

THE EXECUTIVE EMPLOYER<sup>®</sup> CONFERENCE / 2012

# INNOVATE @ LITTLER

# 70

*Years of Employment and Labor Law Solutions*

**MAY 9 - 11, 2012**

THE WESTIN KIERLAND RESORT & SPA  
SCOTTSDALE, ARIZONA

**Littler**  
Employment & Labor Law Solutions Worldwide

**70**  
YEARS





The Attorneys of Littler Mendelson  
Invite You to Attend the 2012  
Executive Employer Conference

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# INNOVATE @ LITTLER

## *70 Years of Employment & Labor Law Solutions*

This year, Littler Mendelson celebrates its 70<sup>th</sup> anniversary. Littler was founded in 1942 with a handful of attorneys in an office in San Francisco. Now, we have more than 900 attorneys in 56 offices in three countries. Our growth has been based on the trust and confidence of our clients, who have come to expect and rely on Littler's insightful analysis of legal issues, intuitive understanding of our clients' business and operational requirements, and ability to develop effective, practical solutions when legal issues and business requirements conflict. Perhaps nowhere is this approach to delivering legal service better reflected than in Littler's annual Executive Employer Conference.

The attorneys of Littler Mendelson are pleased to invite you to **The 2012 Executive Employer Conference**, our 29<sup>th</sup> annual gathering of in-house counsel and HR executives from leading organizations across the globe. The Executive Employer remains the one essential event of the year for those who want to stay up-to-date on legal developments, maintain their organization's legal compliance, and implement practical solutions to minimize risk. This year's conference promises to be one of the best ever.

This year's theme, ***Innovate @ Littler: 70 Years of Employment and Labor Law Solutions***, is inspired by our historic commitment to working collaboratively with our clients to develop real solutions to their pressing legal and business issues. Over the course of the conference, Littler attorneys will share their considerable subject-matter experience in break-out sessions designed to illuminate the answers to critical problems. Our panels will include in-house counsel and HR peers from leading organizations discussing their experiences developing real-world, practical solutions.

We hope you will join us in Scottsdale for this very special event. Please register early as the conference sold out last year!

**The Attorneys of Littler Mendelson**

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## 2012 EXECUTIVE EMPLOYER CONFERENCE HIGHLIGHTS

<b>PRE-CONFERENCE WORKSHOPS (OPTIONAL)</b> Wednesday, May 9 <sup>th</sup>	Back by popular demand, the pre-conference workshops offer attendees an opportunity to engage in intensive study of a specific legal topic, further develop their job skills or learn new ways of managing their responsibilities.
<b>GENERAL SESSION: THE 2012 LITTLER REPORT</b> Thursday, May 10 <sup>th</sup>	One of the highlights of every Executive Employer Conference—the General Session provides a timely review of the most critical legal developments and significant changes impacting the workplace.
<b>SPECIAL GUEST SPEAKER: SENATOR ALAN K. SIMPSON</b> Thursday, May 10 <sup>th</sup>	Alan K. Simpson, former Wyoming senator and co-chair of the President’s National Commission on Fiscal Responsibility and Reform, will provide us with his unique observations and insights developed over his long and illustrious career.
<b>THE 2012 EMPLOYMENT LAW UPDATE</b> Thursday, May 10 <sup>th</sup>	This fast-paced year-in-review is a must-attend session for every employment counsel and HR executive who wants to stay on top of the ever-changing developments in employment and labor law.
<b>LITTLER’S 70<sup>TH</sup> ANNIVERSARY CELEBRATION</b> Thursday, May 10 <sup>th</sup>	A long-standing Littler tradition, the Thursday night gathering has always offered an opportunity to enjoy great food and drink with colleagues under the desert stars. This year’s event will be a night to remember as we celebrate Littler’s 70 <sup>th</sup> anniversary.
<b>AFTER-HOURS DESSERT BAR</b> Thursday, May 10 <sup>th</sup>	There is always room for one more bite! Join Littler’s <i>Women’s Leadership Initiative</i> to cap off a wonderful evening with a little music and some delectable desserts.
<b>SPECIAL SESSIONS</b> Friday, May 11 <sup>th</sup>	New this year, we will offer four extended sessions featuring experienced presenters delving into some thought-provoking topics such as the future of work, guiding your company through dramatic change, developing wage and hour litigation tactics, and the challenges of “bring your own device” policies.
<b>POST-CONFERENCE WORKSHOPS (OPTIONAL)</b> Friday, May 11 <sup>th</sup>	For those who just cannot get enough, we offer two intensive post-conference workshops addressing how to conduct lawful investigations and the new rules of union organizing.

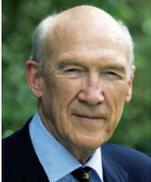
## PRE-CONFERENCE **AGENDA**

11:00 am	Pre-Conference Registration
12:00 pm – 1:00 pm	LUNCH <i>For all pre-conference attendees</i>
1:00 pm – 5:00 pm	Conducting Lawful Investigations: The First 72 Hours
	Managing Litigation as a Business: Aligning Value and Costs of Litigation Services
	Addressing Retaliation and Whistleblowing
	Successful Project Management for In-House Counsel
	The Retail Industry Summit: A Gathering of Leading Retailers to Discuss the Significant Employment and Labor Law Issues Confronting the Industry
	Setting Tone at the Top and Mood in the Middle: Are Your Compliance Efforts Making a Difference?

## CONFERENCE **WELCOME**

6:00 pm	Conference Registration
6:30 pm – 7:30 pm	RECEPTION: Hosted by ELT
7:30 pm	WELCOME DINNER

## CONFERENCE AGENDA: **DAY 1**

7:00 am - 8:00 am	<b>BREAKFAST</b>
8:00 am - 9:30 am	<b>GENERAL SESSION</b> The 2012 Littler Report: Sustainable Innovations for a Changing Workplace
10:00 am - 11:15 am	<b>The EEOC's Expanded Agenda and Systemic Initiative:            What Employers Can Expect During the Coming Year</b> <hr/> <b>Concerned Employer or Big Brother:            Encouraging or Mandating Wellness at Work</b> <hr/> <b>OSHA Update: The 2012 Compliance and Enforcement Agenda</b> <hr/> <b>The NLRB and DOL Try to Breathe New Life into Union            Organizing and Regulation of Employee Conduct</b> <hr/> <b>Anti-Corruption—Local Legislative Developments            and Coordinated Global Compliance Enforcement:            The New Challenges for Global Employers</b> <hr/> <b>Steering Clear of Employee Benefits Litigation Through Better            Document Drafting</b>
11:30 am - 12:30 pm	<b>Don't Be Left Behind: Accommodations and the Interactive            Process in the Wake of the ADA and the EEOC's Scrutiny            of Maximum Leave Policies</b> <hr/> <b>On the Cutting Edge: Protecting Your Company's Trade Secrets            in the Social Media Age</b> <hr/> <b>Background Checks 2012: Can Employers Still Investigate            Their Employees and Applicants?</b> <hr/> <b>A Conversation with NLRB Member Brian Hayes</b> <hr/> <b>Cross-Border Investigations and Litigation:            A Primer for the Multi-National Employer</b> <hr/> <b>Top 10 Ways Employers Are—Inadvertently—Violating IRC 409A</b>
<b>12:30 pm - 1:45 pm</b>  <b>SPECIAL            PRESENTATION</b>	<b>LUNCH AND SPECIAL GUEST SPEAKER: ALAN K. SIMPSON</b>   <p>Alan K. Simpson, former Wyoming senator and co-chair of the President's National Commission on Fiscal Responsibility and Reform, will provide us with his unique observations and insights developed over his long and illustrious career, which are particularly timely with the current presidential campaign.</p>

## CONFERENCE AGENDA: **DAY 1**

<p>2:00 pm – 3:15 pm</p>	<p>Getting Beyond <i>Diversity Day</i>: Developing Meaningful (and Legal) Strategies That Support Your Diversity and Inclusion Efforts Sponsored by Littler’s <i>Women’s Leadership Initiative</i></p> <hr/> <p>Controlling Employee Personal Behavior in the Age of Social Media and Personal Technology</p> <hr/> <p>The Never-Ending Story: Arbitration Agreements and the Law</p> <hr/> <p>Collective Bargaining Strategies in a Challenging Economic and Regulatory Environment</p> <hr/> <p>Doing Business South of the Border</p> <hr/> <p>Health in a Hand Basket: Where Healthcare is Headed and What Employers Should Do About It</p>
<p>3:45 pm – 5:00 pm</p>	<p>GINA: What You Don’t Know Can Cost You</p> <hr/> <p>Class Action Mediation and Settlements: The Insiders’ Views</p> <hr/> <p>Ethical Minefields and eDiscovery: A Perfect Match</p> <hr/> <p>Managing and Winning Labor Arbitrations</p> <hr/> <p>Managing the Social Media Activity of a Multi-National Workforce After the Global Privacy Juggernaut</p> <hr/> <p>No New Taxes? Phooey! Government Agencies Attack Independent Contractors to Refill Depleted Coffers</p>
<p>5:00 pm – 6:00 pm</p>	<p>The 2012 Employment Law Update</p>
<p>6:30 pm</p>	<p><b>DINNER &amp; 70<sup>TH</sup> ANNIVERSARY CELEBRATION</b></p>
<p>9:30 pm</p>	<p><b>AFTER-HOURS DESSERT BAR</b> Hosted by Littler’s <i>Women’s Leadership Initiative</i></p>

## CONFERENCE AGENDA: **DAY 2**

**7:00 am - 8:00 am**

**BREAKFAST**

**8:00 am - 9:15 am**

**What You Need to Know About the Role of Employment Taxes in Everyday Business Affairs**

**Email, Social Media, Investigations and Ethics**

**OFCCP Update: Dealing with an Aggressive Regulatory and Enforcement Agenda**

**The Wage and Hour Update: Critical Developments in Federal and State Laws and Regulations**

**Defusing the Potential Explosion: Practical Approaches to Disarming Employment Law Time Bombs in Your Workplace: Part 1**

**Beware the Ides of March: If You Are Open to the Public, You Need to Know About the New ADA Accessibility Regulations and Design Standards**

**9:30 am - 10:45 am**

**How to Keep Your CEO Out of Jail: What Every HR Professional and Employment Counsel Should Know About the Federal Sentencing Guidelines**

**Insurance Coverage of Employment Law Claims: How Employers and Insurance Carriers Can Work Together Effectively**

**The ADA in Real Life**

**Converting Good Intentions into Compliance: Effective Pay Practices**

**Defusing the Potential Explosion: Practical Approaches to Disarming Employment Law Time Bombs in Your Workplace: Part 2**

**The Bewildering Landscape of State and Federal Immigration Compliance: From E-Verify to Incentivized IMAGE Enrollment**

## CONFERENCE AGENDA: **DAY 2**

**11:00 am - 12:30 pm**

The Future of Work

**SPECIAL  
SESSIONS**

Guiding Your Company Through Dramatic Changes:  
The Critical Legal/HR Role in Major Transactions

Wage and Hour Procedural Tactics, Pre-Trial and Trial Strategy:  
Update on the Developing Law

Business or Pleasure: The Challenges of “Bring Your Own Device”  
Policies in the Workplace

**12:30 pm - 1:30 pm**

LUNCH

**1:30 pm**

CONFERENCE ADJOURNS

## POST-CONFERENCE **AGENDA**

**1:30 pm - 3:30 pm**

The New Rules of Union Organizing: Practical Approaches for  
Handling Expedited Elections Under the NLRB’s New Procedures

**1:30 pm - 4:30 pm**

Conducting Lawful Investigations: Just the Facts

**POST  
CONFERENCE  
WORKSHOPS**

## PRE-CONFERENCE WORKSHOPS

1:00 pm – 5:00 pm

### Conducting Lawful Investigations: The First 72 Hours

Effective investigations can be the key to preventing litigation, staying in legal compliance and creating a workplace where employees know their issues will be addressed. In-house employment counsel and HR professionals should know the necessary steps to be taken immediately after receiving a complaint. In this interactive workshop, we will provide an overview of the general phases of an investigation, focusing on the critical first 72 hours. Attendees will gain investigative skills, an understanding of how to identify allegations and legal issues, and conduct initial triage. We will discuss effective steps for safeguarding employees and business operations, implementing effective reporting systems, securing and gathering evidence—including challenges in eDiscovery—and handling public relations and media issues.

Please join us to learn practical tools and best practices to help you conduct legal and effective investigations.

*To enhance the interactive nature of this workshop, attendance will be limited. However, a second Conducting Lawful Investigations will be offered as a post-conference workshop on Friday, May 11<sup>th</sup>.*

1:00 pm – 5:00 pm

### Managing Litigation as a Business: Aligning Value and Costs of Litigation Services

Led by experienced in-house and outside counsel, this workshop will introduce you to the groundbreaking *Managing Litigation as a Business* initiative, which is designed to help law departments manage their companies' risks, disputes and litigation. Participants will assess their law department's knowledge, capabilities and skills against the 40+ Key Elements of the new Managing Litigation Reference Model. Attendees will receive feedback from peers in small discussion groups and identify criteria for evaluating dispute-related services purchased from outside counsel and suppliers.

The *Managing Litigation as a Business* initiative was devised to help in-house legal teams manage risks, disputes and litigation more efficiently and effectively to achieve better results at lower costs. This collaborative effort by participating law departments and outside counsel aims to:

- Develop a Managing Litigation Reference Model to provide a practical and flexible framework to guide actions, implement improvement processes and measure progress in avoiding and mitigating risks, minimizing and resolving disputes and managing litigation more efficiently and effectively;
- Assist law departments and their preferred providers in achieving specific outcomes through dedicated self-improvement projects and continuous improvement programs; and

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## PRE-CONFERENCE WORKSHOPS

- Marshal and centralize best practices, proven tools and other resources needed to accomplish these goals.

The *Managing Litigation as a Business* initiative seeks to provide a comprehensive solution that can be beneficial to any law department.

1:00 pm – 5:00 pm

### Addressing Retaliation and Whistleblowing

In this workshop, we will examine forces fueling an explosion in retaliation and whistleblowing claims: judicial developments, legislative expansion of rights and remedies and social policy initiatives that continue to foster public support for the rights of whistleblowers. We will analyze a variety of hot topics dividing the courts and posing challenges for employers across the country, including: what type of conduct constitutes “protected activity” or an “adverse action,” how do complainants establish “causation,” and how can employers negate an inference of causation. Other topics include third-party retaliation, coworker harassment and the use of the judicial process as actionable retaliation.

We will discuss practical approaches for responding to whistleblower complaints. We also will address how to deal with a whistleblower who remains in the workplace and other challenging issues. A prominent government enforcement defense attorney will share practical advice on how to conduct an investigation and the best approach in working with the government—whether SEC, U.S. Attorney or Department of Justice—in resolving the matter. Participants will also learn how to revise existing protocols and internal compliance procedures to better insulate their organizations against claims of retaliation and whistleblowing in the future.

1:00 pm – 5:00 pm

### Successful Project Management for In-House Counsel

Recently, law firms across the country have embraced legal project management in an effort to improve efficiency, better manage legal matters and meet clients’ expectations. More recently, driven by the continuing constraints on in-house counsel budgets, organizations are looking to contain costs and improve efficiency by, among other means, implementing project management within their own legal departments. This workshop will outline strategies for successfully implementing project management disciplines within an in-house team. Our panelists will discuss best practices and how working closely with your law firm can increase the success of your project management initiatives.

1:00 pm – 5:00 pm

### The Retail Industry Summit: A Gathering of Leading Retailers to Discuss the Significant Employment and Labor Law Issues Confronting the Industry

It is an election year and Congress may remain deadlocked, but Washington is still finding ways to impact how retailers run their businesses. The Retail Industry Summit, sponsored by Littler’s Retail Industry Practice Group, offers

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## PRE-CONFERENCE WORKSHOPS

retailers—both in-house counsel and HR professionals—an afternoon of industry-specific programming that will help participants navigate the changing political, economic and legal landscape.

The summit will begin with a luncheon presentation by David French, senior vice president of Government Relations at the National Retail Federation, who will share observations on the upcoming elections, as well as insight into how politicians expect to implement their agendas during this election year. The summit will continue with panel presentations and interactive discussions with fellow retailers, led by Littler attorneys and guest speakers. This session will review the latest legal updates and practical advice on a range of labor and employment issues affecting retailers, including:

- Recent developments on Capitol Hill
- Recent developments affecting the future of arbitration agreements
- Trends in class and collective action litigation against retailers
- Challenges to pre-hiring inquiries and background checks
- Union organizing and recent labor law developments affecting retailers
- Effective internal investigations in the retail environment
- Approaches to managing employee leaves of absence and attendance policies

1:00 pm – 5:00 pm

### **Setting Tone at the Top and Mood in the Middle: Are Your Compliance Efforts Making a Difference?**

Research continues to bolster the conclusion that organizations with positive employee engagement are more successful than those organizations without it. In fact, companies that “get it right” when it comes to culture enjoy benefits that include decreased risk of fraud and other financial related misconduct, increased reporting of financial misconduct, enhanced financial performance, and increased operational performance. Indeed, with Dodd-Frank providing incentives for employees to report financial misconduct, retaliation has become the most frequently filed equal employment charge in today’s workplace. The message is clear: It is more important than ever that your compliance efforts impact employee behavior.

But how does one obtain these results? Corporations spend billions adopting mission statements, drafting codes of ethics, implementing compliance training, developing employee engagement strategies, along with other compliance efforts. Do employers get their money’s worth? Do these efforts actually change employee behavior? Do they impress enforcement officers?

In this workshop, we will explore what actually works by taking a critical look at commonly used employee engagement and compliance strategies to separate

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## PRE-CONFERENCE **WORKSHOPS**

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the ineffective from those that truly build profitable, compliant organizations. We will examine data from The Gallup Poll and the Corporate Executive Board's Compliance and Ethics Leadership Council (CELC) research into employee engagement and the effectiveness of corporate compliance efforts. In addition, the following critical topics will be discussed:

- Beyond window dressing—what the DOJ and other regulators want from employers
- What strategies have been proven to work
- How to make training actually change employee behavior
- Is culture more important than procedure?
- Effective incident and investigation management
- Avoiding pitfalls associated with using data that has not been validated
- Using the data in employee performance management and goal-setting

This will be a highly interactive workshop, where participants will work directly with industry experts and learn from each other. For example, we will use polling devices enabling participants to anonymously answer questions about their respective workplace cultures. That data will then be assimilated in real time and compared with the data from The Gallup Poll and the CELC's existing research.

8:00 am – 9:30 am

GENERAL  
SESSIONTHE 2012  
LITTLER  
REPORT

## CONFERENCE SESSIONS: DAY 1

### The 2012 Littler Report Sustainable Innovations for a Changing Workplace

The pace of technological change has accelerated dramatically over the last three decades, creating daunting challenges for in-house counsel and HR professionals striving to comply with federal and state employment and labor laws. Thirty years ago, few could have foreseen the impact of globalization on the workplace, the emergence of the information-based worker, or the extent to which technology in the form of networked computers, email, the Internet and social media would dramatically change the workplace. Few realized how these technological advances would conflict with the limitations of existing employment and labor laws, such as the FLSA and the NLRA that were drafted during an era when “factory worker” was the common job position. More recent enactments, including Title VII, the ADA and the FMLA, have also failed to keep up with the changes in the American workforce.

In *The 2012 Littler Report*, we will review the latest employment law developments at both the federal and state levels. Our annual review—a preview of the sessions that will take place during the Executive Employer Conference—will highlight the significant employment law issues that attendees must be prepared to address in their workplaces. We will review the latest developments in class action litigation, the rise of the unemployed as a protected class, the enforcement of ADR agreements and the most critical compliance issues. We will also discuss the impact that social media, eDiscovery and increased regulatory enforcement has had on the responsibilities of HR professionals and employment law counsel.

We will also address one of the most significant technological changes impacting our workplaces: the omnipresence of the personal smartphone or tablet as a preferred communication device for the average employee. For years, employers considered these personal devices akin to computers, laptops and other business equipment. The employer determined which devices employees could use and then provided and supported the equipment. Recently, employers have responded to demands from workers by opening up their networks to employee-owned iPhone, BlackBerry, Android and iPad devices. By doing so, employers are walking into a legal minefield with serious ramifications including issues involving wage and hour, workplace privacy, protection of trade secrets and confidential information, and eDiscovery. Employers who fail to develop a dual strategy that combines legal compliance solutions with technological considerations may be exposing themselves to potential class action or single-plaintiff liability.

After reviewing these issues in detail, we will present *The 2012 Littler Report Initiative*, a detailed strategy designed to help employers identify and implement practical measures to harmonize business technology needs with legal compliance requirements.

## CONFERENCE SESSIONS: DAY 1

10:00 am – 11:15 am

### The EEOC’s Expanded Agenda and Systemic Initiative: What Employers Can Expect During the Coming Year

Join this lively session with The Honorable Victoria A. Lipnic, EEOC Commissioner and Littler attorneys focusing on the EEOC’s expanded agenda and systemic initiative.

Over the past year, the EEOC has received and investigated a record number of charges. The EEOC has continued to place a strong emphasis on hiring practices, has focused on “building systemic enforcement partnerships” and has expanded into new areas such as equal pay, in addition to more closely examining age discrimination based on proposed new rules. Panel members will provide insight on recently expanded EEOC investigations, some of which are national in scope, and noteworthy EEOC settlements over the past year.

We will also review Littler’s comprehensive annual update on EEOC developments.

10:00 am – 11:15 am

### Concerned Employer or Big Brother: Encouraging or Mandating Wellness at Work

Employers today continue to face skyrocketing increases in healthcare costs. Obesity and smoking are demonstrably the two largest health risks in the U.S. What can employers do in today’s legal and regulatory environment to motivate—or mandate—that their employees get in better shape, lose weight or stop smoking? In addition to providing comprehensive guidance on the legal boundaries and obstacles to such initiatives, this session will include a presentation by in-house counsel from a major U.S. company at the forefront in motivating its employees to lead healthier lives.

10:00 am – 11:15 am

### OSHA Update: The 2012 Compliance and Enforcement Agenda

Over the course of the last year, the Occupational Safety and Health Administration has significantly increased enforcement activities. Cases with penalties over \$100,000 have increased by more than 31%; penalties per citation have increased by 102%; and 235 workplaces have been placed on OSHA’s Severe Violator Enforcement Program listing. In this session, we will discuss OSHA’s extraordinary enforcement activities and employers’ protective legal rights. We will address OSHA’s new rulemaking initiatives, including the comprehensive Injury and Illness Prevention Program. Finally, we will address OSHA’s new national programs and preparations employers can take now.

10:00 am – 11:15 am

### The NLRB and DOL Try to Breathe New Life into Union Organizing and Regulation of Employee Conduct

The NLRB continues to issue pro-labor rules and decisions that have employers—both union and non-union—seeking practical and creative guidance on how to respond lawfully to union organizing and employee concerted activity. In light of

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## CONFERENCE SESSIONS: DAY 1

recent developments and decisions, labor relations issues now, more than ever, add to employers' already complicated economic and operational challenges. An employer's best defense is having a firm understanding of what to expect, what lawful actions may be taken and how to devise effective strategies. This session will discuss the NLRB's latest decisions and regulatory activity and what they mean for employers—including the expedited elections rule, notice-posting rule, and cases concerning union organizing, employees' expanded Section 7 rights, and union access to an employer's facilities. We will also discuss the DOL's persuader regulations and how they could significantly change the way in which employers seek labor-related advice and counsel.

10:00 am - 11:15 am

### Anti-Corruption—Local Legislative Developments and Coordinated Global Compliance Enforcement: The New Challenges for Global Employers

Countries across the globe are increasingly striving to stamp out corruption. Recent examples include the UK confirming that facilitation payments will continue to be prohibited under the Bribery Act 2010, new guidelines in the Netherlands for the investigation and prosecution of bribery, China amending the PRC Criminal Law in February 2011 to apply its anti-bribery laws to foreign officials, and Australia consulting on removing the facilitation payment defense from its foreign anti-bribery laws. In this session we will discuss the issues raised by these developments for U.S. corporations doing business across the globe, such as:

- Is corporate hospitality dead?
- With increased extraterritorial application of local anti-bribery laws, what must we comply with?
- What should a compliant policy/code include?
- What is an effective training program?
- How to monitor and control compliance by supply chain providers?
- When does non-compliance rise to a "pattern" of non-compliance and what are the implications?
- What new challenges do cross-border coordinated agency investigations face?

10:00 am - 11:15 am

### Steering Clear of Employee Benefits Litigation Through Better Document Drafting

Employee benefits litigation continues to be a growing area of exposure for those involved in the design, administration and funding of employee benefit plans. Littler lawyers are constantly on the look-out for ways to reduce the risk of benefit plan litigation through preventive measures. A well-drafted plan document is often the best defense to even the most complex claims.

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## CONFERENCE SESSIONS: DAY 1

In this session, attorneys from Littler’s Employee Benefits and Employee Benefits Litigation Practice Groups will discuss how plan sponsors can make a number of simple drafting changes to their pension and welfare documents to reduce the risks of future ERISA claims. This session will be of interest to benefits litigators and compliance specialists alike.

11:30 am – 12:30 pm

### **Don’t Be Left Behind: Accommodations and the Interactive Process in the Wake of the ADAAA and the EEOC’s Scrutiny of Maximum Leave Policies**

In this interactive session, a panel of Littler attorneys with extensive experience counseling and defending clients regarding disability accommodation issues will explore the significant impact of the ADAAA and the EEOC’s clamp down on employee terminations following the exhaustion of leave entitlements, such as FMLA leave. Our panel will discuss the ADAAA regulations, analyze the EEOC’s approach to leaves as a means of accommodation, explore strategies for avoiding EEOC scrutiny in these areas, and provide practical suggestions for updating interactive accommodation procedures and related employer policies. Participants will gain useful insight into how best to negotiate what increasingly has become a perilous accommodation landscape.

11:30 am – 12:30 pm

### **On the Cutting Edge: Protecting Your Company’s Trade Secrets in the Social Media Age**

In this technological age, employees are routinely accessing social media sites such as LinkedIn—often as part of their job responsibilities. With this changing scenario, it is crucial that organizations implement policies and procedures to protect their confidential information, especially their customer lists, both during employment and after the employment relationship ends. In this session, we will discuss current best practices for drafting confidentiality agreements, recent court decisions and the legal risks of managing social media issues within the workplace.

11:30 am – 12:30 pm

### **Background Checks 2012: Can Employers Still Investigate Their Employees and Applicants?**

Last year, the Supreme Court acknowledged an employer’s strong interest in “employing a competent, reliable workforce” and “separating strong candidates from weak ones.” Many employers, especially multi-state and multi-national companies, are finding it challenging to implement that basic concept due to the intersection of federal and state laws regulating the use of information such as credit reports and criminal records in the hiring process. Employers also must contend with the rising tide of so-called systemic discrimination investigations by the EEOC and private class action lawsuits under the FCRA. In this session, Littler attorneys with extensive experience with and knowledge

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## CONFERENCE SESSIONS: DAY 1

of the patchwork of laws regulating the use of criminal background and credit checks will review the best practices of U.S. and multi-national employers and provide recommendations to help mitigate the significant legal risks in this area.

11:30 am - 12:30 pm

### A Conversation with NLRB Member Brian Hayes

National Labor Relations Board Member Brian Hayes has been a first-hand observer of perhaps the most tumultuous period in the history of the NLRB. Immediately following our session on labor developments, Member Hayes will join some of Littler's most experienced attorneys, from both our Traditional Labor and Government Affairs Practice Groups, in an intimate conversation about recent board activity, treating our Executive Employer Conference guests to a truly unique perspective on what has been one of the most active and politically contentious periods in the Board's history.

11:30 am - 12:30 pm

### Cross-Border Investigations and Litigation: A Primer for the Multi-National Employer

A rising number of legal claims against employers have multi-national implications:

- Multi-national employers must increasingly identify potentially unethical or unlawful conduct regardless of where in the world it occurs;
- Key witnesses often have transferred or are located abroad, and electronic data, email and documents may be in servers or computers kept overseas;
- Clients may be surprised to learn that U.S.-style attorney-client privilege may not protect the confidentiality of communications and documents;
- Preparing overseas executives for U.S.-style depositions and cross examination carries its own set of challenges; and
- Lawsuits and arbitrations may be brought in more than one jurisdiction, as one party or the other seeks the "home court" advantage or otherwise tries to take advantage of more favorable laws.

Companies facing cross-border lawsuits—and conducting cross-border investigations—may experience culture shock on a multi-national scale. In this session, we will focus on key issues and best practices in cross-border investigations and litigation.

11:30 am - 12:30 pm

### Top 10 Ways Employers Are—Inadvertently—Violating IRC 409A

Although Internal Revenue Code Section 409A has been in place since 2005, the complexity of its provisions continue to bedevil attorneys and employee benefits practitioners attempting to draft and structure deferred compensation, severance and settlement agreements. Employers must exercise great care to avoid inadvertent violations that could result in penalty taxes for employees, former employees and other service providers. In this session, our executive

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## CONFERENCE SESSIONS: DAY 1

compensation attorneys will identify and discuss the most common issues they encounter in working with employers on a day-to-day basis and the best strategies for ensuring compliance with this complex regulatory provision.

12:30 pm - 1:45 pm

**SPECIAL  
PRESENTATION**

### Special Guest Speaker: Alan K. Simpson

Alan K. Simpson, former Wyoming senator and co-chair of the President's National Commission on Fiscal Responsibility and Reform, will provide us with his unique observations and insights developed over his long and illustrious career, which are particularly timely with the current presidential campaign.

2:00 pm - 3:15 pm

Sponsored by  
**Littler's  
 Women's  
 Leadership  
 Initiative**

### Getting Beyond *Diversity Day*: Developing Meaningful (and Legal) Strategies That Support Your Diversity and Inclusion Efforts

Corporate America reportedly spends billions of dollars each year on diversity and inclusion training programs. These programs have traditionally focused on the kinds of disparities existing in organizations and the disadvantages women and members of other historically under-represented groups face. The reality is that we still know very little about how to effectively reduce these disparities—particularly in high-profile roles.

There is evidence of “irresistible stereotypes,” or biases so deeply ingrained that they are difficult to be taught away in a mandatory, bi-annual, two-hour lecture. A successful diversity initiative should combine training components with more systemic changes such as the implementation of mentoring programs or the critical assessment of organizational promotion practices.

Join us in this session as we challenge the traditional view of diversity and inclusion programs. Look forward to a spirited and interactive session during which we will explore the multi-faceted issue of bias and its effect on key decision-making processes throughout the employment life cycle.

2:00 pm - 3:15 pm

### Controlling Employee Personal Behavior in the Age of Social Media and Personal Technology

As employees' work and lifestyles change and as business and personal technology continues to expand, employers must clearly understand when, or if, they can control employee personal behavior. In this highly interactive session, our panel will lead a group discussion on topical scenarios that examine the regulatory, technological and social issues that are dramatically reshaping the modern workplace and seek to find practical ways of dealing with increasingly common issues such as:

- An employee embarrasses herself on social media (Facebook or Twitter) and is now the number one topic of conversation—and distraction—among other employees. What can you do?

*[continued]*

## CONFERENCE SESSIONS: DAY 1

- Should supervisors “friend” subordinates on social media? Or does that potentially give the employer too much involvement in and knowledge of the employee’s private life?
- Exactly what can an employee say about his company online? What control can the employer exercise?
- Can employers prohibit employees from engaging in political or religious activities using company electronic resources? What if employees are doing it on a company-provided device, but on their own time?
- If you use technology such as video cameras in work areas and GPS-tracking devices in company vehicles to monitor and/or control behavior, how will this likely impact your employees—and is it worth it?
- Should employees be prohibited from using technology like smartphones to videotape or record workplace interactions with coworkers or supervisors?

2:00 pm – 3:15 pm

### The Never-Ending Story: Arbitration Agreements and the Law

Employers and employees are increasingly turning to contractual arbitration to resolve employment disputes as a less expensive and more efficient alternative to litigation. However, a steady stream of recent arbitration decisions, including U.S. Supreme Court cases *Rent-A-Center v. Jackson* (Jun. 21, 2010), *AT&T v. Concepcion* (Apr. 27, 2011), *Sonic-Calabasas A, Inc. v. Moreno* (Oct. 31, 2011), *Compucredit Corp. v. Greenwood* (Jan. 10, 2012), and the NLRB’s controversial ruling in *D.R. Horton, Inc.* (Jan. 3, 2012) show that drafting an enforceable arbitration provision requires a careful understanding of constantly-evolving arbitration case law.

In this session, we will discuss recent developments in the law and cutting edge strategies to effectively implement arbitration programs and mitigate against anti-arbitration developments.

2:00 pm – 3:15 pm

### Collective Bargaining Strategies in a Challenging Economic and Regulatory Environment

The already complicated minefield of labor negotiations is even trickier when one is bargaining in a challenging economic environment and in the context of staggering regulatory and administrative change. Healthcare reform requires changes to employer-provided health plans and those changes have implications for union negotiations. The latest union tactics to gain leverage in bargaining—rallies, flash mobs, candlelight vigils and picketing—require steadfast employer positions and effective communication. In this session, Littler attorneys will discuss the latest union bargaining trends, complex legal issues including withdrawal liability and cessation of dues check-off, ways of dealing with union information requests, and approaches to devising and successfully implementing an effective bargaining strategy.

## CONFERENCE SESSIONS: DAY 1

2:00 pm – 3:15 pm

### Doing Business South of the Border

The approach to employment relationships and labor unions in Latin America differs in certain key respects from requirements and practices in the U.S. Statutory compensation and benefits entitlements, severance pay obligations and other constraints on employer flexibility are among the factors influencing workplace policies and strategies. This session, featuring Littler attorneys from Mexico and Venezuela, and experienced attorneys from other Latin American jurisdictions, will highlight the unique features of labor and employment laws in the region. We will review issues arising in the opening, expansion and reduction of operations, including challenges in implementing reductions-in-force and other mass layoffs. We will also explore:

- Transfer of employees to and within the region and best practices to reduce labor and tax liabilities;
- Effective strategies for dealing with labor unions in the region; and
- The developing expansion of discrimination remedies, whistleblower protections and employment litigation.

2:00 pm – 3:15 pm

### Health in a Hand Basket: Where Healthcare is Headed and What Employers Should Do About It

Each year, additional provisions of the Affordable Care Act go into effect and new questions for employers arise. At the same time, legal and legislative challenges to the ACA continue to mount. In this session, a panel of attorneys from Littler’s Employee Benefits Practice Group, will discuss where healthcare reform is headed and what steps employers should take to prepare for the near and long-term changes that are likely to occur. This session will discuss the most critical legal issues, as well as practical measures employers can take in providing cost-effective healthcare to their employees.

3:45 pm – 5:00 pm

### GINA: What You Don’t Know Can Cost You

The federal Genetic Information Nondiscrimination Act is broader than you think. Seemingly innocent personnel policies and routine management practices can result in violations of GINA. Significantly, damages for GINA violations can include all those available under Title VII, including punitive damages (even if there’s no adverse employment action) and attorneys’ fees. And as medical technology evolves, the risks of non-compliance with GINA will only multiply. Now, it appears that the EEOC is actively fishing for violations of GINA while investigating other claims of discrimination.

In this session, we will examine the extensive impact of GINA on the workplace, including:

- Whether your wellness program could end up hurting you

*[continued]*

## CONFERENCE SESSIONS: DAY 1

- How nosy can you be about your employees and their families
- Whether looking at an applicant's or employee's Facebook page could get you in trouble

3:45 pm – 5:00 pm

### **Class Action Mediation and Settlements: The Insiders' Views**

Hear from the voices of experience. In addition to Littler attorneys on our panel, we will have a class action claims administrator and a class action mediator who will share their perspectives on such questions as:

- When is the best time to get the most favorable settlement?  
Very early in the case? After filing class certification briefs?  
After certification and discovery is conducted on the merits?
- Effective strategies in mediation—what helps and what hurts?
- What factors affect opt-in rates?
- What percentages of class members actually file claims?
- Is there anything employers can do to position a class or collective action at the outset that might impact the ultimate settlement of the case?
- Is there anything employers can legally do in the settlement and notice process that will reduce the cost of settlement?

This program will present an opportunity for you to ask questions and get information and answers that will help you in mediating class and collective actions and obtaining cost-effective settlements.

3:45 pm – 5:00 pm

### **Ethical Minefields and eDiscovery: A Perfect Match**

Clawbacks, safe harbors, metadata mining, fraud, privilege breaches, fairness, you name it. As if compliance with civil procedure rules was not enough, eDiscovery also raises a wide and growing range of ethical issues, including issues that have the potential to challenge not just attorneys' ethical obligations but also their relationships with their own clients. In this session, our panel will explore the latest ethics opinions, both from bar associations and the courts, and best practices for tiptoeing smartly, but ethically, through the eDiscovery minefield.

*This session will be submitted for CLE ethics credits, in applicable states.*

3:45 pm – 5:00 pm

### **Managing and Winning Labor Arbitrations**

Litigating labor disputes through arbitration can be an effective resolution process but, in today's economy, careful containment of the case is critical. The employer must prepare for and present the company's case in such a way as to be effective, but cost efficient. In this session, Littler attorneys with extensive experience handling labor arbitrations will cover not only how to win

*[continued]*

## CONFERENCE SESSIONS: DAY 1

at arbitration, but how to conduct a labor arbitration effectively and efficiently. We will also discuss hot topics in labor arbitration, including post-arbitration deferral, evidentiary issues and arbitrators' authority to determine arbitrability.

3:45 pm – 5:00 pm

### **Managing the Social Media Activity of a Multi-National Workforce After the Global Privacy Juggernaut**

Multi-national employers are confronting the ultimate compliance challenge. In the past two years, more than a dozen countries around the world, including India, Mexico, Russia, South Korea, and China (Jiangsu province only) have implemented data protection regimes roughly following the European model. At the same time, the rise of social media has extended around the globe, enabling millions of job applicants and employees to be “connected.” While many domestic employers are still searching for the right balance when regulating U.S. employees’ on- and off-duty social media activity, multi-nationals face a more daunting challenge. They must navigate the treacherous intersection of new technology in the workplace, new data protection frameworks, and differing cultural perspectives on privacy and electronic monitoring. This session will identify the most significant challenges for multi-national employers and provide practical recommendations for resolving them.

3:45 pm – 5:00 pm

### **No New Taxes? Phooey! Government Agencies Attack Independent Contractors to Refill Depleted Coffers**

At the federal level, both the IRS and DOL have increased their scrutiny of independent contractor relationships, and state and local government agencies are right behind seeking new sources of revenue to make up for shortfalls in tax collection. In this session, we will review recent agency enforcement activities and the amnesty programs agencies have announced to encourage reclassification of contractors. We will discuss the consequences of these programs, the broad issues that need to be addressed when considering reclassification, and the best way to respond to employment tax audits regarding independent contractor relationships. We will also review California’s S.B. 459, a new law that dramatically increases the potential liability for independent contractor misclassification, and provide strategies for minimizing risk.

5:00 pm – 6:00 pm

### **The 2012 Employment Law Update**

A perennial favorite at the Executive Employer Conference, this special 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 in the coming year and beyond. As in the past, we have assembled a terrific panel of Littler attorneys from across the country and from multiple practice areas that will guide you through the maze of new developments in a fast-paced and—dare we say it—fun-filled session that will prepare you for the challenges that lie ahead.

## CONFERENCE SESSIONS: DAY 2

8:00 am – 9:15 am

### What You Need to Know About the Role of Employment Taxes in Everyday Business Affairs

Employment tax considerations pop up everywhere. This session offers a broad overview designed to help you identify the issues and understand what you need to consider with respect to tax issues related to: offer letters, benefit design and administration, use of temps, use of independent contractors, collective bargaining agreements, settlements and employee terminations.

8:00 am – 9:15 am

### Email, Social Media, Investigations and Ethics

This session will explore the quickly changing ethical and legal challenges presented by the phenomenal growth in smartphone use and social media traffic, the blurring of the lines between personal and business use of email accounts and portable devices, and the emergence of cloud computing. Can a lawyer ethically access an employee's email exchange with a personal lawyer when stored on a corporate network? What are the legal and ethical restrictions on accessing business information stored on a dual-use device or in a personal email account? What, if any, are the ethical and legal limits of using Google, Facebook, LinkedIn or other online resources to investigate applicants or employees? What smartphone apps should a lawyer think twice about using to communicate with a client? Does a client's use of cloud computing create any special duties or concerns for a lawyer? This session will provide practical recommendations for addressing these and other legal and ethical issues at the crossroads of evolving technology and employment law.

*This session will be submitted for CLE ethics credits, in applicable states.*

8:00 am – 9:15 am

### OFCCP Update: Dealing with an Aggressive Regulatory and Enforcement Agenda

Over the last year, the OFCCP issued proposed regulations regarding the employment of veterans and individuals with disabilities, including expansive new recordkeeping obligations; issued an advanced rulemaking notice for a new Internet-based compensation evaluation tool to help it target government contractors for compensation audits; and revised its standard audit scheduling letter's attached itemized document request, enabling the OFCCP to obtain far more information at the initial desk audit stage than in the past. It pursued enforcement actions against a direct government contractor with fewer than 50 employees and proved that the company was a single entity with a sister company that had no government contracts but had more than 50 employees. It obtained a favorable ALJ decision virtually giving it carte blanche to investigate even small compensation differences. Please join Littler's OFCCP Practice Group as we review the implications of these recent enforcement decisions and provide our top 10 Compliance Action Item List for 2012.

8:00 am – 9:15 am

## CONFERENCE SESSIONS: DAY 2

### The Wage and Hour Update: Critical Developments in Federal and State Laws and Regulations

With the continuing expansion of class action litigation, increased enforcement activity by federal and state agencies and newly enacted federal and state laws, employers must stay current with the latest wage and hour developments. In this session, attorneys from Littler's Wage and Hour Practice Group will review some of the most significant developments of the past year and recommend practical measures employers can take to remain compliant. We will review:

- Status of the DOL's regulatory and enforcement agenda, including:
  - Proposed rulemaking regarding the companionship and live-in worker regulations
  - Proposed rulemaking regarding Right-To-Know requirements
  - DOL position on retaliation under the FLSA
- Update on wage and hour class action trends
- Legal challenges to unpaid internships
- State specific developments, including:
  - State agency enforcement trends
  - The increasing number of states with Wage Theft Prevention Acts
  - Recent decisions on exempt/non-exempt status for commissioned sales employees, insurance investigators and managerial employees
  - Tennessee's stance on payment for employee's time traveling to and from jury duty
  - Status of California meal and rest period requirements
  - Legality of rounding employee time entries under state laws

8:00 am – 9:15 am

### Defusing the Potential Explosion: Practical Approaches to Disarming Employment Law Time Bombs in Your Workplace: Part 1

Sometimes you know that something is wrong—really wrong. But you are not sure if it is the manager, the employees or the applicable law. Often it is all three factors working together to build the bomb that it is your job to defuse. In this interactive program, using a mix of video, actors and audience insights, we will work through a number of challenging scenarios including: (1) defusing the demanding employee who claims discrimination when it's not, (2) reclaiming the health of a work group that has been poisoned by two or three negative

*[continued]*

## CONFERENCE SESSIONS: DAY 2

individuals and a weak manager, (3) dealing with a bully who “always makes his numbers” and, thus, is revered by corporate even though his fellow employees despise him, (4) figuring out how to keep the cat’s paw from undermining an otherwise sane and nondiscriminatory discharge decision, and (5) disarming a Facebook situation involving a disparaging employee, a ticked off manager and a host of amused, coworker bystanders.

*Part 2 of this session will be held at 9:30 am – 10:45 am*

8:00 am – 9:15 am

### **Beware the Ides of March: If You Are Open to the Public, You Need to Know About the New ADA Accessibility Regulations and Design Standards**

Regulations prohibiting disability discrimination in public accommodations and commercial facilities took effect in March 2011, with new design and accessibility standards effective March 2012. Employers open to the public must be ready for the new requirements that range from accommodating service animals and accessing restroom areas, to providing text telephones.

In this session the panelists, including Littler attorneys and an ADA accessibility consultant, will explore:

- The new regulations and design standards;
- Anticipated impact on enforcement and litigation; and
- Practical perspectives on how to prepare and avoid costly litigation.

9:30 am – 10:45 am

### **How to Keep Your CEO Out of Jail: What Every HR Professional and Employment Counsel Should Know About the Federal Sentencing Guidelines**

Recently, a blue-ribbon panel recommended to the U.S. Federal Sentencing Commission, Congress and the Administration strengthening the guidelines, (known as the Federal Sentencing Guidelines for Organizations) that regulators, prosecutors, and judges use to determine whether an organization has an effective compliance and ethics program and whether the organization and its executives should be criminally liable for the misconduct of others in the organization. Many of the functions that make up an effective compliance and ethics program are the responsibility of HR and employment counsel: conducting background checks, implementing incident management reporting systems, investigating reports of misconduct, determining appropriate discipline when misconduct occurs, training managers, protecting whistleblowers, etc. Labor and employment counsel and HR professionals need to know the burden they shoulder under the current guidelines and to prepare for what is coming down the road. Every organization in the U.S. should have an updated ethics and compliance program, not just publicly traded companies.

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## CONFERENCE SESSIONS: DAY 2

In this session, we will outline the critical elements of an effective ethics and compliance program as outlined by the Federal Sentencing Guidelines that are typically “owned” by HR and employment counsel and will highlight how the portions of the Guidelines are likely to change in the future. For each of those critical elements, we will elicit ideas from participants and then highlight possible programs and activities that could be implemented to develop a practical and effective compliance and ethics program.

9:30 am – 10:45 am

### **Insurance Coverage of Employment Law Claims: How Employers and Insurance Carriers Can Work Together Effectively**

Employment Practices Liability Insurance (EPLI) has become an important risk management tool for many companies. In this session, employment attorneys and representatives from some of the nation’s premier insurance companies will discuss the defense and handling of EPLI-covered claims. Our panelists will discuss their approach to handling claims, how carriers view the merits of claims, what carriers expect from the insured and from outside counsel, and the dynamics of who controls the defense of the litigation. Our panel will also discuss best practices for providing notice of a claim to the carrier, the selection of defense counsel and a carrier’s perspective on settlement and how it may differ from the insured’s perspective.

9:30 am – 10:45 am

### **The ADA in Real Life**

Claims of ADA violations filed with the EEOC have risen 60% in the last four years. The ADA’s expanded definition of who is “disabled” will likely result in this trend continuing. This reality means that knowing how to correctly manage the interactive process is more critical than ever.

This highly interactive session is designed to equip you with the tools you need to meet this new reality. We will examine case studies culled from actual situations dealing with four key phases of the ADA compliance process, including:

- Accommodations in the hiring process;
- Direct threat or abusive behavior caused by a disability;
- Accommodation issues related to modified job duties and/or leave; and
- Termination of an employee who is no longer a “qualified individual” due to a degenerative disability.

Our panelists, attorneys with ADA experience, will work closely with attendees to discuss and develop practical solutions to problems raised in the case studies. Emphasizing best practices, participants will leave with a better understanding of how to deal with the ADA in real life.

CONFERENCE SESSIONS: **DAY 2**

9:30 am – 10:45 am

**Converting Good Intentions into Compliance:  
Effective Pay Practices**

The duel between California and New York to impose the most burdensome wage notice and commission agreement requirements continues and is likely to infect other states. These new obligations compound any failure to correctly account for the many additions to calculation of the correct half-time rate for overtime pay purposes or to have both an accurate and complete record of employees' hours of work. This session will highlight process-driven solutions to the new state requirements, the accurate calculation of overtime premiums and the recording of work time.

9:30 am – 10:45 am

**Defusing the Potential Explosion: Practical Approaches  
to Disarming Employment Law Time Bombs in Your  
Workplace: Part 2**

*See description of Part 1 of this session on page 25.*

9:30 am – 10:45 am

**The Bewildering Landscape of State and  
Federal Immigration Compliance:  
From E-Verify to Incentivized IMAGE Enrollment**

Employers operating across the U.S.—from small start-ups to large multi-national corporations—are grappling with how to remain compliant with federal and, now, state immigration laws. In this session, we will track the seismic policy shift that is occurring in workplace enforcement actions and discuss best practices employers should deploy to reduce exposure to civil/criminal penalties during an ICE audit. We will assess various state immigration laws and analyze the pros/cons of E-Verify enrollment. Finally, we will discuss the revamped IMAGE program, including the fine mitigation being offered to employers and the two-year exemption from an I-9 audit by ICE.

## CONFERENCE SESSIONS: DAY 2

11:00 am - 12:30 pm

**SPECIAL  
SESSION****The Future of Work**

The American workforce is changing by a magnitude not seen since the dawn of the Industrial Revolution. At that time, an agrarian workforce was forced to adjust to the rise of industrialization, large-scale manufacturing, urbanization and a huge influx of European immigrants. Today, the forces reshaping the workforce are more wide-ranging and potentially disruptive. While our political leaders focus on the Great Recession and talk about “where are the jobs,” what is largely left out of the discussion are the fundamental structural changes that will forever alter our basic concept of what a good job looks like, how employees will perform their work and what it will take for the average worker to obtain meaningful employment.

Globalization, outsourcing, the loss of the manufacturing sector, pressure to shrink the size of the public sector and the ability of employers to reduce costs by relying on contingent and flexible workers are reshaping the workforce. Just as the factory replaced the need for craftsmen in the late 19<sup>th</sup> Century, and the service-based economy reduced American reliance on manufacturing in the late 20<sup>th</sup> Century, the current information technology revolution threatens to irrevocably change the types of workers that we need. Just as the automobile eliminated the need for wagon wheel makers and ATMs reduced the need for bank tellers, self-service check-out kiosks will replace the need for retail clerks; powerful search engines and “crowd-sourcing” will replace the need for research staffs, and smartphones and tablets will replace a myriad of jobs once performed by “white-collar” employees (see, e.g., Siri; an Apple app that could render administrative assistants obsolete). Cloud-based technologies accessible from anywhere have already enabled online marketplaces for independent contractors and freelancers, and may forever alter the commercial real estate industry and all of the jobs that are dependent upon large urban office buildings. One can only imagine what will happen when IBM’s Watson, and its progeny, become powerful and ubiquitous enough to replace millions of knowledge workers.

In this special session, a diverse panel of individuals deeply involved in these dramatic changes will discuss their perspectives on what is happening, how employers can reshape their workforces to adjust to these changes and what employees must do to adapt to this evolution in the nature of work. We will work through a hypothetical scenario involving a new start-up as it explores the optimum way to build and structure its new workforce in light of these shifting demographics and fundamental structural changes. Among other things, we will discuss:

- What are employees and why are they not being hired?
- What is a job and how is it evolving?
- Where are the opportunities?

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## CONFERENCE SESSIONS: DAY 2

- What are the management and legal obstacles that will emerge in this new work environment?
- What are a company's best response strategies?

Please join us for an engaging exploration and discussion to learn how your company can best prepare itself for the future of work.

11:00 am - 12:30 pm

**SPECIAL  
SESSION**

### Guiding Your Company Through Dramatic Changes: The Critical Legal/HR Role in Major Transactions

The only certainty facing business today is that market conditions will create uncertainty and substantial change. Managing a company's workforce through mergers, acquisitions, divestitures, reorganizations, downsizings, RIFs and consolidations requires a degree of agility and a breadth of knowledge difficult to define, much less implement. Consider all of the laws that might apply: WARN, NLRA, Title VII, ADA, ERISA, not to mention applicable state laws and, increasingly, the employment laws of countries across the globe. How can HR professionals or in-house counsel possibly provide advice regarding the employment and labor law issues that will inevitably arise during these types of transactions?

In this session, we will work together to explore the interaction of labor and employment law issues with the major structural changes your organization may be contemplating—or undergoing right now. We will focus on what you need to know to guide your business clients through the maze of legal requirements that apply to major workforce changes, which most business executives assume are fairly straight-forward from an HR perspective. Among other topics, we will discuss:

- EEOC issues that arise during consolidations, RIFs and acquisitions;
- How WARN applies at locations where closures/mass layoffs may occur;
- Labor relations implications and potential collective bargaining restrictions relating to sales and purchases;
- Implications of a stock versus asset sale structure on labor relations obligations;
- Complex employee benefit plan issues, including potential withdrawal liability associated with defined benefit plans and the restructuring of existing health and retirement savings plans; and
- Cross border considerations, in which an international business unit is bought/sold.

In this session, participants will work through a hypothetical corporate transaction involving a U.S. company buying domestic and foreign facilities of another company. This interactive session will help attendees build their "checklist" for advising business clients in future acquisitions/divestitures of company assets, nationally, and internationally.

CONFERENCE SESSIONS: **DAY 2**

11:00 am - 12:30 pm

**SPECIAL  
SESSION****Wage and Hour Procedural Tactics, Pre-Trial and Trial Strategy: Update on the Developing Law**

As the wage and hour litigation wave surges through the state and federal courts, court rulings on case management, class certification and discovery will often determine how and whether cases get resolved—regardless of the merits of the underlying claims. Under the FLSA, plaintiffs’ counsel have used the “two-tiered” standard that initially applies a lenient review of the propriety of class certification as effective leverage to achieve millions of dollars in settlements. As so few of these cases are actually tried, the law is undeveloped with regard to effective trial procedure of a collective action. In this session, a panel of Littler attorneys, with experience trying an FLSA collective action, as well as in-house counsel, will review the rapidly developing procedural law under the FLSA and state wage and hour laws. The panel will discuss strategies to drive cases towards resolution, such as: early motions on the pleadings seeking to narrow the case; the pros and cons of challenging conditional certification; and representative discovery strategies that can be used to focus on the merits of the case without busting the litigation budget. We will also discuss trial strategies that can be used to take these cases effectively to judgment.

11:00 am - 12:30 pm

**SPECIAL  
SESSION****Business or Pleasure: The Challenges of “Bring Your Own Device” Policies in the Workplace**

After the introduction of the BlackBerry, employers relied almost exclusively on company-issued devices to permit employees remote access to their email. Today, employees are clamoring to use personal devices, crammed with their apps, music, photos and more, to conduct business. In response, many companies permit their employees to use personal smartphones and tablets to access company email and other servers.

The benefits of such “dual use” devices include a substantial savings for companies that must otherwise provide and maintain company-owned devices. But the savings must be weighed against the increased risks in areas such as information security and privacy, records management, litigation hold compliance and wage and hour compliance.

This session will explore the challenges inherent in so-called “Bring Your Own Device” policies and provide practical advice on how organizations can manage the inherent risks through a combination of technical controls, policy changes and employee education.

Unlike many corporate policies, “Bring Your Own Device” policies must be developed in conjunction with a cross-functional team that includes Legal, HR, IT, Security, Privacy, and Records Management. Without getting bogged down in technological detail or jargon, this session will explain the risks and offer practical recommendations for developing policies and implementing safeguards to address dual use devices in the workplace.

## POST-CONFERENCE WORKSHOPS

1:30 pm - 3:30 pm

**POST  
CONFERENCE**

### **The New Rules of Union Organizing: Practical Approaches for Handling Expedited Elections Under the NLRB's New Procedures**

The NLRB's unprecedented changes to its procedures for handling union representation cases require employers to rethink the way in which they prepare for and respond to union organizing. Even before the first whisper of organizing is heard, employers need a strategy that not only fosters positive employee relations, but takes into account the Board's new rules and the exacting standards to which employers must comply. In this practical, interactive workshop, Littler attorneys will discuss the new rules and help identify the critical tools employers will need in an era of "constant campaigning."

1:30 pm - 4:30 pm

**POST  
CONFERENCE**

### **Conducting Lawful Investigations: Just the Facts**

Effective internal investigations of corporate misconduct require more than analytical expertise. The need to review, characterize and document factual allegations calls for an unwavering commitment to objectivity. Facilitated by a panel of Littler attorneys, this interactive session will examine key phases of an effective investigation, with an emphasis on concrete and factual practices. Using realistic scenarios, workshop participants will receive practical guidance and hands-on experience in the following techniques:

- The right and wrong way to conduct complaint intake
- How to determine and articulate allegations objectively
- Investigation planning strategies that keep the fact finder on the right track
- Interview techniques that cut through the noise and get to the facts
- Proper methods for documenting interviews—from note taking to witness summaries
- Objectively documenting findings

# CREDITS & CERTIFICATIONS

## **MCLE/CLE Credits**

This program will qualify for minimum continuing legal education credit in most jurisdictions. Littler is an approved MCLE provider in the states of California, Georgia, Illinois, Nevada, New York and Pennsylvania. This program provides up to 18.75 hours of available credit. Littler certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the state bars governing mandatory legal education. This activity 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. If you require credit in a state other than those cited above, please indicate which state(s) in the appropriate place on the registration form.

## **PHR/SPHR/GPHR Certification Credits**

This program provides up to 18.75 re-certification credit hours towards re-certification through the Human Resource Certification Institute (HRCI). For more information about certification or re-certification, please visit the HRCI website at [www.hrci.org](http://www.hrci.org).

## **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. 1.1662-5; *Coughlin v. Commissioner*, 203 F.2d 207 [2d Cir. 1953]).

## HOTEL & REGISTRATION

To register for the conference, please visit [ExecutiveEmployer.com/register](http://ExecutiveEmployer.com/register) or call Juanita Treadway at 541.512.0223

You can make your hotel reservations online by visiting our conference website at [ExecutiveEmployer.com/register](http://ExecutiveEmployer.com/register)

### Location and Hotel Accommodations

**The Westin Kierland Resort & Spa**  
6902 East Greenway Parkway  
Scottsdale, AZ 85254

Littler is pleased to offer a discounted room rate for conference attendees of \$249 plus tax, per night. To receive this discounted rate, you must register for your room through the conference website or call Juanita Treadway at 541.512.0223.

The discounted room rate is not available directly through the hotel. **Please do not contact the hotel to make room reservations.**

#### **PLEASE NOTE:**

Space is limited. In 2011, the main conference hotel sold out weeks prior to the conference, so please make your reservations early. We will have additional room blocks at nearby properties, the **Fairmont Scottsdale Princess** and **Hampton Inn & Suites**. Please contact Juanita Treadway for more information.



## Registration Fee

To celebrate Littler's 70<sup>th</sup> anniversary this year, we are pleased to offer special pricing. The registration fee for The Executive Employer Conference® will be \$1,295 (a \$700 savings from prior years). Registration includes:

- Access to The Executive Employer Conference sessions
- Dinner on Wednesday and Thursday nights
- Breakfast, lunch and snacks throughout
- The 2012-2013 edition of our award-winning, 2,600-plus page compendium published annually for the past 29 years—The National Employer® on CD-ROM

## Group Rates

Littler offers a 10% discount for multiple guests from the same organization attending The Executive Employer Conference. Please indicate your request for group rates on the online registration page.

## Cancellation Policy

Full refunds for the conference are available when written notice is received by our office on or before April 12, 2012. Cancellations received after that date but before April 26, 2012, will be subject to a 50% penalty. No refunds will be given after April 26, 2012.

## Questions?

Please contact Juanita Treadway at 541.512.0223 with any questions about registration.





