

Littler®



The Littler Executive Employer Conference: Employment and Labor Law Solutions in This Time of Uncertainty

May 10-12, 2017 | JW Marriott Desert Ridge Resort | Phoenix, AZ

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THE 2017 EXECUTIVE EMPLOYER CONFERENCE

Historically, new presidential administrations and shifts in the balance of power in Congress usher in change, but mostly incremental change. This transition promises to be different. The changes now occurring in Washington, D.C., could be profound and long-lasting. For employers, the impact of these changes on their workplaces and how they manage their workforces may require entirely new approaches to employment law and HR management. Coupled with the ongoing and remarkable upheaval brought on by technology, globalization, the application of big data and the shift in how work is performed (e.g., the gig economy), employers confront tectonic shifts perhaps not seen since the dawn of the Industrial Age.

The 2016 presidential and congressional elections have caused no small degree of angst and tremendous uncertainty in workplaces across the nation. Employers now face a myriad of questions about what the future holds when it comes to workplace regulation. Will the promises of deregulation come to fruition? Will the laws and requirements enacted or adopted over the past eight years be undone or scaled back? Will state and local governments step in with new regulations where the federal government has stepped aside?

The **Attorneys of Littler Mendelson** invite you to join us for **The Executive Employer® Conference – Employment and Labor Law Solutions in This Time of Uncertainty**: our annual exploration of the most significant developments in labor and employment law, as well as emerging trends and challenges of the future. A hallmark of Littler’s Executive Employer Conference is our consistent focus on understanding current challenges and developing strategies to assist our clients in preparing for issues they will face in the coming years. This year’s program has been designed specifically for in-house counsel, HR executives and employee relations professionals to help you enhance your organization’s legal compliance and maintain a vibrant and productive workplace.

On Wednesday afternoon, we will offer preconference sessions featuring Littler’s innovative consulting teams – the **Workplace Policy Institute (WPI)** leading a discussion on how your organization can help shape policy on Capitol Hill and our **Big Data Initiative** reviewing how big data can be used in hiring and promotion decisions and litigation defense. **Littler’s Women’s Leadership Initiative (WLI)** will host a roundtable discussion featuring Jane Miller from Gallup, Inc. discussing how leading organizations attract, engage and retain gender-diverse workforces. **Littler Global** will host a session providing insight on cross-border employment issues, the global transfer of HR data and the latest developments on International Labour Organization (ILO) human rights issues.

The preconference sessions taking place on Wednesday, May 10, are open to all registered attendees.

THE 2017 EXECUTIVE EMPLOYER CONFERENCE

On Thursday, we welcome special guest Acting Chair of the EEOC Victoria A. Lipnic who will provide attendees with insight into the EEOC's strategic initiatives for the coming years. Other Thursday programs will focus on additional substantive sessions discussing the most pressing employment law questions you are struggling with now, including:

- Paid sick leave compliance across multiple states
- Labor policies under the new administration
- The Affordable Care Act repeal, replacement or "repair"
- ADA and public accommodation issues
- Marijuana legalization and its impact in your workplace
- Privacy concerns in the digital age
- Changes in the regulatory environment
- The future impact of arbitration agreements on class action litigation

On Friday, we will feature interactive sessions where attendees will be presented with realistic scenarios that will cover the hard questions they likely face on a daily basis. These interactive gatherings will feature role playing, live actors and topics that include:

- Conducting lawful and privileged investigations and effectively assessing employee truthfulness
- How to balance business needs and legal risks when making HR decisions
- Handling difficult workplace accommodations issues involving "invisible" disabilities, gender identity and religious preferences

The Executive Employer Conference is just one example of Littler's commitment to help you and your organization focus on minimizing and avoiding risk, implement strategic solutions to increase workplace compliance and develop practical measures to enhance and benefit your workforce. We are dedicated to helping you prepare for and develop strategies to adjust to this period of change and uncertainty.

On behalf of the Attorneys of Littler Mendelson, we hope you will join us in Phoenix!

WEDNESDAY | MAY 10

11:00 am	Conference Registration			
12:00 pm - 1:30 pm	Lunch (open to all attendees)			
PRECONFERENCE SESSIONS				
1:30 pm - 3:30 pm	An Insider's View from the Capitol: A Workplace Policy Update			
1:30 pm - 5:00 pm	Women at Work: Attracting, Engaging and Retaining a Gender-Diverse Workforce	Big Data Summit: What's the Deal with Using Data Analytics in Hiring, Workforce Management and Litigation?	The Littler Global Forum Part I: Strategies and Practices HR and In-house Counsel Need to Manage Labor Relations at the Global Level Part II: Managing U.S./Canada Cross-Border Workforce Issues Part III: Managing HR Data Globally Without Violating International Data Protection Laws Part IV: Puerto Rico's 2017 Employment Law Reform	Industry Roundtables: <ul style="list-style-type: none"> • Healthcare • Transportation
6:30 pm	Reception and Welcome Dinner			

 **NAVIGATION TIP:** Click session titles in the agenda table to jump to the description page

THURSDAY | MAY 11: Current Employment Law Challenges

7:00 am - 8:00 am	Breakfast					
8:00 am - 9:15 am	2017 General Session: The Littler Report					
SESSIONS						
9:45 am - 11:00 am	Seven Key Developments and Recommendations Affecting Your Restrictive Covenant Agreements and Unfair Competition Strategy	EEOC Priorities and What They Mean for Employers: A Conversation with EEOC Acting Chair Victoria A. Lipnic	Paid Sick Time: Compliance Solutions for Multijurisdictional Requirements	Wage and Hour Update: Retrenching on the Federal Level and Continued Activism on the Local Level	Affiliated Company Liability: The Expanding Definition of “Employer” and the Increasing Disregard of Corporate Separateness	One-Year Countdown: Get Ready for Europe’s New Data Protection Framework Before It’s Too Late
11:15 am - 12:30 pm	Workplace Safety: What Is the Trump Card?	What Turns an Employee into a Whistleblower and Are Whistleblowers Good for an Organization?	Employer-Sponsored Healthcare Post-Affordable Care Act	OFCCP Update: Compliance in a Time of Change	The New Supreme Court Balance: Implications for Labor and Employment Law	Entering New Markets: Tips and Tricks of Global Expansion
12:30 pm - 1:45 pm	Lunch: The 2017 Employment Law Update					
2:00 pm - 3:15 pm	Pay Equity: A Rapidly Expanding Frontier	The Top 10 Employee Benefits and Executive Compensation Issues in 2017	The FMLA Today: Tackling New and Persistent Leave Issues	Privacy Concerns in Today’s Technology-Based Workplace	The Current Status of Arbitration Agreements Under the New Administration and in the Courts	Outsourcing: A Global Onslaught on the Use of Independent Contractors

 **NAVIGATION TIP:** Click session titles in the agenda table to jump to the description page

3:45 pm – 5:00 pm	Wage and Hour Class Action Avoidance: Lessons from Trial Attorneys	Who Let the Dogs In? An ADA Primer for Places of Public Accommodation	Weed and Work: Are Marijuana Users the Newest Protected Class?	Realistic Expectations from the NLRB: Reversal of Obama Labor Policies, Business as Usual or Something in Between?	Digging into Background Checks: Advanced Issues and Complex Relationships	Global Migration in the Age of Nationalism
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THURSDAY | MAY 11: Current Employment Law Challenges

5:15 pm – 6:00 pm	Special Session Sponsored by the Workplace Policy Institute The Department of Labor: A Look Ahead					
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6:30 pm	Special Dinner Event: Farm-to-Table Dinner Under the Stars					
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 **NAVIGATION TIP:** Click session titles in the agenda table to jump to the description page

FRIDAY | MAY 12: Interactive Workshops

7:00 am - 8:00 am	Breakfast					
8:00 am - 9:00 am	General Session An Interview with Philip Miscimarra, Chairman of the National Labor Relations Board					
SESSIONS						
9:15 am - 12:00 pm	Retail Industry Roundtable	Conducting Efficient, Effective and Lawful Workplace Investigations	Become a Human Lie Detector: Tactics for Assessing Employee Truthfulness	A Corporate Balancing Act: Business Need vs. Legal Risk	The Employee from Hell - A View from the Dark Side: How In-House Counsel Can Effectively Manage the Legal, HR and Business Issues Surrounding the Problematic Employee	Moving Through the Fog: Handling Complex Issues in Workplace Accommodations Involving "Invisible" Disabilities, Gender Identity and Religious Preferences
12:00 pm	Boxed Lunches					
12:15 pm - 1:15 pm	Special Session Terabytes and Tweets: Ethical Challenges for In-House Counsel in the Use of Technology and Social Media					

 **NAVIGATION TIP:** Click session titles in the agenda table to jump to the description page



11:00 am	Conference Registration
12:00 pm - 1:30 pm	Lunch (open for all attendees)
PRE-CONFERENCE SESSIONS – Choose one (continued on page 9)	
1:30 pm - 3:30 pm	<p>An Insider’s View from the Capitol: A Workplace Policy Update</p> <p>The outcome of 2016 Presidential and Congressional elections set the stage for a sea change in federal workplace policy. As President Obama’s agenda is replaced by that of President Trump’s, the landscape for labor, employment and benefit laws and regulations is expected to dramatically shift. With this change comes an opportunity for employers to shape policy in a positive way. Through Littler’s Workplace Policy Institute (WPI), your company can lend its voice to the legislative and regulatory process and affect real change in workplace policy.</p> <p>Along with a panel of DC policy experts, the WPI attorneys will show employers how to navigate the halls of Congress, as well as regulatory agencies, to impact workplace policy in a way that advances their strategic objectives. During this roundtable discussion we will also examine how workplace policy has already changed during the new administration and what we can expect in the future.</p>
1:30 pm - 5:00 pm	<p>Women at Work: Attracting, Engaging and Retaining a Gender-Diverse Workforce Presented by Littler’s Women’s Leadership Initiative</p> <p>The Gallup Organization issued a groundbreaking report in fall 2016 titled “Women in America: Work and Life Well-Lived.” This report presents valuable analytics and concrete advice on how employers can achieve and maintain a successful gender-diverse workforce in corporate America. We will hear from Jane E. Miller, Chief Operating Officer and Executive Vice President of Gallup, about the findings, what an ideal work culture for women looks like and what organizations can do to foster that culture. Client representatives will discuss how their organizations are handling the issues identified. Finally, in a roundtable discussion session, participants will have the opportunity to weigh in with their perspectives as well as ask questions of the session speakers.</p> <p>Big Data Summit: What’s the Deal with Using Data Analytics in Hiring, Workforce Management and Litigation?</p> <p>Employers of all sizes, in virtually every industry, should prepare for a new employment world dominated by data sets, data systems and analytics. What may seem to be futuristic is coming to your workplace if it has not already arrived. Using more than just resumes and job applications, data can help improve and streamline the hiring process. Research demonstrates that the standard unstructured interview conducted by most line managers is no more effective than flipping a coin in terms of selecting a qualified applicant. Pre-employment assessments take some of the guess work out of hiring, helping your organization raise its hiring “batting average.” They do this by adding an objective analysis to the manager’s (typically) subjective determination. Our panel will discuss the benefits of using a robust assessment battery as part of your hiring, promotion and development process.</p>

PRE-CONFERENCE SESSIONS – Choose one (continued from page 8)

Beyond pre-employment testing, data can be used to predict which applicants are likely to become successful employees or to predict which employees are likely to voluntarily quit in the next six months. The data used to render these predictions come from public sources and information provided by applicants and employees, as well as from internal company records. While companies are investing heavily in artificial intelligence and data-science approaches to decision-making, employers continue to operate with little legal guidance that translates seamlessly into the world of Big Data. This part of the program will highlight how employers can use data analytics as a tool to help them eliminate overt and implicit bias from the employee selection process and how employers can consider legal risks before they materialize and evaluate the legal issues associated with data analytics in an attorney-client privileged setting, whenever possible.

Further, as a practical matter, more than ever before, employers and their workers are using a greater number of electronic systems and recording their activities. Timekeeping systems, GPS data and back-end data from business systems all contain information that may provide insight into what your employees are doing. This data is still often seen as an expensive litigation liability. This part of the program will highlight how everyday electronic systems used in employment can be a source of valuable business information, including real-life examples of how this data can be used as a litigation advantage for employers.

Littler Global Forum (a four-part series, continued on page 10)

1:30 pm –
2:20 pm

Part I: Strategies and Practices HR and In-house Counsel Need to Manage Labor Relations at the Global Level

For global employers, labor relations and dealings with employee representatives can be a significant area of risk that is often unpredictable and difficult to manage. While inherently local, a labor relations conflict can quickly become an international incident and damage a company’s brand. These risks have increased in recent years as companies pursue initiatives to promote responsible corporate conduct and respect for human rights. Labor unions have learned to take advantage of the vulnerabilities created by these initiatives while at the same time, coordinating across borders and through global union federations. Learn from Littler’s global labor lawyers and labor relations professionals from multinational corporations how they identify and manage such risks.

2:25 pm –
3:15 pm

Part II: Managing U.S./Canada Cross-Border Workforce Issues

With the ever-increasing cross-border movement of workers and data, multinational companies face many labor and employment law compliance challenges. For example, the US and Canada have the world’s longest unguarded border and share many similarities, including cultural backgrounds. As each other’s largest trade partners, the exchange and transfer of employees across the border becomes an important business issue. However, the fact that an employee’s hiring, assignment or telecommuting arrangement may create pitfalls under the laws of either country is often ignored by employers until the employee is already working in the neighboring country. As part of this Littler Global Forum, we will discuss traditional and non-traditional strategies for cross-border hiring and transfer assignments, and address related legal developments in both countries in the areas of employment, immigration and tax law.

3:20 pm –
4:10 pm

Part III: Managing HR Data Globally Without Violating International Data Protection Laws

Multinational employers are also increasingly seeking to leverage highly sophisticated, cloud-based solutions to manage their global workforce. While these human resources information system (HRIS) databases permit the integration of far-flung employees into a centrally managed global workforce, they also raise complex legal challenges. More than 70 countries worldwide now regulate the processing of employees’ personal data, and most of these countries generally prohibit the transfer of this data to third countries unless steps are taken to protect employees’ data protection rights. This part of the Global Forum will provide practical recommendations for lawfully centralizing employee data globally in a single HRIS.



<p>4:15 pm - 5:05 pm</p>	<p>Part IV: Puerto Rico's 2017 Employment Law Reform</p> <p>On January 26, 2017, the Governor of Puerto Rico signed into law the Labor Transformation and Flexibility Act, the first major attempt at a comprehensive reform of Puerto Rico's employment legislation since 1998. This interactive panel will provide an in-depth analysis on the implications of this new law, as well as practical recommendations for compliance, with special focus on avoiding potential implementation pitfalls. Topics to be discussed include "grandfather clauses"; wage and hour; repeal of the Closing Law; vacation and sick leave; religious accommodations; probationary employment periods; and drafting and implementing effective policies and procedures.</p>
<p>Choose one (continued from page 9)</p>	
<p>1:30 pm - 5:00 pm</p>	<p>Healthcare Roundtable</p> <p>The Healthcare Industry Roundtable has become an important tradition at the Executive Employer. Experienced Littler lawyers and your peers, nationwide, will engage in lively, open discussion about the things that keep healthcare industry executives up at night.</p> <p>Among the issues to be discussed are:</p> <ul style="list-style-type: none"> • FMLA and leaves abuse • Attracting and managing employees through generational differences • Labor relations • Whistleblower claims and the False Claims Act • Wage and hour • New developments under the OFCCP and EEOC • Credentialing, peer review, privilege and immunity • ADA Title III - accessibility issues • Reasonable accommodation issues (disability and religious) • Social media concerns <p>Transportation Roundtable</p> <p>The Transportation Industry Roundtable will focus on:</p> <ul style="list-style-type: none"> • The latest labor and employment issues facing the transportation industry, including developments in independent contractor and joint employer law • The federal pre-emption of state employment law claims • Arbitration agreements and the use of class action waivers • The impact of new sick time and other leave of absence statutes • Common pitfalls for those in the transportation industry and how to avoid them
<p>6:30 pm</p>	<p>Reception and Welcome Dinner (open to all attendees)</p>



<p>7:00 am - 8:00 am</p>	<p>Breakfast</p>
<p>8:00 am - 9:15 am</p>	<p>2017 General Session: The Littler Report</p> <p>Littler has always been ahead of the curve in recognizing trends, predicting results and providing practical, proactive advice in the world of labor and employment law. Whether it was the popularity of social media, the challenges presented by aggressive government agencies or how new technologies revolutionize the workplace, Littler has been there with you to navigate change and help you best position your company for long-term success. This year's Executive Employer general session will once again explore the changes dramatically impacting our workplaces and influencing how HR and employment law professionals address their job responsibilities today and in the coming years. Join us as we continue the rich tradition started over 30 years ago of providing Employer Conference attendees with the tools to handle today's challenges and providing guidance on preparing for future changes in the laws and the very nature of our workplace.</p>
<p style="text-align: center;">Choose one (continued on page 12)</p>	
<p>9:45 am - 11:00 am</p>	<p>Seven Key Developments and Recommendations Affecting Your Restrictive Covenant Agreements and Unfair Competition Strategy</p> <p>2016 was a year of great change on both the federal and state levels in the unfair competition and trade secret landscape—including the passage of the federal Defend Trade Secrets Act. For example, confidentiality provisions have been subjected to SEC scrutiny (and fines) where they are found to impede whistleblower rights. California has implemented choice-of-law and choice-of-venue provisions restrictions in employee contracts. In fact, some of these changes create liability exposure – not just the loss of enforceability. This session will focus on seven such changes and the impact of those developments on your company's restrictive covenant agreements and unfair competition prevention planning. Last year's developments warrant serious attention, and the session will walk you through action steps you need to take.</p> <hr/> <p>EEOC Priorities and What They Mean for Employers: A Conversation with EEOC Acting Chair Victoria A. Lipnic</p> <p>Over the past several years, the EEOC has increased its focus on systemic investigations and related litigation dealing with “pattern or practice, policy and/or class cases where the alleged discrimination has a broad impact on an industry, profession, company or geographic location.” In late 2016, prior to the presidential election, the EEOC reaffirmed what it considered to be its key priorities, which included: (1) eliminating barriers in recruitment and hiring; (2) protecting vulnerable workers; (3) addressing emerging and developing issues, such as inflexible leave policies against individuals with disabilities, accommodating pregnancy-related limitations and protecting LGBT workers from discrimination; (4) ensuring equal pay for all workers; (5) preserving access to the legal system, such as challenging what the EEOC viewed as overly broad releases and arbitration plans that deterred individuals from filing claims with the EEOC; and (6) preventing harassment in the workplace. Moving forward, will the systemic initiative and priorities previously announced continue in effect or will there be a complete change in focus and direction by the EEOC under the new administration? You will not want to miss this lively exchange between newly appointed Acting Chair of the EEOC Victoria A. Lipnic, and Barry Hartstein, Co-Chair of Littler's EEOC and Diversity Practice Group and the Executive Editor of Littler's Annual Report on EEOC Developments.</p>



Choose one (continued from page 11)

9:45 am -
11:00 am

Paid Sick Time: Compliance Solutions for Multijurisdictional Requirements

Jurisdictions requiring paid sick leave continue to multiply, adding new requirements and increasing obligations. In the meantime, the agencies charged with enforcing sick leave obligations have increased their compliance activity and are aggressively pursuing charges. Not sure what is required by the various sick leave jurisdictions? Looking for insight into how to comply when faced with two, three or more conflicting jurisdictions? This panel discussion will break down the current and upcoming paid sick leave laws, including identifying where sick leave laws are alike and where they are different. Attendees will walk away with a deeper understanding of exactly what is required in each jurisdiction and with solutions to common compliance challenges.

Wage and Hour Update: Retrenching on the Federal Level and Continued Activism on the Local Level

The new administration is widely expected to work to overturn recently implemented labor and employment regulations on the federal level and pave the way for a more employer-friendly climate with regulatory agencies. The administration may abandon the appeal of the successful injunction against the implementation of a higher salary pay requirement for the white-collar exemptions and either go back to the 2004 salary levels or pursue a more modest increase in the salary pay requirement. While employers welcome these developments at the federal level, they will likely face increased activism at the state and local levels. From increased minimum wages in states and cities, to paid sick leave and scheduling laws, state and local governments may make up for any reduction in regulation at the federal level. In addition, the stream of new laws must be considered in relation to court decisions that ever more closely refine an employer’s wage payment obligations. Employers will need to navigate this patchwork of local, state and federal laws and court decisions in the coming year and understand how they work together or against each

Affiliated Company Liability: The Expanding Definition of “Employer” and the Increasing Disregard of Corporate Separateness

Courts and administrative agencies, including the National Labor Relations Board, are broadening the definition of “employer” to expand liability for employment obligations across corporate lines. Various legal theories, including joint employer, single employer and alter-ego theories, are being used to treat nominally separate corporate entities as one employer for liability purposes. The result of this definitional expansion is that affiliated companies are being found liable for labor and employment law violations of subsidiary or sister companies, including violations of the National Labor Relations Act (NLRA), the Worker Adjustment and Retraining Notification (WARN), the Employee Retirement Income Security Act (ERISA) and wage and hour, discrimination and whistleblower laws, among others. Many corporate structure forms are at risk, including holding and operating companies, parent-subsidiary relationships, private equity management-portfolio company relationships, general and limited partnerships, independent contractor relationships and joint ventures. This session will address the factual and legal bases for disregarding corporate separateness in the labor and employment law setting and suggest practical strategies to minimize or avoid liability.



Choose one (continued from page 12)

<p>9:45 am - 11:00 am</p>	<p>One-Year Countdown: Get Ready for Europe's New Data Protection Framework Before It's Too Late</p> <p>In May 2018, the General Data Protection Regulation (GDPR), Europe's landmark, new data protection framework, will take effect. This new data protection framework will affect every U.S. multinational company with employees in any of the EU's 28 member states. The GDPR imposes new employee notice requirements, strictly limits the permissible grounds for processing employees' personal data, establishes new rights for employees regarding their personal data, enhances restrictions on cross-border data transfers and mandates notification of government authorities for security breaches. These new requirements cannot be ignored as penalties can range as high as 4 percent of annual gross revenue for the entire corporate group.</p> <p>This panel discussion will provide practical recommendations on how to take advantage of the one year remaining in the compliance grace period so your organization will be ready when the GDPR takes effect.</p>
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Choose one (continued on page 14)

<p>11:15 am - 12:30 pm</p>	<p>Workplace Safety: What Is the Trump Card?</p> <p>With the assistance of national safety and health experts and the director of the Arizona Division of Occupational Safety and Health (ADOSH), Bill Warren, this session will explore changes to workplace safety occurring under the Trump administration. We will provide an update on campaign promises to reduce the burden of regulations on American businesses. We will review federal OSHA's latest compliance requirements and how their implementation has been changed under the new administration. We also will explore how the 22 state OSHA programs may advance health and safety requirements differently than the federal administration. This session will provide important updates on key health and safety issues occurring throughout the country.</p> <hr/> <p>What Turns an Employee into a Whistleblower and Are Whistleblowers Good for an Organization?</p> <p>In this session, you will hear a panel of experienced litigators, on both sides of the docket, discuss common fact patterns that generate whistleblowing activity and claims of retaliation, along with new developments in this area. We will discuss the use of privileged and confidential information to prosecute a claim, what types of activity are "protected" and what actions meet the definition of retaliation. The panel will discuss whether whistleblowers are good for an organization in key areas such as culture, confidentiality and transparency. The panel will also discuss whether a change in administrations will affect whistleblower protections and bounties in the near future.</p> <hr/> <p>Employer-Sponsored Healthcare Post-Affordable Care Act</p> <p>What do the new administration and Congress mean for the future of the Affordable Care Act? Will the ACA actually be revised, repealed or replaced? What will it mean for the employer mandate and the 30-hour full-time employee definition? This session will provide a practical, timely summary of the status of healthcare reform as it exists in May 2017, including any GOP pending or enacted legislation involving group health plans.</p>
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Choose one (continued from page 13)

<p>11:15 am - 12:30 pm</p>	<p>OFCCP Update: Compliance in a Time of Change</p> <p>Under President Obama, government contractors saw a dramatic increase in regulations with the imposition of significant new requirements relating to EEO and affirmative action, employee benefits, labor relations and pay equity. Following the 2016 election, many of these requirements will likely change. This presentation will discuss the Trump administration’s first 100 days, the requirements that continue to apply to federal contractors and how to prioritize compliance efforts in a time of uncertainty.</p>
	<p>The New Supreme Court Balance: Implications for Labor and Employment Law</p> <p>For most of 2016, the U.S. Supreme Court operated with eight justices that limited not only the cases the court reviewed but also the breadth of its decisions. With a Court expected to be fully staffed this spring, there are several labor and employment issues currently on the docket. How will the new Court look at class action waivers in arbitration agreements that have been challenged by the National Labor Relations Board? How much deference will the Court give to federal agency regulatory interpretations in a case involving transgender student rights under Title IX and how will this decision translate and affect employers under Title VII? What other cases currently making their way through the lower courts should employers be watching? These and other questions will be discussed in this engaging and highly relevant panel discussion.</p>
	<p>Entering New Markets: Tips and Tricks of Global Expansion</p> <p>There are many issues to consider when companies plan new market entry. In addition to recruiting challenges, expansion often requires looking at the cross-border transfer of your workforce, payroll logistics, tax implications and complying with local employment agreement requirements. This session will provide a general overview as well as provide real-world information and practical tips in the areas of immigration, taxation, employment, engaging contractors and information on dealing with local governments, including ways those governments can assist companies expanding into their country.</p>
<p>12:30 pm - 1:45 pm</p>	<p>Lunch: The 2017 Employment Law Update</p> <p>A perennial favorite at the Executive Employer Conference, this fast-paced, highly entertaining special lunchtime session provides a unique opportunity to understand the latest court cases, legislative and regulatory activity and crucial developments that will affect your workplace and your responsibilities this year and during the new administration. As in the past, we have assembled a terrific panel of Littler attorneys from across the country, and from multiple practice areas, who will guide you through the maze of new developments and prepare you for the challenges ahead.</p>



Choose one (continued from page 14)

2:00 pm –
3:15 pm

Pay Equity: A Rapidly Expanding Frontier

With an increased attention paid to pay equity in the workplace, employers need to be prepared for closer scrutiny of pay practices. While the proactive efforts of federal regulators, at the direction of a new administration, may not be fully known at this time, employers should certainly anticipate a proactive plaintiffs’ bar and potential class actions in this area.

Recent developments in numerous states have also changed the stakes for employers. Legislation enacted in California, New York, Maryland and Massachusetts heightens an employer’s obligations to justify pay differences based on gender. The public discourse surrounding pay equity considerations has also increased awareness among employees. Employers are balancing legal obligations, employee engagement and talent retention considerations in an era where some employers are publicly transparent about their “pay gaps” and related strategies. For some, pay equity has become the new diversity and inclusion business strategy for attracting and retaining talent by distinguishing some employers from others in the marketplace. How should employers address this onslaught of new laws and potential challenges to pay practices? Internal privileged audits need to be carefully considered. How should employers respond to competitive pressure to become more transparent regarding pay data? This session is designed to focus on these broad-based challenges for employers. Attendees will receive both an update on recent developments and compliance guidelines and recommendations for dealing with this rapidly evolving area of the law.

The Top 10 Employee Benefits and Executive Compensation Issues in 2017

Sponsors of employee benefits plans and executive compensation arrangements must be mindful of the threats they face from the Internal Revenue Service, Department of Labor and increasingly litigious plan participants. In this session, we will discuss the top 10 issues that employers should focus on this year to minimize their exposure as both plan sponsors and plan fiduciaries. Topics to be discussed include ensuring documentary compliance in a world without periodic retirement plan determination letters; preventive steps to take in advance of the inevitable IRS or DOL audit of retirement and health and welfare plans; the path to assuring good fiduciary governance; simple plan drafting techniques that can effectively limit liability under both retirement and welfare plans; critical cross-border issues; and avoiding common executive compensation pitfalls and potentially expensive multiemployer plan withdrawal liability issues.

The FMLA Today: Tackling New and Persistent Leave Issues

In this session, Littler’s experienced FMLA attorneys and their guest panelists will discuss recent developments under the FMLA, including lessons from actual Department of Labor investigations, the latest case law and strategies for dealing with confounding regulation provisions and state law nuances. Input from the audience will fuel much of the discussion, so come prepared with your most challenging leave questions.

Privacy Concerns in Today’s Technology-Based Workplace

With rapidly changing technological developments, privacy concerns in the workplace are an evolving topic. This presentation will cover the latest hot-button privacy topics, including how pre-employment screening can be used in hiring decisions, ethical issues when lawyers use social media and the pitfalls of using social media in hiring decisions. Data security breaches have also been very prominent in the news – this session will discuss steps employers should take to reduce this risk in the workplace especially as it relates to bring your own device (BYOD) programs.



Choose one (continued from page 15)

<p>2:00 pm – 3:15 pm</p>	<p>The Current Status of Arbitration Agreements Under the New Administration and in the Courts</p> <p>The future of employee arbitration agreements had been clouded following the untimely passing of Supreme Court Justice Antonin Scalia and uncertainty about the election, but now with a new president, new Congress and potentially new Supreme Court justice balance, employers can expect changes and need to be positioned to adapt to the new and largely favorable reality. For example:</p> <ul style="list-style-type: none"> • Arbitral class action waivers will now be reviewed by a new NLRB with a presumably employer-friendly perspective – will this spell the end of the <i>D.R. Horton</i> line of attack? • What will the courts, especially the Supreme Court, do? • Will harsh penalties imposed on federal government contractors, who seek enforcement of their arbitration agreements in Title VII and certain tort cases, remain part of the landscape? • Will Department of Defense contractors face a tougher road than contractors with other federal agencies? • Should existing agreements be modified, and if so, how aggressive should employers be? • What about arbitral opt-out clauses – are they necessary or even advisable? <p>Our panel will address these issues and more, presenting attendees with information on the current status of the law, what changes may be expected and what employers need to do now.</p> <hr/> <p>Outsourcing: A Global Onslaught on the Use of Independent Contractors</p> <p>U.S.-based employers have become familiar with the challenges to asserted independent contractor arrangements under a range of workplace, tax, benefits and other laws. The same questions frequently arise globally, in most regions and many countries, with challenges created by the new “sharing economy” as well as more traditional contracting sectors. Key rulings and ongoing challenges outside of the U.S. – in Europe, Latin America and beyond – will be explored in this session. An esteemed panel of Littler Global attorneys and clients will provide guidance on developing a “best practices” approach to structuring contractor arrangements in the U.S. and globally.</p>
<p>3:45 pm – 5:00 pm</p>	<p>Wage and Hour Class Action Avoidance: Lessons from Trial Attorneys</p> <p>Although few class actions are tried, the parties’ perceptions of the likelihood of winning or losing are important determinants of the settlement value of each case. During the past year, Littler has tried some of the most significant wage and hour cases in the nation. Learn from the lawyers who tried those cases, how their defenses were perceived by the jury, the judge or arbitrator, what policies or other evidence proved most persuasive, and, perhaps most important, what evidence they wished the client could have provided that would have clinched the case. This session will provide rare insight into what you can do proactively to maximize your chances of success at trial, thereby strengthening your negotiating position.</p>



Choose one (continued from page 16)

3:45 pm –
5:00 pm

Who Let the Dogs In? An ADA Primer for Places of Public Accommodation

Accessibility claims in places of public accommodation (ADA Title III claims) are on the rise. While claims and lawsuits are increasing, employers continue to grapple with accessibility issues and compliance. Areas of concern for employers include:

- Barriers to wheelchairs in physical facilities
- Parking lot accessibility
- Acceptance of service animals
- Effective communication for deaf and hard-of-hearing individuals
- Access to treatment in healthcare facilities
- Website accessibility by vision- and hearing-impaired persons
- Accessibility of phone and tablet apps

This session will address the common questions and issues that arise in these areas. It will provide strategies to minimize claims, training suggestions and updates on enforcement trends by the DOJ and private counsel – including developments on Title III “class action” claims against places of public accommodation.

Weed and Work: Are Marijuana Users the Newest Protected Class?

Although marijuana use remains illegal as a matter of federal law, over 20 percent of the U.S. population now resides in jurisdictions that have elected not only to decriminalize marijuana possession but also to regulate and sell marijuana as a retail product. Workers in other jurisdictions may be offered marijuana for medical use. Employers may find their drug-free workplace programs are inadequate to address the prospect of a workforce that feels a growing entitlement to and acceptance of marijuana use. What are the risks of hiring marijuana users? If an employer chooses not to prohibit marijuana use, does it risk negligence or other claims? Can an employer ensure that its drug-testing program measures impairment rather than off-duty drug use? What accommodation obligations may apply regarding medical marijuana? Our panel of Littler attorneys and in-house counsel will explore these and other issues and offer practical insights on managing workers in an era of legal marijuana use.

Realistic Expectations of the NLRB: Reversal of Obama Labor Policies, Business as Usual or Something in Between?

President Trump is expected to create a dramatic shift in labor policy, although exactly how policy will shift is unclear. Our panel of Littler traditional labor lawyers will break down the early signals from the Trump administration and analyze changes at the National Labor Relations Board that may help predict the direction of labor policy and its implications for employers. Topics Littler is watching closely – and will discuss in this session – include expedited elections; Section 7 rights and protected activity; class action waivers; joint employer liability; the persuader rule; appropriate bargaining units; management rights clauses; and the duty to bargain. In addition, our panel will cover significant developments occurring prior to the conference in a rapidly changing legal and regulatory landscape.



Choose one (continued from page 17)

<p>3:45 pm – 5:00 pm</p>	<p>Digging into Background Checks: Advanced Issues and Complex Relationships</p> <p>Employer background checks are under fire from many angles, and, in many cases, background check practices have led to multi-million dollar lawsuits and settlements. This session will go beyond background check basics typically addressed in such materials to address the core – and complex – logistical, contractual and practical issues in conducting background checks and evaluating and potentially transferring liabilities related to them. In this session, we will cover topics such as:</p> <ul style="list-style-type: none"> • New case law raising questions about the manner (e.g., mail, email, certified mail) and timing of preadverse and adverse action notices, especially when complicated by overlapping state and local laws • Proper communication among employers, background check companies and insurers to establish an understanding of shared and independent responsibilities and liabilities (Who is doing what? Who handles what? Who is preserving what?) • Addressing shared risk and liability issues when staffing agencies, temporary employment agencies or other contingent workforce operations conduct background checks or when checks are done under standards set by clients or government contracts • Navigating compliance in the face of software or other third-party technical limitations <hr/> <p>Global Migration in the Age of Nationalism</p> <p>As political developments on both sides of the Atlantic – and elsewhere around the world – demonstrate, corporations face new challenges in the conduct of global business, not the least of which relate to expatriate assignments for key employees to jurisdictions that offer differing degrees of welcomeness, ease of movement and safety. Compliance with national immigration procedures in an era when forces encourage domestic employment is only one aspect of a complex picture that includes tax, payroll, employment and employee benefits laws and corporate policies, among many other factors. This session will explore both traditional and new challenges that arise from the political and cultural forces at work in various nations and discuss legal, HR and employment tax management considerations from several global vantage points.</p>
<p>5:15 pm – 6:00 pm</p>	<p>Special Session Sponsored by the Workplace Policy Institute The Department of Labor: A Look Ahead</p> <p>The 2016 presidential election was arguably one of the most contentious, unpredictable and politically polarizing races in this nation’s history. Now that the election is over, what will this mean for the employer community? How will the course of labor and employment law be changed? What changes will the new administration make at the Labor Department? Although we cannot predict the future, we will examine the changes we expect (and want) to see at the Labor Department – from regulations and executive orders to opinion letters and enforcement.</p>
<p>6:30 pm</p>	<p>Special Dinner Event: Farm-to-Table Dinner Under the Stars</p>



<p>7:00 am - 8:00 am</p>	<p>Breakfast</p>
<p>8:00 am - 9:00 am</p>	<p>General Session An Interview with Philip Miscimarra, Chairman of the National Labor Relations Board</p>
<p>Choose one (continued on page 18)</p>	
<p>9:15 am - 12:00 pm</p>	<p>Retail Industry Roundtable</p> <p>At every level of government and in every facet of employment and labor law, we are seeing developments that have a significant impact on retailers. Back by popular demand, the Retail Roundtable, sponsored by Littler’s Retail Industry Practice Group, will offer retailers a chance to benchmark on the cutting edge issues they face. While we are always open for dialogue and questions, the group will be ready to address trending issues, such as:</p> <ul style="list-style-type: none"> • Risks involving equal pay and strategies for compliance • Wage and hour compliance, including preparing for the possible changes to the white collar exemption regulations, assessing the DOL’s recent joint employment guidance, and California-specific issues such as day of rest requirements, suitable seating, commission plans and meal and rest breaks • Challenges to independent contractor classification • Conducting background checks that are multijurisdictionally compliant • How to handle social media and dual-use devices in the workplace • Administering paid sick leave across multiple jurisdictions • Strategies for avoiding website accessibility litigation <p>Conducting Efficient, Effective and Lawful Workplace Investigations</p> <p>This session will cover the very complex and often sensitive question of how to properly conduct workplace investigations, particularly in light of recent case law creating boundaries around what can and cannot be said to employees. As employers continue to grapple with the difficult issues regarding when and whom to investigate and who should conduct an investigation, we will work through these questions using real-life scenarios. Our panel will address critical questions, including:</p> <ul style="list-style-type: none"> • When to investigate • Whom to investigate • What to address when developing the investigative plan • How to properly investigate and avoid legal pitfalls • How to prepare the investigative report • Preparing for litigation

Choose one (continued from page 19)

9:15 am –
12:00 pm**Become a Human Lie Detector: Tactics for Assessing Employee Truthfulness**

Human resources professionals are frequently called upon to assess truthfulness in the workplace. Making accurate and timely credibility determinations is an essential skill, but how can they be certain someone is being truthful? The task can be daunting. However, there are techniques that can make the job easier: proven tips and tricks borrowed from another profession – the professional intelligence officer.

Throughout history, countries have relied on spies and espionage to seek the truth regarding their adversaries. Although there are ethical, legal and practical considerations that prevent employers from developing their own spy networks in the workplace, there is no reason they cannot borrow, and learn from, some of the other tools that spy handlers around the world have used to assess truthfulness. This presentation does just that – outlining tips and tactics that can help determine whether someone is lying or telling the truth in the employment context and beyond.

A Corporate Balancing Act: Business Need vs. Legal Risk

Every good HR professional and in-house lawyer knows that some HR risks are worth taking while others are not. Given this reality, what should you do when management wants the cancer-stricken employee to be separated, but the ADA undue hardship defense just does not seem all that strong? Or what do you tell a manager who insists that the best candidate for employment should have his offer withdrawn because the background check shows he sold marijuana to an undercover police officer 10 years ago? Or what advice do you give to the CEO when she says that we must set diversity targets and make managers meet those goals and she “doesn’t care what the law says – our lack of diversity is killing our brand?”

This session focuses on the balance between business need and legal compliance. The session will be entirely scenario-based, using videos and other tools. Each scenario will involve a specific risk-related decision where a legitimate business need seems at odds with a legal constraint.

The Employee from Hell - A View from the Dark Side: How In-House Counsel Can Effectively Manage the Legal, HR and Business Issues Surrounding the Problematic Employee

We have talked before about the “employee from hell” and her colleagues, always from the perspective of human resources. In this session, we will view management of the “employee from hell” and her issues from the lens of the in-house attorney as she attempts to advise her internal clients, keep the business people happy and keep the company out of legal trouble (and out of the newspapers). In this session, we will apply the cutting-edge topics you learned about in Thursday’s general and break-out sessions and apply them to real-life scenarios that arise in your workplace every day. Some topics facing our beleaguered in-house counsel include:

- Balancing leave of absence issues with hiring freezes
- The “proper” use of independent contractors
- How to manage salaries as the change to the salary test winds its way through the courts
- Conducting internal audits on exempt status and pay equity



Choose one (continued from page 20)

<p>9:15 am - 12:00 pm</p>	<p>Moving Through the Fog: Handling Complex Issues in Workplace Accommodations Involving “Invisible” Disabilities, Gender Identity and Religious Preferences</p> <p>Employers must contend with employee accommodation requests with increasing frequency. The requests, and sometimes even demands, usually focus on addressing a worker’s physical disabilities under the ADA. It is hidden or “invisible” disabilities, however, that often raise the most difficult challenges. Mental disabilities, for example, may not have obvious physical manifestations, but they can clearly affect an individual’s ability to perform the essential functions of his or her job. Besides accommodations under the ADA, a myriad of new federal, state and local laws have provided additional obligations for employers to recognize their employees’ gender identity and provide accommodations when an employee undergoes a gender transition. But recent court rulings have pitted transgender rights against religious beliefs, with some courts finding that the “religious conscience” of a private sector business may justify refusing to accommodate employees who undergo a gender transition or express a non-conforming gender identity.</p> <p>How can an employer handle situations that sometimes raise questions for which there are no easy answers, given the uncertain and potentially conflicting requirements in this area? When does it make sense for an employer to move from a concern with performance to a concern for an employee’s health? When should an employer question the diagnosis of a treating mental health professional or seek a second opinion? How should an employer deal with co-workers who become disgruntled with “favored” treatment? How should an employer balance the rights of one employee with the rights of another when they appear to conflict? Using real life examples, this session will focus on providing practical advice while working through some of the more complicated workplace accommodation situations that arise in the workplace.</p>
<p>12:00 pm</p>	<p>Boxed Lunches</p>
<p>12:15 pm - 1:15 pm</p>	<p>Terabytes and Tweets: Ethical Challenges for In-House Counsel in the Use of Technology and Social Media</p> <p>This program will address key ethical issues surrounding the burgeoning use of technology and social media by lawyers. We will provide practical examples and tips in two key areas: (1) the lawyer’s duty to be “competent” in the use of technology, including what that means for in-house counsel when representing their clients; and (2) how the duty of technological competence applies to social media activity by attorneys. Specific topics will include: competence in the context of eDiscovery; how social media platforms like LinkedIn, Twitter, SnapChat and Facebook can implicate the lawyer’s duties regarding client confidences, advertising and solicitation; and recent case law and ethics opinions on these issues. CLE ethics credit pending in applicable jurisdictions.</p>

REGISTRATION & HOTEL INFORMATION



Registration

To register for the conference, please visit ExecutiveEmployer.com/register or call Juanita Treadway at 541.301.6102.

Location and Hotel Accommodations

JW Marriott Phoenix Desert Ridge Resort
5350 East Marriott Drive • Phoenix, AZ 85054

Littler is pleased to offer a discounted room rate for conference attendees of \$279 plus tax, per night. **To receive this discounted rate, you must register for your room through the conference website or call Juanita Treadway at 541.301.6102. The discounted room rate is not available directly through the hotel. Please do not contact the hotel directly to make room reservations.**

Please Note

Space is limited. The main conference hotel often is sold out weeks prior to the conference, so please make your reservations early. We may have additional room blocks at nearby properties. Please contact Juanita Treadway for more information.



To register for the conference, please visit
ExecutiveEmployer.com/register
or call Juanita Treadway at 541.301.6102

MCLE/CLE Credits

This program will qualify for continuing legal education credit in most jurisdictions and could provide up to 15.5 total CLE hours in 60 minute states and 18.6 total CLE hours in 50 minute states. Littler certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the state bars governing continuing legal education. This program is pending approval for continuing education credit by the state bar in those states in which Littler has offices and where there are continuing legal education requirements.

PHR/SPHR/GPHR/SHRM/HRPA Certification Credits

This program provides up to 14.5 re-certification credit hours toward re-certification through the Human Resource Certification Institute (HRCI), the Society for Human Resource Management (SHRM) and the Human Resources Professionals Association. For more information about certification or re-certification, please visit the HRCI website at www.hrci.org, the SHRM website at www.shrm.org and/or the HRPA website at www.hrpa.ca.

Tax Deduction of Expenses

An income tax deduction is allowed for expenses of education, including registration fees, travel, meals and lodging undertaken to maintain or improve professional skills (Treas. Reg. 1.162-5; *Coughlin v. Commissioner*, 203 F.2d 307 [2d Cir. 1953]).