



18th Annual Labor and Employment Law Seminar Urgent Issues for Modern Employers

MeadowView Marriott
Conference Resort & Convention Center
Kingsport, Tennessee

Thursday, March 6, 2014
8:00 a.m. – 4:30 p.m.

BAKER DONELSON

EXPAND YOUR EXPECTATIONSSM

Schedule

8:00 a.m. – 8:25 a.m. **Registration**
8:25 a.m. – 8:30 a.m. **Welcome & Introduction**

8:30 – 9:15 a.m.

Significant Developments in Employment Law in 2013 and a Look Ahead.

This session will examine and consider the most significant developments in employment law over the last year and offer a practical view of how employers can limit risk going forward.

Speaker: Steven H. Trent

9:15 – 10:00 a.m.

Well, Well, Well . . . Are Wellness Programs the Answer to the Obamacare Puzzle for Employers?

This session will briefly review the current status of the Affordable Care Act's provisions before discussing in depth the legal implications of adopting one cost-containing alternative: employee wellness programs. The EEOC and some courts are closely scrutinizing such programs for compliance with non-discrimination mandates. It is important that you are aware of the potential pitfalls of noncompliance as well as the potential cost-saving benefits to your company of programs designed to increase employee activity, decrease dangerous behaviors and reward healthy employees. Be prepared for 2015 by considering these issues in 2014.

Speaker: Jennifer P. Keller

10:00-10:10 a.m. **Break**

10:10-10:55 a.m. **Breakout Sessions**

Tennessee Workers' Compensation: The Year in Review.

This session will provide an overview of the important cases and issues that significantly shaped Tennessee workers' compensation in 2013. It will also examine practical ways employers can navigate through these recent developments and what you can expect going forward.

Speaker: Christie M. Hayes

Goals, Benchmarks, Outreach & Accommodations: OFCCP's new regulations under VEVRAA and the Rehabilitation Act.

This session will address the significant changes federal contractors and subcontractors face regarding affirmative action requirements in the recruitment and employment of veterans and individuals with disabilities. Get the information you need for compliance before the OFCCP comes knocking.

Speaker: David Harvey

Managing the Absent Employee.

Do you employ someone whose FMLA intermittent leave days always coincide with holidays and weekends? Do you employ someone who was seen partying at Oktoberfest during continuous FMLA leave to recover from back surgery? Do you employ someone who requests a year of leave time as an ADA accommodation for "workplace phobia?" This session will examine some of the most challenging absenteeism issues facing employers today through the review of real-life case studies. Learn the legal and practical guidelines for managing the absent employee and keeping your business running smoothly.

Speaker: Mark A. Fulks

10:55 – 11:10 a.m. **Break**

11:10 – 11:55 a.m.

Religion and the Workplace: Competing Views = Competing Rights.

Today's diverse workforce will include religious diversity – even in the "Bible Belt." This session will provide an overview of issues related to religious discrimination in the workplace and offer practical guidelines for what triggers an employer's obligation to engage in the interactive process with an employee and, potentially, make a reasonable accommodation because of a sincerely held religious belief.

Speaker: Matthew D. Davison

11:55 – 1:05 p.m. **Lunch (provided)**

1:05 – 1:50 p.m. **Breakout Sessions**

The Art of Hiring and Firing – A Workshop.

The hiring and firing processes utilized by employers are some of the most fertile areas for potential litigation. In this hands-on workshop, learn how to recruit and retain qualified employees and what to do when it turns out a current employee is not as qualified as you would like. The hiring process will be discussed from solicitation to the offer of employment and sticky issues such as how and when to terminate an employee will also be explored.

Speaker: Drew Hutchinson

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Fallout from the Supreme Court's DOMA Decision.

Baker Donelson reviews the Supreme Court's decision finding unconstitutional certain parts of the Defense of Marriage Act and the effects on the employer/employee relationship, particularly in the employee benefits area. This session also considers related issues from the proposed Employment Non-Discrimination Act and follows up on last year's session on the evolution of discrimination laws.

Speaker: Chad E. Wallace

1:50 – 2:00 p.m. Break

2:00 – 2:45 p.m. Breakout Sessions

What's Love Got to Do With It?: Avoiding the Dangers of Workplace Romances.

When Cupid strikes in the workplace, should HR be concerned? The answer is "Yes!" This session will discuss the issues that employers should consider when it comes to romantic relationships between employees, including policy considerations, potential legal implications and practical solutions.

Speaker: Jennifer P. Keller

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Speaker: Chad E. Wallace

2:45 – 2:55 p.m. Break

2:55 – 3:40 p.m. Breakout Sessions

Internal Investigations – Getting to the Truth.

This session will focus on questions such as: What are the goals of an investigation? How do I create an investigative file? Does the order in which I conduct the investigation matter? How do I reach a conclusion in a "he said/she said" situation?

What should I do after the investigation is complete? Can I use investigative tools like polygraphs, background investigations or surveillance?

Speaker: Steven H. Trent

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Speaker: Mark A. Fulks

Wage and Hour Issues: It's Not Always Black and White.

This session will examine several commonly misunderstood or misapplied wage and hour rules, such as calculation of regular rate for overtime (when to include bonus and other payments); differentiating between working and non-working time; and properly classifying exempt employees, as well as often confused issues under the state wage payment laws, such as pay for unused vacation/PTO and requirements related to break/meal periods.

Speaker: Matthew D. Davison

3:40 – 3:50 p.m. Break

3:50 – 4:30 p.m.

Trends in Whistleblower/Retaliation Liability.

Retaliation claims frequently become an all-purpose fallback when other claims in employment litigation fail on their own merits. Charges of retaliation are commonly rooted in accusations that an employer adversely treated an employee for his or her legitimate whistleblower activity. Because of their seeming flexibility and breadth, retaliation lawsuits continue to rise and have become pervasive in all aspects of employment litigation. This session will cover the rise of third-party retaliation, the relationship of retaliation claims to other claims in employment litigation, and best practices to reduce the risk of litigation and limit damages, including: major case law developments under each element of an actionable retaliation claim – protected conduct, adverse action, and causation; trends in third-party retaliation liability and the "cat's paw" theory of liability; relationship of retaliation claims to claims of discrimination; sources of liability for "whistleblower" claims and common mistakes by employers; and best practices to reduce litigation and limit damages.

Speaker: Brent B. Young

Speakers



Steven H. Trent, strent@bakerdonelson.com

Mr. Trent represents employers before the NLRB and other state and federal agencies and advises employers on many topics including union avoidance, FMLA administration, reductions in force, wage and hour issues, employee handbooks, drug testing and employment contracts. He also represents the interests of management during the collective bargaining process. His multi-state practice includes defending claims under the Americans With Disabilities Act, Title VII, age discrimination claims, FLSA, Equal Pay Act, FMLA, breach of contract, and retaliation claims of virtually every kind. Mr. Trent is licensed in Virginia and Tennessee.



Jennifer P. Keller, jkeller@bakerdonelson.com

Ms. Keller is an employment litigator, member of the Firm's Board of Directors and Chair of the Firm's nationally-recognized Labor & Employment Department. Ms. Keller advises clients on a wide variety of issues, including discipline and terminations, benefits issues, leave, disability accommodation, policy formulation and enforcement, and similar matters. A substantial part of her practice is providing training for employers in the areas of harassment and discrimination prevention, drug-free workplace, union avoidance and other employment law issues. Licensed in Tennessee and North Carolina, Ms. Keller regularly practices in both state and federal courts in those states. She also regularly appears before various administrative agencies, and has significant experience in mediating, arbitrating, and litigating claims based on the Civil Rights Acts, FMLA, ADA, FLSA, NLRA, ERISA, state workers' compensation laws and state-specific employment laws.



Matthew D. Davison, mdavison@bakerdonelson.com

Mr. Davison has first-hand experience with all aspects of employment law and labor relations, having served as in-house counsel for human resources at an NYSE traded company. His experience includes employment issues related to mergers, acquisitions and reductions in force, as well as EEO and affirmative action compliance. Mr. Davison proactively advises clients on issues and disputes arising under both federal and state employment laws such as Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Family and Medical Leave Act. He also represents employers before the EEOC and in federal and state courts when litigation ensues. Mr. Davison is licensed to practice in Tennessee, North Carolina and Virginia.



Brent Young, byoung@bakerdonelson.com

Mr. Young has defended dozens of employers against claims of discrimination and other litigation matters. He has likewise counseled dozens of companies of all sizes on the enforcement of covenants not to compete, ERISA work, negotiated severance and separation agreements, and helped draft employee handbooks and employment applications. He is a frequent presenter at seminars on most employment topics and professional ethics issues and is bilingual (English and Spanish), conducting training and investigations in both languages. Mr. Young is licensed to practice in Tennessee and South Carolina.



Chad Wallace, cwallace@bakerdonelson.com

Chad E. Wallace advises employers on employment-related and general business topics, including FMLA, disability and leave, Title VII, and termination issues. He represents clients before administrative agencies, and defends them in state and federal courts on age discrimination claims, gender discrimination and harassment claims, retaliation claims and enforces noncompetition covenants. Mr. Wallace is licensed to practice in Tennessee and Kentucky.



Drew Hutchinson, dhutchinson@bakerdonelson.com

Mr. Hutchinson advises employers on a wide range of employment-related and general business topics and has experience in mediating, arbitrating, and litigating claims based on the Civil Rights Acts, FMLA, ADA, ERISA, state workers' compensation laws and state-specific employment laws. Mr. Hutchinson is licensed to practice in North Carolina, Tennessee and Washington, D.C.



David Harvey, dharvey@bakerdonelson.com

Mr. Harvey's representation includes drafting affirmative action plans under Executive Order 11246, performing compensation analyses and assisting clients in all aspects of Office of Federal Contract Compliance Programs issues. Mr. Harvey also counsels clients on wage and hour issues under FLSA and state law. He regularly represents employers in actions brought under Title VII, the Americans with Disabilities Act, the Equal Pay Act, state law employment claims and the Age Discrimination in Employment Act. Mr. Harvey is licensed in Tennessee, North Carolina and Pennsylvania.



Christie Hayes, chayes@bakerdonelson.com

Ms. Hayes has extensive experience in the area of workers' compensation issues, as well as experience counseling clients on a multitude of federal and state employment laws, including the ADA and FMLA. Ms. Hayes defends employers against employment discrimination claims before the EEOC and THRC and performs training for employers in the areas of discrimination and harassment prevention, drug-free workplace, union avoidance and similar issues. Ms. Hayes advises clients on a wide variety of issues, including leave, disability accommodation, policy formulation and enforcement, and similar matters. Ms. Hayes is licensed to practice in Tennessee and North Carolina.



Mark A. Fulks, mfulks@bakerdonelson.com

Mr. Fulks concentrates his practice in employment law and commercial litigation. He has successfully defended employers against whistleblower claims, and advises clients on a wide-variety of employment and management issues, including strategic management, social media, performance evaluations, and employee motivation. Mr. Fulks, a former prosecutor, donates his time to pro bono representation of indigent criminal defendants and accepts appointment to prosecute cases as a District Attorney General Pro Tem. Mr. Fulks is licensed in Tennessee and Virginia.



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