

ALI-ABA Course of Study
**Employment and Labor Relations Law for the Corporate Counsel
and the General Practitioner**

February 15 - 17, 2007
Coral Gables, Florida

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PROGRAM

Thursday, February 15, 2007

8:00 a.m. Registration and Continental Breakfast

9:00 a.m. Introductory Remarks and Overview

DEALING WITH EMPLOYMENT LAW — *Mr. Panken, Chair*

9:10 a.m. **How To Keep a Firing from Backfiring: An Introduction to Employment Discrimination Laws** — *Mr. Panken*

10:00 a.m. **Handling the Anti-Discrimination Agency Investigation** — *Ms. Babson-Smith*

10:45 a.m. Networking Break

11:00 a.m. **The Fair Labor Standards Act (FLSA)** — *Ms. Hodge and Mr. Panken*

11:45 a.m. **Sex Discrimination in the Workplace** — *Mss. Babson-Smith and Scott*

12:30 p.m. Lunch Break

2:00 p.m. **Dealing with Workplace Disabilities: ADA** — *Mss. Estevez and Hodge*

2:45 p.m. **State Employment Law Developments** — *Mr. McRae and Ms. Scott*

3:30 p.m. Networking Break

3:45 p.m. **Veterans' Rights** — *Ms. Estevez*

4:15 p.m. **Drafting Employee Manuals and Employment Contracts** — *Mr. Panken*

5:15 p.m. Adjournment for the Day

Friday, February 16, 2007

8:00 a.m. Continental Breakfast

LABOR RELATIONS LAW — *Ms. Hodge, Chair*

8:30 a.m. **Retaliation and Whistleblowing Protection** — *Messrs. McRae and Panken*

9:15 a.m. **Labor Law and Reality: The Role of Muscle** — *Mr. Cummings*

9:45 a.m. Networking Break

10:00 a.m. **National Labor Relations Board (NLRB) Representation Proceedings: Determining Employee Desires** — *Mr. Panken*

11:00 a.m. **Unfair Labor Practices (ULPs): The NLRB Enforcement Mechanism** — *Ms. Hodge*

11:45 a.m. Lunch Break

1:15 p.m. **Handling Grievances and Arbitrations under Union Contracts** — *Mss. Babson-Smith and Hodge*

- 2:00 p.m. **Drafting Collective Bargaining Agreements, from A to Z** — *Mr. Fleming*
- 2:45 p.m. Networking Break
- 3:00 p.m. **Economic Pressure: Strikes, Lockouts, and Picketing** — *Ms. Hodge and Mr. Kisicki*
- 3:45 p.m. **Collective Bargaining** — *Messrs. Casey and Kisicki*
- 4:30 p.m. **The Alternative Dispute Resolution (ADR) Alternative to Litigation** — *Messrs. Casey and Kisicki*
- 5:15 p.m. Adjournment for the Day

Saturday, February 17, 2007

- 7:30 a.m. Continental Breakfast
- ALPHABET SOUP: ERISA, MPPAA, WARN, OSHA, IRCA, AND OTHER LAWS AFFECTING EMPLOYMENT** — *Mr. Cummings, Chair*
- 8:00 a.m. **ERISA and MPPAA: An Introduction** — *Mr. Cummings*
- 9:15 a.m. **Ethical Considerations in Handling Employment Law Problems** — *Mr. Duffy*
- 10:15 a.m. Networking Break
- 10:30 a.m. **Bankruptcy's Effect on Employment and Labor Relations Law** — *Mr. Cummings*
- 11:15 a.m. **Other Federal Laws and Regulations Affecting the Employment Relationship**
- Worker Adjustment and Retraining Notification Act (WARN - plant closings) - *Mr. Kisicki*
 - Occupational Safety and Health Act (OSHA) - *Mr. Duffy*
 - Immigration Reform and Control Act of 1986 (IRCA - penalizing the employment of illegal aliens) - *Mr. Fleming*
 - Family and Medical Leave Act (FMLA - mandating unpaid leave, with continued paid health insurance, for family and medical needs) - *Mr. Kisicki*
- 1:00 p.m. Adjournment

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Of Counsel, LeBoeuf, Lamb, Greene & MacRae, L.L.P.

B.A., Hobart College; M.A., L.L.B., Columbia University

Adjunct Professor of Law, NYU Law School (2005-present); Adjunct Lecturer in Law, University of Virginia School of Law (2000-present); Adjunct Professor of Law, Georgetown University Law Center (1983-86); Lecturer in Law, Columbia Law School (1970-74)

Government Service: Minority Counsel, U.S. Senate Labor and Human Resource Committee (1965-66, 1972); Administrative Assistant to U.S. Senator Jacob K. Javits (1969-71)

Memberships: Fellow, American College of Employee Benefits Counsel; American Law Institute (Advisor, Restatement of Employment Law); U.S. Department of Labor Advisory Council on Employee Welfare and Pension Benefit Plans (1972-74); American Bar Association (Chairman, Committee on Pension, Welfare and Related Plans, Section of Labor and Employment Law, 1976-79); Bar Association of the District of Columbia (Chair, Committee on Labor Relations Law, 1972-73)

Publications: PENSION PLAN TERMINATIONS -- SINGLE EMPLOYER PLANS (BNA Tax Management Portfolio (3d Ed., 2005); MULTIEMPLOYER PLANS – SPECIAL RULES (BNA Tax Management Portfolio (2d Ed., 1986); CAPITOL HILL MANUAL (BNA Books, 2d Ed., 1984); BNA PENSION REPORTER (Advisory Board); ERISA at 30: An ERISA Retrospective – Considering the Successes and the Messes, PENSION & BENEFITS DAILY (Sept. 14, 2004); They Can't Pay: United Plans May Be Facing Final Landing, PENSION & INVESTMENTS (Aug. 9, 2004); Privilege and Work Product: ERISA Limitations (co-author), 11 PROBATE & PROPERTY 39 (Sept./Oct. 1997)

Frequent ALI-ABA planning chair and faculty member

Kay H. Hodge, Boston, Massachusetts

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B.A., J.D., LL.M. (Taxation), Boston University

Instructor, Boston University School of Law (1974-75)

Honors: Gold Medal for outstanding legal services in Massachusetts benefiting the public, the legal profession and the Association (Massachusetts Bar Association, 1999); the Boston University Alumni Association Alumni Award for Distinguished Service to the Profession (1996); The Boston University School of Law Silver Shingle Award (1995)

Fellowships: College of Labor and Employment Lawyers; American Bar Foundation; Massachusetts Bar Foundation

Government and Public Service: Law clerk to the Honorable Raymond J. Pettine (District of Rhode Island, 1975); Massachusetts Judicial Nominating Committee, Executive Committee, (1991 - Vice Chair 1992-98); Massachusetts Trial Court Racial and Ethnic Access and Fairness Advisory Board (2001-present)

Memberships: American Bar Association (Board of Governors, 1996-99; House of Delegates, 1991-present; Chair, Presidential Advisory Council on Diversity in the Profession; Chair, Center for Racial and Ethnic Diversity; Administration Committee, A-E-F-C Pension Plan; State Membership Chair, Massachusetts); American Bar Foundation (State Chair, Massachusetts); National Conference of Bar Presidents (Executive Council; Finance Committee; Treasurer); Massachusetts Bar Association (President, 1994-95; ABA State Delegate, 2005-06); Boston Bar Association; National Asian Pacific American Bar Association; American Arbitration Association (Board of Directors, 1997-present); Boys & Girls Club of Metrowest (Board of Directors, 2000-present); Crossroads Community Foundation (Board of Trustees, 2003-present); Newbury College (Board of Trustees, 2002-present); Whitman College (Board of Overseers, 1996-present); Massachusetts Supreme Judicial Court Historical Society (Board of Overseers, 1996-present)

Publications Include: Responding to Discrimination Charges, 47 PRAC. LAW. 37 (Oct. 2001); Honorable Paul J. Liacos --- An Appreciation, 81 MASS. L. REV. 134 (Sept. 1996)

Peter M. Panken, New York, New York

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B.A., Haverford College; LL.B., Harvard University

Associate, Columbia University Labor Seminar, 1968-72

Honors: Listed in: New York Area's Best Lawyers (New York Magazine, 2005, 2006); Best Lawyers in America (Labor & Employment Law)(CORPORATE COUNSEL, 2005, 2006); The International Who's Who of Business Lawyers, Who's Who in America, Who's Who in the East, Who's Who Legal, and Who's Who in the World.

Memberships: American Law Institute (Adviser, RESTATEMENT OF THE LAW THIRD, AGENCY; Members Consultative, RESTATEMENT OF THE LAW OF EMPLOYMENT); ALI-ABA Program Subcommittee Advisers; American Bar Association (Labor Law Section); New York State Bar Association (Labor and Employment Law Section, Committee on Continuing Legal Education); Federation of the Handicapped (President, 1983-92); Society for Human Resources Management (President, Metro New York Chapter, 1990-92; Chairman, Legislative Liaison Committee, Metro New York Chapter, 1988-90); Executive Forum

Publications: RESOURCE MATERIALS: EMPLOYMENT AND LABOR LAW (Editor in Chief)(ALI-ABA, 9th Ed., 1999); THE DEVELOPING LABOR LAW (Contributing Editor)(ABA Section of Labor and Employment Law); A STATE-BY-STATE SURVEY OF THE LAW ON RELIGION IN THE WORKPLACE (Author and General Editor)(ALI-ABA); Disability Law (chapter author), EMPLOYMENT LAW DESKBOOK FOR HUMAN RESOURCES PROFESSIONALS; Terminations Without Tears – Avoiding Litigation Risks in Reductions in Force (chapter author), REDUCTIONS IN FORCE (Business Laws Inc.); Retaliation: The New Vogue in Employment Litigation (3 Parts), Legal Update, HR BANKER (Feb-April 2005); Retaliation: The New Vogue in Employment Litigation, THE BULLET“ILN” (International Lawyers Network, Dec. 2004); How to Keep a Firing From Backfiring, HR BANKER (July 2004); An Employer's Checklist for Reasonable Accommodation of Religion in the Workplace, 49 PRAC. LAW. 25 (Aug. 2003); Wage Hour Laws: Avoiding the Quicksand and Land Mines (co-author), 26 ALI-ABA BUSINESS LAW COURSE MATERIALS JOURNAL 31 (Aug. 2002); An Employer's Checklist for Determining Reasonable Accommodation to Religion in the Workplace, FORMS & CHECKLISTS BI-MONTHLY (Business Laws, Inc., March/April 2001)

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Fairfield County Regional Bar Association; American Bar Association; The Association of the Bar of the City of New York; Society of Human Resource Management

Publications Include: Evaluation of Subjective Selection Systems in Title VII Discrimination Cases, 7 CARDOZO L. REV. 549 (Winter 1986).

Michael W. Casey, Miami, Florida

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B.A., J.D., Louisiana State University

Honors: Listed in: “Best Lawyers in America” (Labor & Employment Law)(CORPORATE COUNSEL, 2005, 2006); “Leading American Lawyers,” and “Who’s Who Legal”

Memberships: American Bar Association; American Employment Law Council; Fellow, College of Labor and Employment Lawyers; Federal Bar Association; Florida Bar Association (Former Chair and Vice Chair, Labor & Employment Law Section); Miami-Dade County Bar Association (Director, 2005-06); The Federalist Society; The Florida Bar (Former Chair, Labor & Employment Law Section)

Publications Include: Employment Law Trends for 2005: Danger Zones Widen for Unwary Employers, EMPLOYMENT PRACTICES LIABILITY CONSULTANT (Winter 2005)

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A.B., Princeton; J.D., University of Virginia

Associate Professor of Law, University of Houston (1991-95); Visiting Professor of Law, University of Virginia (1994-95)

Fellow, College of Labor and Employment Lawyers

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Prior Affiliations: Vice President and Associate General Counsel, Time Warner Inc.; Pillsbury, Madison & Sutro, San Francisco (1984-91); Matthews & Branscomb, San Antonio; General Counsel, University of Houston System (1997-2002)

Government & Public Service: General Counsel, Office of Compliance, U.S. Congress (1995-97); Law clerk to the Honorable George P. Kazen (S.D. Texas)

Memberships: National Employment Law Institute (Advisory Board)

Publications Include: ETHICS AND PROFESSIONALISM HANDBOOK FOR LABOR AND EMPLOYMENT LAWYERS (NELI 2005); Intentional Infliction of Emotional Distress and Employment At Will: The Case Against ‘Tortification’ of Labor and Employment Law, 74 B.U.L.REV. 387, 1994

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B.A., J.D., University of Miami

Board Certified Labor and Employment Lawyer, Florida Bar Board of Legal Specialization and Education

Honors: Listed in “Chambers USA: America’s Leading Lawyers for Business” (2006); “2006 Elite Women” (HISPANIC BUSINESS MAGAZINE); “Outstanding Outside Counsel” (Minority Corporate Counsel Association); “Florida Super Lawyer” (2006); “Up and Comer” (SOUTH FLORIDA LEGAL GUIDE, 2004); Finalist, 2006 Hispanic Woman of the Year Award; Lillian R. Levy Award of Excellence (University of Miami Inter-American Law Review, 1993)

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Memberships: American Bar Association; United Way Leadership Circle

Publications Include: PUBLIC ACCOMMODATIONS UNDER THE AMERICANS WITH DISABILITIES ACT: COMPLIANCE AND LITIGATION MANUAL (Thomson West, 2002-2007)

Joseph Z. Fleming, Miami, Florida

Greenberg Traurig, P.A.

B.A., University of Florida; J.D., University of Virginia; LL.M. (Labor Law), New York University

Honors: From PROGRESSIVE ARCHITECTURE, for drafting of a preservation ordinance for the Miami Beach “Art Deco District”; 1000 Friends of Florida for *pro bono* litigation to protect the home of Marjory Kinnan Rawlings at Cross Creek, Florida; Florida Audubon Society, Hal Scott Award (for *pro bono* representation to protect the Everglades, the Florida Keys, and Florida Coastal Barrier Islands); Listed in “Super Lawyers,” (FLORIDA SUPER LAWYERS MAGAZINE, 2006); CHAMBERS & PARTNERS USA GUIDE (all editions); “Top Lawyers in South Florida,” (SOUTH FLORIDA LEGAL GUIDE, 2004-05); “Legal Elite” (FLORIDA TREND MAGAZINE, 2004-06); “Best Lawyers in America” (all editions)

Government and Public Service: Dade County Task Force on Well Field Protection (Vice Chair, 1984-); Biscayne Bay Management Committee of Dade County, Florida; Legal Consultant to National Park Service, U.S. Department of the Interior, Regarding Biscayne Bay National Park (1981); Florida Rural Legal Services, Inc. (Past President; Director, 1967-76)

Memberships: American Law Institute; American Bar Association (Urban Quality Committee: Chair, 1987-90; Section of Urban, State and Local Government Law: Council, 1990-94); American Law Institute – American Bar Association (ALI-ABA) (Advisory Group on Labor Law; Chair, Course on Airline and Railroad Labor and Employment Law; Chair, Course on Historic Preservation Law; Co-Chair, Course on Entertainment, Arts and Sports Law); The Florida Bar (Entertainment, Arts and Sports Law Section: Chair, 1986-89; Environmental and Land Use Section: Chair, 1974-75; Labor and Employment Law Section: Chair, 1972-73)

Publications Include: Multinational Corporations: Extraterritoriality Issues and Collective Bargaining; The Foreign Corrupt Practices Act and the OECD Antibribery Convention; and The Federal Alien Tort Claims Act (Co-Author), in INTERNATIONAL LABOR AND EMPLOYMENT LAW (BNA, 1999, 2002-06 and current editions); Management Law: What are Management's Rights, and How Can They be Used in Your Business?, SMART BUSINESS MIAMI (Oct. 2005); Title IX From The Rose Crew to Gutter: The Law and Literature of

Sports, 14 FORDHAM INTEL. PROP. MEDIA & ENT. L.J. 793 (2004); The United States: An Analysis of *Federal Maritime Commission v. South Carolina Ports Authority*, 34 URB. LAW 859 (Fall 2002); "After 9/11/2001," is a "City on a Hill" on a Slippery Sloop When It Legislates Inconsistently With Important Nation-State Interests? An Analysis of *Missouri Hotel and Motel Assn. v. City of St. Louis, Missouri*, 33 URB. LAW. 1059 (Fall 2001); Mt. Healthy, Causation, and Affirmative Defenses, 51 MERCER LAW REV. 637 (Winter 2000)

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Publications Include: Can't We All Just Get Along?: Is Interacting With Others a Major Life Activity? (co-author), 35 ARIZ. ATT'Y 41 (April 1999); Contributing Author, ARIZONA CHAMBER OF COMMERCE EMPLOYEE HANDBOOK (2nd ed. 1996)

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B.A., University of California, Los Angeles; J.D., Harvard University

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Honors: "20 Under 40" California Lawyers (DAILY JOURNAL, 2003); "California Super Lawyer," Business Litigation (LAW & POLITICS, 2004)

Government and Public Service: Assistant U.S. Attorney, Criminal Division, Frauds Section (Los Angeles, 1995-98); Lawyer Delegates to the Ninth Circuit, Central District of California (Co-Chair, 2003-04); Central District of California (Attorney Discipline Committee, Attorney Admissions Fund Board)

Memberships: State Bar of California; American Bar Association (Chair, Environmental Crimes Committee, West Coast Chapter); Los Angeles County Bar Association (Committee on Diversity in the Profession; Executive Committee, Criminal Justice Section); Federal Bar Association (Board of Directors); California Minority Counsel Program (Steering Committee); LAPD Police Commission Rampart Review Panel

Publications Include: Is Government Knowledge a Defense to False Claims Liability: A Discussion of the Role of Government Knowledge Under the California and Federal False Acts, FEDERAL CONTRACTS REPORT (BNA, Sept. 27, 2005); GAUGING ORGANIZATION EXPOSURE TO ENVIRONMENTAL CRIMINAL LIABILITY: A COMPARISON OF THE PROPOSED ENVIRONMENTAL SENTENCING GUIDELINES TO THE ORGANIZATIONAL GUIDELINES AND THE DEPARTMENT OF JUSTICE'S REVISED PRINCIPLES OF FEDERAL PROSECUTION OF BUSINESS ORGANIZATIONS (American Bar Association for the National Institute on White Collar Crime, March 2004); Proof and Pretext: *Reeves* Provides Some Clarification of the Burden-Shifting Formula in Employment Discrimination Lawsuits, LOS ANGELES LAWYER (March 2004); What to do When Your Client's Office is Searched, 49 PRAC. LAW. 23 (Oct. 2003); Grace Under Pressure: Fifteen Steps You Should Take to Manage a Search of Your Client's Office Pursuant to a Federal Warrant, CORPORATE COUNSEL'S QUARTERLY AND THE LAWYER'S BRIEF (July 2002)

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B.A., University of California at Berkeley; J.D., University of the Pacific, McGeorge School of Law

Honors: “Best Lawyers in America” (2007); “Best Lawyers in Southern California” (CALIFORNIA LAWYER) and “Top 50 Female Super Lawyers,” (LOS ANGELES MAGAZINE/LAW & POLITICS)(2004-06); Speaker Recognition (City of Hope, 1992)

Memberships: American Bar Association (Labor and Employment Law Section); State Bar of California; California Employment Lawyers Association; Los Angeles County Bar Association (Litigation and Employment Sections; Vice Chair, Executive Committee, Los Angeles County Bar Dispute Resolution Services; Vice-Chair, Executive Committee on Fee Arbitration; Advisory Committee, Lawyer Referral Information Service); Association of Business Trial Lawyers; Consumer Attorneys Association of Los Angeles; BERKELEY JOURNAL OF EMPLOYMENT AND LABOR LAW (National Advisory Board)

Publications Include: A New Twist on Sexual Favoritism in the Workplace, HR.com (Nov. 2005) and VERITUDE, Workforce Insight (Sept. 2005); Unruly Rules on Employee Background Checks, CAL. LAW. (Jan. 2004); How Accommodating Are Your Accommodations?, HOTEL AND MOTEL JOURNAL (Sept. 2003); Sexual Harassment and Discrimination, WOMEN AND THE LAW (WestGroup, 2002); Application of *Faragher* Defense to State Civil Rights Claims, NAT’L L.J. (April 2002); BENEFITS AND COMPENSATION SOLUTIONS MAG., (Contributing Monthly Editor, 2000-2001); Bound and Gagged: Termination Rights of In-house Counsel, HOUSE COUNS. MAG. (April 2000); Religious Proselytizing in the Workplace: Free Speech or Harassment?, CAL. LAW. (Aug. 1999); Proselytizing in the Workplace, HOUSE COUNS. MAG. (Spring 1999); Damage Control: The Availability of Punitive Damages in Arbitrations, LOS ANGELES LAW. MAG. (March 1996); Punitive Damages in Securities Arbitration, LOS ANGELES DAILY J. (Nov. 1994)