approaches to problem-solving. We are proud to have been listed among FORTUNE magazine's "100 Best Companies to Work For" for four consecutive years, something few other law firms have attained. Many of our offices consistently rank as a Best Place to Work in their cities and states, as well. Our labor and employment attorneys are listed in *Chambers USA*, *Best Lawyers in America*© and *Super Lawyers*, alongside other state-specific accolades. The group also holds national Tier Two rankings in *U.S. News – Best Lawyers* in Employment Law and Labor Law.

LABOR & EMPLOYMENT

BAKER DONELSON

FORTUNE MAGAZINE'S 100 BEST COMPANIES TO WORK FOR FIVE YEARS IN A ROW

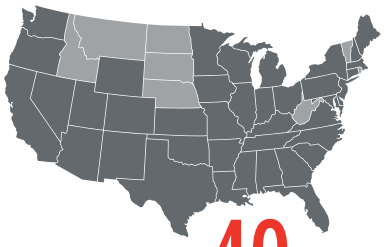
RANKED 31ST IN 2014

HIGHEST-RANKED LAW FIRM IN 2014

MORE THAN 70 LABOR AND EMPLOYMENT-FOCUSED ATTORNEYS

SPREAD ACROSS THE FIRM'S 7 STATES AND WASHINGTON, D.C.

LICENSED IN 18 STATES AND DC



HANDLED MATTERS IN 40 STATES AND DC

MORE THAN 90 COLLECTIVE ACTIONS IN THE LAST SEVERAL YEARS

> 630 FEDERAL COURT CASES IN LAST THREE YEARS

APPEARED IN THE THIRD, FOURTH, FIFTH, SIXTH, ELEVENTH AND DISTRICT OF COLUMBIA CIRCUIT COURTS OF APPEAL IN LAST THREE YEARS

APPEARED IN 22 DISTRICT COURTS AS WELL AS THE DISTRICT OF COLUMBIA IN LAST THREE YEARS

26 ATTORNEYS SELECTED TO BEST LAWYERS TOP-RANKED IN LOUISIANA AND TENNESSEE

U.S. NEWS BEST LAW FIRMS NATIONALLY-RANKED TOP-RANKED IN 6 CITIES

23 ATTORNEYS LISTED IN SUPER LAWYERS PLUS 8 RISING STARS

www.bakerdonelson.com

PRESENTATION

Trying To Reason With Hurricane Season

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Agenda

Surviving the past employment law hurricane season.

Preparing for new storms on the horizon.

Battening down your hatches (policies/practices).

Employers Stay Afloat

- Hobby Lobby Supreme Court Decision
- Sandifer v. U.S. Steel Supreme Court Decision
- New Tennessee Employer Friendly Laws

Significant Changes In Tennessee

- No personal liability under THRA for supervisors/managers.
- New caps on damages for pain and suffering, humiliation, embarrassment, etc.
- Employees are now barred from bringing common law whistleblower claims.
- Only whistleblower relief is under TN Statute which requires “sole cause” standard of proof.

Significant Changes In Tennessee

- Employees are now prohibited from bringing two cases (one in state court and one in federal court) based on the same set of facts.
- Employer can move to dismiss the state court action if the same case is also filed in federal court.
- New laws took effect July 1, 2014.

Significant Changes In Tennessee

- Effective April 23, 2013, the Tennessee Wage Regulation Act was amended to eliminate private suits for state wage-hour violations.
- The Tennessee Department of Labor now has exclusive power to enforce the law.
- Previously employees had the choice to go to the TDOL or straight to Court.

Significant Changes In Tennessee

- Tennessee passed the **Online Privacy Act,** which is effective January 1, 2015.
- Will be covered in depth in our November Third Thursday Breakfast Briefing.

Storms on the horizon

- New EEOC Guidance and New EEOC Court Cases
- Supreme Court Cases Ready For Decision
- DOL Rulemaking on Exempt Status
- Potential New Executive Orders
- State Law Changes

EEOC Priorities

- Expanding Title VII to include transgender and sexual orientation with the prohibition against sex discrimination.
- Pursuing litigation to ensure equal pay for women.
- Pushing employers to accommodate working parents.
- Challenging employer classifications of independent contractors.
- Expanding the Pregnancy Discrimination Act.

Transgender and Sexual Orientation

- State laws and City Ordinances protecting these classifications.
- Nondiscrimination in Employment Act still pending in the House. Little activity expected.
- EEOC still processing administrative charges for both types of discrimination under Title VII.
- In September 2014, the headlines show the EEOC is serious about pushing this issue for acceptance by our Federal Courts.

"EEOC Files Historic Sex Bias Suits For Transgender Workers" 9/25/14

- Two separate suits – one against a funeral home and one against an eye clinic.
- And although the suits are the first of their kind to be filed by the EEOC in federal court, transgender individuals have been filing suits in states from Florida to New Jersey for several years under state laws prohibiting gender identity discrimination.
- President Obama recently issued an executive order prohibiting federal contractors from discriminating on the basis of sexual orientation or gender identity.
- Employment Nondiscrimination Act still pending in the House.

"Legal Tide Favors EEOC Stance on Transgender Bias." 9/29/14

- Supreme Court already recognized that sex stereotyping was unlawful under Title VII in the 1989 decision -- *Price Waterhouse v. Hopkins.*
- Both of the EEOC lawsuits allege the employees failed to conform to traditional gender stereotypes and that was at least part of the reason for termination.
- Changing societal feelings on these issues, as well as the Supreme Court's decision last week not to hear five pending same-sex marriage cases clearing the wage for such marriages to proceed in Indiana, Oklahoma, Utah, Virginia, and Wisconsin, may also have an indirect impact on how the Courts and employers view these issues.

EEOC Pursuing Litigation/Equal Pay

"Discrimination is changing. It's important for us to think about what barriers remain to advancement in the workplace — sometimes they may be very common practices that people rely upon, whether it be negotiation of a salary matching prior job experience, which, in fact, can cause disparities that may not be job-related."

EEOC Vice Chairwoman Jenny Yang

June 5, 2014

EEOC Key Issue: Accommodating Working Parents

- Caregiver discrimination guidelines from 2007.
- EEOC pushes employers to accommodate parents with flexible work schedules and telecommuting opportunities.
- Although “parents” are not a protected class, different treatment for male/female employees with regard to parenting or caregiver obligations can lead to viable claims of sex discrimination.

EEOC Fights Discriminatory use of the Independent Contractor Classification

"What we've been seeing are problems with staffing agencies that are often categorizing people by race and gender and age and other issues, and steering certain people with certain backgrounds into particular jobs," she said. "So, we have brought a number of cases against both staffing agencies and the businesses that employ them."

EEOC Vice Chairwoman Jenny Yang

June 5, 2014

EEOC Tries To Expand the Pregnancy Discrimination Act

Pregnant Workers Fairness Act (PWFA) H.R. 5647 – S. 3565

The bill requires employers to make the same sorts of accommodations for pregnancy, childbirth, and related medical conditions that they do for disabilities.

EEOC Issues Pregnancy Discrimination Enforcement Guidance July 14, 2014

- http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm
- Covers the interaction between the ADAAA and pregnancy discrimination.
- Clarifies who the pregnancy discrimination law covers.
- Defines who is similarly situated to a pregnant female with work restrictions for the purpose of analyzing discrimination claims.
- Discusses EEOC's position on light duty and pregnancy.

EEOC's Position on Pregnancy and the ADAAA

- Pregnancy itself is still not a disability.
- Changes to the definition of the term "disability" make it much easier for pregnant workers with pregnancy-related impairments to demonstrate that they have disabilities for which they may be entitled to a reasonable accommodation under the ADAAA.
- Reasonable accommodations available to pregnant workers with disabilities might include allowing a pregnant worker to take more frequent breaks, to keep a water bottle at a work station, or to use a stool; altering how job functions are performed; or providing a temporary assignment to a light duty position.

EEOC Says The PDA Prohibits Discrimination Based On:

- **Potential or Intended Pregnancy**
  - As one court has stated, "Discrimination against an employee because she intends to, is trying to, or simply has the potential to become pregnant is . . . illegal discrimination." In addition, Title VII prohibits employers from treating men and women differently based on their family status or their intention to have children.
  - Because surgical impregnation is intrinsically tied to a woman's childbearing capacity, an inference of unlawful sex discrimination may be raised if, for example, an employee is penalized for taking time off from work to undergo such a procedure.

EEOC Says The PDA Prohibits Discrimination Based On:

- **Medical Conditions Related to Pregnancy or Childbirth**
  - Lactation Issues – also covered by other laws (ACA)
  - Abortion – Title VII protects women from being fired for having an abortion or contemplating having an abortion.
  - Medical Conditions – Title VII prohibits discrimination against a woman with a medical condition relating to pregnancy or childbirth and must treat her the same as others who are similar in their ability or inability to work but are not affected by pregnancy, childbirth, or related medical conditions.

EEOC Defines Similarly Situated

- An employer is obligated to treat a pregnant employee temporarily unable to perform the functions of her job the same as it treats other employees similarly temporarily unable to perform their jobs, whether by providing modified tasks, alternative assignments, leave, or fringe benefits.
- An employer may not refuse to treat a pregnant worker the same as other employees who are similar in their ability or inability to work by relying on a policy that makes distinctions based on the source of an employee's limitations (e.g., a policy of providing light duty only to workers injured on the job). *NOTE: Courts differ on this issue.*

EEOC Defines Similarly Situated

- An employer has a policy or practice of providing light duty, subject to availability, for any employee who cannot perform one or more job duties for up to 90 days due to injury, illness, or a condition that would be a disability under the ADA. An employee requests a light duty assignment for a 20-pound lifting restriction related to her pregnancy. The employer denies the light duty request, claiming that pregnancy itself does not constitute an injury, illness, or disability, and that the employee has not provided any evidence that the restriction is the result of a pregnancy-related impairment that constitutes a disability under the ADA. The employer has violated the PDA because the employer's policy treats pregnant employees differently from other employees similar in their ability or inability to work.
- **NOTE:** *Young v. UPS* case has different holding. Courts are split.

Young v. UPS, Inc.

UPS has a policy of giving light duty assignments to various categories of employees who are physically unable to do their usual job.

Young v. UPS, Inc.

Under the policy, these categories of employees are entitled to light duty assignments:

- ✓ employees who have been injured on the job;
- ✓ employees who have a qualifying disability under the ADA; and
- ✓ employees who have temporarily lost their DOT certifications.

The Facts . . .

- Ms. Young gives her supervisor a doctor's note stating she should not lift more than twenty pounds for the first twenty weeks of her pregnancy and not more than ten pounds thereafter.
- The supervisor gives the note to HR.
- HR informs Ms. Young that she is not among the categories of employees that are entitled to light duty.
- Ms. Young takes unpaid leave for the duration of her pregnancy losing income as well as her medical coverage months before the birth of her child.
- Ms. Young sues UPS for pregnancy discrimination under Title VII of the 1964 Civil Rights Act.

And loses

Twice

The Bottom Line

- According to the Court of Appeals, as long as an employer's policy can be described without reference to pregnancy—by identifying in pregnancy-neutral terms the preferred classes of conditions that are entitled to light-duty accommodations— the policy does not discriminate on the basis of pregnancy.

And speaking of the Supremes . . .

Cases To Be Decided By June 2015

- ***Young v. UPS*** (pregnancy discrimination)
- ***EEOC v. Abercrombie & Fitch Stores, Inc.*** (religious discrimination)
- ***Mach Mining LLC v. EEOC*** *(whether and to what extent courts may enforce the EEOC's duty to conciliate a case before filing a lawsuit)*
- ***Perez et al v. Mortgage Bankers Association*** (DOL Rulemaking)
- ***Integrity Staffing Solutions v. Busk et al****.* (whether waiting in security screening lines is compensable work time)

Abercrombie Case Issue

- Trial court ruled for the EEOC finding the employer had sufficient notice of a conflict between its “Look Policy” and the applicant’s need to wear a head scarf in observance of her religious faith. No need for the applicant to make an explicit reference to her needs.
- The Tenth Circuit reversed, finding applicants are required to notify the employer of their need for a religious accommodation.
- Split of authority among the other Circuit Courts of Appeal.

The *Mach Mining* Case Issue

- Employer asked for case to be dismissed because the EEOC failed to conciliate (attempt to settle) the case in good faith as required by 42 U.S.C. Section 2000e-5(b).
- EEOC claims its conciliation efforts are not reviewable by a court.
- Seventh Circuit Court of Appeals agreed with the EEOC.
- The Second, Fourth, Fifth, Sixth, Eighth, and Ninth Circuits have all held that the EEOC's duty to conciliate is reviewable to some extent, though under different levels of scrutiny.
- The Supreme Court will make the ultimate decision.

The *Mortgage Bankers Assoc.* Case Issue

- The Department of Labor made an administrative decision to change the interpretation of its regulations to begin applying overtime and minimum wage rules to mortgage loan officers. In other words, mortgage loan officers are, according to the DOL, non-exempt.
- At issue is whether the Obama administration was required to put out a formal notice and take public comment before changing its interpretation of regulations.

Battening Down the Hatches (Policies and Practices)

- If you are a federal contractor of subcontractor, make sure you are in compliance with new Executive Orders and stay tuned for others that may be on the horizon.
- Include discussions of transgender and sexual orientation discrimination in your training sessions. Very likely courts will accept the EEOC's theory and expand the law without the need for Congress to the pass the ENDA. Even if the Courts do not, the EEOC can still process a charge against your organization.

Battening Down the Hatches (Policies and Practices)

- Review your light duty and accommodation policies/practices as they relate to pregnant employees and be ready to make any changes necessary based on how the Supreme Court rules in *Young v. UPS*. If accommodations are required by the High Court, written policies may need to be updated as well as management practices.
- Keep an eye on the Supreme Court's decision in the *Abercrombie* case as you may need to do more training for hiring managers on the issue of religious accommodations.

PRESENTATION

Earthquaked! When Classifications Threaten Your Foundation

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“The Great Recession”

- Aggressive cost reduction mandates from executive management . . .

- Pressures to reduce labor costs create …
  - Lean staffing models/reduced head count
  - Efforts to reduce overtime and other costs

- A recipe for disaster?

Misclassification of Employees as Independent Contractors

Who is an Employee?

- An employee is a person who performs services that are subject to the will and control of the employer
- The employer has the right to dictate both:
  - What the employee does; and
  - How the employee does it.

Who is an Independent Contractor?

- A person over whom the employer has the right to control or direct only the result of the work, not the means and methods by which the work is accomplished

- Generally, an independent contractor has multiple clients, maintains a separate workplace, and is not supervised or controlled by an employer

The US DOL "Misclassification Initiative"

- In September 2011, the U.S. DOL and the IRS signed a Memorandum of Understanding in which they agreed to cooperate and share information with the goal of reducing the incidence of this form of misclassification

- Labor departments in 14 states have signed the Memorandum of Understanding (NY, MA, CT, MD, IL, MN, IA, MO, LA, MT, CO, UT, WA,CA and HI)

According to the U.S. DOL …

- "The misclassification of employees as … independent contractors, presents a serious problem for affected employees, employers, and to the entire economy."

- "Misclassified employees are often denied access to critical benefits and protections – such as family and medical leave, overtime, minimum wage and unemployment insurance – to which they are entitled."

- "Employee misclassification also generates substantial losses to the Treasury and the Social Security and Medicare funds, as well as to state unemployment insurance and workers compensation funds."

“Misclassification” Lawsuits are a Hot Topic

- *Scovil v. FedEx Ground Package System, Inc., d/b/a FedEx Home Delivery*, Case No. 1:10-cv-00515-DBH (D. Maine, March 14, 2014).

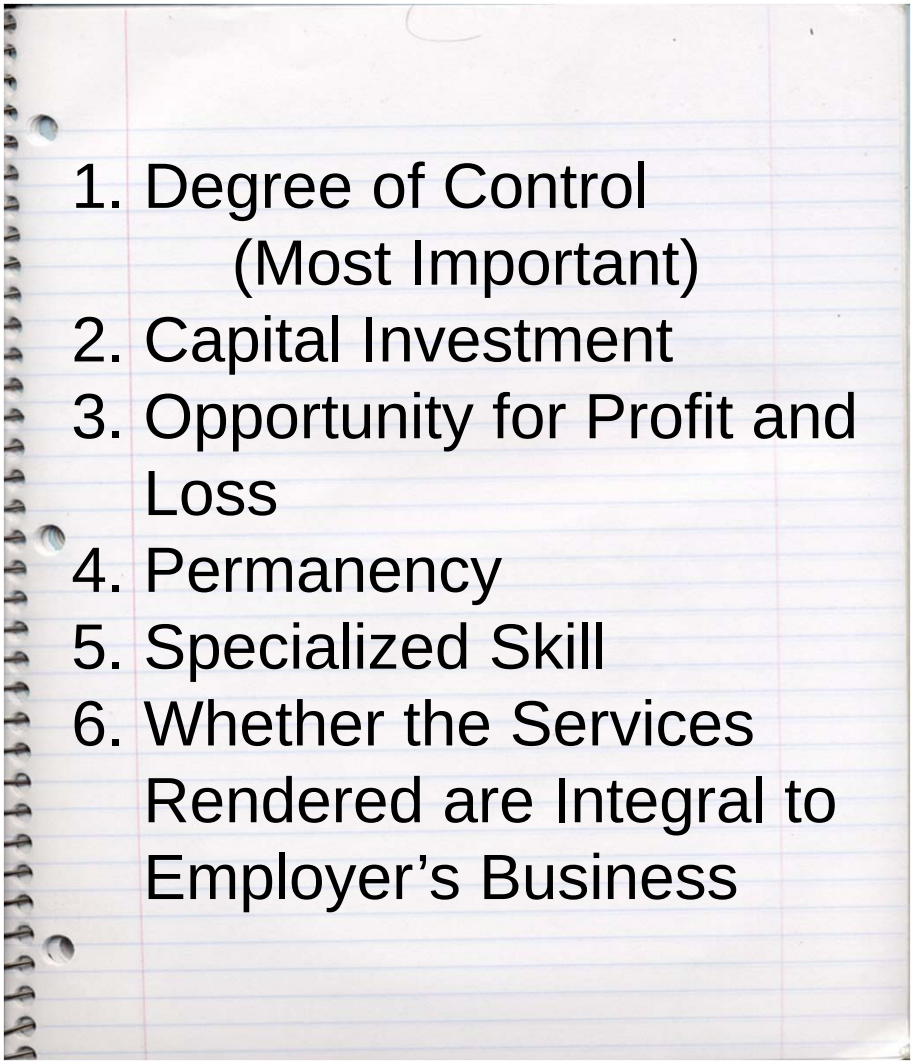
- 141 drivers classified as independent contractors by FedEx Ground will receive $5.8 million in settlement of their misclassification claims brought under state and federal wage and hour laws.

- The settlement amount includes plaintiff counsels' legal fees of $1.9 million.

Marguiles v. Legends Football League, LLC

- Class action filed on June 30, 2014, in state court in Los Angeles, CA
- Plaintiffs are current and former “Lingerie League” football players who the League classified as independent contractors
- The plaintiffs seek unpaid wages, unpaid overtime and statutory penalties
- Note: The League had each player sign a contract in which they agreed to be classified as independent contractors

The Economic Realities Test



Other Handy Guidelines:

- Do you pay regular employees to perform essentially the same duties as the proposed independent contractor?
- Have you paid the proposed independent contractor as a regular employee in the past to perform essentially the same tasks?

➢ If the answer to either of these questions is YES, you probably should not classify the worker as an independent contractor

Other Considerations

- Employers have the burden to prove the classification is correct
- A written agreement with the proposed independent contractor doesn't control
- Penalties for misclassification include:
  - Payment of back taxes, interest, statutory penalties to the *government*, and/or
  - Payment of back pay, interest and the value of lost benefits to the misclassified *employee*

Unpaid Interns and Volunteers

The *Black Swan* Meets the 24-Hour News Cycle

- On June 11, 2013, a federal district court in New York ruled that Fox Searchlight Pictures violated wage and hour law when it employed two unpaid interns on the set for the film *Black Swan*
- The story exploded in the national media, with immediate coverage in industry publications and full-blown national media coverage by the major networks, CNN, FOX, etc.
- Local media followed: To Pay or Not to Pay? The Test for Unpaid Internships, Nashville Business Journal, June 28, 2013

The Story Has a Life of Its Own . . .

- Today, a Google search for news stories about unpaid interns returns over 3,000 hits
- The story has even developed into a feud between FOX News and the NY Times:

"NY Times Still Crusading Against Unpaid Interns While It Keeps Using Unpaid Interns"
FOX News (Blog) – March 16, 2014

The Lawsuits Keep Coming

- In January 2014, a New York federal district judge approved a class action settlement in which Elite Model Management agreed to pay $450,000 to settle a class action filed by a former Fashion Week intern
- The Settlement fund was created to pay more than 100 former interns between $700 and $1,750 for time that Elite employed them without pay

So Why All The Noise?

- It's a sexy topic. Unpaid interns are common in TV and movie production companies, sports franchises, the music business, the fashion industry, etc.
- Many employers are not in compliance.
- More plaintiffs' lawyers are taking wage & hour cases than ever before
- And …

Millennials

- Under-employed, angry and plugged-in

Lawyers Are Poised to Take Advantage . . .

- Google the words “unpaid internship” and the first result is: http://www.unpaidinternslawsuit.com/, a website hosted by a plaintiffs’ law firm:

> Unpaid interns are becoming the modern-day equivalent of entry-level employees, except that employees are not paying them for the many hours they work. The practice of classifying employees as “interns” to avoid paying wages runs afoul of federal and state wage and hour laws, which require employers to pay all workers when they “suffer or permit” the minimum wage and overtime. Employers’ failure to compensate interns for their work, and the prevalence of the practice nationwide, curtails opportunities for employment, fosters class divisions between those who can afford to work for no wage and those who cannot, and indirectly contributes to rising unemployment.

The U.S. DOL's Six-Part Test:

1. The internship is similar to training that would be given in an educational environment;

2. The internship experience is for the benefit of the intern;

3. The intern does not displace regular employees, but works under close supervision of existing staff . . . ;

The U.S. DOL's Six-Part Test (Cont.)

4. The employer derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impaired;

5. The intern is not necessarily entitled to a job at the conclusion of the internship; and

6. The employer and the intern understand the intern is not entitled to wages for the time spent in the internship

The U.S. DOL's Six-Part Test (Cont.)

- The DOL test applies to all for-profit employers (government employers and non-profit, charitable organizations are exempt)

- A for-profit company's unpaid internship program must comply with all 6 prongs of the DOL test

- The DOL test is nothing new: The 6-part test is derived from a SCOTUS opinion from 1947, *Walling v. Portland Terminal Co.*, 330 U.D. 148 (1947)

Non-Profit “Volunteers”

- The DOL guidelines only apply to for-profit employers -- they don’t apply to non-profits or government agencies
- Employers that qualify as non-profits may employ unpaid workers as “volunteers”
- The rules for volunteers are very relaxed, almost non-existent
- A best practice is for non-profits to advise volunteers, in writing, they will not be compensated

Temporary Employees

Joint Employer Liability

- No matter how well your agreement with your staffing agency is drafted, there are times when a court may find that two or more separate companies are joint employers
- Joint employer relationships commonly occur in the context of discrimination and harassment liability, FMLA responsibilities, and ADAAA reasonable accommodation responsibilities

EEOC v. Skanska USA Building, Inc.

- In December 2013, the Sixth Circuit Court of Appeals found a general contractor and subcontractor on a construction project were joint employers
- Three employees of the subcontractor (C-1) claimed racial harassment and the EEOC filed suit on their behalf
- The trial court dismissed the EEOC's claims against the general contractor (Skanska) on the grounds that it was not the complaining parties' employer
- The Sixth Circuit disagreed and reversed

EEOC v. Skanska USA Building, Inc. (cont.)

- The court reaffirmed the rule that separate companies are considered joint employers if they "share or co-determine those matters governing essential terms and conditions of employment"
- Central to the court's analysis were facts demonstrating that most of the complaining employee's daily responsibilities and assignments were directed by Skanska
- "That the terms of C-1's contract with Skanska envisioned a more active role for C-1 is beside the point"

Discrimination/Harassment Considerations

- Did you know (or have reason to know) of discrimination/harassment, but failed to take corrective action?
- If a regular employee is harassed by a temporary worker, both the employer and the temp agency should investigate
- If a temporary worker is harassed by a regular employee, both the employer and the temp agency should investigate
- The employer may be liable to the harassment victim irrespective of whether the victim is a regular employee or a temp

FMLA Considerations

- FMLA regulations provide that in most cases the temp agency is the primary employer and the employer is the secondary employer
- The primary employer is responsible for providing employees notice, providing the leave of absence, maintaining benefits and handling reinstatement
- The secondary employer must accept temps who return from FMLA leave

ADAAA Considerations

- ADAAA regulations provide that both the temp agency and the employer have duties to reasonably accommodate disabled temporary workers
- As a result, both the temp agency and the employer are required by law to engage in an interactive process to determine whether a disabled temporary worker can be reasonably accommodated
- In fact, the failure to engage in a good faith interactive process is an emerging area of strict liability for employers

The Hazards of Long-Term Temps

- Many employers use temps for legitimate reasons such as staffing seasonal workloads or as a talent pool for new hires (i.e, “temp to perm” programs)
- That said, far too many well intentioned employers use “long-term temps” to comply with head-count restrictions and/or reduce labor costs
- Some of these employers have so-called “temps” who have been working for many months or even years
- This is a serious problem

Long-Term Temp Danger Zones

- Family and Medical Leave Act
- Employee Benefits
- Union Organizing
- National Labor Relations Board Guidelines

FMLA Danger Zones

- The FMLA may apply to temps whose assignments exceed the 12 month threshold

- Regardless of the duration of their assignments, temps count towards the FMLA's geographic thresholds

Employee Benefits Danger Zones

- DOL regulations provide that full-time employees employed for one year or more are automatically eligible to participate in 401(k) retirement plans unless they opt out
- “Full time” means at least 1,000 hours per year
- The regulations do not distinguish between full-time regular employees and full-time temps
- As a result, full-time temporary employees whose assignments last at least one year may be eligible to participate in the employer’s 401(k)

Union Organizing Danger Zones

- Employers with high percentages of temporary workers and/or large numbers of long-term temps may face high levels of discontent
- Long-term temporary workers are particularly susceptible to union organizing
- Make no mistake: Unions are actively exploiting these factors
- Many unions have announced initiatives to organize temporary workers in recent years

NLRB Danger Zones

- Yet another reason to proceed with caution are NLRB guidelines that permit temporary workers to participate in union organizing and elections
- According to the NLRB, if temporary workers have a "reasonable expectation" of ongoing employment, the cards they sign to compel elections may count and they may get to vote in the elections
- Note: The NLRB is currently trying to liberalize "joint employer" guidelines in the *Browning-Ferris* case

Questions?

PRESENTATION

Immigration Tsunami: Understanding the Tidal Wave of Compliance When Hiring Foreign Nationals

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Overview

- Hiring a foreign national employee **differs significantly** from hiring a U.S. citizen.
- Sponsorship involves time, money, and also responsibilities
- Foreign nationals are not allowed to work for a U.S. employer until proper work authorization is issued by the U.S. government.
- Holding a Visa does not always mean that the person is authorized to work.

Questioning immigration status at interview

- It is helpful to know if sponsorship is required for the candidate during the interview process

- Employers may lawfully ask following two questions regarding immigration status in an interview setting:
  1. Are you legally authorized to work in the U.S.? Yes or No.
  2. Do you now or will you in the future require sponsorship for employment visa status (e.g. H-1B visa status)? Yes or No.

Visa eligibility, time and cap limits

- As the prospective employer of a foreign worker, the first questions you'll face are eligibility questions: whether any of the work-authorizing nonimmigrant visa categories will fit the job you have open and the candidate you have in mind

- Most nonimmigrant visas are subject to numerical and time limits – when can employee start? How long can they work for employer?

Work authorization is incident to status not visa

- Not every visa holder is in the U.S. legally. Need to check status – valid I-94
- Different nonimmigrant categories for different jobs
- Only lawful permanent residents (LPR's) and some foreign nationals with unrestricted work authorization are allowed to work without sponsorship

B-1 Temporary Visitors

- B-1 status allows entry to participate in business activities of a commercial or professional nature in the United States, including, but not limited to:
  - Consulting with business associates
  - Traveling for a scientific, educational, professional or business convention, or a conference on specific dates
  - Negotiating a contract
  - Participating in short-term training

- **MUST BE PAID BY FOREIGN EMPLOYER**

Case #1

- U.S. company with subsidiary in Canada terminates the company's comptroller in the U.S. for cause. Canadian subsidiary sends accountant to help while parent company hires permanent replacement. Accountant remains on foreign payroll. Canadians are visa-exempt.

- Can she work in the U.S. for 6 months?

- Options?

TN Professional Work Permit

- Citizens of Canada or Mexico if profession is on the NAFTA list (**Appendix 1603.D.1**)
- Only to work in a prearranged full-time or part-time job, for a U.S. employer. Self employment is not permitted
- Professional Canadian or Mexican citizen has the qualifications of the profession
- Canadians apply at the Border or Port of Entry
- Mexicans apply at Consulate

L-1 Intracompany Transferee

- Allows a U.S. employer to transfer an executive or manager from one of its affiliated foreign offices to the U.S. Requirements:
- Qualifying relationship with a foreign company (parent company, branch, subsidiary, or affiliate) and doing business in the U.S. and abroad.
- Employee must have been working for company abroad for one continuous year within the three years immediately preceding admission to the U.S.
- Be seeking to enter in executive or managerial capacity (also specialized knowledge).
- No cap, time limit 7 for managers and executives and 5 for Specialized knowledge.

H-1B: Most used Nonimmigrant visa

- The job must require a bachelor's degree or its equivalent as an industry minimum for an entry-level position.
- Foreign national must possess that degree or U.S. equivalent.
- Employer must pay prevailing wage as determined by the Department of Labor (DOL)
- Employer must file and obtain certification of a Labor Condition Application with DOL prior to H-1B filing
- Posting notice with salary information required
- If terminated, employer must pay transportation back to home country

More H-1B

- H-1B professionals may change jobs as soon as a new petition is filed by the new employer.
- Processing time 3-4 months regular processing, 15 days premium $1225.00 premium fee
- Only 65,000 per year – 10/01/12 start date
- Some employers are cap-exempt (universities and some non-profits)

Green Card sponsorship

- Foreign nationals may become permanent residents through a job or offer of employment.

- Some categories require a certification from the U.S. DOL to show that there are no U.S. workers available in the geographic area where the immigrant is to be employed and that no American workers are displaced by foreign workers. PERM process

Labor Certification and Green Card

- Step 1: PERM Labor Certification
- Step 2: The I-140 Petition
- Step 3: The I-485 Adjustment Application

Labor Certification: PERM

- Must test market – Active recruitment campaign: newspaper ads, internal notice of filing, job order, employer's website, etc…
- Job minimum educational and experience requirement
- Employee must meet requirements at time of hire
- In most instances, this mandatory recruitment/advertising effort can be accomplished within 60-90 days.

The Backlog: When to start the Process

- Some people may run out of time
- May extend H-1B status if PERM pending 365 days or approved I-140
- Other categories can not extend (L's)
- Some categories do not need PERM (Managers and Executives)

	General	China	India	Mexico	Philippines
EB-1	**C**	**C**	**C**	**C**	**C**
EB-2	**C**	15 NOV09	01May 09	**C**	**C**
EB-3	01OCT11	01APR09	15NOV03	01OCT11	01OCT11
EB-3 •Other Workers	01OCT11	22JUL05	15NOV03	01OCT11	01OCT11

Everyone must do PERM labor certification except for EB-1. If in EB-2 category, may skip PERM if can show that doing so is in the national interest of the United States.

I-9 Compliance
E-verify

The TN Lawful Employment Act (TLEA)

The I-9 Verification Process

- All U.S. employers must verify the employment eligibility and identity of all employees hired after November 6, 1986 by completing Employment Eligibility Verification forms (Forms I-9)

- Employers who hire or continue to employ individuals *knowing* that they are not authorized to be employed in the United States may face civil and criminal penalties.

Current Form Date

- Immigration law and employment eligibility verification regulations can change over time, check I-9 Central at www.uscis.gov for updated Form I-9 information.
- Current edition date 03/08/13;
- All U.S. employers must complete and retain a Form I-9 for each individual they hire for employment in the U.S. This includes citizens and noncitizens.
- The employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and relate to the individual and record the document information on the Form I-9.

When to complete form

- Must wait for employee to accept offer of employment
- Employee completes Section 1 NO LATER than first day of work for pay, or before if employee has accepted job offer
- Employer completes Section 2 within three business days of the date of hire of their employee (the hire date means the first day of work for pay).
- If you hire a person for fewer than three business days, Sections 1 and 2 of Form I-9 must be fully completed by the employee's first day of work for pay

- Employees must present unexpired original documentation that shows the employer their identity and employment authorization. Employees choose which documentation to present.
- Employees must make: One selection from List A or One selection from ListB in combination with one selection from List C.
- List A contains documents that show both identity and employment authorization, List B documents show identity only, and List C documents show employment authorization only.

I-9 Retention

- Employers are required to retain the page of the form on which the employer and the employee enter data. If copies of documents presented by employees are made, those too should be kept with the I-9 forms.
- The I-9 forms may be stored on paper or electronically.
- Form I-9 must be kept by the employer either for three years after the date of hire or for one year after employment is terminated, whichever is later. The form must be available for inspection by authorized U.S. Government officials (e.g., Department of Homeland Security, Department of Labor, Department of Justice).

I-9 Retention

1. Date the employee began work for pay	1. _____
A. Add three years to the date on line 1.	A. _____
2. The date employment was terminated	2. _____
B. Add one year to the date on line 2.	B. _____
3. Which date is later; A or B?	3. _____
C. Enter the later date.	C. _____

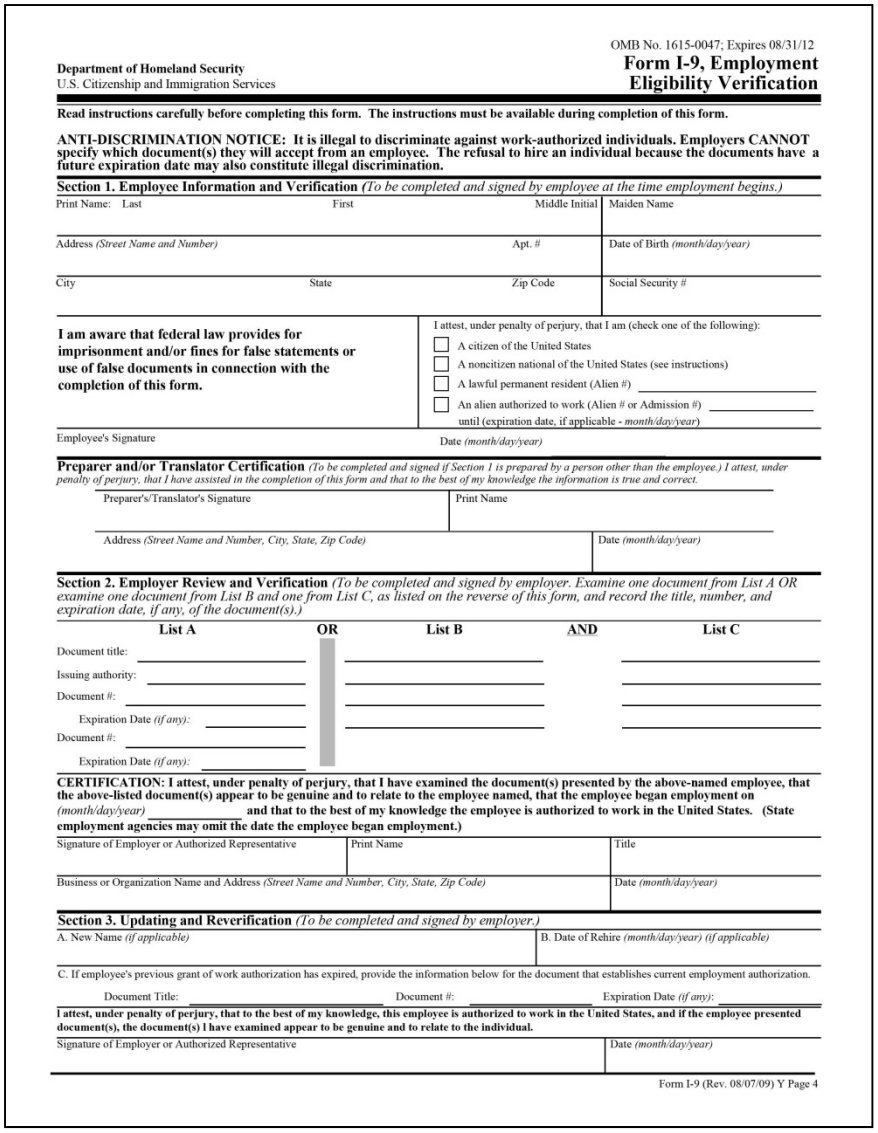
What is E-Verify?

- Internet-based system
- Operated by Department of Homeland Security (DHS) and the Social Security Administration (SSA)
- Allows participating employers to electronically verify employment eligibility of newly hired employees

Who Uses E-Verify?

- Voluntary for most employers.
- Some states, such as Arizona and Mississippi, require employers to E-Verify.
- Mandatory for employers with federal contracts or subcontracts that contain the Federal Acquisition Regulation E-Verify clause.

Relationship to the I-9



OMB No. 1615-0047; Expires 08/31/12

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification *(To be completed and signed by employee at the time employment begins.)*

Print Name: Last | First | Middle Initial | Maiden Name

Address *(Street Name and Number)* | Apt. # | Date of Birth *(month/day/year)*

City | State | Zip Code | Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen of the United States
- ☐ A noncitizen national of the United States (see instructions)
- ☐ A lawful permanent resident (Alien #) _____
- ☐ An alien authorized to work (Alien # or Admission #) _____ until (expiration date, if applicable - *month/day/year*) _____

Employee's Signature | Date *(month/day/year)*

Preparer and/or Translator Certification *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

Preparer's/Translator's Signature | Print Name

Address *(Street Name and Number, City, State, Zip Code)* | Date *(month/day/year)*

Section 2. Employer Review and Verification *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

	List A	OR	List B	AND	List C
Document title:					
Issuing authority:					
Document #:					
Expiration Date *(if any)*:					
Document #:					
Expiration Date *(if any)*:					

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on *(month/day/year)* _____ **and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)**

Signature of Employer or Authorized Representative | Print Name | Title

Business or Organization Name and Address *(Street Name and Number, City, State, Zip Code)* | Date *(month/day/year)*

Section 3. Updating and Reverification *(To be completed and signed by employer.)*

A. New Name *(if applicable)* | B. Date of Rehire *(month/day/year) (if applicable)*

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title: _____ Document #: _____ Expiration Date *(if any)*: _____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative | Date *(month/day/year)*

Form I-9 (Rev. 08/07/09) Y Page 4

- E-Verify compares I-9 information to electronic database.
- I-9 completion is required while E-Verify is voluntary for most employers.

Some E-Verify No-No's

- Don't use E-Verify to prescreen applicants.
- Don't take adverse action based on a case result unless E-Verify is a Final Nonconfirmation.
- Don't selectively verify work authorization for newly hired employees.

Tennessee Lawful Employment Act

- Requires Tennessee employers to use Federal E-Verify Employment Verification Program or maintain certain identity or work authorization documents
- Requires covered employers to request and maintain a copy of requisite identity or work authorization documents for non-employees with whom they contract or pay for services
- Provides monetary penalties and the suspension of business licenses for violations
- Law becomes effective in phases:
  - 500 or more employees – January 1, 2012
  - 200 – 499 employees – July 1, 2012
  - Less than 200 employees – January 1, 2013
  - Not effective if 5 or fewer employees

Tennessee Lawful Employment Act

- Valid Tennessee driver's license or photo identification
- A valid driver's license or photo identification from another state where the license requirements are at least as strict as those in Tennessee
- A birth certificate issued by a U.S. state, jurisdiction or territory
- A U.S. government issued certified birth certificate
- A valid, unexpired U.S. passport
- A U.S. certificate of birth abroad
- A certificate of citizenship
- A certificate of naturalization
- A U.S. citizen identification card
- A lawful permanent resident card
- Other proof of employee’s immigration status and authorization to work in the United States

Tennessee Lawful Employment Act

- TLEA only requires listed identification document storage for an independent contractor who is not someone else's employee. Self-employed painter or bricklayer.

QUESTIONS?

PRESENTATION

The Inmates May Be Running The Asylum After All

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Social Media Venting

Triple Play Sports Bar and Grill, 361 NLRB No. 31 (August 22, 2014)

- Background: A "Like" and a comment
- "Like" and a comment were protected concerted activity
- Employees' actions too harsh for protection?
  - No: Not directed to general public, did not disparage products or services, related to an ongoing employment dispute

Confidentiality Policies

Recent NLRB Examples:

- *Target Corp.*, 359 NLRB No. 103 (2013).
  - NLRB found Target's confidentiality policy unlawful because it prohibited the disclosure of "confidential information," which it defined as "any nonpublic information," including "personnel records."
- *Flex Frac Logistics, LLC,* 358 NLRB No. 127 (2012).
  - NLRB found the employer's confidentiality policy unlawful because it prohibited the disclosure of "personnel information."

Confidentiality Policies (continued)

Employees have a protected right to communicate with each other regarding their own wages or their co-workers' wages.

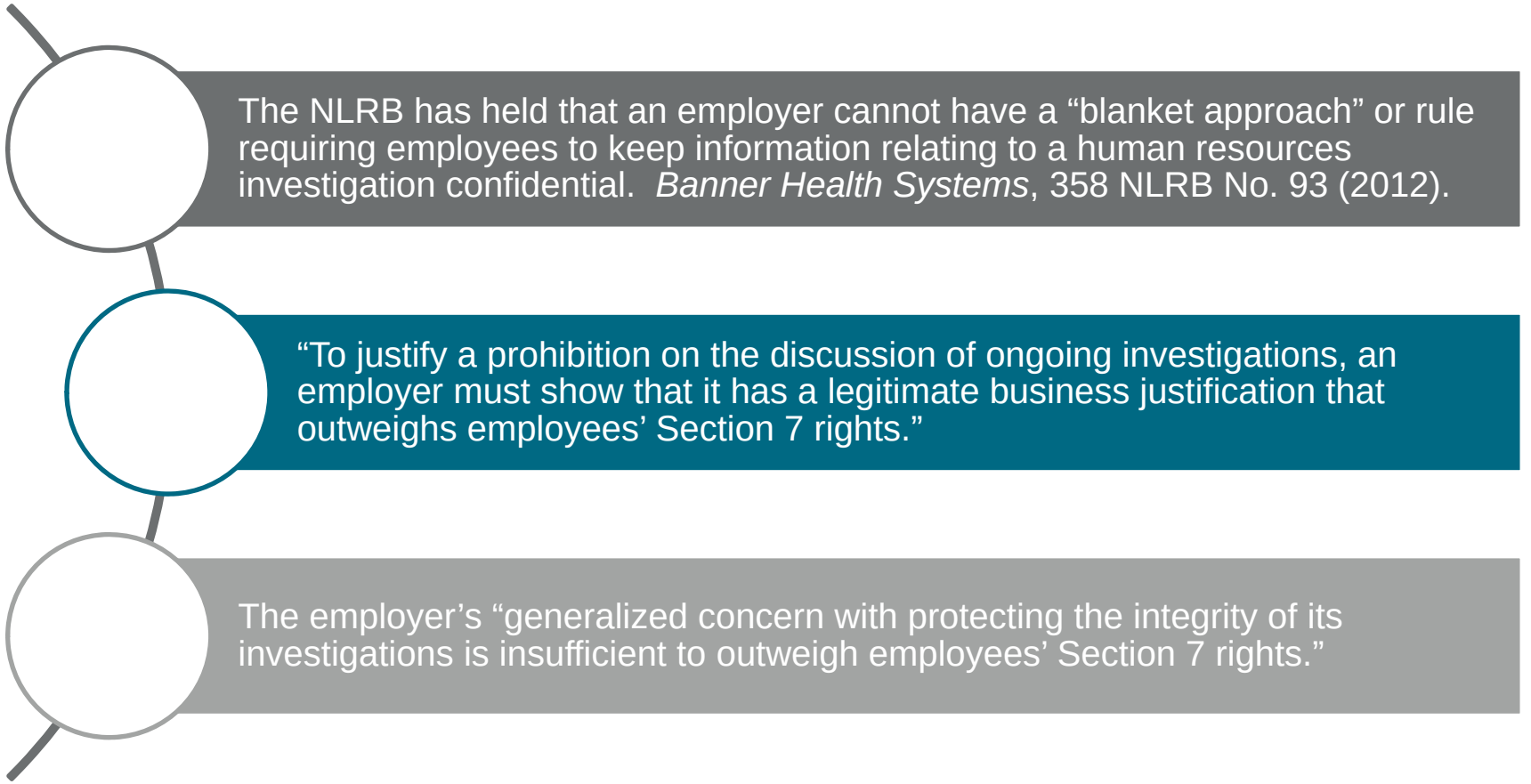
Confidentiality policies cannot prohibit discussion or communication of employee wages or terms and conditions of employment.

The NLRB takes the position that confidentiality policies cannot be so broad that an employee would reasonably interpret the policy as prohibiting the discussion of wages or terms and conditions of employment.

Employers often include "personnel information" or "financial information" in their definition of confidential information.

Employers may prohibit employees from disseminating confidential information that the employee learns by virtue of the employee's job responsibilities. (Example: a payroll clerk could not share salary information that he learned in the course of processing payroll).

Confidentiality of HR Investigations



Confidentiality of HR Investigations (continued)

The NLRB held that the employer must assess on a case-by-case basis whether:

- A particular witness needs protection.
- Evidence is in danger of being destroyed.
- Testimony is in danger of being fabricated.
- The confidentiality instruction is necessary to prevent a cover-up.

It is the employer's burden to prove that one of these factors justifies a confidentiality instruction in a particular case.

Confidentiality of HR Investigations (continued)

The NLRB GC's Office has issued an Advice Memorandum containing an approved policy for confidentiality in the context of HR investigations:

- The Company has a compelling interest in protecting the integrity of its investigations. In every investigation, the Company has a strong desire to protect witnesses from harassment, intimidation, and retaliation, to keep evidence from being destroyed, to ensure that testimony is not fabricated, and to prevent a cover-up. The Company may decide in some circumstances that in order to achieve these objectives, we must maintain the investigation and our role in it in strict confidence. If the Company reasonably imposes such a requirement and you do not maintain such confidentiality, you may be subject to disciplinary action up to and including immediate termination.

Off-Duty Employee Access to Premises

Off-duty employees have a right to solicit and distribute literature in **exterior**, non-working, areas of the employer's premises. (ie. parking lot, sidewalks, driveway).

This right applies to the facility where the employee works and any other facility of the employer.

The NLRB allows employers to restrict access for "security needs," if the employer can prove a specific security concern, but there is a very high burden on the employer to prove why off duty employees in its parking lot pose a specific security threat.

Off-Duty Employee Access to Premises (continued)

An employer can have a policy limiting off-duty access by employees if:

- The policy limits access solely to the interior of the facility.
- The policy is clearly disseminated to all employees.
- The policy applies to off-duty access to the interior of the facility for all purposes, not just for union activity.

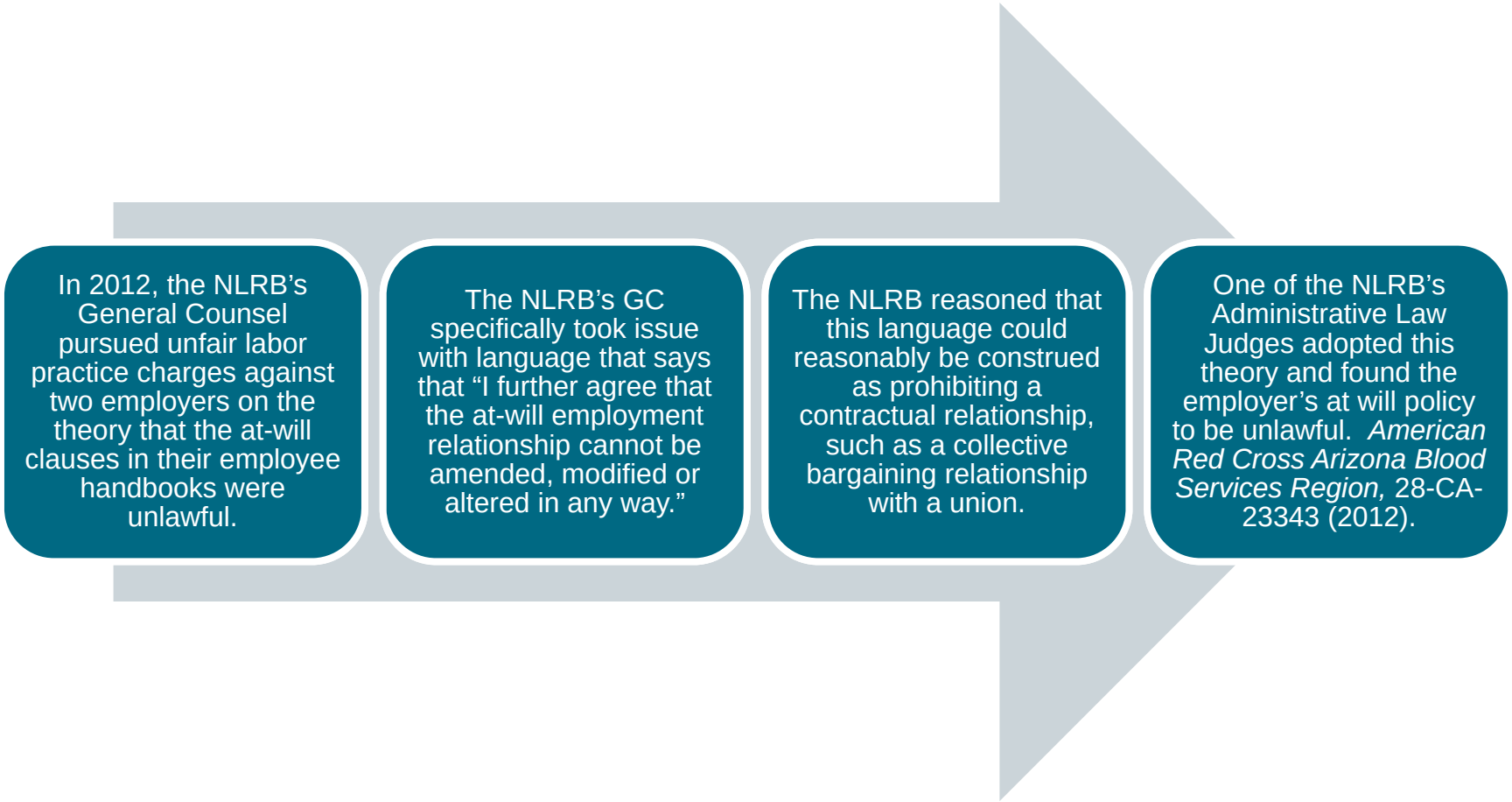
Off-Duty Employee Access to Premises (continued)

In *Sodexo America, LLC*, 358 NLRB No. 79 (2012), the NLRB emphasized that the policy must restrict ***all*** off duty access to the interior of the facility.

- An exception that allowed off duty employees to enter the facility for "company business," rendered the policy invalid.
- The practical implication is that if you allow off-duty employees to come into the facility to pick up a paycheck, fill out HR forms, come to company sponsored events, etc., then you will have to allow them into the facility for organizing activity.

When off duty employees are permitted into the facility, you can restrict their access to nonworking areas.

At-Will Employment



At-Will Employment (continued)

In response to public outcry, the NLRB's General Counsel issued two advice memoranda, backtracking from its position on at-will employment policies.

In *Rocha Transportation*, 32-CA-086799 (2012) and *Mimi's Café*, 28-CA-084365 (2012), the General Counsel held that the employer's at will policies were lawful.

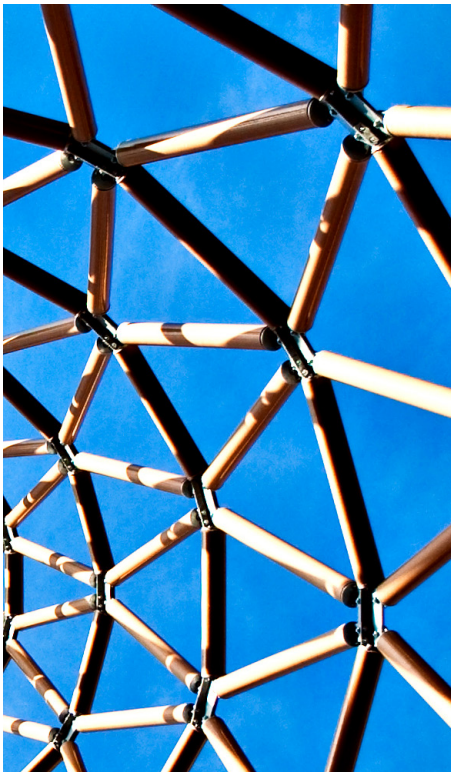
It distinguished these policies from the *American Red Cross* policy in two ways:

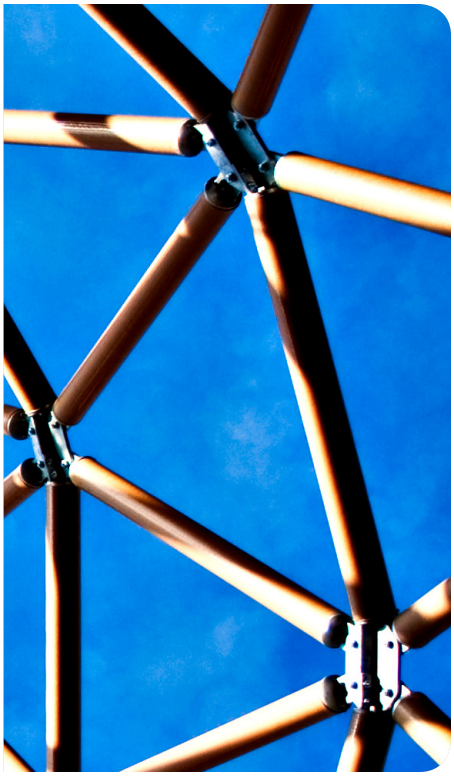
- The approved policies did not use the word "I." In other words, the approved policies did not require the employee to individually waive any rights.
- The approved policies did not foreclose the prospect that at-will status could be altered in the future.

At-Will Employment (continued)

Approved policy:

- The relationship between you and [the Company] is referred to as employment at will. This means that your employment can be terminated at any time for any reason, with or without cause, with or without notice, by you or the Company. No representative of the Company has authority to enter into any agreement contrary to the foregoing "employment at will" relationship. Nothing contained in this handbook creates an express or implied contract of employment.





Firm Profile

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FIRM PROFILE

As the 68th largest law firm in the U.S., Baker Donelson gives clients access to a team of more than 650 attorneys and public policy advisors representing more than 30 practice areas, all seamlessly connected across 20 offices to serve virtually any legal need.

Who We Are

Since our beginnings in 1888, Baker Donelson has built a reputation for achieving results for our clients on a wide range of legal matters. While providing legal services is our focus, it is how we deliver them that sets us apart. Our goal is to provide clients with more than what they have come to expect from a law firm.

Baker Donelson commits to a deep understanding of a client's business, to enable us to anticipate clients' needs and assist in their decision making processes. Because we offer consistent, knowledgeable guidance based on their specific goals and objectives, clients view us as a valued business partner. This allows them to focus on the growth and success of their business, confident their legal issues will be handled by an attentive, responsive team.

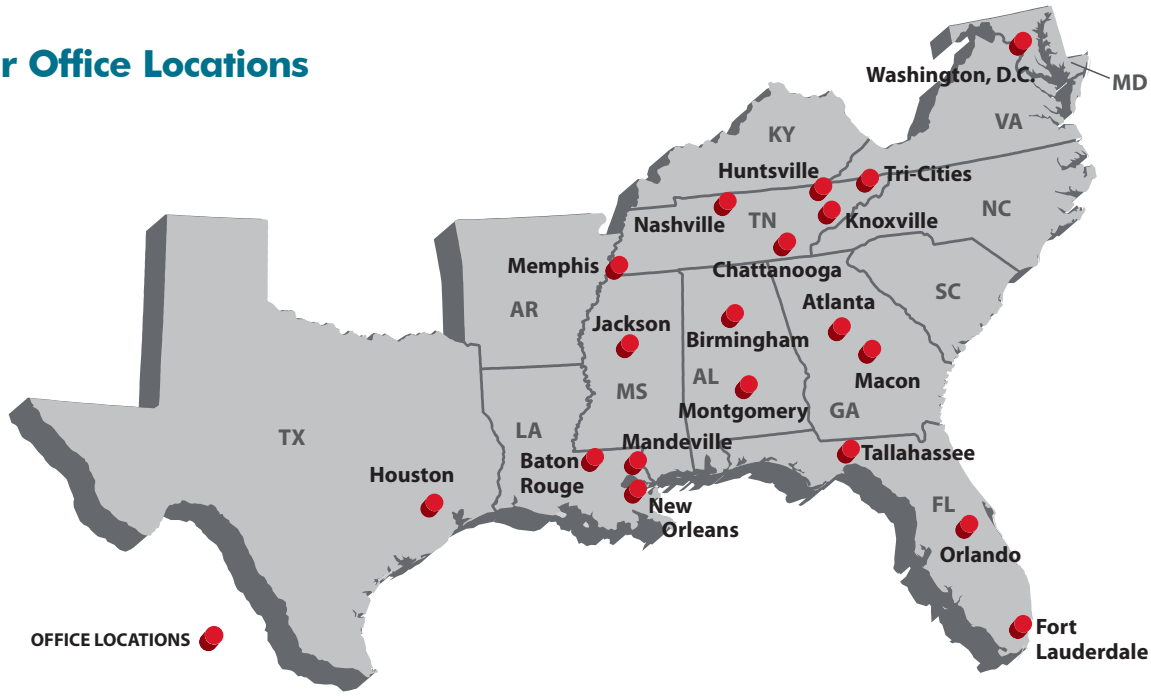
Our unique approach to providing legal services is enabled by our extensive support structure. As the 68th largest law firm in the U.S., Baker Donelson gives clients access to a team of more than 650 attorneys and public policy advisors representing more than 30 practice areas, all seamlessly connected across 20 offices to serve virtually any legal need. Clients receive informed guidance from experienced, multi-disciplined industry and client service teams. Our diversity and women's initiatives ensure diversity in our people, perspectives and experiences. Technology helps us operate more effectively and efficiently by providing instant access to client-specific information and other key resources.

What Sets Baker Donelson Apart

- Our Health Care practice is nationally recognized: Ranked among the Top 10 in both the American Health Lawyers Association's "Top Honors" rankings and *Modern Healthcare's* "Largest Healthcare Law Firms" list in 2014; selected by *Chambers USA:* America's Leading Business Lawyers (2014, 2013, 2012, 2011 and 2010) as one of the nation's leading health law practices.
- We have been ranked by FORTUNE magazine as one of the "100 Best Companies to Work For" since 2010.
- We created BakerManage™, an industry-leading proactive project management system that ensures complicated legal matters are managed efficiently and completed on time and within budget.
- We created BakerCorp Connect and BakerLit Connect, collaborative, web-based tools that allow our clients to manage corporate and litigation matters more efficiently through real-time information. These and other related online services deliver cutting-edge legal support to our clients, reducing costs and improving results through innovative knowledge management.
- We established the Howard Baker Forum in Washington, D.C. to provide a platform for examining specific, immediate, critical issues affecting the nation's progress at home and its relations abroad. The Forum organizes a variety of programs and research projects to examine and illuminate public policy challenges facing the nation today.
- Our commitment to pro bono matters is routinely recognized on an individual city and lawyer basis. Recent nods have come from the Birmingham Bar Association Volunteer Lawyers Program, Louisiana State Bar, State Bar of Georgia, Mississippi Volunteer Lawyers Program, Mississippi State Bar, Legal Aid of East Tennessee and the Tennessee Bar Association.

- Our Baker Donelson Nonprofit Institute allows attorneys to provide board training, charter and bylaw review and advice, director liability analysis and more on a pro bono basis to nonprofit organizations.
- We have been consistently ranked by *Multicultural Law* magazine in the "Top 100 U.S. Law Firms For Diversity" since 2005, in the "Top 100 Law Firms For Women" since 2008, and in the "Top 25 Law Firms For African-Americans" since 2011.
- Women make up 25 percent of our Board, 23 percent of our shareholders, 36 percent of our attorneys and lead offices, practice groups and administrative departments.
- We established the Baker Donelson Diversity Scholarship Program for law students. Through it, recipients of the three annual scholarships are awarded a salaried second-year law student Summer Associate position, and $10,000 is paid during the students' third year of law school to help defray the cost of tuition and related expenses.
- Since 2006, we've been listed as a "Go-To Law Firm" in the Directory of In-House Law Departments of the Top 500 Companies, produced by *Corporate Counsel* and American Lawyer Media.
- *National Law Journal's* 2014 list names us as the country's 68th largest law firm. Named as 50th largest law firm on *Law360* 400 (number of U.S. attorneys) in 2014.
- *Chambers USA*: America's Leading Business Lawyers 2014 list ranked 81 of our attorneys across 23 practice areas, with 25 of those practice areas noted as leading practices in individual states.
- *Best Lawyers In America*® 2015 named 249 of our attorneys to its list. Based upon total number of attorneys listed, we are top-listed in the nation in 9 practice areas: Closely Held Companies and Family Businesses Law, Commercial Finance Law, Litigation – Construction, Mass Tort Litigation/Class Actions – Defendants, Medical Malpractice Law – Defendants, Personal Injury Litigation – Defendants, Product Liability Litigation – Defendants, Professional Malpractice Law – Defendants and Transportation Law.
- We were awarded 175 different Tier 1 metropolitan rankings in the 2014 *U.S. News – Best Lawyers* "Best Law Firms" list, which ranks us among the top 20 firms nationally with the most first-tier metropolitan rankings.

Our Office Locations



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Whether you are double-checking what you already know or need to learn something new about a legal issue, *Baker Donelson's Quick and Easy Guides to Labor & Employment Law* is for you. The topics covered in these web-based guides are the ones our clients ask about most often and cover the basic topics that HR professionals encounter on a daily basis. While this guide is certainly not intended to provide a "law-school" thesis on these issues, it will provide a useful reference tool for any HR professional.

Visit the URL below to get started. Don't forget to bookmark it for easy access!

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If you have questions about the Guides or any other labor and employment matter, do not hesitate to contact a Baker Donelson Labor & Employment lawyer for more information.

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Training Programs

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LABOR & EMPLOYMENT

Baker Donelson customizes all in-house management training programs so that your management team will feel comfortable interacting with us and getting answers to their questions.

The key to effective management training on employment law issues is interaction. Baker Donelson customizes all in-house management training programs so that your management team will feel comfortable interacting with us and getting answers to their questions. We use a variety of techniques to make the training sessions educational and entertaining, including the following:

Customization

Programs are made industry, business and/or company specific, including use of your company's policies, forms, mission and values during training sessions.

Non-Lecture

Training sessions are open and interactive, with ample time for managers to ask questions and get answers.

No Legalese

We make employment laws understandable for the layperson and modify content based on the attendees' experience level.

Mock Trials

Managers get a real-world view of what it is like to be a witness or a juror in an employment law case.

Video Vignettes

We create videos using your management team or purchase videos as options for enhancing the learning experience.

Case Studies

Managers are challenged to apply what they have learned through real-world scenarios pertinent to your business.

Quizzes

We offer a variety of quiz formats to enhance your managers' ability to retain what they have learned.

Role-Playing

Managers practice investigation techniques, termination scenarios, performance evaluation meetings and counseling scenes with us and their peers, giving them an opportunity to hone their skills and be able to react quickly when difficult employment situations arise.

Employment Law Training Topics Include:

Mid-Level Managers And Front Line Supervisors

- Basics of Employment Discrimination and a Guide to Common Causes of Discrimination/Harassment Complaints
- Creating and Maintaining a Harassment-Free Work Environment
- When and How Managers Should Respond to Employee Complaints
- Compliance Guides on The Family and Medical Leave Act (FMLA) and The Americans With Disabilities Act (ADA)
- Religious and Disability Accommodations: When, Where and How
- Management's Guide to Legal and Ethical Decision-Making
- Dos and Don'ts for Protecting Privacy Rights in the Workplace
- Reduce Legal Risks: Basics of Progressive Discipline, Documentation and Termination
- Making the Employee Handbook Your Management Playbook
- Recruiting, Interviewing, Selecting and Hiring Employees and Conducting Evaluations
- Conducting Internal Investigations
- Negligent Supervision: Easy Guide to Reducing Legal Risks
- Wage and Hour Law for the Front Line Supervisor
- Mission Possible: Union Avoidance
- Unlawful Retaliation: Prevention is Worth a Pound of Cure
- Leadership Workshops on Diverse Workforces, Reducing Legal Risks, and Motivation

Human Resources Professionals

- Internal Investigations A to Z
- The Americans With Disabilities Act: Straight Answers to Tough Questions
- Coordinating the FMLA, ADA, and Workers' Compensation
- Maintaining a Union-Free Work Environment
- How to Conduct an Employment Practices Audit
- Lawfully Managing Attendance
- Personnel Document Retention: Best Practices for Reducing Legal Exposure
- Developing an Employee Handbook
- Affirmative Action Compliance
- Surviving an OFCCP Audit
- A Step-By-Step Guide for Responding to an EEOC Charge
- Negligent Hiring: Crafting Policies and Procedures to Reduce the Risk
- Conducting a Wage & Hour Audit
- Train the Trainer Sessions
- Employment Verification: Policies, I-9, E-Verify and No-Match
- Managing Visas and Status for Foreign Workers

Executive Management

- Employment Law 101 for Executive Management
- Tone at the Top: Executive Management Commitment to a Harassment Free Workplace

To schedule your training program, please contact:

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kvance@bakerdonelson.com
615.726.5674