

16TH ANNUAL  
LABOR & EMPLOYMENT LAW SEMINAR  
**URGENT ISSUES  
FOR MODERN EMPLOYERS**

MEADOWVIEW MARRIOTT  
CONFERENCE RESORT & CONVENTION CENTER  
KINGSPORT, TENNESSEE

THURSDAY, FEBRUARY 23, 2012  
8:00 A.M. — 4:30 P.M.



**BAKER DONELSON**  
BEARMAN, CALDWELL & BERKOWITZ, PC

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# SCHEDULE

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

8:30 a.m. - 9:15 a.m.

## **EEOC and Discrimination Update: Recent Developments**

This topic will provide an update on recent developments at the Equal Employment Opportunity Commission and will also include a survey of the types of evidence used by plaintiffs to “prove” discrimination in court.

Speaker: Steven H. Trent

9:15 a.m. - 10:00 a.m.

## **The ADA: Out of the Frying Pan and into the Fire**

This session will cover the changes and challenges brought about by the ADA, the EEOC’s issued guidance interpreting the Act, recent case law developments, and practical advice for responding to requests for accommodation.

Speaker: Jennifer P. Keller

10:00 a.m. - 10:10 a.m. BREAK

10:10 a.m. - 10:55 a.m. BREAKOUT SESSIONS

## **Immigration: Ensuring Compliance When Hiring Foreign Nationals**

This session will discuss employer best practices and detailed guidelines for employing foreign nationals. This briefing will also review and focus on recent updates regarding employment verification with emphasis on E-Verify and the implementation of the Tennessee Lawful Employment Act.

Speaker: Mabel Arroyo-Tirado

## **Tennessee Workers’ Compensation: The Year in Review**

Provides an overview of the important cases, issues and new laws that significantly shaped Tennessee Workers’ Compensation in 2011. This session also examines practical ways employers can navigate through these recent changes and what employers can expect in 2012.

(This session is also available at 1:05 p.m.)

Speakers: Philip R. Baker & Drew Hutchinson

## **Guns, Drugs and Videotape**

This session will discuss a number of less common but important issues involving workplace premises issues, substance abuse policies, and workplace privacy concerns. Specifically, this session will discuss the legal issues surrounding guns in the workplace, workplace violence, the Tennessee Drug Free Workplace Program and the creation and use of recorded communications in a workplace setting.

Speaker: Christie M. Hayes

10:55 a.m. - 11:10 a.m. BREAK

11:10 a.m. - 11:55 a.m.

## **The Dangers of Retaliation: Avoid Making a Mountain out of What Otherwise May be a Molehill**

This session will discuss the dangers associated with the increasing number of potential

retaliation claims faced by the modern employer, such as those that may arise under generic state whistleblower statutes and common law, as well as the specific anti-retaliation provisions of numerous federal and state statutes such as Sarbanes-Oxley and the Dodd-Frank Act, and will offer practical avoidance tips.

Speaker: Matthew D. Davison

11:55 a.m. - 1:05 p.m. LUNCH (provided)

1:05 p.m. - 1:50 p.m. BREAKOUT SESSIONS

## **Restrictive Covenants in the Workplace: New Developments and Limitations**

We will cover the basics of covenants not-to-compete as well as other covenants between employers and employees, and discuss their use by employers, possible pitfalls in drafting and attempting to enforce such covenants, and the current view of such covenants by the courts in Tennessee and Virginia.

Speaker: Chad E. Wallace

## **Employee Classification and Other FLSA Concepts that Employers Should Know and Understand**

An in-depth look at exemptions under the FLSA and steps employers should take to avoid liability for misclassification. The session will also touch on some alternative pay methods for non-exempt employees. Finally, the session will examine travel time and some other FLSA issues that are often misunderstood.

Speaker: David Harvey

## **Tennessee Workers’ Compensation: The Year in Review**

(This session is also available at 10:10 a.m.

See previous session description.)

Speakers: Christie M. Hayes & Drew Hutchinson

1:50 p.m. - 2:00 p.m. BREAK

2:00 p.m. - 2:45 p.m. BREAKOUT SESSIONS

## **Employment Law 101: Back to Basics**

This session will provide an introduction and overview of basic employment laws and issues and to which employers they apply.

Speaker: Philip R. Baker

## **Bulletproof Documentation**

Participants will obtain an “attorney’s view” on how to make your organization’s documentation stand up to attacks from unhappy employees and plaintiffs’ attorneys. Learn the dos and don’ts of good documentation and hear analysis of some specific fact scenarios.

Speaker: Chad E. Wallace

## **How the New National Labor Relations Board Will Impact Your Business**

Decisions by the National Labor Relations Board affect both union and non-union companies. The current Board is viewed by many as

bringing about substantial changes in union and employer campaigning, elections and allegations of unfair labor practices challenging traditional management prerogatives. We will review and discuss important decisions by the Board and new or proposed regulations, including President Obama’s recent appointment of three new NLRB members that will lead to more big changes in 2012. This is information that is critical to your company whether or not you currently have a union.

Speaker: Steven H. Trent

2:45 p.m. - 2:55 p.m. BREAK

2:55 p.m. - 3:40 p.m. BREAKOUT SESSIONS

## **The Ever-Evolving Role of Social Media in the Workplace: Where Are We and Where Are We Going?**

This session will explore the evolution of social media and networking as they relate to the modern employer, with a particular focus on the associated risks of liability to the employer and practical methods for reducing those risks, in light of the inevitable evolution of technology and culture moving into the future.

Speaker: Matthew L. Davison

## **Hiring and Firing: Key Steps to Avoid Litigation**

This session will discuss employer best practices when it comes to hiring and firing, as well as tips to avoid litigation during the process. In addition, this session will emphasize steps you can take to position your company for a successful defense when litigation is unavoidable.

Speaker: Brent B. Young

## **Revisiting the ADA/ FMLA/Workers’ Compensation Intersection: Navigating through the Bermuda Triangle and Coming Out Alive**

This will be an interactive session utilizing true-to-life scenarios implicating these three important sets of laws.

Speaker: Jennifer P. Keller

3:40 p.m. - 3:50 p.m. BREAK

3:50 p.m. - 4:30 p.m.

## **Managing the Challenging Employee**

Supervising others is never easy—but some employees make it particularly difficult. Challenging employees can try a manager’s patience, drain time and energy, and create potential legal exposure. To successfully navigate a change in course takes skillful management. This session will include: how to identify challenges associated with supervising difficult employees; how to create a positive work environment for all; how to respond positively to challenging employees and treat them fairly; and how to avoid or mitigate the pitfalls of associated legal exposure.

Speaker: Brent B. Young

## SPEAKERS



**JENNIFER P. KELLER**, chair of the Firm's Labor & Employment Department, concentrates her practice in the areas of employment and workers' compensation litigation. She regularly practices in state and federal court and before various administrative agencies, including the DOL, EEOC, THRC and NLRB. A substantial part of her practice is performing training for employers in the areas of harassment and discrimination prevention, drug-free workplace, union avoidance and similar issues. Ms. Keller has been listed in *Best Lawyers in America*<sup>®</sup> since 2008. She is a member of the Defense Research Institute and is licensed in Tennessee and North Carolina.



**STEVEN H. TRENT** chaired the Firm's Labor & Employment Department for eight years. He represents employers before the NLRB and other state and federal agencies and

advises employers on many topics, including union avoidance and FMLA administration. His multi-state practice includes defending claims under the Americans with Disabilities Act, Title VII, age discrimination, Equal Pay Act, FMLA and breach of contract claims and retaliation claims of virtually every kind. Mr. Trent has been listed annually since 2005 in *The Best Lawyers in America*<sup>®</sup> and is licensed to practice in both Tennessee and Virginia.



**MATTHEW D. DAVISON** concentrates his practice in labor and employment law. His experience includes Title VII, ADA, ADEA, FMLA, FLSA and workers' compensation litigation. He

also has first-hand experience with all aspects of employee and labor relations (including collective bargaining), employment issues involved with mergers and acquisitions, and affirmative action compliance. Mr. Davison is licensed to practice in Tennessee, Virginia and North Carolina.



**BRENT B. YOUNG** has experience in age discrimination defense, defense and enforcement of covenants not-to-compete, ERISA work, negotiation of severance and separation agreements, and drafting of and consultation on employee handbooks, employment applications and other applicable documents. He also has been extensively involved in the development and implementation of alternative dispute resolution programs for several clients. Mr. Young is licensed to practice in Tennessee and South Carolina.



**PHILIP R. BAKER** concentrates his practice primarily on employment law, with substantial experience providing counsel, advice and litigation defense for employers in

workers' compensation, retaliatory discharge and discrimination issues. Mr. Baker has substantial experience in preparing and participating in mediations designed to help employers prevent litigation costs. Mr. Baker also has experience drafting employment agreements, including non-competes, employee loan-repayment agreements and independent contractor agreements. He is licensed to practice in Tennessee.



**CHAD E. WALLACE** concentrates his practice in the areas of labor and employment law and commercial litigation. He advises businesses/employers on a wide range of employment-related

and general business topics, and he represents clients before various state and federal courts and administrative agencies. Mr. Wallace is licensed to practice in Tennessee and Kentucky.



**MABEL ARROYO-TIRADO** concentrates her practice in the area of immigration. Fluent in both English and Spanish, Ms. Arroyo-Tirado 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.



**DAVID HARVEY** concentrates his practice in labor and employment law. His representation includes drafting affirmative action plans, performing salary grade comparisons, adverse impact calculations and other documents related to OFCCP compliance reviews. Mr. Harvey also counsels clients on issues such as the FLSA and the ADEA. He is licensed to practice in Tennessee, Pennsylvania and North Carolina.



**CHRISTIE M. HAYES** concentrates her practice in labor and employment issues. She has extensive experience in the areas of workers' compensation, ADA and FMLA, and defends

employers against discrimination claims before the EEOC and THRC. Ms. Hayes is licensed to practice in Tennessee and North Carolina.



**DREW HUTCHINSON** concentrates his practice in the areas of labor and employment. He has a broad range of experience in civil litigation matters and contract disputes on behalf of a diverse

client base. He also has experience in negotiating and drafting license agreements, commercial transactions and the formation and acquisition of various business entities. Mr. Hutchinson is licensed to practice in Tennessee and D.C.

## REGISTRATION INFORMATION

**To Register:**

Please complete the enclosed form and mail, fax or email it to:

Laralee Harkleroad  
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC  
P.O. Box 3038  
Johnson City, TN 37602  
423.928.0181 phone 423.928.5694 fax  
lharkleroad@bakerdonelson.com

**Fee:**

The fee for the seminar is \$125 per attendee.

**Deadline:**

All registration forms must be received by February 17, 2012. Register early for a guaranteed spot. Refunds will be made for cancellations received one week or more prior to the seminar.



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When you have labor and employment needs, you want a firm that understands and services your entire business. We give you what boutique labor and employment firms can't: a set of attorneys who are not only dedicated to the practice of labor and employment issues, but who can also employ an integrated and experienced team of professionals to assist you in every other aspect of your legal business needs. We set ourselves apart by valuing your entire company – not only your employees but also your intellectual property, your shipping and logistics systems, your real estate and equipment assets, your corporate structure and everything that makes your company what it is. And when it comes to your company's most valuable asset, your employees, our attorneys are committed to counseling with and advocating for you every step of the way.

With litigation avoidance in mind, the Group has developed extensive training programs for client supervisors and managers. The training programs, along with on-point legal advice, help to ensure clients' compliance with employment and employment-related laws and regulations. Training programs are provided in-house for clients in the areas of union avoidance, workplace harassment prevention, OSHA compliance, Family Medical Leave Act and drug-free workplace, among others.

The Firm also customarily represents clients in developing a general union avoidance approach in advance of union election campaigns, in the clients' dealings with labor unions during the election phases of union campaigns and in the negotiation of any labor agreements. For those clients who have unions representing their workforces, the Firm pursues management's interests in all phases of the grievance and arbitration process. Clients are represented before all governmental bodies charged with the enforcement of employment statutes and policies.

In circumstances of unavoidable litigation, the Firm's labor and employment attorneys have extensive experience in state and federal courts throughout the country defending wrongful discharge claims, various employment-related tort actions, and state and federal claims of unlawful discrimination and harassment, in both individual plaintiff and class action suits. In addition, Baker Donelson labor and employment attorneys provide representation in the following areas:

- Workplace harassment and discrimination prevention and defense
- Drug-free workplace
- Reasonable accommodation
- Wage and hour laws
- Unfair labor practice allegations before the National Labor Relations Board
- Charges before the U.S. Department of Labor
- Workers' compensation
- OSHA compliance and litigation
- Employee benefits
- Family and medical leave
- Policies and handbooks/affirmative action plans
- Federal Immigration laws and regulations

Baker Donelson's labor and employment attorneys belong to numerous nationally recognized organizations, and they regularly organize and conduct industry-specific seminars and roundtables on relevant topics in the labor law arena. The Group also regularly publishes and distributes to clients and potential clients legal alerts and industry updates.

Baker Donelson has been ranked among the Top 10 Labor & Employment litigation firms in the country by *Employment Law 360*, the newswire for labor and employment law professionals. The Labor & Employment Group includes more than 90 experienced attorneys who work with clients on all issues relating to workplace law. The Firm's experience, reputation and proven cost-effective representation of clients' labor and employment matters for more than 30 years have resulted in the representation of a growing list of local, regional and national clients headquartered throughout the south central United States.

For more information, please visit [www.bakerdonelson.com](http://www.bakerdonelson.com).

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The Rules of Professional Conduct of the various states where our offices are located require the following language: Jennifer P. Keller, Chair of the Labor & Employment Department, is located in the Johnson City office of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, 100 Med Tech Parkway, Suite 200, Johnson City, Tennessee 37604. Phone: 423.928.0181. No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. FREE BACKGROUND INFORMATION AVAILABLE UPON REQUEST.

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