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Thursday, January 21, 2010
8:00 a.m. Registration and Networking Session
8:55 a.m. Introductory/Administrative Remarks – ALI-ABA Staff (not webcast or recorded)

Webcast Segment A
9:00 a.m. Course Overview – Course Planning Chairs

LABOR RELATIONS LAW - Ms. Hodge, Chair
9:05 a.m. **Employee Rights Under the National Labor Relations Act (NLRA)**
   – *Mr. Higgins and Ms. Hodge*
   Section 7 of the NLRA protects employee rights to form, join, and assist labor organizations. Section 8 provides the mechanism for enforcing employer and employee rights. This session defines who is entitled to which protected rights and details the enforcement mechanisms under the NLRA.

9:45 a.m. **Economic Pressure: Strikes, Lockouts, Picketing and Secondary Boycotts**
   – *Mr. Higgins*
   Protected and unprotected strikes; discharge vs. replacement of strikers; picketing and secondary boycotts; responding to unions' corporate campaigns; employer recourse to the courts; operating during a strike; lockouts

10:30 a.m. Networking Break
10:45 a.m. **Collective Bargaining** – *Ms. Hodge and Mr. Higgins*
   NLRB enforcement of the duty to bargain in good faith; preparing for negotiations; picking the negotiating team, framing proposals, and planning strategies; economic analysis and bargaining aids; bargaining subjects and tips on effective bargaining techniques

11:30 a.m. **Drafting Collective Bargaining Agreements from A to Z** – *Mr. Kisicki*
   A primer on the drafting of terms of collective bargaining agreements from Arbitration to the Zipper clause

12:15 p.m. Lunch Break

Webcast Segment B
1:45 p.m. **National Labor Relations Board (NLRB) Representation Election Proceedings – Determining Employee Desires** – *Mr. Panken*
   The NLRA protects employee rights to form, join, and assist labor unions. The NLRB conducts elections to determine whether a majority of the employees in an appropriate bargaining unit want union representation. But first it must decide who may vote. Then it encourages a vigorous, but fair, election campaign. This session explores the NLRB’s role and the limits of effective election campaigns.
2:30 p.m. **Handling Grievances and Arbitrations under Union Contracts** – *Mr. Fleming and Ms. Hodge*
Handling the grievance process: responding to issues, persuasion, and compromise: Arbitration: selecting the arbitrator, framing the issues, preparing the case, and conducting the arbitration

3:30 p.m. Networking Break

3:45 p.m. **The Employers Dilemma: What To Do in Anticipation of a Union Organizing Campaign** – *Mr. Kisicki*
It is most likely that the NLRB will either order bargaining on the basis of card counts (if the Employee Free Choice Act is enacted) or will order very quick elections after a petition is filed. What can or should employers do to get their side of the election campaign issues across to the voters to ensure that they make an informed choice when they vote?

4:15 p.m. **The Fair Labor Standards Act** – *Ms. Hodge and Mr. Panken*
Wage and hour laws are counterintuitive traps for the unwary employer. Costly class (collective) action litigation is burgeoning. This presentation details how to comply with Wage and Hour laws and what to do when the plaintiff or Department of Labor knocks

5:15 p.m. Adjournment for the Day

**Friday, January 22, 2010**

8:30 a.m. Networking Session

**Webcast Segment C**

**DEALING WITH EMPLOYMENT LAWS - Mr. Panken, Chair**

9:00 a.m. **How To Keep a Firing from Backfiring — An Introduction to Employment Discrimination Laws** – *Mr. Panken*
What the laws command; why statutory defenses are illusory; how to minimize employer risk in reductions-in-force and other termination situations

10:00 a.m. Networking Break

10:15 a.m. **Handling the Anti-Discrimination Agency Investigation** – *Ms. Zebrowski*
Responding to the filed charge; investigating the facts; limiting the scope of the Agency investigation; dealing with the government investigator; utilizing the new EEOC mediation process; avoiding litigation; judging when to fold and when to hang tough

11:00 a.m. **Sex Discrimination in the Workplace** – *Ms. Hodge*
Asserting the employer’s defenses: the four Ps - Promulgating a Policy, Protection of the victim, Prompt investigation, and Punishment of the perpetrator; how to identify, deal with, and eliminate sexual harassment in the workplace and the role of training as a defense to hostile environment claims

11:45 a.m. **Retaliation and Whistle Blowing Protection** – *Mr. Panken*
Retaliation litigation is increasing exponentially and new whistleblower protection is now available under the Sarbanes-Oxley law (with trials before OSHA administrative law judges). This segment addresses proving the essential elements (P-protest, A-adverse action, and C-causal connection) and practical steps to avoid liability.

12:30 p.m. Lunch Break
Webcast Segment D
2:00 p.m. **Dealing with Workplace Disabilities – Mr. Morris.**
What are protected disabilities under state and federal laws? What are employer obligations to reasonably accommodate people with disabilities? How should employers deal with concepts like “impairment,” “substantial limitation of major life activities,” and “reasonable accommodation?” How can employers effectively comply and avoid costly litigation?

2:45 p.m. **State Employment Law Developments – Mr. Kisicki**
Employment discrimination for reasons against Public Policy, infliction of emotional distress, and broader statutory protected classes make state employment litigation a more significant source of employer liability and potential monetary damages. This section brings us up to date on the latest trends.

3:30 p.m. Networking Break

3:45 p.m. **Veteran’s Rights – Mr. Wright**
USERRA creates employment rights for employees returning from military service. With over 100,000 reservists soon to return from active duty, employers must be kept up to date on their employment rights.

4:15 p.m. **Drafting Employee Manuals, Employment Contracts and Releases – Mr. Panken**
One key to successful employee relations is the communication of the rights and responsibilities of employees. Another key aspect is the drafting of executive employment contracts that properly protect the employer’s interests without scaring off potential leaders of the company. This segment analyzes forms and practical approaches that work.

5:15 p.m. Adjournment for the Day

Saturday, January 23, 2010
7:30 a.m. Networking Session

Webcast Segment E
ALPHABET SOUP: ERISA, MPPAA, WARN, OSHA, IRCA, AND OTHER LAWS AFFECTING EMPLOYMENT – Mr. Cummings, Chair

8:00 a.m. **ERISA and Employee Benefit Litigation and Dispute Resolution in the Current Economic Environment – Mr. Cummings**
A brief review of pension and health benefit controversies, in the current economic environment, arising under the Employee Retirement Income Security Act (“ERISA”) as most recently amended, including union and non-union plans, administrative and fiduciary responsibilities, risk analysis, dispute resolution, and litigation aspects

9.15 a.m. **Ethical Considerations in Handling Employment Law Problems – Mr. Duffy**
Who is the client? When is there a conflict between employer and supervisors and how to handle the separation? Preserving attorney-client privilege; obligations to disclose embarrassing documents and facts; confidential conversations; *ex parte* communications

10:15 a.m. Networking Break
10:30 a.m. **Bankruptcy Aspect of Employment, Labor and Retiree Benefits Law**  
  – *Mr. Cummings*

A quick introduction to the role of Bankruptcy Law and courts in regulating labor relations, bargaining, cutbacks, “VEBA” substitutions, and employment and benefits obligations of employers in (or on the verge of) reorganization in bankruptcy

11:00 a.m. **Other Federal Laws and Regulations Affecting the Employment Relationship**

**WARN Act:** Mandating advance notice of plant closing or mass layoffs to employees, Unions, and State and Local agencies – *Mr. Kisicki*

**IRCA,** The Immigration Reform and Control Act: Penalizing the employment of illegal aliens – *Mr. Fleming*

**FMLA,** The Family and Medical Leave Act: Mandating unpaid leave, with continued paid health insurance, for family and medical needs – *Mr. Morris*

**Polygraph Protection Act:** Severely limiting the use of mechanical devices to determine the truthfulness of suspects – *Mr. Kisicki*

**FCRA,** The Fair Credit Reporting Act: Limiting the use of credit reports in employment.– *Mr. Fleming*

12:00 noon **OSHA, The Occupational Safety and Health Act** – *Mr. Duffy*

How OSHA really works; what to do and not do both before and when the OSHA inspector arrives; new OSHA trends and initiatives

12:45 p.m. Adjournment

**Total 60-minute hours of instruction: 17.25, including one hour of ethics.**
ALI-ABA Course of Study  
Employment and Labor Relations Law  
for the Corporate Counsel and the General Practitioner

January 21-23, 2010  
Washington, D.C.

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