



2019 HR COMPLY

An HR Daily Advisor Event

November 13-15, 2019 | Nashville, TN

REGISTER

Preconference Workshops, Wednesday, 11/13/19

Continental Breakfast/Preconference Registration

7:30 a.m.–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 Noon–1:00 p.m.)*

This intensive day-long workshop provides substantive instruction on FMLA compliance in light of new and existing regulations, court rulings, and application of this far-reaching law. Through attorney-led instruction, you'll engage with workshop peers to solve day-to-day challenges concerning intermittent leave, return to work, employee performance, and much more.

You'll enhance your advanced-practitioner skill set when you attend this satisfaction-guaranteed master class and learn:

- How to judge a serious health condition the way judges do, and eliminate disputes about what does and doesn't constitute it
- The latest FMLA revisions, so you don't risk noncompliance
- What recent FMLA court decisions really mean, so you can adjust your policies accordingly
- Where FMLA recordkeeping trips up even the savviest human resource managers, and some solutions to avoid similar mistakes
- How to tame the intermittent leave and reduced schedule beasts, and put a stop to abuse and fraud
- How FMLA, ADA, and workers' comp laws overlap, so you can avoid violations
- And more!

(Full day) Leader as Coach: Leadership Development Training

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

This engaging, highly experiential course is designed for managers, leaders, and influencers who understand the necessity of superior coaching in today's business ecosystem where leadership development has become everyone's responsibility. The curriculum equips participants with immediately-usable skills they can use to cultivate collaborative talent development partnerships; engage in potent, performance-enhancing conversations; and create extraordinary engagement, alignment, productivity and innovation in their teams.

When you attend this action-packed workshop, you will:

- Be introduced to a proven, very practical coaching model that can be effectively used throughout your teams and organization
- Learn how to initiate and guide high-quality coaching conversations using Bluepoint's Coaching Power Tools
- Participate in real-life exercises that will allow you to hone your conversational coaching skills and receive direct feedback on your personal effectiveness
- Understand how to apply the concepts of appreciation, constructive confrontation and accountability to your own leadership practices
- Create your own professional development plan that will map out your leadership trajectory and set ambitious but achievable goals
- Take away valuable course materials, tools, and a copy of Gregg Thompson's popular book, *The Master Coach*

(a.m. only) Employee Handbook Workshop: How to Draft and Revise Employment Policies and Procedures that Align with Current Federal Law

8:30 a.m.–11:30 a.m.

Is your employee handbook up to date with the latest legal changes? Even if you think it is, you need to make sure your policies don't unintentionally create a binding contract with employees—one that could jeopardize their "at will" status and open you up to devastating lawsuits. Plus, with the continuing expansion of employee-friendly state and local legislation—not to mention the ever-changing nature of the National Labor Relations Board's reach—it's vital to make sure you're staying on top of it all. This half-day workshop will provide critical information on the latest legal changes to incorporate into your company's employee handbook.

You'll learn the practical implication of important new federal updates and best practices for designing, building, and customizing your own employee handbook. We'll cover:

- Important wording to include and what to steer clear of in light of new federal court, legislative, and regulatory developments and national employment trends
- Suggested policy language to include for 2020 concerning hot topics such as:
 - Drug testing/use/zero-tolerance policies
 - Internal hiring/antinepotism
 - Harassment prevention and antiretaliation, including compliant procedures for reporting
 - Reasonable accommodation requests due to Americans with Disabilities Act (ADA)-protected disabilities

- Pregnancy-based accommodations
 - Hiring practices
 - Social media usage and confidentiality
 - Varied forms of paid and unpaid leave (e.g., paid sick and family and medical leave)
 - Parental/bonding leave (distinct from maternity/pregnancy leave)
 - Moonlighting/antimoonlighting
 - 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
 - BYOD/mobile device privacy
 - Cybersecurity/data breach response
 - Workplace violence
- How to use your employee handbook as an effective tool in defending your organization against costly lawsuits
 - Best practices for distributing, storing, updating, and disposing of outdated versions of your employee handbook

(a.m. only) **Workplace Investigations: Your Action Plan for Probing Complaints, Interviewing Witnesses, Reaching Reasoned Conclusions, and Taking Action**

8:30 a.m.–11:30 a.m.

HR is legally required to thoroughly investigate every complaint of unlawful or potentially unlawful conduct that crosses your desk, even when it seems without merit. You want to investigate in a timely manner and limit your liability for keeping a guilty party on the payroll. If you act too quickly, though, you run the risk of cutting some key corners. The secret to conducting a successful inquiry is to get your complete investigation plan in place *before* the complaint ever hits your desk—because, as you well know, in HR, it’s never a question of if, but when. This preconference workshop will bring you up to speed on how to conduct efficient, effective, legally compliant workplace investigations.

You’ll learn:

- What to do first when an employee comes to you with a complaint or allegation
- How to handle those common requests for “complete confidentiality” and “I don’t want you to *do* anything about this, but ...”
- How to separate a complainant and the alleged wrongdoer without inviting retaliation claims (from either side)
- Interviewing tips to help you get to the truth

- Strategies for resolving those “he said, she said” situations
- What you should and shouldn’t do before the investigation is concluded
- When you should consider bringing in an outside investigator
- What to do after the investigation is over to minimize your legal risks under federal laws

(p.m. only) Wage and Hour Audits: Find and Fix Your Biggest—And Most Costly—Trouble Spots Before the Feds Do

1:00 p.m.–4:00 p.m.

Where do we stand on overtime? The Department of Labor (DOL) is diving back into the job of modernizing and streamlining the overtime exemption rules. After a court invalidated Obama-era proposed regulatory changes in 2016, all eyes have been on the DOL to see whether it will follow through with establishing a new salary level that would align with modern-day job duties, wages, and salaries. Currently, there’s buzz that a new threshold of about \$35,000 is on the likely horizon.

Now is the time to get up to speed on the steps to take to ensure that your exemption classifications will pass muster under the new rules. This includes reviewing job duties against job descriptions, as well as compensation paid, to determine whether currently classified exempt employees will still be exempt under the new rules. And that’s just the tip of the iceberg because the DOL’s Wage and Hour Division (WHD) recently jacked up the penalty for repeat or willful Fair Labor Standards Act (FLSA) minimum wage and overtime violations to \$2,014 per violation. Since wage and hour compliance runs the gamut from overtime exemptions to travel pay, on-call time, and more, it’s important for employers to get up to speed on the latest regulatory and enforcement updates so they can minimize the risk of costly civil penalties.

During this intensive workshop, you’ll learn how to:

- Analyze job descriptions and duties to tell if positions are really exempt from overtime under current and anticipated federal DOL regulations.
- Reclassify jobs as nonexempt or exempt in a way that minimizes potential legal risks and maximizes savings.
- Calculate travel, waiting time, and on-call pay to ensure full FLSA compliance.
- Establish and enforce legally compliant wage and hour policies.
- Avoid WHD enforcement actions, which could result in financially devastating civil penalties.
- And much more!

(p.m. only) Sourcing and Interviewing Do’s and Don’ts: Tactics to Identify Ideal Candidates

While Avoiding Legal Pitfalls

1:00 p.m.–4:00 p.m.

Facebook provides a tool that allows companies to filter out certain demographics when advertising open jobs. For instance, *The New York Times* reported that Verizon, when recruiting for financial planning and analysis positions, recently ran a promotion targeting Facebook feeds for users between the ages of 25 and 36 who lived within a specified region. *The Times* reported that hundreds of millions of Facebook users, many of whom are likely over the age of 40, weren't aware the ad existed because it hadn't been delivered to them. The article noted, too, that companies like UPS, Target, and State Farm all have targeted their recruitment ads as part of a comprehensive recruitment strategy to cast a net across all ages. But do such practices run afoul of the Age Discrimination in Employment Act (ADEA)? Your company could be at considerable risk for high-priced jury verdicts and settlements in the event you're sued for these or other allegedly discriminatory sourcing practices. And that's just the tip of the iceberg because there are a host of legal issues that could arise once you call in a candidate to interview. You must make sure you are asking the right questions to ensure that you are abiding by applicable legal requirements and that every candidate is given a fair and equal opportunity while also steering clear of questioning that oversteps and violates job candidates' rights under the ADEA, the ADA, and other federal laws concerning equal pay and more. During this intensive workshop, you'll learn:

- Legal ways to source and interview job candidates
- What questions you can and cannot ask
- Which of your current sourcing practices may be exposing your company to legal risks
- The do's and don'ts of sourcing and interviewing through role-playing exercises and mock interviews designed to highlight legal pitfalls to avoid

Day 1 Main Conference, Thursday, 11/14/19

Registration and Breakfast

7:00 a.m.–7:55 a.m.

Opening Remarks

7:55 a.m.–8:00 a.m.

Opening Keynote: To Be Announced!

8:00 a.m.–9:00 a.m.

Hot Topic Power Talks

9:05 a.m.–10:25 a.m.

Sexual Harassment Prevention: Are Today's Training Methods Making a Difference?

9:05 a.m.–9:20 a.m.

Ever since the rise of the #MeToo movement, workplace training to spot, correct, and outright abolish sexual harassment has been a hot topic. And today's organizations

aren't just focused on delivering "traditional" antiharassment training. Progressive organizations are also examining whether their own culture could be perpetuating a sexist or bullying culture that could foster harassment in varied forms. But are HR's current efforts proving effective? HR Comply's *Hot Topic Power Talks* kick off with thought-provoking insights on how to tell.

Affordable Care Act

9:25 a.m.–9:40 a.m.

Sponsored by First Capitol Consulting

Work Stress: The Latest Science and Solutions for Minimizing the Costly and Corrosive Effects on Employees

9:45 a.m.–10:00 a.m.

Stress can rear its ugly head on the workplace and result in unnecessary productivity, lost time, and safety risks. And an employer might find itself defending a claim for workers' compensation or death benefits if workplace stress appears to be the predominant cause of a medical outcome, such as a heart attack or a stroke. But what can employers do to proactively combat the seemingly growing levels of work-related stress to provide a better, more wellness-centric workplace for all employees? This *Hot Topic Power Talk* will reveal cutting-edge strategies for reducing workers' stress, which can, in turn, boost individual and organizational performance and foster a culture of wellness.

Severance Agreements: 5 Mistakes You Don't Want to Make

10:05 a.m.–10:25 a.m.

Should you offer severance when letting an employee go? It's a common question that you should be prepared to answer whenever you must initiate an employee's separation from employment. But how can you ensure that an agreement, which by its very nature is designed to protect the business against future liability, doesn't spark legal troubles of its own? 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 *Hot Topic Power Talk* is designed to break down the top legal pitfalls to avoid when drafting a severance agreement. You'll learn:

- What a severance agreement should never say—and what you can—and should—feel confident about including
- The writing you should draft in support of *any* severance or separation agreement—and the essential language to be sure to include
- The types of claims that aren't releasable even with what you believe is proper monetary consideration

- Examples of legal compliance risks that could arise under the Older Workers Benefit Protection Act if you aren't careful about timing
- How to avoid any hint of coercion in your conversations with departing workers
- How severance agreements could lead to legal headaches under the Employee Retirement Income Security Act (ERISA) and the Consolidated Omnibus Budget Reconciliation Act (COBRA)

Networking, Refreshments, and Exhibit Break

10:25 a.m.–10:45 a.m.

Breakouts

10:45 a.m.–Noon

[Foundations in HR Compliance](#)

Preemployment Screening: Illegal Practices to Avoid and New Updates on Ban the Box, Salary History Inquiries, and Background Checks

More and more states and cities are enacting laws that remove criminal history questions from job applications. The federal Fair Chance Act prohibits an executive agency from “requesting an applicant for federal employment to disclose criminal history record information before a conditional offer of employment is made to the applicant.” Similar laws, often referred to as “ban the box” laws, are being adopted by a number of cities and states. Ban the box typically means employers must delay inquiries about an applicant’s criminal history until later in the hiring process. Depending on the law, this can mean waiting until after the first interview or a conditional job offer. However, employers are still entitled to do background checks before actually hiring someone. Understanding what employers can do to prescreen potential employees while still staying within the law takes a thorough understanding of the local and state laws involving hiring. Some cities and states are also barring prospective employers from asking about a candidate’s salary history. While the purpose of this restriction is to level the playing field so that prospective employees get a fair shake no matter what their gender or ethnicity as far as salary parity, it can make headaches for HR when trying to determine what to offer for salary. In addition, employers with multiple sites in different cities and states covered by laws that ban the box and prohibit salary history inquiries need to ensure they are compliant with applicable state and local laws. This session will provide critical updates designed to help you evaluate whether your organization’s preemployment screening practices could subject you to legal liability and costly penalties. You’ll learn:

- The latest updates on ban the box laws, salary inquiry restrictions, and other laws that affect background checks of prospective hires
- When questions related to criminal convictions may be asked—and what’s off limits

- Fair Credit Reporting Act (FCRA) and Equal Employment Opportunity Commission (EEOC) rules to abide by concerning employee background checks
- Best practices for reviewing job advertisements, employment applications, and other related forms
- How to handle tricky questions around salary and learn the related laws depending on your location
- Best practices for ensuring compliance when your company operates across multiple states or cities, which may have varying requirements concerning ban the box and salary history inquiries
- Whether you have to explain if you decide against hiring someone because of a criminal record—and why
- How many years back you can go when doing background checks
- How to establish background check policies that link the decision-making to job descriptions
- How to avoid “red flag” issues that could result in disparate treatment and disparate impact
- The importance of individualized assessments to avoid discrimination claims
- And much more!

Legislative/Regulatory Updates and Trends

Paid Sick and Safe Leave Trends and Compliance Update: What HR Needs to Know to Manage Legal Risks

With so many states and cities now enacting paid sick leave laws, employers may be left scrambling to understand how newly passed legislation affects their organizations and intersects with other types of leave. These new laws have a far-reaching impact, affecting employers operating in single states, multistate employers, and those with nationwide operations. In many cases, the new laws are quite expansive, covering not just medical issues but also granting leave needed to manage domestic violence or stalking-related issues (i.e., safe time) or time needed for other necessities—for example, to attend a meeting about a child’s education plan. Keeping track of and managing employees’ paid sick and safe leave can be an added challenge for employers—especially since they also have to understand and manage other types of leave, such as those protected under the Family and Medical Leave Act (FMLA) and the ADA. A technical mistake in administering paid sick leave and other time can result in costly and damaging legal repercussions. To avoid legal risks, it’s important to stay up to date

on how to manage legal risks amid the trend of paid sick and safe leave laws. This session will cover:

- What new paid sick and safe time leave laws generally provide, plus a rundown on the states and cities that have enacted or are considering such laws
- How these laws interact with existing leave laws, such as the FMLA and the ADA when leave is granted as a reasonable accommodation
- High-risk compliance areas to watch for when responding to requests for paid sick or safe leave and how *not* to misstep
- How to determine what qualifies as paid sick time or other protected time off
- How to provide employees with up-to-date information on their rights under the law and how to update your company's existing sick time and safe time policies
- What to know about other states'/cities' regulations if your organization operates on a multistate or national level
- How these laws are being enforced and how to be vigilant and comply with the laws
- And much more!

HR Management Solutions

Equitable Job Grades Structure: How to Create a Competitive—and Legal—Compensation System that Rewards Performance and Promotes Longevity

Reviewing job grades, thinking about reranking jobs, moving positions, reviewing internal equity, or adding variable pay systems into the total reward compensation mix can make even the most seasoned of HR professionals' heads spin. While a change in your pay grade structure can result in getting maximum productivity from your employees and help you retain top talent, if not properly executed, the compensation plan could inadvertently spark legal liability for your organization. Whether you want to reward performance, longevity, knowledge, skills, or competencies, determining pay grades is the first step to creating an internally equitable, market-competitive compensation system. Without accurate pay grade determination, it won't matter how good your pay survey information is—internal equity will likely be skewed too high or too low. This session will walk you through how to:

- Create an equitable and competitive compensation system to attract and retain the best employees, as well as the pros and cons of using a job grade system.

- Identify what job grades are and the characteristics that determine them.
- Evaluate whether you should create or revise a pay structure.
- Build a salary structure using various methods.
- Determine when to pay above market—and below—and how to ensure that your compensation practices don't spark pay equity liability under the Equal Pay Act.
- Address questions about why you're implementing a job grade structure.
- Use pay grades as part of your performance/merit pay programs and variable pay plans.
- And much more!

Networking Lunch

Noon–1:00 p.m.

Breakouts

1:00 p.m.–2:15 p.m.

Foundations in HR Compliance

ICE Enforcement Significantly on the Rise: How to Avoid the Top 10 Employment Verification and Form I-9 Compliance Risks Workplaces Are Now Facing

Workplace investigations, audits, and arrests by Immigration and Customs Enforcement (ICE) are up significantly. Just how significantly? In 2017, worksite investigations rose more than 300 percent; I-9 audits were up 340 percent; and criminal arrests at worksites were up over 400 percent. As of January 2019, administrative worksite arrests were up close to 800 percent over 2017. This session, led by skilled immigration attorneys, will identify the biggest compliance risks organizations now face and how to avoid costly penalties for knowingly hiring or continuing to employ undocumented workers and which employment verification or Form I-9 documentation practices could yield the most costly fines for substantive/uncorrected technical violations.

Legislative/Regulatory Updates and Trends

Health Reimbursement Arrangements: How Proposed Changes Will Impact Employees' Healthcare Coverage and Traditional Employer-Sponsored Health Plans

A proposed regulatory change would significantly expand how health reimbursement arrangements (HRAs) are used under the Affordable Care Act (ACA). These rules, which would likely go into effect in 2020, specify that HRAs could be used to reimburse individual health insurance coverage for active employees. Giving employers this option could have a major impact on the future of employer-sponsored group health plans. While many large employers

are unlikely to adopt this new type of HRA for their full-time employees, it's likely the proposed HRAs could be offered by small employers, to part-time employees at any size employer, and to classes of employees who reside in remote geographic areas (i.e., the class of employees whose primary site of employment is in the same rating area). In addition, these proposed rules provide insight into how the DOL may view current retiree medical plans that consist of an HRA that reimburses individual health coverage policies. This session will provide the latest updates on the proposed regulatory changes to HRAs, which could impact employees' healthcare coverage and traditional employer-sponsored health plans. You'll learn:

- Which employers may want to consider the new proposed HRAs
- What's in store for traditional employer-sponsored health plans
- How HRA rules could impact the health insurance market
- How individual coverage HRAs could satisfy the ACA employer mandate
- Potential uses for proposed "excepted benefit" HRAs
- The implications for existing retiree medical plans that use HRAs to reimburse individual health insurance policies

HR Management Solutions

Eradicating Unconscious Bias: How to Ensure a Diverse Workplace and Equalize Hiring, Pay, and Performance-Based Decisions

Bias exists whether we want it to or not. It's human nature to gravitate toward making certain decisions based on preferences and general likes and dislikes. But when bias is present in the workplace, it can have many negative legal and practical consequences. It's time to figure out how unconscious bias could be affecting decision-making at your company, including decisions about recruiting and hiring, wage rates, promotions, terminations, and more. This session will provide a road map for:

- Identifying the most common types of unconscious bias that could be lurking in your workplace
- Recognizing the damaging effect unconscious bias can have on workforce productivity, team dynamics, and organizational effectiveness
- Applying successful tools and tips for eradicating bias from your company's work practices to increase diversity
- And more!

Networking, Refreshments, and Exhibit Break

2:15 p.m.–2:30 p.m.

Breakouts

2:30 p.m.–3:45 p.m.

Foundations in HR Compliance

Granting ADA Accommodation Requests: How to Evaluate Whether Disability Protection Applies to Physical and Mental Impairments

Determining whether you must legally grant a request for accommodation under the ADA first requires analysis of whether the employee is in fact a “qualified individual” with a disability under federal law. If the answer is yes, you must consider whether the request is reasonable and should be granted or whether there’s a better (alternative) accommodation you should recommend. And there are instances when a request for accommodation could result in an undue hardship on the business, in which case you may deny that request. Through the interactive process, each employee’s request for ADA accommodation requires an individualized, fact-specific analysis of the transitory, episodic, or permanent nature of his or her physical or mental condition; essential job functions; and more. This session will take a deep dive into how to properly evaluate each and every request for an ADA accommodation that comes across your desk. You’ll learn:

- What it means to be a “qualified individual” under the ADA and signs that an employee doesn’t qualify for ADA coverage
- What to do once a request for ADA accommodation is made—including the questions you may ask of the employee and his or her doctor (and what questions or requests are legally off limits)
- Examples of accommodation requests that may result in an undue hardship and the documentation you’ll want to make sure you have in place if you’re denying a request for accommodation on this basis
- How to deal with requests to telecommute, for light duty, to transfer to a different position, or to work a reduced or an alternate schedule due to mental health-related conditions, such as bipolar disorder, anxiety, and depression
- Tell-tale signs that attendance is an essential function based on a particular job’s duties
- Recently decided cases addressing ADA accommodation—and the practical impact of those federal and state court rulings
- And more!

Legislative/Regulatory Updates and Trends

Parental Leave, Pregnancy, and Pay: How to Avoid the High Risk of EEOC Scrutiny, Costly Lawsuits, Penalties, and Fines ‘Based on Sex’

Cosmetics giant Estée Lauder recently paid out a staggering \$1.1 million settlement in response to allegations that it had unfairly discriminated against new fathers through its parental leave policy. In the lawsuit, the EEOC asserted that the company provided male workers who had just become new fathers with lesser parental leave benefits than female employees who had just become new mothers. The costly settlement underscores the importance of ensuring that parental leave and return-to-work policies are based on sex-neutral criteria to minimize the risk of sex discrimination claims under Title VII of the Civil Rights Act of 1964. Right now, parental leave is being granted by more employers than ever before. In 2015, just 25 percent of workplaces had policies in place granting time off for new parents. Yet, in 2018, about 40 percent of workplaces were offering parental leave, according to Mercer’s 2018 Survey on Absence and Disability Management. With more employers aiming to align employees’ needs with their paid-time-off policies and the White House announcing President Donald Trump’s push to fund paid family leave, now is the time to learn the compliance pitfalls to avoid when drafting and enforcing parental and pregnancy leave policies. This session will cover:

- The many—some potentially surprising—ways sex discrimination claims may arise as a result of your leave, pay, or other policies
- Do’s and don’ts for drafting parental leave policies—paid or unpaid—for baby bonding and other family-based commitments
- How to make sure your paid or unpaid parental leave policies, while generous, are also equitable and don’t spark EEOC scrutiny
- How to spot “red flags” concerning benefits related to parental leave
- Examples of paid or unpaid parental leave, pay, and benefit policies that comply with EEOC guidance and how they avoid discrimination claims based on sex

HR Management Solutions

Forced Arbitration: Is it Still an Effective Method for Minimizing Legal Risks Concerning Sexual Harassment, Discrimination, and Other Claims?

A group called Googlers for Ending Forced Arbitration emerged in early 2019 with the message for the public: Mandatory arbitration agreements are a means by which employers seek to silence victims of harassment and discrimination in the workplace. The group claims that “forced arbitration” must be dealt with to ensure transparency and workplace equality. Employers, on the other hand, have good reason for getting their employees to sign arbitration agreements as a condition of hiring. For starters, agreements to arbitrate employment disputes can help organizations avoid costly and time-consuming lawsuits, often taking several years to resolve. Through a “one-and-done” arbitration hearing, the affected parties can learn whether legal claims have any merit and whether the employee(s) involved is entitled to any damages as

a result. But is arbitration right for *all* employment claims? The answer is likely no. Facebook, Uber, Lyft, and Microsoft have already nixed forced arbitration of sexual harassment claims. Should your company, too? This session will explore:

- Pros and cons of using arbitration agreements to settle employment-related disputes
- The practical impact the U.S. Supreme Court's 2018 ruling in *Epic Systems Corp. v. Lewis* has on your right to legally enforce arbitration agreements
- How the National Labor Relation Board (NLRB) anticipated ruling in *Prime Healthcare Paradise Valley LLC* could impact arbitration and settlement of employment disputes
- Examples of arbitration agreement language that is likely to pass legal muster—and signs that one or more of an arbitration agreement's provisions could be struck down by a court
- Which types of employment claims are “fair game” for arbitration and which types of claims you should keep out of your arbitration agreements
- How the EEOC and the NLRB could impact your ability to force arbitration
- And more!

General Session | Developing a Uniform Performance Management Strategy for Distributed Work Teams to Minimize Legal Risks

4:00 p.m.–5:00 p.m.

In today's day and age, many jobs can be performed anytime from anywhere, which makes telecommuting an attractive option for both employers and their employees. But at what costs? While employees may enjoy the benefit of not having to commute into the office, the employer seemingly has less control over them. And less control could result in legal trouble stemming from misuse of company data, for example. Day 1 of *HR Comply 2019* closes with an insightful examination of compliance and practical challenges organizations need to avoid when managing in-house and distributed work teams to ensure uniform levels of accountability and compliance, regardless of your employees' physical location. This session will examine:

- The top 10 legal concerns that should be on your radar when managing a distributed workforce
- How to develop performance measures to ensure that opportunities for advancement aren't limited to in-house staff only
- Do's and don'ts for drafting telecommuter agreements

- How to manage wage and hour concerns when you can't physically monitor employees' work time
- BYOD and data privacy/security concerns—and the steps to take to ensure that sensitive or confidential information isn't vulnerable to a security breach
- Tips on how to ensure that all employees are being held accountable to the same employment policy standards and performance measures
- And more!

Day 2 Main Conference, Friday, 11/15/19

Breakfast

7:00 a.m.–8:00 a.m.

Breakfast and Learn

7:30 a.m.–7:45 a.m.

Opening Keynote | Recognizing, Responding to, and Eradicating Racism in the Workplace

“Blackface.” Violent attacks on churches predominantly attended by various ethnic groups. Statements by government officials that those seeking to enter the United States through its southern border are violent offenders and drug dealers. These are just a few of the headlines of this past year—headlines that underscore the need to recognize and respond to overt and more hidden signs of racism that could be permeating the workplace. While overt stereotypes may be easy to spot and take action to correct, racism is often masked through more subtle actions, such as microaggressions. Day 2 of *HR Comply* kicks off with a thought-provoking look at why implicit bias training may not be enough to deal with this issue. Our keynote speaker will take a deep dive into how bias can manifest itself so you'll have a better understanding of the types of policies to establish so you can eliminate the impact such biases have on your workplace.

Breakouts

9:15 a.m.–10:30 a.m.

Foundations in HR Compliance

Electronic and Cloud-Based HR Recordkeeping: Best Practices for Shifting to Digital, Protecting Sensitive Data, and Managing Files

Storing HR records whether in paper format or electronically comes with many challenges. Aside from knowing what to keep and for how long, if you store documents electronically, you need to follow Department of Labor guidelines for electronic storage of documents governed by ERISA. And the security issues involved in storing important documents in the cloud may cause anxiety, especially when every day there are news stories involving breaches and hacking of electronic data. Plus, there are many other important issues to address. For instance: How

easy will it be for HR to retrieve the electronic records when needed? How will these files be protected? And how do you know when it's safe to destroy employee records saved in the cloud? Also, while the European Union's (EU) General Data Protection Regulation (GDPR) is now in effect, a recent survey by HyTrust Inc. revealed that 80 percent of U.S. businesses polled didn't have a plan in place to ensure compliance. Knowing the laws that govern those actions is essential—and so is knowing how to access and successfully delete or destroy cloud-based documents. And, if you are planning to move your HR recordkeeping to the cloud, you'll need a vendor with a good reputation as far as security, backups, and providing quality—risk-minimizing—service to your organization. This session will cover how to:

- Recognize what records you must keep under federal law and for how long.
- Legally handle document security risks, storage, and destruction of personnel records in the cloud.
- How the EU's GDPR may apply to personal data your organization collects and stores.
- Properly follow federal laws around retaining or destroying employee records and how to safely store employee records in the cloud or electronically.
- Devise a plan for going paperless with HR recordkeeping.
- Comply with applicable federal electronic recordkeeping laws to ensure proper collection, storage, and deletion of records
- Conquer logistical challenges of going paperless by following a series of best practice steps
- Determine whether log-on/-off times, calendars, notes, to-do lists, e-mails, and other forms of data constitute electronic records
- Destroy electronic documents in the cloud or stored on your server—and the proper timing for doing so
- Recognize when there's a legal duty to preserve records—and the technology you may need to sift through when that preservation duty arises

Legislative/Regulatory Updates and Trends

OFCCP Audit Risk Is Up: How Federal Contractors Should Prepare for and Respond to Allegations of Systemic Discrimination Concerning Hiring, Pay, and More

Under a new directive, the Office of Federal Contract Compliance Programs (OFCCP) is expected to increase federal contractor audits in 2019. The reason in part stems from the OFCCP's belief that many federal contractors aren't preparing affirmative action plans. This session will provide:

- A comprehensive overview of the OFCCP's myriad levels of scrutiny—from full audits to desk audits
- The practical impact of its discontinuation of continued active case enforcement and measures every federal contractor should take to avoid the OFCCP's cross hairs
- How to take advantage of the OFCCP's new early resolution procedures
- What to expect from the OFCCP if your organization is suspected of engaging in unlawful and systemic hiring or pay-related practices
- And more!

HR Management Solutions

Sexual Harassment Training: How to Educate the Supervising Workforce on Antiharassment and Reporting Requirements

Currently, five states have laws on the books requiring mandatory sexual harassment training—California, Connecticut, Delaware, Maine, and New York. But even if your state doesn't have similar requirements in place yet doesn't mean you should delay in training your workforce on your company's antiharassment stance and your reporting requirements. To proactively mitigate legal risk in the #MeToo era, it's critical to teach employees the types of conduct that likely could be construed as harassment under federal law and the action plan they need to follow if such conduct occurs. After all, a workforce that speaks up against harassment could be your best defense against costly litigation if everything is handled properly once a formal or informal complaint is raised. During this session, you'll learn:

- Essential train-the-trainer fundamentals, including the scope of issues to cover; the recommended timeline for training supervisors, managers, and the workforce at large
- Effective ways to deliver and track sexual harassment training
- Real-life examples you can use to illustrate the differences between quid pro quo and hostile work environment harassment involving supervisor and employee, coworker and coworker, or customer and employee sexual harassment
- The harmful effects harassment can have on workplace culture, the victim and his or her coworkers, and the business as a whole
- How to effectively communicate the penalties harassers could face for their actions
- What every employee needs to know about your company's antiharassment policy

- A checklist of what supervisors and managers should *never* say to a complainant or anyone else involved in a sexual harassment complaint
- How complaints of sexual harassment should be made, to whom, and when if an employee experiences, witnesses, or otherwise learns of inappropriate behavior
- How to convey to supervisors/managers and employees what they generally can expect in the event of an investigation
- How to train the workforce on maintaining a retaliation-free work zone, including examples of conduct that might be construed as retaliatory against someone who's been the victim of harassment and/or someone who's reported it

Networking, Refreshments, and Exhibit Break

10:30 a.m.–10:45 a.m.

Breakouts

10:45 a.m.–Noon

[Foundations in HR Compliance](#)

Termination and Performance Management Discussion Training: De-escalation Tactics for Managing Unexpected Outbursts, Threats of Violence, and the Risk of Lawsuits

Discipline and termination talks aren't fun for anyone. They are, however, essential. But what do you do when the employee whose performance you're critiquing—or terminating—reacts badly, with an outburst or even a threat of violence? Drafting succinct, noninflammatory termination letters, performance reviews, and performance improvement plans can help defuse emotional reactions and the desire to bring a lawsuit. Anything that appears to “attack” an employee personally could spark angry, and potentially violent, reactions, even serving as legal ammunition in the event of a lawsuit against your organization. In addition, proper training for supervisors and managers to address and mitigate possible outbursts that could escalate to violence is essential. Workplace violence prevention training can help your frontline staff establish a game plan for managing situations in which emotions and anger run high. This session will cover:

- Practical training tips for handling performance management and termination discussions
- What can set off an emotional or angry reaction in an employee—and how to handle these situations so you can minimize the risk of violent outcomes or lawsuits
- Coaching approaches that work best when communicating with employees who have received unfavorable performance reviews or need to be terminated
- Action steps to follow when you must discipline and/or terminate someone who may react with violence or an emotional outburst

- Best practices and language choices for crafting clearly communicated and legally compliant termination letters
- How to clearly inform an employee that his or her performance is not meeting expectations—without assassinating his or her character
- Characteristics potentially violent individuals tend to share, and warning signs to watch out for, so you can minimize the possibility of a heated or violent confrontation during a termination meeting or performance review
- What *not* to offer in a termination letter and how to apply the concept of “benevolent severance” to minimize legal risks
- Why it’s important to listen to an employee’s concerns during a performance management or termination meeting, as well as how to steer the meeting to end in a way that doesn’t foster anger or violence
- And much more!

Legislative/Regulatory Updates and Trends

Marijuana and Opioids at Work: Emerging Compliance Obligations Concerning Drug Testing, Off-Duty Drug Usage, and ADA Accommodations

With more and more states legalizing the use of marijuana for medicinal or recreational purposes (oftentimes both), you’re likely to encounter more workplace issues as a result. And the law is far from settled, particularly given the Trump administration’s stated intention to tighten enforcement at the federal level, where the drug remains illegal. What’s permitted and what’s prohibited if you want to monitor and restrict cannabis usage or possession among employees? What about workplace safety issues? Can you legally limit the use of marijuana, as with alcohol, during or before work time? What kinds of tests can you administer? If an employee has a prescription for medical marijuana, does the ADA bar you from restricting usage or disciplining the employee for use? Consider, too, that due to the ongoing opioid epidemic, unintentional poisonings are now the number one cause of accidental death in the United States, surpassing motor vehicle accidents. Don’t get caught in the compliance “weeds” concerning marijuana or opioids in the workplace. During this session, we’ll cover the latest compliance rules and learn what you can and cannot do legally to monitor the use of marijuana and opioids at work. You’ll learn:

- Which states have legalized marijuana for medicinal and/or recreational use
- The practical implications of marijuana still being considered illegal—and a Schedule I drug—under federal law

- How to address off-duty usage of marijuana or opioids
- The latest move by the Trump administration to tighten enforcement around marijuana use and distribution and how that affects states and their laws
- Best practices for federal contractors to follow with respect to drug testing and usage to ensure they don't lose federal funding
- Which state laws explicitly include employee nondiscrimination protections and which don't concerning medical cannabis
- How medical marijuana laws interact with unemployment and workers' comp
- Whether medical marijuana or opioid usage may qualify as a reasonable ADA accommodation
- How to develop and manage drug-testing policies and practices in light of the current legal landscape usage
- What to do if an employee tests positive for marijuana or opioids
- The role of fitness-for-duty evaluations and best practices for workplace safety
- And much more!

HR Management Solutions

Toxic Personalities and Workplace Conflicts: Effective and Legal Ways to Manage Tough Interpersonal Situations and Build a Culture of Cooperation

Every office has at least one: the employee with the toxic personality—the one who manages to bring down everyone else on a daily basis. And aside from that individual, every workplace, regardless of size or industry, is bound to run into a situation where conflict among coworkers or managers arises. Such interpersonal conflicts can cause uncomfortable employee interactions, create tension, and breed workplace “drama” that causes slowdowns in production, costly mistakes, and an inhospitable culture. This session will provide recommended approaches for managing toxicity and confrontation in the workplace—all while ensuring that your actions don't inadvertently increase your organization's legal risks under Title VII of the Civil Rights Act of 1964 (Title VII), the ADA, or other federal laws. You'll learn how to:

- Identify the deteriorating and potential costly impact interpersonal conflicts among coworkers can have your business
- Create and enforce a policy for handling interpersonal conflicts among coworkers

- Communicate a culture of respect for your workplace
- Deliver preventive training to managers on how to address conflicts before they snowball
- Manage interpersonal conflicts before they become a real problem—including best practices and what to avoid doing or saying
- Identify legal issues under Title VII that may stem from toxicity at work and interpersonal conflicts
- Spot toxic employee behaviors—and conversation starters to address toxic employees about their behavior and the effect it has on others
- Clearly define expectations for how the toxic behavior must change
- Determine if an employee who is exhibiting negative, disruptive, or otherwise potentially toxic conduct may be entitled to a reasonable accommodation under the ADA
- Document interactions and set a timeline for goals achieved
- Provide rewards for change, or disciplinary penalties, up to and including termination, if no progress is made

Moderated Q&A Panel: Your Employment Law Questions Answered

12:05 p.m.–12:30 p.m.

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 2019!*

Wrap-Up Announcements and Conference Adjourns 12:30 p.m.

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Agenda subject to change.