



2018  
**HR COMPLY**  
An HR Daily Advisor Event

November 14-16,  
Las Vegas, NV

Register Today

## PRECONFERENCE LEARNING OPPORTUNITIES *(Day 1 of HR Comply 11/14/18)*

### **Continental Breakfast/Preconference Registration**

7:30-8:30 a.m.

### ***Choose from Full and Half-Day Workshops:***

#### **(Full day) FMLA Master Class: Advanced Leave Management Training**

8:30 a.m. – 4:30 p.m. (lunch on your own from 12:00 – 1:00 p.m.)

*Presented by Susan Fentin, Esq., Skoler, Abbott & Presser, P.C. and Stacie Caraway, Esq., Miller & Martin PLLC*

This intensive all-day workshop is designed to teach you how to master FMLA fundamentals and apply your knowledge to the type of real-life, fact-specific situations that arise in every life. You'll learn how to determine who's eligible for FMLA Leave; how to ensure compliance with applicable notice requirements; the steps to take to prevent, spot, and thwart FMLA abuse; and how to manage overlapping—and often confusing—leave and accommodation requirements under FMLA, the ADA, and workers' compensation. Then, you'll work with other attendees to come up with answers to real-life scenarios so you can demonstrate your command of the myriad issues you need to be able to spot and address concerning, reduced schedule and intermittent leave, return to work, performance issues, and much more.

You'll learn:

- FMLA eligibility rules—how to tell when leave must be granted
- How to obtain the appropriate information on the medical certification to provide you with the information you need to determine if an illness or injury constitutes a serious health condition
- FMLA notice and deadline requirements
- Practical strategies for curbing FMLA fraud and abuse stemming from intermittent and reduced schedule leave
- Legal strategies for mastering tricky FMLA issues, such substituting various types of paid leave for FMLA leave, when job reinstatement rights apply, Department of Labor investigations into your FMLA administration practices, and more
- How to manage intersecting compliance obligations under FMLA, the ADA, and state family and pregnancy disability leave and workers' compensation laws
- How to “issue spot” and work through every day issues that you're likely to be faced with concerning:
  - Insufficient or unreturned medical certifications and fitness-for-duty evaluations

- Intermittent leave and reduced schedule leave tracking and how to spot and prevent FMLA abuse
- How to count FMLA leave and pay during holidays and office shutdown
- Performance issues that happen to coincide with a protected employee's request for FMLA leave
- How to handle situations when an employee can't return to work at the expiration of his or her leave or can only return with restrictions but can't perform the essential job functions

**(AM only) Immigration & I-9 Recordkeeping: How to Evaluate Documentation for Employment Eligibility & Reverification, Correct Errors and Omissions, Avoid Discrimination Claims, and Respond to ICE Audits**

*Presented by: Elaine Young, Esq., Kirton McConkie*

8:30 a.m. – 11:30 a.m.

This intensive workshop is broken up into 3 sections designed to provide you with the tools necessary for ensuring ongoing I-9 recordkeeping compliance as well what you need to know to prepare for ICE audits and avoid discrimination charges stemming from your Form I-9 practices. You'll learn how to:

- Ace your Form I-9 completion obligations for new employees and rehires, including best practices for ensuring that your completion and re-verification on the current Form I-9 (commonly referred to as the SMART I-9) comply with federal requirements
- Self-audit your I-9 recordkeeping practices by evaluating the documentation you have on file and correcting errors and omissions with respect to Sections 1, 2, or 3 of the Form I-9 so you can minimize legal liabilities
- Manage ICE audits and raids—what you must do, what you may refuse to do, and how to effectively and humanely manage your workforce and avoid discrimination claims

**(PM only) Employment Policies and Procedures Drafting Workshop**

*Presented by Mark Schickman, Esq. and Cathleen Yonahara, Esq., Freeland Cooper & Foreman LLP*

1:30 – 4:30 p.m.

What are the essential employment policies and procedures that should be included in your employee handbook for the coming year? This hands-on workshop will teach you key language to include—and the issues to steer clear of—regarding your company's employment policies and procedures. You'll learn:

how to draft policies and procedures concerning leave administration, ADA accommodations, hiring and pre-employment screening practices, and much more.

We'll cover:

- At-will employment
- Internal hiring/anti-nepotism
- Drug testing/use/zero tolerance policies
- Harassment prevention and anti-retaliation including compliant procedures for reporting

- Reasonable accommodation requests due to ADA-protected disabilities
- Pregnancy-based accommodations
- Hiring practices—how to avoid asking questions that are unlawful
- Labor relations, including social media usage and confidentiality
- Varied forms of paid and unpaid leave, e.g. paid sick and family and medical leave—and leave policies for employers *not* covered by FMLA, but who want to offer some equivalent form of medical/family leave
- Parental/bonding leave (distinct from maternity/pregnancy leave)
- Moonlighting/anti-moonlighting (which can be of particular importance when dealing with employees on FMLA leave)
- Premium pay/use of time off during holiday periods
- Treatment of accrued leave on termination (payout/forfeit/accrual cap)
- Fragrances and allergens in the workplace
- Discipline (to allow you, as the employer, the most flexibility)
- Absenteeism/job abandonment/no-call, no-show
- Harassment
- Employee travel/compensation for travel time
- Inclement weather/business disruptions
- Telecommuting, remote work, and flexible work arrangements
- Social media use, privacy, and security
- BYOD
- Workplace violence

### **MAIN CONFERENCE DAY 1 (Day 2 of HR Comply 11/15/18)**

[Registration/Breakfast: 7:00 a.m. – 8 a.m.]

[Announcements: 7:55 a.m. – 8:00 a.m.]

#### **Opening Keynote**

#### **The Time for a Culture Shift Is Now: How to Fix a Broken Culture and Inspire Teams to Achieve Greatness**

8:00 a.m. – 9:00 a.m.

*Presented by: Patty McCord, Workplace Innovator, Culture and Leadership Consultant and Former Chief Talent Officer, Netflix*

As chief talent officer for Netflix, Patty McCord co-authored the Netflix Culture Deck. Since its creation, the deck has been viewed more than 15 million times, and Sheryl Sandberg calling it perhaps “the most important document ever to come out of Silicon Valley.” Ms. McCord may have moved on from Netflix, but she continues to leave a strong and thought-provoking mark as she coaches and advises companies around the world on culture and leadership. Her new book *Powerful: Building a Culture of Freedom and Responsibility*, which the *Washington Post* named one of the top 11 leadership books to read in 2018, reveals why most companies fail at hiring, motivating, and creating exceptional teams. Her kickoff keynote includes revealing insights that just might change the way you think about how your business

should be run. She'll give you actionable input into how to make the necessary cultural shifts to keep up with changing business needs and to continually motivate and inspire the workforce. And, in today's #MeToo and #TimesUp era, she'll touch on ways to identify and work toward fixing a broken culture that could be contributing to negative stereotypes or inequitable practices that can damage a company's reputation and its people if not put in check.

### **Hot Topic Power Talks**

9:10 – 10:20 a.m.

HR Comply's "Hot Topic Power Talks" are designed to provide insightful and sophisticated commentary on some of the most interesting workforce challenges facing employers for 2018 and beyond.

- **Wage & Hour Litigation Under the Trump Administration**

9:10 -9:30 a.m.

*Presented by Ruben Garcia, University of Nevada, Las Vegas*

The election of Donald Trump and his appointment of Alexander Acosta as the new Secretary of Labor has had distinct consequences for the future enforcement of the Fair Labor Standards Act (FLSA), which governs the payment of minimum wages and overtime compensation under federal law. This *Hot Topic Power Talk* will brief you on what's on the horizon in terms of Department of Labor regulation/enforcement and wage and hour litigation concerning hot-button issues like:

- Tip-sharing pools
- What to expect from the DOL on overtime exemptions, including a new proposed annual salary threshold
- Whether ride-sharing workers are likely be deemed exempt from overtime pay
- What the DOL's new Payroll Audit Independent Determination Program (PAID) could mean for wage and hour audits

- **Arbitration Agreements: What to Use Them for and When to Steer Clear**

9:35 – 9:55 a.m.

*Presented by Mark Schickman, Esq., Freeland, Cooper & Foreman LLP*

Employers have a strong interest in getting their employees to sign arbitration agreements as condition of hiring. After all, getting them to agree to your terms could mean the difference between years of defending costly legal claims in court and a "one-and-done" hearing before an arbitrator to determine whether their legal claims have any merit and whether they are entitled to any damages as a result. But, a new bill that's been introduced in Congress seeks to bar arbitration of sex discrimination or harassment claims. The bipartisan legislation—"Ending Forced Arbitration of Sexual Harassment Act" (S.

2203; HR 4570)—includes a downright scary provision for employers: If this act becomes law, courts would have the authority to invalidate an entire arbitration agreement if it includes terms requiring an employee to arbitrate sex discrimination disputes. This timely *Hot Topic Power Talk* will provide valuable insight into the types of issues to steer clear from including in your arbitration agreements given the current status of court rulings and legislation that has already been enacted or is likely to take effect.

- **HR's Data Security and Notification Game Plan in the Event of a Breach**  
10:00 - 10:20 a.m.

*Presented by Daniel Nelson, C EH, Armstrong Teasdale*

S.B. 2179 has been introduced in Congress. Known as the Data Security and Breach Notification Act of 2017, this law would have a sweeping impact on how businesses manage their data security and breach notification practices. That's because it would standardize how data breaches must be reported and replace close to 50 state-based laws addressing the issue. What personally identifiable information (PII) is most vulnerable to hacking, and what are some of the best practices cybersecurity experts recommend for ensuring that confidential and sensitive data your workplace stores as a matter of doing business is well protected to guard against damaging and potentially financially devastating data security breaches? This Hot Topic Power Talk will brief you on where new state and federal data security and notification legislation stands and provide best practices for protecting PPI.

### **Networking & Refreshments Break**

10:20 a.m. – 10:45 a.m.

### **Breakouts**

10:45 a.m. – 12:00 p.m.

### **Foundations in HR Compliance**

#### **Today's Biggest Recruiting and Hiring Pitfalls—and How to Avoid Them**

10:45 a.m. – 12:00 p.m.

*Presented by Cathleen Yonahara, Esq., Freeland Cooper & Foreman LLP*

Researching candidates on social media, inquiring about criminal background, asking applicants to disclose salary history, requiring pre-employment medical examinations—these are just a few of the sticky areas employers grapple with when recruiting and hiring new employees. This session is designed to provide the most up-to-date information on how to recruit and hire without running afoul to the law.

You'll learn:

- Do's and don'ts for conducting background checks, including the latest on "ban-the-box" laws now in effect
- How to use social media for sourcing and recruiting—and what never to use it for
- What you legally can and can't ask during the interview

- How to evaluate the wording of your employment applications to identify areas that could leave your company vulnerable to legal liabilities, including the latest on laws taking shape nationwide that ban inquiries into salary history
- Best practices for managing the pre- and post-offer phases of the hiring process, so you don't spark liability under the Americans with Disabilities Act or other federal laws

### **Legislative/Regulatory Updates and Trends**

#### **Paid Sick, Parental & Family Leave Hotbed: Multi-State Updates for Mastering Emerging Compliance Obligations**

*Presented by: Kara Shea, Esq., Butler Snow, LLP and Kevin McCormick, Esq., Whiteford, Taylor & Preston*

Legally mandated paid sick leave is gaining support in states and municipalities around the country. Currently, at least eight states and the District of Columbia have paid sick leave laws on their books, two of which will first take effect in 2018. Plus, you still need to juggle your existing obligations relating to PTO and family leave. Given this uncertain yet highly active environment, *now* is the time to anticipate the changes that you might need to make to your existing policies if paid sick leave comes to your jurisdiction. During this session, you'll learn how the recent developments related to paid sick leave affect your daily operations and workplace policies and get best practices for administering PTO—from accurately accounting for partial day absences to instituting vacation time caps—and how to identify other policies that could be affected by mandatory paid sick leave.

We'll cover:

- What an effective, legal PTO policy generally looks like
- Where paid sick leave laws have passed or are being considered
- Requirements employers may be subjected to concerning carryover and notice/posting requirements
- PTO administration best practices, including:
  - How to correctly account for partial-day absences under your PTO policy
  - The kinds of notice you need to give exempt workers before forcing them to use accrued PTO during furloughs
  - What paid vacation vs. PTO can mean when it comes to overtime pay for nonexempt employees
  - The lowdown on "use it or lose it" policies
- Tactics for combining PTO leave with protected leave under FMLA
- Smart moves regarding cashing out unused time and examples of when PTO counts as a wage under state law
- What's new from the Trump Administration regarding paid leave, and what might be coming
- PTO and the exempt employee: When you can dock pay
- Legal ways to institute caps on vacation banks
- How PTO works when an employee is eligible for pregnancy disability leave or paid family leave
- And much more!

## **HR Management Solutions**

### **Flexible Work Arrangements: Talent Development Considerations and Legal Policies for Today's Distributed Workforce**

10:45 a.m. – 12:00 p.m.

*Presented by Michael D. Haberman, Omega HR Solutions, Inc. and Jonathan Mook, Esq. DiMuro Ginsberg PC*

Today's workers aren't necessarily keeping the same hours that you do or working down the hall from you. Many organizations have policies that provide for flexible work arrangements, with remote telecommuters or in-house staff working compressed workweeks or engaging in job sharing. What are the benefits and potential legal drawbacks to flexible work arrangements? And, how can HR keep a handle on everyone to ensure they're properly trained on workplace policies and practices, including tracking hours, and to make sure that you're complying with notice and posting requirements for your distributed workforce. This session will focus on the top legal pitfalls to avoid when it comes to managing flexible work arrangements, including how to ensure you're in compliance with the individual laws that may apply to employees working in multiple states on individualized schedules, and more.

You'll learn:

- Why some organizations are starting to pull back on letting employees telecommute
- Answers to questions such as:
  - Is there a link between retention and the flexibility of telecommuting?
  - Which types of workers should generally be considered as candidates for working remotely and which shouldn't?
- How do you know if your telecommuters are actually working effectively?
  - The case for "agile teams" and collaboration when rolling back telecommuting—and whether telecommuting rollbacks may lead to massive employee unhappiness and/or departures
  - How to attract and retain talent if you're in a second-tier city and want employees to work on-site
  - How to tell if telecommuters are less engaged than on-site workers
  - Examples of organizations where telecommuting is going strong
  - What constitutes a disability that may merit a flexible work arrangement as an ADA accommodation
  - How to properly record hours worked for nonexempt telecommuters, job sharers, and those working compressed workweeks
  - Whether you may pay employees afforded flexible work arrangements less than other employees
  - Key issues concerning workers' compensation
  - Telecommuting and other flexible work arrangement agreement essentials
  - When it may make more sense to consider job sharing vs. full-time employment
  - How to effectively address flexible work arrangements in your company's employee handbook
  - How to evaluate job duties to determine whether on-site attendance or a specific schedule is an essential function of the job

- The potential hidden costs of flexible work arrangements
- How to get the best performance out of employees working through flexible arrangements
- How to equitably evaluate work performance and work quality regardless of whether an employee works a traditional, in-house schedule or works different hours remotely

### **Lunch, Networking & Exhibits**

12:00 – 1:00 p.m.

### **Breakouts**

1:00 p.m. - 2:15 p.m.

### **Foundations in HR Compliance**

#### **Management Training that Can Help HR Avoid Legal Risks**

1:00 p.m. - 2:15 p.m.

*Presented by: Todd Ewan, Esq., Fisher Phillips LLP*

This session will provide you with the nuts and bolts on what to train supervisors and managers to do—and not do—with respect to many every day issues, including:

- Employee time cards and working “off the clock”
- Documenting performance issues
- Managing interpersonal conflicts among team members and tips for dealing with difficult employees
- How they should respond to requests for references
- Social media monitoring
- And much more!

### **Legislative/Regulatory Updates and Trends**

#### **Federal Contractors’ Latest Compliance Hurdles—and How to Avoid Costly OFCCP Violations and Get EEOC and Affirmative Action ‘Right’**

1:00 p.m. - 2:15 p.m.

*Presented by: Mickey Silberman, Esq., Fortney Scott LLC*

Employers that are federal contractors face complex and often confusing EEO, affirmative action, and pay equity obligations. And, the Office of Federal Contract Compliance Programs (OFCCP), the federal agency that enforces these obligations, makes sure contractors stay in compliance, with real consequences if they don’t. Each year the agency conducts thousands of proactive compliance audits and investigations (no employee complaint needed) to keep contractors “honest.” Stakes are high for non-compliant employers—OFCCP can allege systemic discrimination, impose large monetary “back-pay” demands and even threaten debarment from current and future contracts for those who don’t comply. In this session, we’ll review and discuss the latest trends in OFCCP enforcement and help employers “get OFCCP right.”

This session, designed for federal contractors, will brief you on:

- OFCCP's aggressive approach to investigating employers' pay systems and demands for equal pay for broad groups of employees who often are doing very different jobs
- Effective ways to assess your diversity outreach and recruitment efforts to pass OFCCP scrutiny
- Defining "applicant" in a strategic way to manage and minimize recordkeeping requirements
- Creative and efficient methods for monitoring your hires, promotions and terminations trends to ensure you uncover "hidden barriers" to equal employment opportunity and OFCCP compliance

### **HR Management Solutions**

#### **Personality and Aptitude Tests: Weighing the Rewards Against the Legal Risks**

1:00 p.m. - 2:15 p.m.

*Presented by: Ryan Frazier, Esq., Kirton McConkie*

Pre-employment personality and aptitude tests can be an effective way to determine whether a job candidate possesses the types of traits and skills necessary to excel in the role. But, it's important to only conduct such employment testing when you have a firm grasp on how hiring decisions based on test results could leave your company vulnerable to legal risks.

This session will teach you:

- How to ensure that your pre-employment testing procedures are legally defensible in the event the organization is legally challenged about the basis for its decision
- Risk avoidance strategies concerning the use of big data in hiring decisions
- Examples of how an algorithm could have a disproportionate impact on a segment of your applicant pool
- And more

#### **Refreshments, Networking & Exhibits Break**

2:15 p.m. – 2:40 p.m.

#### **Breakouts**

2:40 p.m. – 3:55 p.m.

### **Foundations in HR Compliance**

#### **#Me Too and #TimesUp: Bullying and Sexual Harassment Prevention and Training**

*Presented by Susan Fentin, Esq., Skoler, Abbott & Presser, P.C.*

The #MeToo and #TimesUp explosion has raised questions about the effectiveness of traditional anti-harassment training. Companies have been conducting anti-harassment training for years. Why is it that sexual harassment training has not worked? How can HR ensure that managers and employees understand their company's position on unlawful harassment? This session will review the elements of

a successful anti-harassment training and cover strategies for ensuring that your workplace is free from all forms of illegal harassment.

Topics to be covered include:

- Signs of a “dangerous” workplace culture that might leave your company particularly vulnerable to harassment claims
- Why the involvement of senior management is critical to the success of an anti-harassment program
- The role of civility in preventing bullying and harassment
- What supervisors need to know and understand about their obligations
- How to ensure that employees feel free to complain about inappropriate conduct in the workplace
- How to encourage bystander intervention and the role that can play in addressing problematic conduct
- Why a respectful workplace is the foundation for a harassment-free environment
- The key differences between supervisor, coworker, or client/vendor harassment and how to handle each
- Employers’ obligations when a complaint of harassment is brought forward – what to do and what not to do
- The significance of a complete anti- discrimination/harassment policy

### **Legislative/Regulatory Updates and Trends**

#### **Pay Equity is Getting More ‘Comp’licated: How to Proactively and Strategically Protect Your Organization in Light of New, Aggressive Equal Pay Laws**

*Presented by: Mickey Silberman, Esq., Fortney Scott LLC*

Equal pay is hot, and pay discrimination claims are on the rise. The momentum continues to grow—quickly. In two years, more than a dozen states and several major cities have passed new, aggressive equal pay laws designed to make it easier for employees to bring (and win) pay discrimination claims. This growing “patchwork” of federal, state and local laws poses particularly concerning challenges especially for multistate employers. For instance, how can multistate organizations comply with different and often contrasting laws from state to state? How can organizations proactively address pay equity issues *before* being targeted for internal complaints, EEOC charges, OFCCP investigations and the growing wave of private litigation? Also, how can an organization find and fix the unexplained pay disparities that lurk within our pay systems? And, can an organization do this all “under privilege” so it doesn’t have to turn over its efforts in discovery in response to demands from increasingly savvy plaintiffs’ counsels and enforcement agencies? This session will outline a proactive and strategic approach for HR professionals concerned about how to address the growing pay equity challenges employers face.

You’ll learn:

- The growing patchwork of new state and big-city equal pay laws, what they mean practically, and how to respond
- How to take advantage of the “safe harbors” under many new state equal pay laws to protect your organization from claims and liability

- How to conduct a proactive self-audit of your pay system to find and fix unexplained pay disparities
- And much more!

### **HR Management Solutions**

#### **Severance Agreements: When to Use Them and How to Minimize Legal Risks and Make the Transition as Seamless as Possible**

Presented by *Mark Schickman, Esq., Freeland, Cooper & Foreman LLP*

You're letting one or more workers go—should you offer severance? If so, how much? And will the severance payment and agreement fully protect you from the possibility of a future lawsuit? While a signed severance agreement can provide some protection from future litigation, it's not an ironclad guarantee—and some risks simply cannot be waived. Additionally, if you go about it wrong, you may actually be *increasing* your lawsuit risks. This session will discuss how severance agreements can be used to minimize legal risks and make a clean break when an employee needs to go. You'll learn:

- The keys to severance agreement compliance—what you can say, what you should never say, and everything in between
- Whether it's a good idea to allow someone to resign (rather than being terminated) to avoid having to explain a firing to future employers
- Writing you should draft in support of any severance or separation agreement
- The types of claims you're permitted to release with proper monetary consideration—and the ones you simply can't
- Pointers on how to best communicate with your employees about their severance agreements, what they can and can't do, and ways to answer common questions
- Tips for handling employees who may become combative or litigious when faced with termination
- Language that should be included in every severance agreement
- Special rules that apply to older workers—who's protected by the Older Workers Benefit Protection Act, and the practical impact these rules have on your severance agreements
- How to avoid any hint of coercion in your conversations with departing workers
- What to do when an employee refuses to sign—or threatens to sue
- Practical strategies on how to review your company's severance agreements before you need them
- How ERISA may apply to severance
- Severance health benefits, which raise COBRA interaction issues
- And more

### **Roundtables**

4:00 – 5:00 p.m.

HR Comply's roundtables are designed to give you the opportunity to engage in meaningful discussions with conference peers and our expert facilitators on some of today's most challenging HR and legal-related issues.

Networking Reception

5:00 p.m.

**MAIN CONFERENCE DAY 2 (Day 3 of HR Comply 11/16/18)**

[Registration/Breakfast: 7:00 a.m. – 8:00 a.m.]

**BLR Solution Demo: HR.BLR.com and BLR Handbook Builder**

7:15 – 7:30 a.m.

Join BLR's sales team for a dynamic demonstration showcasing the power of BLR's resources. You won't want to miss this high-energy talk where we'll announce the conference raffle winner. You must be present to win, so we hope you can join us!

[Announcements: 7:55 a.m. – 8:00 a.m.]

**Opening Keynote**

**Celebrating Dis-similarities to Demonstrate a Commitment to Diversity & Inclusion—and Other Strategic Ways to Spark Employee Engagement**

8:00 a.m. – 9:00 a.m.

*Presented by: Kathleen (Kathie) L. Patterson, CHRO, Ally Financial*

Employee engagement is integral to your business. A highly engaged workforce can mean the difference between just getting by and “crushing” your organization’s respective corner of the market. Day 2 of *HR Comply* kicks off with an in-depth look at how Ally Financial has developed a multi-pronged, winning employee engagement strategy that celebrates individual employees’ differences to demonstrate its commitment to diversity and inclusion, uses corporate giving as an altruistic motivator, and empowers employees through its internal social media channel.

Ally Financial’s CHRO Kathie Patterson will reveal:

- The success of Ally Financial’s new employee resource groups (ERGs) and how this framework can be used as a guide for developing your own efforts to embrace diversity and inclusion in a new way
- How to effectively cultivate a culture of volunteerism—and how those efforts can translate into better employee engagement
- How the company’s two employee social media channels—Pulse and SociALLY—foster communication and camaraderie and support Ally’s underlying mission to create a 360-degree approach to employee engagement

**Breakout Sessions**

9:10 a.m. – 10:25 a.m.

**Foundations in HR Compliance**

**HR Recordkeeping: Best Practices for Paper and E-Storage, Meeting Mandatory Notice, Posting, and More**

*Presented by: Danielle Moore, Esq., Fisher Phillips LLP*

Recordkeeping—in both paper and electronic formats—is something HR professionals need to continuously address, as each year brings about new and updated requirements that add to the already existing laundry list of records you must retain under federal law. And, recordkeeping is just one piece of the compliance pie. You've also got to ensure that you're up to date on mandatory workplace postings and are distributing written notices to employees as required by state and federal law. On top of that, you've got to ensure that you have policies in place to keep up with new legislative requirements. This foundations-based session is HR Comply's one-stop shop for all things related to employment recordkeeping, mandatory posting and written notice requirements, and policy drafting tips in light of new and existing federal requirements.

You'll learn:

- Key recordkeeping changes and additions you'll need to make for the coming year based on recently enacted and pending legislation
- Best practices for digital recordkeeping and what you must still keep in paper format—and how long you need to maintain records under federal law
- Mandatory notices you must post for your workforce, including recommendations on where to display them
- Mandatory written notices and forms that must be distributed to new hires and additional notices that must be provided in writing when certain events occur such as upon termination or changes in rate of pay
- Examples of state wage and hour recordkeeping requirements you also need to consider

### **Legislative/Regulatory Updates and Trends**

#### **Marijuana in the Workplace: Tolerate or Terminate? Your Legal Rights and Limitations in Policy Development and Enforcement**

*Presented by James Reidy, Esq., Sheehan Phinney Bass & Green, PA*

Employers face a complex web of compliance concerns under newly enacted state laws as they try to navigate drug testing policymaking and recreational and medical marijuana usage. And, employers need to maintain a delicate balance between business objectives, employee rights, and ADA requirements. Given the current state of things, it's clearly in an employer's best interest to be proactive on this issue. Workplaces assume a great deal of these costs in the form of absenteeism, increased healthcare expenses and lost productivity. On the other end, each employee who recovers from a substance abuse disorder saves a company more than \$3,200 a year. This session will focus on the current regulatory landscape concerning drug testing and policy enforcement concerning recreational and medical marijuana usage.

You'll learn:

- The ins and outs of developing a comprehensive drug-testing program designed to give you the information you need to make informed and legal hiring and other employment decisions of California-based employees
- When an employer may conduct drug testing on prospective and current employees

- Drug-testing testing policy essentials, and instances when enforcement of zero-tolerance policy language may spark legal issues under federal law
- How to train supervisors and managers on warning signs that someone might be under the influence
- The action plan for addressing a situation when you suspect an employee is drunk or high at work
- What to do if an applicant or a current employee demands to be retested because the test revealed a false positive result
- How to address the off-duty use of marijuana
- How medical marijuana laws interact with unemployment and workers' compensation-related benefits
- Whether medical marijuana usage may qualify as a reasonable accommodation under the Americans with Disabilities Act (ADA)
- How to develop and manage drug-testing policies and practices in light of the current legal landscape
- How to decide if your organization should test for marijuana
- What to do if an employee tests positive for marijuana usage
- The role of fitness for duty evaluations, and best practices for workplace safety

### **HR Management Solutions**

#### **Performance Management for the Multi-Generational Workforce: How to Give Them What They Want and Decrease Your Legal Risks**

*Presented by: Joan Goodwin, Deloitte Consulting LLP and John Husband, Holland & Hart LLP*

Millennials, now the largest segment of the U.S. workforce, crave real-time feedback and coaching. This could be a reason why more than one-third of U.S. companies have replaced traditional annual performance reviews. Companies like Adobe, Microsoft, IBM, Deloitte, Dell, and General Electric have opted for informal, regular check-ins between employees and their managers. But, what impact does the replacement of traditional performance reviews with real-time feedback have on best practices for ensuring you've got proper documentation in place to back up employment decisions concerning discipline, demotions, promotions, and discharge?

This session will cover:

- Whether there's a divide in how today's multi-generational workforce expects to receive coaching and mentoring opportunities as part of your performance management strategy—and how to ensure that you're meeting the needs of the varied segments of your particular workforce
- How to strike a balance—so you keep proper documentation of employment-based decisions in place even if you opt to increase the frequency of performance discussions and eliminate ratings altogether
- Strategies for training supervisors and managers to continue to document performance-based issues as necessary even if they aren't completing annual reviews anymore
- And more

## **Networking & Refreshments Break**

10:25 a.m. – 10:40 a.m.

## **Breakout Sessions**

10:40 a.m. – 11:55 a.m.

### **Foundations in HR Compliance**

#### **How to Avoid Your Biggest Pre- and Post-Termination Legal Risks: Documentation, Discrimination, Unemployment Compensation, and More**

*Presented by Mario Bordogna, Esq., Clark Hill PLC*

“He or she has got to go.” That may be the sentiment that supervisors and managers and perhaps an employee’s coworkers share. But, does HR have its “legally defensible ducks” in a row to terminate the worker without sparking a lawsuit? Have you thought carefully about all the places where the risks can be found? And, when should you contest an employee’s unemployment compensation claim? This session will tackle these and other important questions about pre-and post-termination legal risks, identifying the most common mistakes employers make in these situations which tend to increase the odds of EEOC charge filings and costly litigation, and offering practical guidance on how to minimize them.

You’ll learn:

- How to ensure that you’ve got the proper written documentation to back up the adverse employment action
- How an employee’s protected class status could be used to fuel a claim for unlawful termination under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act, and other federal laws
- What questions to ask and how to discipline or terminate an employee on protected leave under FMLA, the ADA, or workers’ compensation law without sparking legal liability
- How to evaluate whether a similarly situated employee outside the employee’s protected class could be used as a “comparator” in legal proceedings to show that you treated them more favorably than the worker you just fired
- When it’s worth contesting a departed worker’s claim for unemployment compensation—and when it’s not
- Post-termination notice requirements
- How to handle a prospective employer asking you to give a reference for the terminated worker

### **Legislative/Regulatory Updates and Trends**

#### **Healthcare on the Fringes: The Complexities of Keeping ACA-Era Costs Down and Benefit Plan Offerings Consistent with Your Business Strategy**

*Presented by John Hickman, Esq., Alston & Bird LLP and Darrell Moon, Orriant*

Right now, the ultimate fate of the Affordable Care Act remains to be seen, and mega mergers (such as the \$69 billion proposed merger between CVS and Aetna) and employer health care insourcing (e.g., Amazon) and on-site clinics are being billed as potential game-changers in terms of how health benefits are provided. What’s the practical impact of the latest healthcare plan trends—both inside and out of the political arena? Employers need to balance the goal of providing the workforce with affordable,

quality health care options against what works best for the financial bottom line. This session will delve into what businesses can do to improve plan offerings to make them more cost friendly—so employees truly recognize their value—while ensuring their alignment to complex compliance requirements under the ACA and HIPPA and underlying business objectives.

### **HR Management Solutions**

#### **Anxiety, Workplace Stress, and PTSD: HR's ADA Accommodation and Performance Management Roadmap**

*Presented by Racquel Martin, Esq., Bradley Arant Boult Cummings LLP*

When must you accommodate an anxious or stressed-out employee under the Americans with Disabilities Act (ADA)? How long do you keep an employee's job open? What if your workplace is the *cause* of the worker's stress or anxiety? And, perhaps most crucially, what should you do when you suspect a mental condition is affecting an employee's job performance? Mental disabilities may not be as readily apparent as physical ones, so your obligations to provide reasonable accommodations for conditions such as anxiety, post-traumatic stress disorder (PTSD), and stress are not always clear-cut. But, legally, your responsibilities are the same. This session will cover:

- The latest on your legal obligations concerning stressed out, anxious workers who may be suffering due to ancillary mental conditions, such as post-traumatic stress disorder or depression
- How to master the practical challenges that arise in workplaces every day concerning time off, requests for accommodation, and other issues when employees are stressed out or in a panicked state
- The limits on what you can ask for in terms of documentation when an employee claims he or she is entitled to disability protection under federal law
- The game plan for addressing a claim that workplace stress is behind an employee's performance, conduct, or attendance issues
- What to do if an employee has a panic attack while at work or claims the reason s/he can't report to work is because of panic attacks
- How to deal with performance issues and safety concerns when an employee is on treatment medication
- How to handle claims that non-industrial PTSD—from military service or other life experiences—is interfering with his/her ability to perform essential job functions
- How to properly address accommodation requests unique to anxiety disorder and PTSD, including the "need" for the employee to bring therapy or companion animals, or psychiatric service dogs to work
- How FMLA impacts employees with anxiety disorder or PTSD and those caring for family members with this or a similar diagnosis
- Tips for helping employees perform when fatigue, concentration, short-term memory, or cognitive functioning is impacted

12:00 p.m. – 12:30 p.m.

#### **Moderated Q&A Panel: Your Employment Law Questions Answered**

Our skilled panel of employment attorneys is ready to address your specific concerns before you head home to implement the compliance best practices and strategic insights you've learned at HR Comply

2018!

12:30 p.m. – 12:35 p.m.

**Wrap Up Announcements**  
[Conference adjourns]

*\*Agenda Subject to Change*